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1. Combined Technical Services Recruitment Examination Rules, 2022.
2. Odisha Accountant-cum-Data Entry Operator (Method of Recruitment & Conditions of Service) Rules, 2024.
3. Odisha Diploma Engineers' Service (Method of Recruitment and Conditions of Service) Rules, 2012.

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COMPENSATION
 CRIMINAL TRIAL
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 PROPERTY LAW
 SERVICE JURISPRUDENCE
 SERVICE LAW

CORRIGENDUM

Judgment reported in 2025 (I) ILR-CUT-884 (Saudamini Swain & Anr. V. State of Orissa & Ors.) the *Result of the case* may be read as “**Writ Petitions allowed**” in place of “**Writ Petitions dismissed**” at Page No. 909.

(Mistake of typographical error is regretted.)

SUBJECT INDEX

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ARBITRATION & CONCILIATION ACT, 1996 – Section 34 – Challenge of Arbitral Award – Delay in challenging the award – Limitation – Whether Section 5 of the Limitation Act shall apply while challenging the arbitral award U/s. 34 of the Arbitration & Conciliation Act, 1996. Held: No – Section 5 of the Limitation Act to condone the delay beyond the statutory period prescribed under section 34(3) of the Act, 1996 is not applicable. <i>M/s. Chhabra Coal Beneficiaries & Energy (P) Ltd. V. M/s. Rexon Strips Ltd. & Anr.</i>	2025 (I) ILR-Cut..... 1329
ARBITRATION & CONCILIATION ACT, 1996 – Section 34 – Challenge of Arbitral Award – Delay in challenging the award – Limitation – Whether Section 14 of the Limitation Act shall apply for excluding the period of limitation challenging the arbitral award under Section 34 of the Arbitration & Conciliation Act, 1996. Held: Yes – Section 14 of the Limitation Act is applicable to a proceeding under section 34 of the 1996 Act, which mandates for exclusion of certain period while computing the period of limitation, not for extension of period of limitation. <i>M/s. Chhabra Coal Beneficiaries & Energy (P) Ltd. V. M/s. Rexon Strips Ltd. & Anr.</i>	2025 (I) ILR-Cut..... 1329
ARBITRATION & CONCILIATION ACT, 1996 – Section 34 – Challenge of Arbitral Award – Whether the impugned award deserve interference on the ground of mentioning wrong/ incorrect or non-mentioning of the provision of law. Held: No – It is a well settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/ or statutory authority had the requisite jurisdiction therefor. <i>M/s. Chhabra Coal Beneficiaries & Energy (P) Ltd. V. M/s. Rexon Strips Ltd. & Anr.</i>	2025 (I) ILR-Cut..... 1329

ARBITRATION AND CONCILIATION ACT, 1996 – Section 37 r/w Section 18(2) and 18(3) of MSMED Act – In the facts of the present case, upon a perusal of the orders of the Facilitation Council, this Court is perturbed to note that the Council did not refer the parties for a proper attempt of conciliation despite the statutory mandate prescribed under Section 18(2) – Firstly, no reference to Section 18(2) of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) was made, and secondly, no conciliator was appointed – Whether the order of the Learned District Judge warrants interference keeping in mind the limitations of the High Court’s power U/s. 37 of the 1996 Act.

Held: Yes – When the statute mandates that upon receipt of a reference, the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation, the Council was bound to conduct the conciliation itself or refer the parties for such conciliation – There is no whisper of either things being done and therefore, given the gross irregularities as well as non-conformity committed by the MSEFC in its awards, the same in the opinion of this Court and for the reasons stated above, shocks the conscience of this Court.

The Deputy General Manager, (Elect.), Electrical Circle, Berhampur V. M/s. Maa Bhairabi Traders, Lochapada Road, Ganjam & Anr.

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CENTRAL GOODS AND SERVICES TAX ACT, 2017 – Section 6(2)(b) r/w Section 65 of Odisha Goods and Services Tax Act, 2017 – Central Revenue has issued summons for scrutiny and demand for the periods of 2017-18 and 2018-19 – For the said periods the State authorities had already conducted audit and final audit report stand discussed – After conclusion of the audit, Petitioner accepted relevant paragraphs in the report to meet the short payment of tax – Whether the summons issued by the Assistant Commissioner, GST and Central Excise U/ss. 61 and 74 of Central Goods and Services Tax Act, 2017 for scrutiny and demand is sustainable, when the proceeding initiated U/s. 65 of Odisha Goods and Services Tax Act, 2017 has already been concluded.

Held: No – State Revenue had already probed by initiating the audit – Undisputed fact is, the show cause notice issued by Central revenue was after commencement of audit – We are clear in our mind that a summons issued under section 70 means the process of collection of evidence or gathering of material, as by interpretation of word ‘investigation’ given by the Supreme Court in *Liberty Oil Mills v.*

Union of India reported in (1984) 3 SCC 465 with reference to investigation mentioned in provisions of Import and Export Control Act and Imports (Control) Order, 1955 – There is also no dispute that subject matter of both proceeding are same.

Impugned order dated 26th April, 2024 passed by the Assistant Commissioner, GST and Central Excise is set aside and quashed – The interference is severable so there must be re-computation.

Bipin Kumar Agrawal V. The Commissioner CGST & Central Excise, Rourkela & Ors.

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COMBINED TECHNICAL SERVICES RECRUITMENT EXAMINATION RULES, 2022 – Rule 4(b) r/w Rule 6 of Odisha Diploma Engineers’ Service (Method of Recruitment and Conditions of Service) Rules, 2012 – Appellants possess qualification of degree in Engineering – Their contention before the Court is that though the prescribed qualification for the post of Junior Engineer is diploma in Engineering, the candidate having higher qualification of degree cannot be excluded – The Appellants neither aggrieved by the advertisement nor the Rules but they claim eligibility to apply for the post as it would not cause prejudice to diploma holder – Whether the candidature of a candidate having higher qualification than the qualification prescribed for a post in the relevant Rule and advertisement should be considered.

Held: No – In this case we are satisfied that the Government has been able to demonstrate separation of cadre, which implies that work of Junior Engineer can be done by a diploma holder, while work of an Assistant Executive Engineer can only be executed by those having higher qualification of degree in engineering.

Choudhury Saubhagya Mohan Dash V. State of Odisha & Ors.

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COMPENSATION – Apportionment of compensation – In the present case R3 to R6 are legal heirs of the (deceased), husband of Appellant No. 1 – A dispute arose between the widow and her child on one side and widow mother, major and minor sister and brother on the other side asserting their right to compensation – The mother, brother and sisters of the deceased are also claiming share in the compensation in equal portion with that of widow and infant son of the deceased, who also lay their claim on the compensation along with widow mother of the deceased – Whether the major married sister and major earning brother are entitled to compensation under the heading of “loss of dependency”.

Held: No – R5 and R6 are not entitled to compensation under the heading of “loss of dependency”, but they may have the right to a share on the non-contractual heads of loss of estates as well as filial consortium towards loss of love and affection of their deceased brother.

Mamata Nayak & Anr. V. Sunita Dhal & Ors.

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CONSTITUTION OF INDIA, 1950 – Article 21 r/w Section 139 AA of Income Tax Act, 1961 – The petitioner challenges the mandatory linkage of Aadhaar with PAN under Section 139 AA of the Income Tax Act and its impact on Demat account operations – Whether the linkage of Aadhaar with PAN violates the right to privacy and personal liberty as enshrined under Article 21 of the Constitution.

Held: No – The impugned provision mandating Aadhaar-PAN linkage for Demat accounts stands on firm constitutional and legal footing – It satisfies the triple test established in *Puttaswamy* (case), serving a legitimate state interest in curbing tax evasion and ensuring financial transparency.

While concerns regarding data security and privacy are acknowledged, they do not outweigh the compelling need for regulatory oversight in the securities market – Adequate safeguards have been implemented to mitigate risks, and the measure remains a proportionate and reasonable restriction on privacy – Therefore, the provision does not warrant interference by this Court.

Tathagata Satapathy V. HDFC Bank Ltd., Mumbai & Ors.

2025 (I) ILR-Cut.....

1146

CRIMINAL PROCEDURE CODE, 1973 – Section 125 – Maintenance – Effective date for payment of maintenance – The petitioner/husband challenged the order of the Family Court, Khurda wherein direction was made to pay maintenance to wife and son with effect from the date of filing – Whether the maintenance should be given retrospectively with effect from filing of application or prospectively from the date of the award.

Held: – The maintenance to the wife and son in this case should be payable w.e.f. the date of application filed by them U/s. 125 of Cr.P.C.

Tarun Kumar Gadabad V. Subhalaxmi Lenka & Anr.

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1344

CRIMINAL PROCEDURE CODE, 1973 – Section 190 (1)(a), 190 (1) (b), 204 – The learned Trial Court issued summons against the petitioner taking cognizance of offence U/ss. 13(2)/13(1)(d) of the Prevention of Corruption Act read with Section 21(1)/23 of Mines and Minerals (Development and Regulation) Act and Sections 120-B/ 409/420 of I.P.C. – The petitioner contended that the order of taking cognizance is liable to be set aside as no reason has been stated – Whether the learned Trial Court requires to record reason while issuing summons.

Held: No – At the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and the Magistrate is only to be satisfied that there are sufficient grounds for proceeding against the accused – It is fairly well settled that when issuing summons, the Magistrate need not explicitly state the reasons for his satisfaction that there are sufficient grounds for proceeding against the accused.

M/s. Rashmi Cement Limited & Anr. V. State of Odisha (Vigilance)

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1366

CRIMINAL PROCEDURE CODE, 1973 – Section 227 – The petitioner was charge sheeted U/ss. 498-A and 306 of IPC – The wife of petitioner has died in her matrimonial house within 07 years of marriage – There is no evidence indicating that the deceased was ever subjected to physical as well as mental cruelty by her husband and the in-laws on the demand of dowry – Whether a prima facie case against the accused be made out in absence of sufficient grounds to sustain the charge.

Held: No – When there is no material to show sufficient ground to sustain the charge, this Court is of the considered view that, the trial vis-à-vis charges would be radar less voyage and continuing the criminal proceedings would be an exercise in futility, resulting in wastage of precious judicial time.

Manoranjan Tarei @ Tarai V. State of Odisha & Anr.

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CRIMINAL PROCEDURE CODE, 1973 – Section 438 – Pre-arrest Bail – Economic offence – The petitioners are seeking pre-arrest bail in connection with a C.T. case for commission of offences punishable U/ss. 406/409/420/467/468/471/120-B of IPC – Whether the petitioners are entitled to pre-arrest bail in an economic offence.

Held: No – On a perspicuous analysis of materials on record and on perusal of the case diary, this Court is not persuaded to hold that the

Petitioners have been able to make out an exceptional case for grant of pre-arrest bail.

Susanta Kumar Samal V. State of Odisha

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1239

CRIMINAL PROCEDURE CODE, 1973 – Section 439 – Bail – Offence under Section 302 of Indian Penal Code, 1860 – What are the relevant factors the Court should consider while granting bail to an accused?

Held: The grant of bail in cases involving serious offenses such as Section 302 IPC requires a judicious and cautious approach – The nature of the allegations, gravity of the offense, severity of punishment, and prima facie involvement of the accused must all be carefully weighed before granting such relief – The Courts must remain vigilant against any decision that may inadvertently undermine the administration of justice or allow interference with the investigation.

Niranjan Sahoo @ Babuni V. State Of Odisha

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CRIMINAL PROCEDURE CODE, 1973 – Section 482 – Inherent jurisdiction – The petitioner filed an application U/s. 482 of Cr.P.C. seeking quashing of V.G.R. Case as the order of cognizance has been passed without assigning any reason – Whether High Court should exercise jurisdiction U/s. 482 of Cr.P.C. to embark upon an inquiry whether the evidence in question is reliable or not or whether a reasonable appreciation of its accusation has been made or not.

Held: No – That is the function of the trial Judge – Due process of law cannot be curtailed in between, at the same time, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly or it would allow an accused to short-circuit the prosecution intermittently by invoking the inherent jurisdiction.

M/s. Rashmi Cement Limited & Anr. V. State of Odisha (Vigilance)

2025 (I) ILR-Cut.....

1366

CRIMINAL TRIAL – Circumstantial evidence – Extrajudicial Confession – The learned Trial Court found the appellant guilty of the offence punishable under Section 302 of Indian Penal Code – There is no eyewitness to the occurrence and the case is based on circumstantial evidence – Evidence of P.Ws. 1, 2, 6 and 7 relating to the confession in

the village panchayat is not trustworthy – Evidence of P.W.3 that the appellant did not come to the meeting place, and he was brought only after the police came to the village, creates doubt in the evidence of P.Ws. 1, 2, 6 and 7 who have stated that the appellant came and made extrajudicial confession – Whether it is reliable and trustworthy to convict the appellant.

Held: No – In view of the doubtful features, we are not inclined to accept the evidence of P.Ws. 1, 2, 6 and 7 relating to extrajudicial confession made by the appellant in the village meeting to be voluntary and trustworthy as it has failed to pass the rigorous test on the touchstone of credibility.

Bhagban Nayak V. State of Odisha

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CRIMINAL TRIAL – The Trial Court acquitted the accused persons (Respondents) from the offences U/s. 364, 376(2)(f), 302 and 34 of the Indian Penal Code, 1860 – The deceased, a minor girl was reported missing after playing with other children on the day of temple pratistha in the village Gangeswarpur Sasan – The body of deceased was found on the next day lying in a dried pond amidst Amari bushes near the Siva Temple – The prosecution’s case rested heavily on circumstantial evidence – The prosecution case is also based on last seen theory alleging that the respondents were lastly seen with the deceased – The prosecution further used the police dog to track a scent from the crime scene to one of the respondent’s cabin – Whether the evidence of police dog in the absence of proper procedural safeguards and corroboration be relied upon to prove the guilt of the accused.

Held: No – While assessing the police dog evidence, it is observed that the investigation lacked critical elements – The prosecution did not present evidence of the dog’s training, skill, or past performance to establish its reliability – No forensic evidence, such as fingerprints, bloodstains, or incriminating materials, was recovered from the locations identified by the dog – The prosecution failed to demonstrate that the conditions under which the dog conducted the tracking were controlled or that there were no other scent trails that could have confused the animal.

The dog is a mere “tracking instrument” rather than a witness, with the handler reporting the dog’s behavior – The police dog evidence, in the instant case, is unreliable in the absence of corroboration – It cannot form the basis for implicating Respondent No.1, as the

investigation did not meet the necessary safeguards to ensure the reliability of the dog's actions.

State of Odisha V. Pratap Kr. Das & Anr.

2025 (I) ILR-Cut.....

1114

EQUAL PAY FOR EQUAL WORK – The special Secretary to Govt. School and Mass Education vide order No. 16057 dated 01.08.2019 directed to freeze the existing remuneration of the petitioners who are working as Senior Technical Consultant of respective District Project Office at the current level with effect from 31.03.2019 – Similarly placed persons under the State Government have received the revised scale of pay as per the 7th pay commission – Whether the order of freezing the remuneration thereby depriving the petitioners to the benefit of 7th pay commission is sustainable.

Held: No – It is highlighted that the impugned Office Order dated 01.08.2019 has no foundational factor to hold water.

Therefore, this Court is of the considered opinion that the reason for freezing the existing remuneration for lack of concurrence of the Finance Department is liable to be obliterated.

Bishwaranjan Pradhan & Anr. V. State of Odisha (Chief Secy.-cum-Chairman Executive Committee, OPEPA) & Ors.

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1247

HINDU MARRIAGE ACT, 1955 – Section 13(1)(i-a) – Mental cruelty – Whether repeated threats to commit suicide, to harm the spouse and their family members amounts to cruelty.

Held: Yes – This Court is of the considered opinion that the repeated threat of suicide or violence is not merely misconduct; it is an insidious form of emotional blackmail and psychological oppression – Such conduct crosses the boundaries of personal conflict and touches upon the very core of harassment, making it impossible for the aggrieved spouse to continue leading a peaceful and dignified marital life.

Madhusmita Samanta V. Rajesh Singh

2025 (I) ILR-Cut.....

1100

HINDU MARRIAGE ACT, 1955 – Section 13(1)(i-a) – The learned Judge, Family Court granted the prayer for divorce holding that the conduct of Appellant/ wife amounts to mental cruelty U/s. 13(1)(i-a) of the Act – The Appellant/wife systematically harassed the Respondent

and his family by filing multiple false cases, including over 45 FIRs against him and his family members – Learned Family Court, Cuttack found that the filing of multiple legal cases, including over 45 FIRs was not merely an exercise of legal rights but a deliberate attempt to harass and intimidate the Respondent and his family – It was held that while seeking legal remedies is a legitimate right, the misuse of legal process to pressurize a spouse constitutes cruelty, justifying the dissolution of the marriage – Whether filing of multiple legal cases including over 45 FIRs to pressurize a spouse constitutes cruelty U/s. 13(1) (i-a) of the Act.

Held: Yes – The Appellant’s contradictory legal actions filing for restitution of conjugal rights while simultaneously initiating domestic violence cases and excessive criminal complaints only deepened the emotional chasm between the parties, leaving the Respondent with no reasonable prospect of reconciliation – The Appellant’s conduct, far from reflecting a desire to rebuild the marriage, displayed a deliberate pattern of harassment and control, causing the Respondent severe mental agony and emotional exhaustion.

In light of these circumstances, the findings of the Family Court are rooted in sound legal reasoning and supported by overwhelming evidence – The Appellant’s actions, viewed collectively, meet the threshold of mental cruelty as defined under Section 13(1)(i-a) of the Hindu Marriage Act –Therefore, this Court finds no infirmity in the impugned judgment granting divorce to the Respondent-Husband, and the appeal is liable to be dismissed.

Madhusmita Samanta v. Rajesh Singh

2025 (I) ILR-Cut.....

1100

HINDU MARRIAGE ACT, 1955 – Section 14 – Statutory bar – The Appellant challenged the order of learned Family Court where the prayer of the husband to grant decree of divorce has been rejected on the ground of non-completion of statutory period as provided in Section 14 of the 1955 Act – Whether the statutory bar/period provided U/s. 14 of the Hindu Marriage Act is mandatory in nature.

Held: Yes – Section 14 starts with a non-obstante clause, meaning it overrides all other provisions of the HMA – It explicitly prohibits not just Court from entertaining a divorce petition within one year of marriage but also prevents a party from presenting such a petition – The decision further emphasizes that the statutory bar is absolute unless a specific application for leave is filed and allowed – In cases where an

application under the proviso is not made, the divorce petition itself is not maintainable – However, the proviso to section 14(1) permits a relaxation of this bar in exceptional cases where the petitioner can demonstrate either exceptional hardship suffered by the petitioner, or exceptional depravity on the part of the Respondent – The Court retains discretion in such cases to allow the petition to be presented within one year, provided the plea is substantiated through a separate application seeking permission to file for divorce prematurely – Further, even if permission is granted, the Court has the power to withhold the operation of the decree until after one year from the date of marriage, or dismiss the petition if it finds that leave was obtained through misrepresentation or concealment.

Debabrata Debadarsan Palei V. Subhakanti Patra & Anr.

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1127

INDIAN PENAL CODE, 1860 – Section 306 – What are the essential ingredients to attract an offence U/s. 306 of IPC?

Held: It is a well-established legal principle that the presence of *mens rea* the intention to abet the act is essential – Mere harassment, by itself, is not sufficient to find an accused guilty of abetting suicide – The prosecution must demonstratively establish an active or direct action by the accused that led the deceased to take his/her own life – The element of *mens rea* cannot simply be presumed or inferred; it must be evident and explicitly discernible.

Manoranjan Tarei @ Tarai V. State of Odisha & Anr.

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1227

INDUSTRIAL DISPUTES ACT, 1947 – Section 2-A(2) – Maintainability of Application U/s. 2(A) – The Workman was terminated from service on being found guilty in a domestic enquiry – The Workman without exhausting the remedy under Clause-26 of the Certified Standing Orders moved to the Industrial Adjudicator U/s. 2-A of the Act – Whether pre-condition of exhausting remedy of appeal as prescribed in the standing order is mandatory before approaching the industrial adjudicator.

Held: No – The statutory remedy under Section 2-A (2) of the Act does not contain any pre-condition of exhausting remedy of appeal before approaching the authority – The only pre-condition to be satisfied to file an application under Section 2-A (2) of the Act is that if in a case of termination of a Workman the Conciliating Officer fails to conciliate

and conclude the proceeding within a period of forty-five days then the Workman has the remedy to approach the Industrial Adjudicator within three years from the date when the cause of action arose to initiate the industrial dispute – Section 2-A (2) of the Act does not mandate any pre-condition of exhausting appellate remedy provided under the Standing Orders.

M/s. Aditya Aluminium, Lapanga, Through its Chief Executive, Sambalpur V. The Presiding Officer, Labour Court, Sambalpur & Anr.

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INDUSTRIAL DISPUTES ACT, 1947 – Section 2(s) – Workman – The Petitioner Management stated that the Opposite Party was engaged as an unskilled DLR against a vacant post of Chowkidar and not coming under the definition of Workman – Whether the Opposite Party working as unskilled DLR against a vacant post of Chowkidar is coming under the definition of workman.

Held: Yes – From the admission of Management, it is apparent that the nature of job, the Opposite Party-Workman was discharging comes under the preview of Section 2(s) of the Act.

The Management of M/s. Hare Krushna Mahatab Library, Bhubaneswar V. Prasanna Kumar Sethi

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1082

INDUSTRIAL DISPUTES ACT, 1947 – Section 25-B (2) – Petitioner-Management took a plea that the workman never worked continuously for more than 240 days without any break for the period from 02.04.2004 till 20.08.2010 and only worked for the said period on working days – Whether the “continuous service” of 240 days in the preceding twelve months as on the date of refusal of employment of the workman should include Sundays/Weekly rest days as well as National Holidays.

Held: Yes – Law is well settled that apart from the reasons of interruption, as detailed under Section 25-B(1), interruption due to Sundays/ weekly rest days as well as National Holidays, which are paid holidays, are also to be counted for the purpose of calculation of 240 days, as prescribed under Section 25-B(2)(a)(ii) of the Act.

The Management of M/s. Hare Krushna Mahatab Library, Bhubaneswar V. Prasanna Kumar Sethi

2025 (I) ILR-Cut.....

1082

JUDICIAL PRECEDENT – Per incuriam – Meaning of – Law is well settled that any judgment or order passed contrary to the statute is a nullity. That apart, law is also well settled that any judgment passed without taking note of the earlier judgment of the same Court so also Supreme Court is per incuriam.

M.D., Odisha State Co-Operative Bank Ltd., Bhubaneswar V. Prafulla Chandra Patnaik & Ors.

2025 (I) ILR-Cut.....

1314

LIMITATION ACT, 1963 – Section 14 – ‘Court’ – Meaning – Whether it speaks of ‘Civil Court’.

Held, No – It is not necessary that the court spoken of in Section 14 should be a ‘civil court’ – Any authority or tribunal, having the trappings of a Court, would be a ‘court’ within the meaning of the said Section.

M/s. Chhabra Coal Beneficiaries & Energy (P) Ltd. V. M/s. Rexon Strips Ltd. & Anr.

2025 (I) ILR-Cut.....

1329

MOTOR VEHICLES ACT, 1988 – Section 171 – The learned Tribunal ordered for penal interest @ 9% per annum, if the award is not paid within two months of receipt of copy of the order – Whether penal interest @ 9% per annum on the compensation amount imposed by the Motor Accident Claims Tribunal-cum-Additional District Judge is sustainable.

Held: No – Section 171 of the Act contemplates about interest but not penal interest – The imposition of penal interest @ 9% per annum on the compensation amount being not sustainable is hereby set aside.

Mamata Nayak & Anr. V. Sunita Dhal & Ors.

2025 (I) ILR-Cut.....

1348

MOTOR VEHICLES ACT, 1988 – Section 173(1) r/w Section 5 of Limitation Act – Period of limitation – Sufficient cause – There is delay of 3,270 days in filing the appeal – Whether the delay of 3,270 days in filing Appeal under the Motor Vehicles Act can be condoned in absence of sufficient cause but on the basis of beneficial legislation.

Held: No – This Court is not persuaded to hold, keeping in view that the Motor Vehicles Act is a beneficial legislation, that the grounds as set forth in the petition for condonation of delay constitute “sufficient

cause” for condonation of delay of 3,270 days so as to engulf the sisters and brothers of the deceased of an accident which took place in 28.12.2008 in litigation.

The New India Assurance Company Ltd., represented through its Branch Manager, Balangir V. Bihari Parabhue & Ors.

2025 (I) ILR-Cut.....

1223

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 (in short NDPS Act) – Section 52-A – Non-compliance of mandatory provision – The appellants have been convicted for commission of offence punishable U/ss. 20(b)(ii)(C) of NDPS Act – The primary evidence for proving possession of the narcotic substance would always be the seized substance itself – There is no evidence to certify the correctness of any list of samples so drawn – The evidence on record does not disclose about the production of recovered and seized articles before the Court concerned, much less the remaining samples ever produced before the Court – Recovery of the contraband ganja from the exclusive possession of the appellants not proved - Whether in absence of compliance of mandatory provision U/s. 52-A of the NDPS Act an inference can be drawn that prosecution has not been able to prove its case against the appellant.

Held: Yes – From a cumulative analysis of evidence on record and discussion made hereinabove, this Court is of the considered opinion that neither the provision of Sec. 52-A of the NDPS Act has been complied with nor the recovery of the Contraband Ganja from the exclusive possession of the appellants has been proved through any independent witness nor the safe custody of the Contraband articles has been established, which assumes great significance on the face of admitted evidence of keeping the custody of the samples with PW2-the raiding officer overnight without any explanation and it only leads to an inference that prosecution has not been able to prove its case against the appellants beyond all reasonable doubt by leading clear, cogent and unimpeachable evidence.

Chand Mohammad V. State of Odisha

2025 (I) ILR-Cut.....

1357

ODISHA ACCOUNTANT-CUM-DATA ENTRY OPERATOR (METHOD OF RECRUITMENT & CONDITIONS OF SERVICE) RULES, 2024 – Appointment to the post of Accountant-Cum-Data Entry Operators one for each Panchayat – As per Rule 70% of the posts are to be filled up by direct recruitment and 30% amongst from GRS – The Rules also provides that as an one time measure, the GRS who have

completed 5 years of continuous service shall be absorbed on regular basis against vacant post – Petitioner being GRS applied for absorption into the post – The authority denied absorption on the ground of involvement in criminal case though he has been acquitted – Although the petitioner has been acquitted from criminal case, the authority taking plea of the date of selection board meeting i.e. 14.03.2024 as cut-off date denied absorption – Whether the plea of cut-off date is sustainable in case of absorption of the petitioner when he has fulfilled all the conditions and has been acquitted by the Court.

Held: No – If a cut-off date is fixed and his case is not considered as he was facing a criminal case before such date, it would be akin to treating him guilty – This Court fails to understand as to how the date of selection board meeting, 14.03.2024 can have any relevance in this regard – The subsequent order of acquittal, as already stated, only goes to legally acknowledge the fact of innocence of the Petitioner – It must therefore, be held that he was innocent all through notwithstanding pendency of the criminal case – Such being the case, he cannot be discriminated on the basis of the date of judgment of acquittal, which obviously is not under his control.

Purna Ch. Majhi V. State of Odisha & Ors.

2025 (I) ILR-Cut.....

1200

ORISSA GRAMA PANCHAYATS ACT, 1964 – Section 24(2)(c) – Non-compliance of 15 days statutory period – The petitioner challenges the impugned notice for convening special meeting for the no confidence motion initiated against him in contravention of Section 24(2)(c) of the Act – Whether non-compliance of 15 days statutory period as specified in the statute can be construed to be a ground to challenge the motion of no confidence, where no prejudice to the petitioner has been established.

Held: No – The inescapable conclusion of the Court is that compliance of Section 24(2)(c) of the Act with regard to the mode of service of notice even with less than 15 days as a margin between the date of notice and meeting cannot be a ground to challenge the action, especially when, there is no evidence of any such prejudice being caused to the petitioner.

Karunakar Seth V. State of Odisha & Ors.

2025 (I) ILR-Cut.....

1187

ORISSA LAND REFORMS ACT, 1960 – Section 37(b) – Family – Petitioner submitted that the authority has not considered the married

daughter as family U/s. 37 (b) of the Act, for which the order is legally not tenable – Whether the married daughter should be considered as family as per the definition of Section 37 (b) of the OLR Act.

Held: No – When the Legislature specifically intended to exclude a major married son, who had separated by partition or otherwise before the appointed date, there would be no justification for not giving the same privilege or benefit to a married daughter, who by virtue of her marriage stands at a more distant place than a separated son on partition from the joint family and at last, concluded that a harmonious construction being the essence of the rule of interpretation, a daughter, who is already married by the appointed date would not come under the definition of “family”.

Radha Krushna Padhy V. Additional District Magistrate, Rayagada & Anr.

2025 (I) ILR-Cut.....

1179

ORISSA LAND REFORMS ACT, 1960 r/w OLR (Amendment) Act, 1973 – Section 52 – Cut-off date – Petitioner pleaded that the land measuring Ac.4.90 decimals which was gifted to the daughter of the petitioner at the time of her marriage, needs to be excluded while determining the ceiling area – Whether the land gifted in favour of the married daughter in 1995 is to be considered as a part of the ceiling surplus in a *suo motu* proceeding under OLR Act, which was initiated in 2002.

Held: No – The *suo motu* proceeding under the OLR Act was initiated in 2002 and by then, the petitioner had already disposed of Ac.4.9 decimals of land in favour of the married daughter in 1995 and therefore, in view of the provisions of the Act and for the purpose of the proceeding under Section 52, he is to be so held liable on account of acquisitions or deemed date of subsequent acquisitions – On a sincere reading of the law in place, irrespective of the reasons for the *suo motu* ceiling proceeding against the petitioner, according to the Court, for all intents and purposes, the cut-off date shall have to be held from the date of such subsequent acquisitions and obviously the same is to exclude the transfer of Ac.4.90 decimals of land in favour of the petitioner’s daughter in 1995 and hence, is not referable to the cut-off date i.e. 26th September, 1970.

Radha Krushna Padhy V. Additional District Magistrate, Rayagada & Anr.

2025 (I) ILR-Cut.....

1179

ORISSA MUNICIPAL ACT, 1950 – Section 54(2) – Removal of petitioner – Requisition for removal was not enclosed in the notice – Furthermore, resolution copy enclosed in the notice was not a true copy but apparently a copy reflecting pagination – As per the provision of Sub-section (2) of 54 of the Act, a notice to be issued by the Collector was required to have enclosed therewith both the requisition as well as the resolution – Whether the removal of the petitioner without complying the mandatory requirement as provided in section 54(2) of the Act is sustainable.

Held: No – It is clear that finding of fact by the learned Single Judge was erroneous – The notice conveying the meeting issued on 27th August 2024 did not meet with mandatory requirement as provided under Sub-section (2) in Section 54 of the 1950 Act.

Arati Pradhan V. State of Odisha & Ors.

2025 (I) ILR-Cut.....

1051

PAYMENT OF GRATUITY ACT, 1972 – Section 7(3)(A) – Delay in payment of gratuity – Quantum of interest with regard to such delay – Whether it should be as per the provision provided under the Payment of Gratuity Act or under the Interest Act.

Held: It should be under the Payment of Gratuity Act and it shall be disbursed with interest @ 10% which is the statutory rate fixed under the Payment of Gratuity Act, 1972.

M.D., Odisha State Co-Operative Bank Ltd., Bhubaneswar V. Prafulla Chandra Patnaik & Ors.

2025 (I) ILR-Cut.....

1314

PROMISSORY NOTE – Onus for examination of the genuineness of the signature – The appellant was the defendant before the Trial Court – The plaintiff filed suit for realization of money with interest thereon from the appellant/defendant – The plaintiff paid ₹33,000/- to the defendant on 03.04.1991 through execution of a promissory note on stamp papers executed by the defendant in favour of the plaintiff in presence of the witnesses with condition of repayment of the said loan amount with interest thereon within six months since 03.04.1991 – The defendant did not repay the said loan amount for which plaintiff filed the suit – The defendant's took a plea that he had not executed any promissory note – The so called promissory note dated 03.04.1991 is a false/ forged and fabricated one – The Trial Court held that defendant has violated the condition of such promissory note for which the plaintiff is entitled to recover the said amount with interest from the

defendant – The Appellate Court dismissed the appeal filed by defendant concurring/ accepting the finding and observation made by the Trial Court – Whether the burden lies on the defendant to get the signature on the promissory note examined through a handwriting expert to confirm it's genuineness.

Held: Yes – It was the duty of the defendant to get the signature vide Ext.3/a on Ext.3 examined through handwriting expert in order to establish that, Ext.3/a on Ext.3 is not his signature, but, the defendant has not done his such duty, then, at this juncture, it cannot be held that, the due execution of the promissory note vide Ext.3 by the defendant in favour of the plaintiff has not been proved, when the plaintiff has proved the due execution of the same by him (defendant) in his favour through the un-assailed testimonies of P.Ws.1 to 3.

Dukshyadipati Misal V. Bhabani Chandra Panigrahi

2025 (I) ILR-Cut.....

1379

PROPERTY LAW – Withdrawal of suit – Maintainability of second suit – The learned Trial Court has rejected the petition of the defendants for disposing of the suit of plaintiff on a preliminary issue on the ground of its non-maintainability for the withdrawal of earlier suit for partition of the plaintiff for the same properties assigning the reason that the question of maintainability of the suit shall be decided after final hearing of the suit – Whether withdrawal of a suit for partition by the same plaintiff for the same properties will debar/ preclude the plaintiff from filing a fresh suit.

Held: No – Withdrawal of the previous suit for partition vide C.S. No.4 of 2018 by the plaintiff shall not be a bar for the maintainability of the 2nd Suit for partition vide C.S. No.166 of 2022, as the cause of action in the suit for partition is recurring one, because, the right to partition is a right occurring from time to time and there is a continuing cause of action till the continuance of the jointness of the properties, then, at this juncture, the impugned order dated 01.03.2024 passed by the learned Trial Court in C.S. No.166 of 2022 rejecting the petition of the petitioners (defendants) cannot be held as erroneous.

Tusagra Pruseth & Anr. V. Chudamani Pruseth & Ors.

2025 (I) ILR-Cut.....

1385

SERVICE JURISPRUDENCE – Job contract period – The petitioner made representation to the authority to calculate the final pension by taking into account the job contract period from 18.12.1964 to 06.11.1989 & the period of regular service – The authority rejected the

claim of petitioner – Whether the period of service rendered on job contract basis should be considered for pension and pensionary benefit.

Held: Yes – This Court observes that the order passed by this Court which was eventually confirmed by the Hon'ble Supreme Court has already been implemented by the State-Opposite Parties by including the length of service rendered in the job contract establishment in the total qualifying period of service for the purpose of determination of pension and pensionary benefits.

This Court found that there is no justification in taking a different view than the one which has been approved by the Hon'ble Supreme Court and has attained finality and the same has also been acted upon – As such, denying the claim of the Petitioner to consider the length of service he has rendered in the job contract establishment i.e. from 18.12.1964 to 06.11.1989 is legally untenable.

Baishnab Charan Das V. State of Odisha & Ors.

2025 (I) ILR-Cut.....

1206

SERVICE JURISPRUDENCE – Regularization – Application of ORV Act, 1975 at the stage of regularization – It is admitted that the petitioners were engaged as peons/watchmen under the Opposite Party No.2/ Odisha State Police Housing Welfare Corporation Ltd. on daily wage basis and subsequently were given *ad hoc* engagement since 1990/1994/1996 – The authority regularized the service of petitioners *vide* office order dated 19.06.2009 – The Opposite Party No.2/Chairman-cum-Managing Director of Odisha State Police Housing and Welfare Corporation passed an order dated 12.05.2010 withdrawing the regularization – The authority at a belated stage made objection that as the provisions of the ORV Act 1975 being not followed at the time of engagement of the petitioners as *ad hoc* employees, office orders of regularization were liable to be withdrawn – Whether such withdrawn of regularization of the service of the petitioners is just and proper.

Held: No – At the stage of consideration of regularization/ absorption in service, the application of the ORV Act is not a *sine qua non* factor – Needless to repeat that at the time of engagement the authorities ought to have kept in view such statutory requirement, if any – For the flaw in adhering to procedural infirmity could not adversely affect the petitioners' right to be considered for regularization in services after having rendered unblemished service for long period.

Rabindra Nath Barik & Ors. V. State of Odisha (Principal Secy., Home Deptt., Odisha Secretariat) & Ors.

2025 (I) ILR-Cut.....

1278

SERVICE JURISPRUDENCE – Regularization – The petitioner seeks regularization of the service of his sister-in-law, despite her engagement on an *ad hoc* basis – Whether mere continuation in an *ad hoc* capacity confers an enforceable right to regularization.

Held: No – Regularization is not an automatic consequence of prolonged service but is contingent upon compliance with prescribed rules, policies, and the availability of sanctioned posts – The petitioner has not demonstrated that Late Geetarani Swain was appointed through a duly sanctioned process or that she met the requisite criteria for regularization.

This Court is not inclined to grant the relief sought for regularization of the services of Late Geetarani Swain – The process of regularization involves an administrative determination based on policy considerations, service requirements, and statutory compliance, which fall within the exclusive domain of the executive – The Court cannot direct regularization in contravention of settled principles of law, particularly in cases where the engagement was *ad hoc* and not pursuant to a regular selection process – Any relief in such matters must emanate from executive policy decisions rather than judicial directives.

Krushna Chandra Swain V. The Commissioner-cum-Secretary, Food Supply & Consumer Welfare Department, Government of Odisha & Ors.

2025 (I) ILR-Cut.....

1168

SERVICE JURISPRUDENCE – Reinstatement – The petitioner was entangled in a criminal case, as a result of which he was disengaged from service – The petitioner faced trial and was acquitted by the learned Trial Court – The authority rejected prayer for reinstatement even after the order of acquittal – Whether the petitioner has any right to reinstatement in service after his acquittal in a vigilance case.

Held: Yes – This Court is of the considered view that the Opposite Parties should have considered the case of the Petitioner for his reinstatement in service after his acquittal in the Vigilance case pursuant to the judgment under Annexure-6 to the Writ Petition.

Akshaya Kumar Dash V. State of Odisha & Ors.

2025 (I) ILR-Cut.....

1211

SERVICE JURISPRUDENCE – Stay of Disciplinary Proceeding – Petitioner challenges the rejection order passed by Central Administrative Tribunal – The interim relief sought for by the petitioner for stay of the inquiry in the disciplinary proceeding initiated against him till conclusion of the criminal case instituted against him and pending in the Court of learned Special Judge (CBI) Court – Whether it is necessary to stay the enquiry of disciplinary proceeding till conclusion of criminal proceeding initiated against a delinquent officer.

Held: No – Even when the charge is found to be serious involving complicated questions of fact and law as also the likelihood of the prejudice to be caused to the delinquent in criminal proceedings, the Court has to keep in consideration that the criminal trials get prolonged indefinitely, and the departmental proceedings cannot be suspended indefinitely or delayed unduly and has to draw a balance between the need for a fair trial to the accused delinquent on the one hand and an expeditious conclusion of the on-going disciplinary proceedings on the other as it is always in the interest of the employee and the employer both because if the employee is not guilty, his honour should be vindicated at the earliest possible and if he is guilty, he should be dealt with properly according to law as it would not be in the interest of the administration to continue with such employee awaiting the result of the criminal proceedings – Each case requires to be considered in the back drop of its own facts and circumstances.

Deepak Kumar V. Union of India & Ors.

2025 (I) ILR-Cut.....

1073

SERVICE JURISPRUDENCE – The petitioner having been appointed against the termination vacancy and continuing as such for the last 27 years and his services have been duly approved – It is also evident that there was some procedural irregularity in the appointment of petitioner which was committed by the management at the relevant time – The Opposite Party No. 5 was validly appointed in the year 1987 and continued as such till 1995 whereas the petitioner has been refused employment without following due procedure – The Inspector of Schools holds the termination of Opposite Party as illegal – Whether the order passed by the School Inspector is not valid

Held: No – The petitioner cannot also be blamed for the mistake committed by the Managing Committee and that too, at this distance of time – If the impugned order is to be implemented strictly, it would result in termination of services of the petitioner, which obviously would affect his right to livelihood guaranteed under Article 21 of the Constitution of India – Therefore, taking an overall view of the matter,

particularly in the peculiar facts and circumstances of the case and without setting a precedent, this Court holds that ends of justice would be best served if the interests of both the petitioner and opposite party No. 5 are protected.

Santibrata Panda V. State of Odisha & Ors.

2025 (I) ILR-Cut.....

1193

SERVICE LAW – Encashment of unutilized leave salary – The petitioner retired from service on attaining the age of superannuation in the rank of a jailer – Since the petitioner was facing two departmental proceedings for his involvement in vigilance proceeding, the retiral dues including the pensionary benefits of the petitioner have been withheld by the authorities – The petitioner submitted an application for encashment of his unutilized leave of 291 days – The authority rejected the application on the ground of pendency of departmental/ judicial proceeding – Whether the unutilized leave salary of the petitioner can be withheld by the authority on the ground of pendency of departmental/judicial proceeding.

Held: No – The Hon’ble division bench, on a careful analysis of the legal position, came to a categorical conclusion that in absence of any statutory rules, the leave encashment cannot be withheld by the authorities.

Syed Shahrudin Ahmed V. State of Orissa & Ors.

2025 (I) ILR-Cut.....

1219

2025 (I) ILR-CUT-1047

BIPIN KUMAR AGRAWAL
V.
THE COMMISSIONER CGST & CENTRAL EXCISE,
ROURKELA & ORS.

[W.P.(C) NO. 20151 OF 2024]

24 FEBRUARY 2025

[ARINDAM SINHA, A.C.J., & M.S. SAHOO, J.]**Issue for Consideration**

Whether the summons issued by the Assistant Commissioner, GST and Central Excise U/ss. 61 and 74 of Central Goods and Services Tax Act, 2017 for scrutiny and demand is sustainable, when the proceeding initiated U/s. 65 of Odisha Goods and Services Tax Act, 2017 has already been concluded.

Headnotes

CENTRAL GOODS AND SERVICES TAX ACT, 2017 – Section 6(2)(b) r/w Section 65 of ODISHA GOODS AND SERVICES TAX ACT, 2017 – Central Revenue has issued summons for scrutiny and demand for the periods of 2017-18 and 2018-19 – For the said periods the State authorities had already conducted audit and final audit report stand discussed – After conclusion of the audit, Petitioner accepted relevant paragraphs in the report to meet the short payment of tax – Whether the summons issued by the Assistant Commissioner, GST and Central Excise U/ss. 61 and 74 of Central Goods and Services Tax Act, 2017 for scrutiny and demand is sustainable, when the proceeding initiated U/s. 65 of Odisha Goods and Services Tax Act, 2017 has already been concluded.

Held: No – State Revenue had already probed by initiating the audit – Undisputed fact is, the show cause notice issued by Central revenue was after commencement of audit – We are clear in our mind that a summons issued under section 70 means the process of collection of evidence or gathering of material, as by interpretation of word ‘investigation’ given by the Supreme Court in *Liberty Oil Mills v. Union of India* reported in (1984) 3 SCC 465 with reference to investigation mentioned in provisions of Import and Export Control Act and Imports (Control) Order, 1955 – There is also no dispute that subject matter of both proceeding are same.

Impugned order dated 26th April, 2024 passed by the Assistant Commissioner, GST and Central Excise is set aside and quashed – The interference is severable so there must be re-computation. (Paras 7-8)

Citations Reference

G.K. Trading Company v. Union of India & Ors., **Civil Misc. Writ (Tax) Petition no.666 of 2020 (DB), High Court of Allahabad, judgment dated 2nd December, 2020**; Liberty Oil Mills v. Union of India, (1984) 3 SCC 465 – referred to.

List of Acts

Central Goods and Services Tax Act, 2017; Odisha Goods and Services Tax Act, 2017.

Keywords

Subject matter; Proceeding; Inquiry; Investigation; Scrutiny; Demand.

Case Arising From

Order dated 26th April 2024 passed by the Assistant Commissioner, GST and Central Excise.

Appearances for Parties

For Petitioner : Mr. S.S. Padhy

For Opp. Parties : Mr. Umesh Chandra Sahoo (Junior Standing Counsel)
Mr. Sunil Mishra (Standing Counsel)

Judgment/Order**Judgment*****ARINDAM SINHA, A.C. J.***

1. The writ petition was moved on 6th September, 2024 by Mr. Padhy, learned advocate appearing on behalf of petitioner. Mr. Sahoo, learned advocate, Junior Standing Counsel appears on behalf of Central revenue and Mr. Mishra, learned advocate, Standing Counsel, for State revenue.

2. On behalf of petitioner it was earlier submitted, impugned is order dated 26th April, 2024 passed by the Assistant Commissioner, GST and Central Excise. It is an order, subject matter of which was scrutiny. Section 61 in Central Goods and Services Tax Act, 2017 provides for scrutiny and the order was made for demand under section 74. The scrutiny and demand were for periods 2017-18 and 2018-19. For the periods, the State authorities had already conducted audit and final audit report dated 4th May, 2023 stands disclosed. The provision for audit is section 65. Referring to section 6(2)(b) it was submitted, impugned order be interfered with because there already has been a concluded proceeding in respect of subject matter of the proceeding initiated by Central revenue, resulting in impugned order.

3. We reproduce below paragraph 4 from our order dated 6th September, 2024.

“4. Definitions section 2 does not define proceeding. Opposite parties have adjournment to make out their case on opposing the writ petition.”

4. There does not appear to be dispute on facts. Central revenue had issued summons, after which State revenue had issued notice and got conducted audit. Report was filed. Section 65 in Odisha Goods and Services Tax Act, 2017 provides for audit. Sub-section (7) therein permits the proper officer to initiate action, inter alia, under section 74. Provisions in the Act correspond to provisions in Central Goods and Services Tax Act, 2017. On the audit concluded, petitioner accepted relevant paragraphs in the report, to meet the short payment of tax.

5. Mr. Padhy submits, the summons was issued prior to notice issued by State revenue. However, the show cause notice was issued after the audit report filed and his client having accepted it to pay the difference pointed out. In the circumstances, there stood a proceeding concluded before the show cause notice was issued by Central revenue. He relies on view taken on **judgment dated 2nd December, 2020** by a Division Bench of the High Court of Allahabad in **Civil Misc. Writ (Tax) Petition no.666 of 2020 in G.K. Trading Company v. Union of India and others**. He places paragraph 10 (Manupatra print), reproduced below.

“10. The words “subject-matter”, “proceedings” and “inquiry” have not been defined either under the State G.S.T. Act or the Union Territory G.S.T. Act or the C.G.S.T. Act. Therefore, these words have to be interpreted in the context of the aforesaid Acts. The word “inquiry” in Section 70 has a special connotation and a specific purpose to summon any person whose attendance may be considered necessary by the proper officer either to give evidence or to produce a document or any other thing. It cannot be intermixed with some statutory steps which may precede or may ensue upon the making of the inquiry or conclusion of inquiry. The process of inquiry under-Section 70 is specific and unified by the very purpose for which provisions of Chapter XIV of the Act confers power upon the proper officer to hold inquiry. The word “inquiry” in Section 70 is not synonymous with the word “proceedings”, in Section 6(2)(b) of the U.P.G.S.T. Act/C.G.S.T. Act.”

Mr. Padhy also relies on paragraphs 17 and 18, reproduced below.

*“17. Thus, Section 6(2)(b) of the C.G.S.T. Act prohibits separate initiation of proceedings on the same subject-matter by the proper officer under the C.G.S.T. Act when proceeding on the same subject-matter by the proper officer under the State Act has been initiated, whereas Section 70 of the U.P.G.S.T./C.G.S.T. Act merely empowers the proper officer to summon any person in any inquiry. **The word “proceedings” used in Section 6(2)(b) is qualified by the words “subject-matter” which indicates an adjudication process/proceedings on the same cause of action and for the same dispute which may be proceedings relating to assessment, audit, demands and recovery, and offences and penalties etc.** These proceedings are subsequent to inquiry under Section 70 of the Act. The words “in any inquiry” used in Section 70 of the Act is referable to the provisions of Chapter XIV, i.e. Section 67 (power of inspection, search and seizure), Section 68 (inspection of goods in movement), Section 69 (power to arrest), Section 71 (access to business premises) and Section 72 (officers to assist proper officers). Therefore, proper officer under the U.P.G.S.T. Act or the C.G.S.T. Act may invoke power under Section 70 in any inquiry. Prohibition of Section 6(2)(b) of the*

C.G.S.T. Act shall come into play only when any proceeding on the same subject-matter has already been initiated by a proper officer under the U.P.G.S.T. Act.

18. Thus, the words "any proceeding" on the same "subject-matter" used in Section 6(2)(b) of the Act, which is subject to conditions specified in the notification issued under sub-Section (1); means any proceeding on the same cause of action and for the same dispute involving some adjudication proceedings which may include assessment proceedings, proceedings for penalties etc., proceedings for demands and recovery under Sections 73 and 74 etc." (emphasis supplied)

6. We respectfully agree with view taken in **G.K. Trading Company** (supra). The provisions in Central Goods and Services Tax Act, 2017 correspond to provisions in Odisha Goods and Services Tax Act, 2017. It follows that the legislature intended there should not be overlap in making probe. Clause (b) under sub-section (2) in section 6 of Central Goods and Services Tax Act, 2017 is reproduced below.

"6(2)(b). where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter." (emphasis supplied)

Clause (b) under sub-section (2) in section 6 of Odisha Goods and Services Tax Act, 2017 carries converse description of the proper officer as under the Central Act. Rest of the provision is same.

7. In view of aforesaid we are satisfied that State revenue had probed by initiating audit. In **G.K. Trading Company** (supra) view taken includes audit to be a proceeding. Undisputed fact is, the show cause notice issued by Central revenue was after commencement of audit. We are clear in our mind that a summons issued under section 70 means the process of collection of evidence or gathering of material, as by interpretation of word 'investigation' given by the Supreme Court in **Liberty Oil Mills v. Union of India** reported in (1984) 3 SCC 465 with reference to investigation mentioned in provisions of Import and Export Control Act and Imports (Control) Order, 1955. There is also no dispute that subject matter of both proceeding are same.

8. Impugned order dated 26th April, 2024 passed by the Assistant Commissioner, GST and Central Excise is set aside and quashed. The interference is severable so there must be re-computation.

9. The writ petition is allowed and disposed of.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Writ Petition allowed.

2025 (I) ILR-CUT-1051

**ARATI PRADHAN
V.
STATE OF ODISHA & ORS.**

[W.A. NO. 328 OF 2025 & I.A. NO. 878 OF 2025]

10 MARCH 2025

[ARINDAM SINHA, A.C.J., & M.S. SAHOO, J.]**Issue for Consideration**

Whether removal of the petitioner without complying the mandatory requirement as provided in section 54 (2) of the Orissa Municipal Act is sustainable.

Headnotes

ORISSA MUNICIPAL ACT, 1950 – Section 54 (2) – Removal of petitioner – Requisition for removal was not enclosed in the notice – Furthermore, resolution copy enclosed in the notice was not a true copy but apparently a copy reflecting pagination – As per the provision of Sub-section (2) of 54 of the Act, a notice to be issued by the Collector was required to have enclosed therewith both the requisition as well as the resolution – Whether the removal of the petitioner without complying the mandatory requirement as provided in section 54(2) of the Act is sustainable.

Held: No – It is clear that finding of fact by the learned Single Judge was erroneous – The notice conveying the meeting issued on 27th August 2024 did not meet with mandatory requirement as provided under Sub-section (2) in Section 54 of the 1950 Act. (Para 10)

List of Acts

Orissa Municipal Act, 1950.

Keywords

Requisition for removal; Notice; Resolution; Mandatory requirements.

Case Arising From

Judgment dated 28.01.2025 passed in W.P. (C). No. 22679 of 2024.

Appearances for Parties

For Appellant : Mr. Samir Ku. Mishra, Sr. Adv.

For Respondents: Mr. K.C. Kar, Govt. Adv.

Mr. Hrudananda Mohapatra

Mr. Bibekananda Bhuyan, Sr. Adv.

Judgment/Order**Judgment****ARINDAM SINHA, A.C. J.**

1. Appellant had filed a writ petition praying that notice dated 27th August, 2024 and resolution dated 19th July, 2024 be quashed. Contention of petitioner before the learned single Judge was, the requisition was not enclosed in the notice issued, as mandated by sub-section (2) of section 54 in Orissa Municipal Act, 1950. A notice to be issued by the Collector was required to have enclosed therewith, both the requisition as well as the resolution. Petitioner's case was, the requisition was not enclosed in the notice. Furthermore, resolution copy enclosed in the notice was not a true copy but apparently a copy reflecting pagination. The requirement under the provision is mandatory, while the procedure follows in the rules. The learned single Judge failed to appreciate the facts in dismissing the writ petition challenging petitioner's removal on defective notice.

2. Mr. Mishra, learned senior advocate appears on behalf of appellant. Mr. Kar, learned advocate, Government Advocate appears on behalf of State, Mr. Mohapatra, learned advocate appears for respondent no.4 and Mr. Bhuyan, learned senior advocate, for respondent nos. 6, 7, 9 to 11.

3. Contention on behalf of respondent no.4 was, the notice served on appellant carried the resolution as well as the requisition. Appellant cannot deny she became aware of the notice, as received by her father-in-law, who had made clear acknowledgement on receiving the notice, to be along with the resolution and the requisition.

4. At this juncture it would be convenient to reproduce paragraphs 5 and 6 from our order dated 14th February, 2025.

*"5. Sub-section (2) says, inter alia, in convening the meeting the procedure shall be in accordance with the rules subject however to the provisions named therein. Clause (a) in the sub-section says, no such meeting shall be convened except on a requisition duly signed along with copy of resolution proposed to be moved at the meeting. Clause (b) provides for the requisition to be addressed to the District Magistrate. **Clause(c) mandates the District Magistrate, to within 10 days of receipt of the requisition, fix the meeting and give notice of the same to all councillors holding office, of such notice along with copy of the requisition and the proposed resolution.** At this stage we are prima facie satisfied, any aberration may cause the meeting held thereafter to be pronounced as not duly held.*

6. In view of aforesaid we require State to produce the file of the District Magistrate and the officer must avail the convenience of video conferencing to assist us on adjourned date. The officer is at liberty to be physically present." (emphasis supplied)

5. Today Mr. Kar produces the original file. Collector, Nayagarh is virtually present.

6. We required Mr. Kar to show us office copy of the notice issued to the councillors under sub-section (2) in section 54. Mr. Kar complied. We found the

office copy had attached to it photocopy of the resolution bearing endorsement of attestation. Following it was another copy of the notice bearing endorsement on service.

7. We then asked Mr. Kar to identify from the file, original requisition received. Mr. Kar identified it for us. We looked at it and rest of the papers in the file. There is no attested copy of the requisition in it.

8. We required Mr. Mishra, appearing on behalf of petitioner, to show us original notice received by his client. He identified it from the writ file as produced before the learned single Judge. We looked at the original notice appellant had received. It exactly corresponds with office copy notice bearing as enclosure, the resolution. We note that office copy of the notice, as aforesaid, bears enclosure of copy of the resolution as attested, the original resolution being elsewhere in the file. Petitioner's notice simply had enclosure of photocopy of the copy resolution attached to the office copy of the notice, without the endorsement of attestation.

9. It appears from impugned judgment, a position on fact was pronounced upon by the learned single Judge to be, appellant cannot deny receipt of the notice along with copies of the resolution and requisition because her father-in-law had acknowledged receipt of it. Appellant had contended otherwise before the learned single Judge and maintains such contention before us, causing us to have called for and look at the original file. On query made the Collector submits, omission to enclose the requisition, when brought to his notice, he issued a subsequent notice enclosing it.

10. It is clear that finding of fact by the learned single Judge was erroneous. The notice convening the meeting issued on 27th August, 2024 did not meet with mandatory requirement as provided under sub-section (2) in section 54. Mr. Bhuyan submits, this finding by the appellate Court is not necessary in view of submission made by the Collector and subsequent fact of deferment of the meeting, it having been held and not challenged. We have seen from paragraph-12 of impugned judgment, this contention was negated by the learned single Judge. Petitioner before said Court is appellant before us. Mr. Bhuyan's clients cannot assail the reason given on this contention as no cross appeal was filed. Furthermore, when the original notice is bad, any deferment or action taken pursuant thereto, must also be held to be bad.

11. Impugned judgment is set aside in appeal. Consequently, prayer in the writ petition is allowed. Notice dated 27th August, 2024 is set aside and quashed. Interim order passed in the appeal will thus merge.

12. The appeal is allowed and disposed of.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Appeal allowed.

2025 (I) ILR-CUT-1054

**CHOUDHURY SAUBHAGYA MOHAN DASH
V.
STATE OF ODISHA & ORS.**

[W.A. NO. 62 OF 2025 WITH BATCH]

11 MARCH 2025

[ARINDAM SINHA, A.C.J., & M.S. SAHOO, J.]

Issue for Consideration

Whether the candidature of a candidate having higher qualification than the qualification prescribed for a post in the relevant Rule and advertisement should be considered.

Headnotes

COMBINED TECHNICAL SERVICES RECRUITMENT EXAMINATION RULES, 2022 – Rule 4(b) r/w Rule 6 of ODISHA DIPLOMA ENGINEERS' SERVICE (METHOD OF RECRUITMENT AND CONDITIONS OF SERVICE) RULES, 2012 – Appellants possess qualification of degree in Engineering – Their contention before the Court is that though the prescribed qualification for the post of Junior Engineer is diploma in Engineering, the candidate having higher qualification of degree cannot be excluded – The Appellants neither aggrieved by the advertisement nor the Rules but they claim eligibility to apply for the post as it would not cause prejudice to diploma holder – Whether the candidature of a candidate having higher qualification than the qualification prescribed for a post in the relevant Rule and advertisement should be considered.

Held: No – In this case we are satisfied that the Government has been able to demonstrate separation of cadre, which implies that work of Junior Engineer can be done by a diploma holder, while work of an Assistant Executive Engineer can only be executed by those having higher qualification of degree in engineering. (Para 18)

Citations References

Akash Santosh Deshmukh & Ors. v. Brihanmumbai Municipal Corporation & Anr., **Writ Petition no.18052 of 2024 (DB), Bombay High Court, Interim Order dated 11th December, 2024**; Puneet Sharma v. Himachal Pradesh State Electricity Board Limited & Anr., (2021) 16 SCC 340; State of Uttarakhand v. Deep Chandra Tewari, (2013) 15 SCC 557; State of Haryana v. Abdul Gaffar Khan, (2006) 11 SCC 153; Uma Shankar Sharma v. Union of India, (1980) 3 SCC 202; Chief Manager, Punjab National Bank v. Anit

Kumar Das, (2021) 12 SCC 80; Maharashtra Public Service Commission v. Sandeep Shriram Warade, (2019) 6 SCC 362; Zahoor Ahmad Rather v. Sheikh Imtiyaz Ahmad, (2019) 2 SCC 404; Unnikrishnan CV & Ors. v. Union of India & Ors., 2023 SCC OnLine SC 343 – referred to.

List of Acts

Combined Technical Services Recruitment Examination Rules, 2022; Odisha Diploma Engineers' Service (Method of Recruitment and Conditions of Service) Rules, 2012.

Keywords

Minimum qualification; Degree holder; Diploma holder; Prescribed qualification.

Case Arising From

Judgment dated 3rd December 2024 passed in W.P.(C) No. 1445 of 2024.

Appearances for Parties

For Appellant : Mr. P.K. Rath, Sr. Adv. (W.A 62 of 2025)
Ms. Kaveeta Wadia, Sr. Adv, Mr. Shashank Tripathy
(W.A 3433 of 2024)
Mr. Budhadev Routray, Sr. Adv (W.A 3459 of 2024)

For Respondents: Mr. Pitambar Acharya, A.G with Mr. Saswat Das, A.G.A.
Mr. Sanjib Swain, SC for OSSC
Mr. Gautam Misra. Sr. Adv. (for Caveator)
Miss Pami Rath, Sr. Adv. (for Caveator)

Judgment/Order

Judgment

ARINDAM SINHA, A.C. J.

1. Six writ appeals have been listed and have been called on for hearing. Mr. Routray, learned senior advocate appears on behalf of appellants in W.A. no.3459 of 2024. Miss Wadia, learned senior advocate appears on behalf of appellants in W.A. no.3433 of 2024. Mr. Rath, learned senior advocate appears on behalf of appellants in W.A. no.62 of 2025. None appears on behalf of appellants in W.A. nos.91, 92 and 94, all of 2025.

2. Impugned in the appeals is judgment dated 3rd December, 2024 of the learned single Judge. Mr. Routray submits, his clients' contention stands recorded in paragraph-8. Rule 4(b) of Combined Technical Services Recruitment Examination Rules, 2022 does not provide restrictions on allowing candidates with higher qualification. The qualification required, though diploma for recruitment to post of Junior Engineer, candidates having higher qualification by degree cannot thus be

excluded. He points out from the paragraph, case of degree engineers was, they are not aggrieved by the advertisement nor the rules but they claim eligibility to apply for the post. In allowing them to also apply it would not cause prejudice to diploma holders. Two years of the degree course is equivalent to the required diploma.

3. He draws attention to the 2022 rules. He submits, eligibility criteria for direct recruitment, in supersession of all earlier rules or resolutions or executive instructions or orders have been provided for by overriding effect given on rule 8. Rule 4 provides for eligibility conditions. The post of Junior Engineer has been said to have, inter alia, minimum educational qualification as noted in column-3 of schedule-I. Said column gives the requirement as by Odisha Diploma Engineering Service (Method of Recruitment and Condition of Services) Rules, 2012. Drawing attention to the 2012 rules he submits, eligibility has been prescribed under rule 6, by clause (b). The clause provides for possession of a diploma in engineering or an equivalent qualification from an institution recognized by Odisha Council of Technical Education and Vocational Training. He submits, going by subsequent mandate in the 2022 rules, prescribed qualification is but the minimum. His clients have degree in engineering. It cannot be disputed that a degree holder possesses higher qualification than a diploma holder. He reiterates, two years of the course is equivalent to the diploma.

4. Mr. Routray draws attention to counters filed by State through Under Secretary to Government, Department of Water Resources. He submits, same counter has been filed in some writ petitions that have given rise to the appeals. With reference to paragraph-9 in the counter he submits, the Under Secretary has said that there is no restriction for candidates who possess higher qualification. Relied upon sentence in the paragraph is reproduced below.

“9. ... It is reiterated that there is no restriction for the candidates who possess higher qualification such as B.Tech. in Civil Engineering through Diploma in Civil Engineering to participate in the recruitment process of Junior Engineer. ...”
(emphasis supplied)

5. He relies on view taken by a Division Bench of the Bombay High Court by **interim order dated 11th December, 2024 in Writ Petition no.18052 of 2024 (Akash Santosh Deshmukh and others v. Brihanmumbai Municipal Corporation and another)**, paragraphs-20 to 24. He submits, there is no intelligible differentia for the classification contended by State, to exclude degree holders from applying for post of Junior Engineer. By the view taken the Bombay High Court, after having given option to the Municipality, directed relief to petitioners, similarly placed as his clients.

6. Mr. Routray submits, his clients' contentions urged before the learned single Judge were not dealt with. He draws attention to paragraph-26 in it to submit, it is the reasoning paragraph for denying his clients the relief. Impugned judgment be

reversed in appeal and there be appropriate direction for steps being taken to allow his clients to participate in the recruitment of Junior Engineers.

7. Miss Wadia, learned senior advocate submits on the hierarchy of posts making up the cadres. Under the rules of 2012 there are two posts. The feeder post is the post of Junior Engineers, to be filled up by direct recruitment. There is 100% promotion to the other post of Assistant Engineer, as mentioned in said rules. There is further promotional avenue open to Assistant Engineers, by lateral entry into the post of Assistant Executive Engineer. Post of Assistant Executive Engineer is a post that has essential eligibility requirement of engineering degree. Hence, there is no logic or rationale in excluding degree holders from applying to the lowest feeder post of Junior Engineer, which post has promotional avenue up to and beyond post of Assistant Executive Engineer because, posts above the latter are to be filled up only on promotion. She lays emphasis, the advertised post for recruitment being Junior Engineer by direct entry, is the feeder post.

8. She relies on judgments of the Supreme Court.

(i) **Puneet Sharma v. Himachal Pradesh State Electricity Board Limited and another** reported in (2021) 16 SCC 340, paragraphs 31 and 37. Paragraph-31 is reproduced below.

“31. In the present case, what is evident from the rules is that direct recruitment to the post of JEs in HPSEB is to the extent of 72%. Undoubtedly, eligibility is amongst those who passed in matriculation or 10+2 or its equivalent qualification. However, this Court is of the opinion that the diploma holders’ contention that the minimum qualification is matriculation and that the technical qualification is diploma is incorrect. The minimum qualification for the post cannot be deemed to be only matriculation but rather that only such of those matriculates, or 10+2 pass students, who are diploma holders would be eligible. The term “with” in this category has to be read as conjunctive.”

(ii) **State of Uttarakhand v. Deep Chandra Tewari** reported in (2013) 15 SCC 557, paragraph-11.

(iii) **State of Haryana v. Abdul Gaffar Khan** reported in (2006) 11 SCC 153, paragraph-7.

(iv) **Uma Shankar Sharma v. Union of India** reported in (1980) 3 SCC 202, paragraph-5. She submits, the Supreme Court said that terms and conditions of service are intended to be construed reasonably and too technical a view can defeat the essential spirit and intent embodied in them. She relies on this decision and **Deep Chandra Tewari** (supra) to submit, there cannot be an embargo on candidates having higher qualification from participating in the recruitment for the post.

9. Mr. Acharya, learned advocate, Advocate General appears on behalf of State. At the outset we drew his attention to paragraph-9 in the counter, to the passage relied upon. He submits, the 2022 rules provide for procedure on eligibility. The 2012 rules provide for procedure of recruitment and conditions of service. Drawing attention to the 2012 rules he demonstrates, said rules prescribe procedure

in the cadre, Odisha Diploma Engineers' Service. Clause (k) under definitions rule 2 gives meaning of diploma to be 3 years diploma course in mentioned disciplines. Rule-3 constitutes the service to be of Junior Engineer and Assistant Engineer. He submits, rule 4 clearly prescribes procedure of direct recruitment for post of Junior Engineer and promotion to the next post of Assistant Engineer. These two posts he reiterates, constitute the cadre as providing a feeder and promotional posts to fulfill all requirements including career progression. He then draws attention to rule-7 in the 2012 rules, clause (v). The clause is reproduced below.

“7. xxx xxx xxx

(v) *Selection shall be based on career evaluation and objective type written test.*

(a) *Weightage on career evaluation shall be 50% (fifty per cent) and objective type written test 50% (fifty per cent)*

(b) *The career evaluation shall be made in the following manner,*

(i) *High School Certificate: 20% (Twenty per cent)*

(ii) ***Certificate or Diploma in Engineering : 30% (Thirty per cent).***

(emphasis supplied)

He submits, unless a candidate possesses a diploma, he cannot be considered for selection. Contentions of equivalence and submissions made in regard thereto before the learned single Judge are of no relevance because even if two years in a degree course is assumed, though not admitted to be equivalent to a diploma, there is no mechanism for assessing the 30% as is required by clause (v) under rule-7.

10. Having submitted as above he answers our question regarding passage in paragraph-9 of the counter on submission that a diploma holder, after obtaining appointment as a Junior Engineer and carrying on to be promoted as Assistant Engineer can, in the meantime, obtain degree for being considered for entry to the post of Assistant Executive Engineer.

11. Mr. Acharya relies on judgments of the Supreme Court.

(i) **Chief Manager, Punjab National Bank v. Anit Kumar Das** reported in (2021) 12 SCC 80, paragraph-17.3. He submits, the Supreme Court declared that it is for the employer to determine and decide relevancy and suitability of the qualifications for any post and it is not for the Court to consider and assess.

(ii) **Maharashtra Public Service Commission v. Sandeep Shriram Warade** reported in (2019) 6 SCC 362, paragraph9. In this case the Supreme Court said, it is for the employer who is best suited to decide the requirements a candidate must possess according to needs of the employer and nature of work. He submits, a need of State is to fulfill the societal obligation to allow employment opportunity to diploma holders.

(iii) **Zahoor Ahmad Rather v. Sheikh Imtiyaz Ahmad** reported in (2019) 2 SCC 404, paragraph-26. He submits, the Supreme Court agreed with its earlier decisions on presence of rule, absence of which would make it impermissible to draw an inference that a higher qualification necessarily presupposes the acquisition of

another, albeit lower qualification. The rule considered in the earlier decisions was rule-10 (a) (ii) in Kerala State and Subordinate Services Rules, 1958.

(iv) **Unnikrishnan CV and others v. Union of India and others** available at **2023 SCC OnLine SC 343**, paragraph-13. Mr. Acharya relies on a sentence in the paragraph, where the Supreme Court said that before the High Court appellants therein had attempted to justify their claim contending diploma is equivalent to a degree and as such being entitled for promotion, which has been negated by the High Court and rightly so.

12. Mr. Acharya submits further, State has devised employment opportunity for diploma holders by the 2012 rules. Similar rules have also been formulated to provide employment for degree holders. Impugned judgment is a good one. There is no error either in fact or in law. The appeals be dismissed.

13. Mr. Swain, learned advocate appears as Standing Counsel for respondent no.2. He submits, the Commission in publishing the notice for recruitment, required the candidates to have essential qualification of diploma.

14. Mr. M. Mishra, learned senior advocate appears on behalf of applicant, a diploma holder who lodged caveat in W.A. no.3433 of 2024. He adopts submissions already made on behalf of those opposing the appeals. Mr. G. Misra, learned senior advocate appears on behalf of applicant, a diploma holder who lodged caveat in W.A. no.62 of 2025. He distinguishes **Puneet Sharma** (supra) by reliance on paragraph-40, reproduced below.

*“40. As noticed previously, in addition to the above considerations, **an amendment to the rules was made on 3-6-2020 declaring that those with higher qualifications are also entitled to apply or be considered for appointment.** This amendment was brought in to clear all doubts and controversies and, in that sense, the amending provisions should be deemed to have been inserted from inception.”* (emphasis supplied)

He submits further, submissions made by Miss Wadia stand recorded in paragraphs-9 and 11 of the judgment in **Zahoor Ahmad Rather** (supra). They were dealt with by paragraph-27 in the decision, reproduced below.

*“27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in **Jyoti K.K.** must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in **Jyoti K.K.** turned.”*

Miss Rath, learned senior advocate appears for a diploma holder, who filed caveat. She submits, the recruitment was by an online process. On a candidate seeking to apply, only way he or she can would be by proceeding with the online application having only option on educational qualification to be diploma. She submits further, the 2012 rules for degree engineers do not require engineering degree for those entering by lateral entry from the diploma cadre.

15. We understand that the 2022 rules prescribe the recruitment procedure. In making the prescription there is provision for minimum eligibility criteria, for recruitments to the several cadres. Therefore the prescription by said rules cannot be relied upon, either as expansion on minimum or otherwise, as the minimum being essential. The prescription is by way of regulating procedure as per referred rules in column 3 of schedule-I. As such the eligibility criteria provided for by the referred rules in column 3, must have primacy.

16. There are separate rules promulgated in year 2012 to provide for two separate cadres. One is Odisha Diploma Engineering Service (Method of Recruitment and Conditions of Services) Rules, 2012 and the other, Odisha Engineering Service (Methods of Recruitment and Conditions of Services) Rules, 2012. Only difference between them is, the former having word ‘Diploma’ between words ‘Odisha’ and ‘Engineering’ as the rules are called. Intention of State by the subordinate legislation is thus clear on providing for two separate cadres. One for diploma engineers and the other for degree engineers. It is State’s policy to appoint diploma engineers in a separate cadre. We accept contention of State that selection provided for in rule 7 of the diploma rules of 2012 will become difficult to work out in event degree holders apply on strength of their degrees. It may be that a degree holder has higher qualification than a diploma holder but to find the point and score in the degree course as would be equivalent to the score in the diploma is something nobody has attempted nor even tried to demonstrate to us. They are distinguishing facts. Here we add, the statement in the counter means, a diploma engineer also having degree, can apply for the post of Junior Engineer.

17. Declarations of law made by the Supreme Court in **Anit Kumar Das** (supra), **Sandeep Shriram Warade** (supra) and **Zahoor Ahmad Rather** (supra) all support contentions of State. Reliance on **Unnikrishnan CV** (supra), however, is of no aid to State because converse contention was negated by the High Court and the Supreme Court said it was rightly so. The contention was that diploma is equivalent to degree. It follows that, judgments of the Supreme Court in **Puneet Sharma** (supra), **Uma Shankar Sharma** (supra), **Deep Chandra Tewari** (supra) and **Abdul Gaffar Khan** (supra) do not come to aid of appellants.

18. In **Puneet Sharma** (supra) relied upon paragraphs- 31 and 37 must be understood in context of paragraph-40. Reproduced below is paragraph-11 from **Deep Chandra Tewari** (supra).

*“11. We are conscious of the principle that when particular qualifications are prescribed for a post, the candidature of a candidate possessing higher qualification cannot be rejected on that basis. No doubt, normal rule would be that candidate with higher qualification is deemed to fulfill the lower qualification prescribed for a post. But that higher qualification has to be in the same channel. **Further, this rule will be subject to an exception. Where the prescription of a particular qualification is found to be relevant for discharging the functions of that post and at the same time, the Government is able to demonstrate that for want of the said qualification a candidate may not be suitable for the post, even if he possesses a “better” qualification but that “better” qualification has no relevance with the functions attached with the post.**”*

(emphasis supplied)

The Supreme Court was conscious of the principle that when particular qualifications are prescribed for a post, candidature of a candidate possessing higher qualification cannot be rejected on that basis. However, the Court also pointed out the principle being subject to an exception. In this case we are satisfied that the Government has been able to demonstrate separation of cadre, which implies that work of Junior Engineer can be done by a diploma holder, while work of an Assistant Executive Engineer can only be executed by those having higher qualification of degree in engineering. Moreover, declaration of the principle and the exception was in context of facts of that case, where requirement was of B.Ed. degree and there were persons holding B.Ed. with specialization in vocational education asking to be considered for appointment as assistant teacher at primary level. There was also reliance on paragraph-7 in **Abdul Gaffar Khan** (supra). Facts in that case can be distinguished as the Supreme Court upon close scrutiny of the advertisement issued found, it did not anywhere stipulate diploma is the required qualification.

19. Proceeding to assume that a diploma engineer appointed in the post of Junior Engineer finds promotion to become Assistant Engineer, he in the meantime, if improved himself to obtain the degree, can then apply for ‘lateral entry’ to post of Assistant Executive Engineer on strength of subsequently acquired degree. There is no promotional avenue from post Junior Engineer to post Assistant Executive Engineer. Entry into the latter is direct, on having eligibility of possessing engineering degree followed by selection on merit. There is no scope of otherwise ‘lateral entry’ for diploma engineers to the cadre of degree engineers provided for by their rules of 2012. It follows that said rules for degree engineers does not mention eligibility in respect of diploma engineers.

20. Impugned judgment needs no interference. The appeals are thus dismissed.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Appeals dismissed.

2025 (I) ILR-CUT-1062

**BHAGBAN NAYAK
V.
STATE OF ODISHA**

[JCRLA NO. 86 OF 2009]

19 MARCH 2025

[S.K. SAHOO, J. & MISS SAVITRI RATHO, J.]

Issue for Consideration

Whether order of conviction can be passed basing upon the extrajudicial confession

Headnotes

CRIMINAL TRIAL – Circumstantial evidence – Extrajudicial Confession – The learned Trial Court found the appellant guilty of the offence punishable under Section 302 of Indian Penal Code – There is no eyewitness to the occurrence and the case is based on circumstantial evidence – Evidence of P.Ws. 1, 2, 6 and 7 relating to the confession in the village panchayat is not trustworthy – Evidence of P.W.3 that the appellant did not come to the meeting place, and he was brought only after the police came to the village, creates doubt in the evidence of P.Ws. 1, 2, 6 and 7 who have stated that the appellant came and made extrajudicial confession – Whether it is reliable and trustworthy to convict the appellant.

Held: No – In view of the doubtful features, we are not inclined to accept the evidence of P.Ws. 1, 2, 6 and 7 relating to extrajudicial confession made by the appellant in the village meeting to be voluntary and trustworthy as it has failed to pass the rigorous test on the touchstone of credibility. (Para 11)

Citations References

State of U.P. -Vrs.- M.K. Anthony, **(1985) 1 Supreme Court Cases 505**; Piara Singh & Ors. -Vrs.- State of Punjab, **(1977) 4 Supreme Court Cases 452**; Sahadeven & Anr. -Vrs.- State of Tamil Nadu, **(2012) 6 Supreme Court Cases 403**; Sharad Birdhichand Sarda -Vrs.- State of Maharastra, **A.I.R. 1984 S.C. 1622 – referred to.**

Keywords

Extrajudicial confession; Motive; Circumstantial evidence.

Case Arising From

Judgment and order dated 09.12.2008 passed by the Adhoc Addl. Sessions Judge (F.T.C), Malkangiri in Criminal Trial No. 28 of 2008.

Appearances for Parties

For Appellant : Ms. Mandakini Panda

For Respondent : Miss Subhalaxmi Devi, Addl. Standing Counsel

Judgment/Order**Judgment*****BY THE BENCH,***

The appellant Bhagban Nayak faced trial in the Court of the learned Adhoc Additional Sessions Judge (F.T.C.), Malkangiri in Criminal Trial No.28 of 2008 for offence punishable under section 302 of the Indian Penal Code (in short “I.P.C.”) on the accusation that on 10.09.2006 at about 7.00 p.m., in his house situated in village Pedaguda, he committed murder of his wife Radhika Nayak (hereafter “the deceased”). The learned trial Court vide impugned judgment and order dated 09.12.2008, found the appellant guilty of the offence charged and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- (rupees five thousand), in default, to undergo R.I. for a further period of six months.

Prosecution Case:

2. The prosecution case, as per the first information report lodged by P.W.1 Bhaktaram Pujari before the Officer in- charge of Mudulipada police station on 11.09.2006, in short, is that on 10.09.2006 in the evening hours at about 7.00 p.m., the appellant dealt five to six tangia blows to the deceased on her head, ear and back suspecting her character as a result of which the deceased sustained bleeding injuries and died and her dead body along with the dead body of their new born baby of twenty days was lying in the courtyard of the house. The informant received the information from the co-villager Bhagirathi Nayak and rushed to the spot and he found the dead bodies lying there and further found that the appellant was standing there being armed with a Tangia and was shouting. It is further stated in the F.I.R. that a village meeting was convened over this issue and the appellant was asked about the occurrence and he confessed his guilt and stated to have killed the deceased by dealing blows with Tangia suspecting her character. It is further stated in the first information report that on account of heavy rain in the night on 10.9.2006, the first information report could not be lodged in the police station and on the next day, the written report was presented by P.W.1.

On the basis of such written report presented by P.W.1, Mudulipada P.S. Case No.20 dated 11.9.2006 was registered under section 302 of Indian Penal Code against the appellant and Sub-Inspector of Police R.Sabar took up investigation of the case. On his transfer, the charge of investigation was taken over by P.W.8 Niranjana Behera, I.I.C., Mudulipada police station on 28.12.2007 who reexamined some witnesses, sent the exhibits to R.F.S.L, Berhampur through S.D.J.M., Malkangiri for chemical examination and on conclusion of investigation, he submitted charge sheet against the appellant under section 302 of the Indian Penal

Code. Since the Sub-Inspector of Police R.Sabar, who investigated the case from 11.9.2006 till the charge was handed over to P.W.8, the documents prepared by the said S.I. of police R.Sabar were proved by P.W.8.

Framing of Charges:

3. After submission of charge sheet, the case was committed to the Court of Session following due procedure, where the learned trial Court framed the charge against the appellant as aforesaid. The appellant pleaded not guilty and claimed to be tried and accordingly, the sessions trial procedure was resorted to establish his guilt.

Prosecution Witnesses and Exhibits:

4. In order to prove its case, the prosecution examined eight witnesses and also exhibited seventeen documents.

P.W.1 Bhaktaram Pujari stated that the appellant was the husband of the deceased and the deceased died about two years back. He further stated that two years back just before the Dusshera, during evening hours, one Moti Nayak and Bhagirath Naik came and told him that the appellant had killed his wife by means of a tangia and hearing the news, they rushed to the house of the appellant and found the deceased was lying dead in front of the verandah and found the bleeding injuries on the back side of her neck and waist. He further stated that on the same day, the panchayat meeting was held and on being asked, the appellant confessed before everybody that he suspected his wife of infidelity and killed her by a Tangia. He further stated that one Sambu scribed the F.I.R.

P.W.2 Damu Pujari stated that the deceased, who was the wife of the appellant, died about two years back and on the day of occurrence during evening hours, one Bhagirathi Naik came and reported that the appellant had killed the deceased by a Tangia. He further stated that on hearing the news, they rushed to the house of the appellant and found the deceased lying on the verandah with bleeding injuries. He further stated that a meeting was held in the village pertaining to the incident and the appellant was called to the meeting and on being questioned, the appellant admitted his guilt by stating that he had killed his wife by a Tangia as she was of a bad character. He is a witness to the seizure of blood-stained Tangia from the appellant vide Ext.2. He is also a witness to the seizure of one blood-stained check lungi from the appellant vide seizure list Ext.3, seizure of blood-stained earth and sample earth from the spot vide seizure list Ext.4. He is also a witness to the inquest report so also the confessional statement of the appellant vide Ext.5 and Ext.6 respectively.

P.W.3 Narasingh Pujari stated that about two years back, prior to Dusshera, during evening hours, one Moti Naik came and told him that the appellant had killed the deceased and on hearing such news, he rushed to the house of the appellant and saw the dead body of the deceased lying on the verandah with bleeding injuries and a dead infant child was lying by the side of the deceased. He further stated that pertaining to the incident, one meeting was held in the village and the appellant did

not come and after lodging of the F.I.R., when the police came, the appellant was brought. He is a witness to the inquest conducted on the dead body of the deceased so also on the dead body of the deceased's infant child vide Ext.5 and Ext.7 respectively.

P.W.4 Damburudhar Subudhi was a constable attached to Mudulipada police station, who is a witness to the seizure of wearing apparels of the deceased, one white colour saree and one command certificate vide Ext.8.

P.W.5 Dr. Suman Kumar Topno was the Medical Officer, attached to C.H.C., Khairput stated that on police requisition, he conducted post mortem examination over the dead body of the deceased and opined that the cause of death was due to intracranial hemorrhage due to puncture of lungs and there was profuse hemorrhage leading to shock and death and the time since death was within 18 hours. He proved the post-mortem examination report vide Ext.9. He also proved the post-mortem examination report of the new born child vide Ext.10 and query report vide Ext.11.

P.W.6 Arjun Naik stated that the deceased was the wife of the appellant and a new born child of the appellant and the deceased also died on the date of occurrence. He further stated that the deceased was assaulted by the appellant by means of a Tangia on her neck and other parts of the body for which she died. He further stated that after the occurrence, there was a panchayat in the village which was attended to by all the villagers and on being asked, the appellant admitted his guilt by saying that he had killed his wife by means of a Tangia.

P.W.7 Bhagat Samarath narrated more or less the same version as P.W.6.

P.W.8 Niranjana Behera is the Investigating Officer in this case.

Ext.1 is the F.I.R., Ext.2 is the seizure list in respect of one blood-stained Tangia, Ext.3 is the seizure list in respect of one blood-stained lungi of the appellant, Ext.4 is the seizure list in respect of blood-stained earth and sample earth, Ext.5 is the inquest report, Ext.6 is the disclosure statement, Ext.7 is the inquest report conducted over the dead body of the deceased, Ext.8 is the seizure list in respect of wearing apparels of the deceased, one white colour saree and one command certificate, Ext.9 is the post-mortem examination report of deceased, Ext.10 is the post-mortem examination report of new born child, Ext.11 is the query report, Ext.12 is the forwarding letter, Ext.13 is the spot map, Ext.14 is the seizure list in respect of nail clippings of the appellant and a command certificate, Exts.15 & 16 are the dead body challans and Ext.17 is the chemical examination report.

Defence plea:

5. The defence plea of the appellant is one of denial.

Findings of the Trial Court:

6. The learned Trial Court, after assessing the oral as well as documentary evidence on record, came to hold that the death of the deceased has been proved to be homicidal in nature. The learned Trial Court relied upon the evidence of the witnesses relating to extra judicial confession made by the appellant in the village panchayat and came to hold that the extra judicial confession coupled with leading to the discovery of the weapon of offence under section 27 of the Evidence Act, chemical examination report and medical report established the charge under section 302 of the I.P.C. against the appellant.

Contentions of Parties:

7. Miss. Mandakini Panda, learned counsel appearing for the appellant argued that there are no eye witnesses to the occurrence and the case is based on circumstantial evidence and the evidence adduced by the witnesses like P.Ws.1, 2, 6 and 7 relating to the confession in the village panchayat is not trustworthy. P.W.3 has stated that a meeting was held in the village after the dead bodies were found and the accused did not come to that meeting and only after the lodging of the F.I.R., when the police came, the accused was brought. Learned counsel for the appellant further argued that the evidence on record indicates that the appellant and the deceased were living peacefully for eight to nine years and no motive has been proved on the part of the appellant to commit the crime. So far as the evidence of leading to discovery of Tangia is concerned, the concerned Investigating Officer R.Sabar, the S.I. of Police has not been examined in the trial Court and only the disclosure statement of the appellant recorded under section 27 of the Evidence Act vide Ext.6 has been proved by the prosecution but there is no evidence on record that on the basis of such disclosure statement, the appellant led the police party and the witnesses to the place of concealment of the weapon and produced the weapon, which was seized and therefore, the recovery cannot be accepted in law. Moreover, the seized Tangia was sent for chemical examination and the chemical examination report vide Ext.17 indicates that no blood was found on the seized Tangia. It is argued that even if the Tangia in question was seized at the instance of the appellant which had no blood on it and which was also not produced during trial to be marked as a material object, the same cannot be utilized as a circumstance against the appellant since it has not proved to be the weapon of offence. It is argued that the circumstances available on record do not form a chain so complete to come to the irresistible conclusion that it is the appellant who has committed the crime and therefore, the impugned judgment is liable to be set aside.

8. Miss. Subhalaxmi Devi, learned counsel for the State, on the other hand, supported the impugned judgment and cited decisions of the Hon^{ble} supreme Court in the case of **State of U.P. -Vrs.- M.K. Anthony reported in (1985) 1 Supreme Court Cases 505, Piara Singh and others -Vrs.- State of Punjab reported in (1977) 4 Supreme Court Cases 452 and Sahadeven and another -Vrs.- state of Tamil Nadu reported in (2012) 6 Supreme Court Cases 403** and submits that if the extra judicial confession is trustworthy and reliable, the same can itself be the

ground to convict the appellant and the witnesses, who have deposed about the extra judicial confession, have got no animosity with the appellant to depose falsehood against him and therefore, learned trial Court is quite justified in accepting the evidence of these witnesses and convicting the appellant under section 302 of the Indian Penal Code.

Appreciation of a case based on circumstantial evidence:

9. Adverting to the contentions raised by the learned counsel for the respective parties, there is no dispute that in the case in hand, there are no eye witnesses to the occurrence and the case is based on circumstantial evidence. It is the settled principle of law that where the case rests upon circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or guilt of any other person. In order to base conviction of an accused basing on circumstantial evidence, the prosecution is required to firmly establish each of the circumstances and the circumstances cannot be explained under any other hypothesis, the circumstances taken together must form a complete chain so as to unerringly point the finger only at the accused as perpetrator of crime.

In the case of **Sharad Birdhichand Sarda Vrs.- State of Maharastra reported in A.I.R. 1984 S.C. 1622**, their Lordships have laid down five golden principles so as to constitute “Panchasheel” in the proof of a case based on circumstantial evidence which are as follows:-

- “1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;
2. The facts so established should be consistent only with the hypothesis of the guilt of the accused that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except the one to be proved, and
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

Contents of F.I.R.:

10. Though in the F.I.R., it is stated that the appellant was standing near the dead bodies which were lying in his courtyard holding Tangia and shouting, but during trial, nobody has stated in that respect including the informant. The F.I.R. does not constitute substantive evidence. It can only be used as to previous statement for the purpose of either corroborating its maker under section 157 of the Indian Evidence Act or for contradicting him under section 145 of the Indian Evidence Act.

Extrajudicial confession:

11. The main circumstance appearing in the case is the extrajudicial confession of the appellant in the village meeting which is stated to have been held after the occurrence and the relevant witnesses on this circumstance are P.Ws.1, 2, 3, 6 and 7.

Though P.Ws.1, 2, 6 and 7 have stated about the confession being made by the appellant in the village meeting, but we find that none of them has stated that he was present in the meeting and in his presence, the appellant confessed his guilt. P.W.1 has stated that the appellant was called to the meeting and on being asked, he confessed before everybody that he suspected the deceased of infidelity and hence he killed her by a Tangia. In the cross-examination, he has stated that when the meeting was held, the appellant was hiding and the meeting was held in the sadar danda of the village. He further stated that the appellant and the deceased were living together peacefully. P.W.2 has also stated that the appellant was called to the meeting and on being questioned, he admitted his guilt and stated that since the deceased was of bad character, he killed her by a Tangia. So far as P.W.3 is concerned, he stated that pertaining to the incident, one meeting was held in the village, but the appellant did not come and after lodging of the first information report when the police came, the appellant was brought. He further stated in the cross-examination that the appellant and the deceased were staying peacefully as husband and wife for about eight to nine years. P.W.6 has stated that after the occurrence, there was a panchayat in the village which was attended to by all the villagers and the appellant on being asked, admitted his guilt and stated that he had killed the deceased by means of a Tangia. In the cross-examination, he has stated that the appellant and the deceased were staying as husband and wife and having children and they had no history of quarreling with each other. P.W.7 has stated that after the occurrence, there was panchayat in the village which was attended to by all the villagers and the appellant on being asked, admitted his guilt saying that he had killed the deceased by means of a Tangia before everybody. Though in the evidence of P.W.1 and P.W.2, it appears that in the meeting, the appellant stated the reason for killing his wife (deceased) that the evidence of P.W.6 and P.W.7 is silent in that regard. The evidence of P.W.3 that the appellant did not come to the meeting place and he was brought only after the police came to the village creates doubt in the evidence of the witnesses like P.Ws.1, 2, 6 & 7, who have stated that the appellant came and made extrajudicial confession in the village meeting.

Law is well settled that extrajudicial confession is a weak piece of evidence and requires appreciation with a great deal of care and caution. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witnesses before whom it is made. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The Court has to satisfy itself in regard to the voluntariness of the confession, truthfulness of the confession and independent reliable corroboration. Whenever the Court, upon due appreciation of the entire prosecution evidence, intends to base conviction on an

extrajudicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extrajudicial confession is surrounded by suspicious circumstances and suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, its credibility becomes doubtful and it loses its importance and it may be difficult for the Court to base a conviction on such a confession. In such circumstances, the Court would be fully justified in ruling such evidence out of consideration. However an extrajudicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court and conviction can be founded thereon if the evidence about the confession comes from the mouth of the witnesses who appear to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive attributing an untruthful statement to the accused. It is but a natural curiosity to ask as to why a person of sane mind should at all confess and what benefit he would get by making such confession. Extrajudicial confession, in order to afford a piece of reliable evidence, must pass the test of reproduction of exact words, the reason or motive for the confession and the person selected in whom confidence is reposed.

In the case of **M.K. Anthony** (supra), the Hon^{ble} Supreme Court has held as follows: -

“15. There is neither any rule of law nor of prudence that evidence furnished by extrajudicial confession cannot be relied upon unless corroborated by some other credible evidence. The courts have considered the evidence of extrajudicial confession a weak piece of evidence. (See **Jagta v. State of Haryana : (1974) 4 S.C.C. 747 and State of Punjab v. Bhajan Singh : (1975) 4 S.C.C. 472**). In **Sahoo v. State of U.P. : A.I.R. 1966 S.C. 40**, it was held that 'an extra-judicial confession may be an expression of conflict of emotion, a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime.' Before evidence in this behalf is accepted, it must be established by cogent evidence what were the exact words used by the accused. The Court proceeded to state that even if so much was established, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as a corroborative piece of evidence. However, in **Piara Singh v. State of Punjab : (1978) 1 SCR 661**, this Court observed that the law does not require that evidence of an extrajudicial confession should in all cases be corroborated. It thus appears that extrajudicial confession appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated. If the evidence about extrajudicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused; the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extrajudicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of

corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extrajudicial confession is reliable, trustworthy and beyond reproach, the same can be relied upon and a conviction can be founded thereon.”

However, we find that in that case, even the Hon’ble Supreme Court after holding that if the evidence of extrajudicial confession is reliable, trustworthy and beyond reproach, the same can be relied upon and a conviction can be founded thereon, discussed the other evidence on record like dying declaration, the leading to discovery of the weapon of offence etc. and on that basis found that the prosecution case to be proved.

In the case of **Piara Singh** (supra), the Hon’ble Supreme Court though held that the learned Sessions Judge erred in law in refusing to rely on the extrajudicial confession holding that it is a very weak type of evidence and that law does not require the evidence of an extrajudicial confession should in all cases be corroborated, based the conviction relying on the evidence of the eye witnesses to the occurrence and other materials on record.

In the case of **Sahadevan** (supra), the Hon’ble Supreme Court has relied upon number of decisions of the Hon’ble Supreme Court and came to hold that the extrajudicial confession is a weak evidence by itself and it has to be examined by the Court with greater care and caution and it should be made voluntarily and should be truthful and it should inspire confidence. It is further held that the extrajudicial confession attains the greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence. For an extrajudicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities. Such statement essentially has to be proved like any other fact and in accordance with law.

In the case of **Nazir Khan and others -Vrs.- State of Delhi, reported in (2003) 8 Supreme Court Cases 461**, the Hon’ble Supreme Court has discussed about the word „voluntary“ which means a statement made of the free will and accord of accused, without coercion, whether from fear of any threat of harm, promise, or inducement or hope of reward. The Hon’ble Court further held that if the facts and circumstances surrounding in making of the confession appear to cast a doubt on the voluntariness of the confession, the Court may refuse to act upon the confession, even if it is admissible in evidence. The question whether a confession is voluntary or not is always a question of fact. A free and voluntary confession is deserving of highest credit, because it is presumed to flow from the highest sense of guilt.

In the case in hand as discussed above, apart from the fact that none of the witnesses to the extrajudicial confession has stated about his presence in the meeting, there appears to be discrepancies in their statements in as much as two of the witnesses have stated that while confessing the guilt, the appellant also stated the reason for commission of murder whereas the other two witnesses are completely silent in that regard. P.W.3 has stated that the appellant did not come to the meeting place at all. The exact words stated by the appellant have not been deposed to by any

of the witnesses like P.Ws.1, 2, 6 & 7. When the appellant was hiding and brought to the meeting place and questioned by the villagers, it is very difficult to accept that extrajudicial confession made, if any in such a scenario would be voluntary in nature. The circumstances in which such confession is stated to have been made, creates doubt that it was of his own free will and accord of the appellant without any fear or outside influence. Thus, doubt is created that on his own volition, repenting that he had committed the crime, the appellant came forward and disclosed before the villagers present in the meeting place that he had committed the crime. The duty lies with the prosecution to prove this sort of evidence in a clear and precise way particularly the circumstances surrounding the confession. The Court must consider the age of the individual, his intelligence, education and mental condition. The length of interrogation, the presence of any promise or threat and the presence of any physical or mental coercion are also to be kept in mind while assessing voluntariness of confession and whether it is trustworthy. In view of the doubtful features, we are not inclined to accept the evidence of P.Ws.1, 2, 6 and 7 relating to extrajudicial confession made by the appellant in the village meeting to be voluntary and trustworthy as it has failed to pass the rigorous test on the touchstone of credibility.

Motive:

12. In a case based on circumstantial evidence, motive assumes pertinent significance as existence of motive is always an enlightening factor in a process of presumptive reasoning in such a case. Absence of motive puts the Court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take the place of legal proof.

In the case in hand, the prosecution has utterly failed to prove any motive on the part of the appellant. The evidence of P.W.1 that the appellant and the deceased were living together peacefully, the evidence of P.W.3 that for eight to nine years, they were staying together as husband and wife peacefully and the evidence of P.W.6 that the appellant and the deceased were having children and there was no history of quarrelling with each other indicates that the prosecution has failed to prove any motive on the part of the appellant to commit the crime.

Recovery of Tangia:

13. So far as the recovery of Tangia at the instance of the appellant is concerned, not a single independent witness has stated about such recovery at the instance of the appellant on the basis of his disclosure statement. P.W.2 who is a witness to the seizure of blood-stained Tangia from the appellant vide Ext.2 simply stated that after the F.I.R. was lodged, police came to the village, effected the seizure. The Investigating Officer, who has recorded the disclosure statement of the appellant and prepared the seizure list of the Tangia, has not been examined by the prosecution. Only the disclosure statement of the appellant recorded by the previous I.O. has been proved by the I.O. (P.W.8) who subsequently took over charge of investigation from S.I. of police R.Sabar. In absence of any evidence that on the

basis of the disclosure statement, the appellant led the police party and others to the place of concealment of the weapon of offence and the place was not accessible to all and in absence of any evidence that particular weapon was used for commission of crime, the recovery becomes immaterial and it is not admissible under section 27 of the Evidence Act. In the chemical examination report vide Ext.17, it appears that no blood was found on the Tangia. The seized Tangia was also not produced during trial. Thus, such evidence cannot be utilized against the appellant.

Conclusion:

14. In view of the foregoing discussions, on the basis of the available material on record, it cannot be said that the circumstances have been firmly established by the prosecution and the circumstances form a complete chain and from the circumstances, it can be concluded that it was the appellant and none else who was the author of the crime. Law is well settled that suspicion, howsoever strong cannot take the place of proof. Surmises and conjectures have no place in the matter of legal proof of guilt of an accused. There is ocean of mental difference between “may be true” and “must be true” and the same divides conjectures from sure conclusions. The prosecution must elevate its case from the realm of “may be true” to plane of “must be true”.

Thus, we are of the view that the conviction of the appellant under section 302 of the Indian Penal Code is not sustainable in the eye of law and accordingly, the same is hereby set aside. The JCRLA is allowed and the appellant is acquitted of the charge under section 302 of the Indian Penal Code.

Learned counsel for the State has produced the documents from the jail authority to show that the appellant is in custody.

The appellant be set at liberty forthwith, if his detention is not required in any other case.

Lower Court record along with a copy of the judgment be sent to the concerned Court.

Before parting with the case, we would like to put on record our appreciation to Ms. Mandakini Panda, learned counsel for her preparation and presentation of the case before the Court and rendering valuable help in arriving at the decision above mentioned. This Court also appreciates the valuable help and assistance rendered by Ms. Subhalaxmi Devi, learned Additional Standing Counsel for the State.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

JCRLA allowed.

2025 (I) ILR-CUT-1073

**DEEPAK KUMAR
V.
UNION OF INDIA & ORS.**

[W.P.(C) NO. 7349 OF 2025]

19 MARCH 2025

[S.K. SAHOO, J. & MISS. SAVITRI RATHO, J.]

Issue for Consideration

Whether it is necessary to stay the enquiry of a disciplinary proceeding till conclusion of criminal proceeding initiated against a delinquent officer.

Headnotes

SERVICE JURISPRUDENCE – Stay of Disciplinary Proceeding – Petitioner challenges the rejection order passed by Central Administrative Tribunal – The interim relief sought for by the petitioner for stay of the inquiry in the disciplinary proceeding initiated against him till conclusion of the criminal case instituted against him and pending in the Court of learned Special Judge (CBI) Court – Whether it is necessary to stay the enquiry of disciplinary proceeding till conclusion of criminal proceeding initiated against a delinquent officer.

Held: No – Even when the charge is found to be serious involving complicated questions of fact and law as also the likelihood of the prejudice to be caused to the delinquent in criminal proceedings, the Court has to keep in consideration that the criminal trials get prolonged indefinitely, and the departmental proceedings cannot be suspended indefinitely or delayed unduly and has to draw a balance between the need for a fair trial to the accused delinquent on the one hand and an expeditious conclusion of the on-going disciplinary proceedings on the other as it is always in the interest of the employee and the employer both because if the employee is not guilty, his honour should be vindicated at the earliest possible and if he is guilty, he should be dealt with properly according to law as it would not be in the interest of the administration to continue with such employee awaiting the result of the criminal proceedings – Each case requires to be considered in the back drop of its own facts and circumstances. (Para 10)

Citations References

State of Rajasthan -Vrs.- Shri B.K. Meena & Ors., **AIR 1997 SC 13**; Kendriya Vidyalaya Sangathan & Ors. -Vrs.- T. Srinivas, **AIR 2004 SC 4127**; State Bank of India & Ors. -Vrs.- Neelam Nag & Anr., **(2016) 9 Supreme Court Cases 491**; Stanzen Toyotetsu -Vrs.- Girish V. & Ors., **(2014) 3 Supreme Court Cases 636**; State Bank of India & Ors. -Vrs.- R.B. Sharma, **(2004) 7 Supreme Court Cases 27**; Capt. M. Paul Anthony -Vrs.- Bharat Gold Miner

Ltd. and another, **(1999) 3 Supreme Court Cases 679**; Secretary, Ministry of Home Affairs & Ors. -Vrs.- Tahir Ali Khan Tyagi, **2003 (2) SCT 227 (SC) : MANU/SC/0540/2002**; R. Subba Rao -Vrs.- Chief Vigilance Officer, **2022 LiveLaw (AP) 121 – referred to.**

Keywords

Disciplinary proceeding; Criminal proceeding; Stay of enquiry.

Case Arising From

Order dated 26.02.2025 passed by the learned Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 59 of 2025.

Appearances for Parties

For Petitioner : Mr. Parsuram Mohapatra

For Opp. Parties : Ms. Sulochana Patra, CGC & Mr. P.K. Parhi, D.S.G.I.

Judgment/Order

Judgment

BY THE BENCH,

This writ petition has been filed by the petitioner Deepak Kumar, who is now working as Executive Engineer (Civil) in the Office of the Superintending Engineer, Yogayog Bhawan, Kolkata, challenging the order dated 26.02.2025 passed by the learned Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.59 of 2025 under Annexure-1 in rejecting the interim relief sought for by the petitioner for staying the inquiry in the disciplinary proceedings initiated against him vide Memorandum No.8-14/2024-Vig.II dated 28.10.2024 till conclusion of the criminal case instituted against him vide T.R. Case No.14 of 2023 pending in the Court of learned Special Judge (C.B.I), Court No.1, Bhubaneswar.

2. The petitioner filed the aforesaid O.A. Case No.59 of 2025 before the learned Central Administrative Tribunal, Cuttack Bench, Cuttack seeking following reliefs:

- “(i) To admit Original Application, and issue notice to the Respondents.
- (ii) To call for the relevant records and after hearing from the both sides allow the original application to the extent that.
- (iii) The order/File No.10/Kol/2025 dated 29.01.2025 of Respondent No.3 (Annexure-A/7) be quashed.
- (iv) And pass such other order/ orders, direction/ directions as deem fit and proper to the facts and circumstances of the case to give complete relief in favour of the applicant.
- (v) Further, as a measure of interim relief, it has been prayed that no inquiry be held in the departmental proceeding initiated vide Memorandum (File No.8-14/2024-Vig.II) dated 28.10.2024 of Respondent No.2 (Annexure-A/2) till the criminal case bearing T.R. Case No.14 of 2023 (Annexure-A/3) is finalized by staying the operation of Order at Annexure-A/7.”

3. From the Article of Charge framed against the petitioner, it appears that while he was working as Executive Engineer (Civil), Postal Civil Division, Patna and holding additional charge of Executive Engineer (Civil), Postal Civil Division, Bhubaneswar during the period from 02.06.2022 to 14.04.2023, he issued a work order No.1531 dated 23.12.2021 to one Prasanna Manika for the work of repair and maintenance of postal staff Quarters block PTN 134-145 at new P&T Colony, Sector-6, Rourkela. It further appears from the Article of Charge framed that he entered into conspiracy with Shri Suvasish Pal, Assistant Engineer (Civil), Postal Civil sub-Division, Sambalpur and withheld amount of Shri Prasanna Manika, Contractor from 1st and 2nd RA Bill to obtain undue advantage from the contractor for releasing the withheld amount and thus, the petitioner tarnished the image of the Department, committed gross misconduct and failed to maintain devotion to duty and thus acted in a manner unbecoming of Government servant and misused his official position thereby violating Rule 3(1) (i), (ii), (iii) and (xv) of Central Civil Services (Conduct) Rules, 1964. The Article of Charge was served on the petitioner by way of a Memorandum dated 28.10.2024 along with a statement of imputation of misconduct and misbehaviour in support of Article of Charge and a list of documents and a list of witnesses, by whom the Article of Charge was proposed to be sustained and the petitioner was directed to submit a written statement of his defence and further to state whether he desires to be heard in person within fifteen days and it was informed to the petitioner that an enquiry would be held only in respect of those Article of Charge, which is not admitted and therefore, he should specifically admit or deny the Article of Charge.

4. On receipt of such Memorandum which consist of Article of Charge and the statement of imputation in support of Article of Charge, list of documents and list of witnesses, the petitioner submitted a representation before the Under Secretary to Government of India, Ministry of Communication, Department of Telecommunications, Vigilance Wing, Sanchar Bhawan, New Delhi on 02.12.2024, wherein he indicated that since on the self-same ground, a criminal case under sections 7 & 12 of the Prevention of Corruption Act read with section 120-B of the Indian Penal Code (hereinafter 'I.P.C.') vide C.B.I Case No.RC-05(A) of 2023 which corresponds to T.R Case No.14 of 2023 is subjudice before the learned Special Judge (C.B.I), Court No.1, Bhubaneswar and the charge sheet/Article of Charge of the disciplinary proceeding and the criminal case are based on identical and similar set of fact and the witnesses in both the cases are same and the documents relying on for the charges in the criminal case are also relied on in the charge sheet of the Departmental Proceeding, in case he files the written statement of defence, his defence would be exposed and he will be highly prejudiced in the criminal case and therefore, a prayer was made to keep the Departmental Proceeding in abeyance till the conclusion of the criminal case in T.R. Case No.14 of 2023.

5. On receipt of such representation, though the Authority did not pass any order, however the petitioner approached the learned Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.59 of 2025 in which the prayer was

made to quash the order/File No.10/Kol/2025 dated 29.01.2025 of respondent no.3 i.e. Shubhranil Das, the Inquiring Authority and an interim prayer was made to stay the Departmental Proceeding initiated against the petitioner till the conclusion of T.R. Case No.14 of 2023.

6. The learned Central Administrative Tribunal vide impugned order dated 26.02.2025 has been pleased to hold that the charge sheet in the T.R. Case is yet to be filed. However, the criminal case is for demand and acceptance of bribe, which is in violation of section 7 of the Prevention of Corruption Act, whereas in the Departmental Proceedings, the allegation is for violation of Departmental Rules for withholding the RA bills of the Contractor to get undue advantage. The learned Tribunal relied upon the ratio laid down by the Hon'ble Supreme Court in the case of **State of Rajasthan -Vrs.- Shri B.K. Meena and others reported in AIR 1997 SC 13** as well as **Kendriya Vidyalaya Sangathan and others -Vrs.- T. Srinivas reported in AIR 2004 SC 4127** and came to hold that the extent of proof of criminal charge would be beyond any reasonable doubt while, in the Departmental Proceedings, a person can be found guilty even on reasonable probability and it would be travesty of justice, if the respondents are not permitted to complete the departmental enquiry and await the final decision of the criminal trial. The learned Tribunal further held that if the petitioner is not guilty of the Article of Charge, the departmental enquiry would be dropped and there is no uniform principle that wherever a departmental enquiry and the criminal trial is based on somewhat similar facts, the departmental enquiry should essentially be stayed till conclusion of the criminal trial. Mere similarity of facts per se is not a ground for staying any of the two proceedings. Their scope, ambit and consequences in fact and law are distinct and different and accordingly, the interim relief which was claimed by the petitioner for staying the inquiry in the Disciplinary Proceedings was rejected.

7. Mr. Parsuram Mohapatra, learned counsel appearing for the petitioner challenging the impugned order argued that from the statements of the witnesses, which have been supplied to the petitioner with the Memorandum consisting of Article of Charge, it would appear that the allegations in both the cases are almost identical and if at this stage, the petitioner would file his written statement of defence in the Departmental Proceeding, he will be seriously prejudice as he is likely disclose his defence and the same would have adverse effect in the criminal trial. Learned counsel further urged that the observation of the learned Central Administrative Tribunal that charge sheet in T.R. Case is yet to be filed, is an error of record. In fact, the charge sheet in the said case has already been filed on 30.09.2023 before the learned Special Judge (C.B.I), Court No.1, Bhubaneswar in T.R. Case No.14 of 2023 and the case is now posted for supply the police papers to the petitioner. Learned counsel placed reliance in the case of **State Bank of India and others -Vrs.- Neelam Nag and another reported in (2016) 9 Supreme Court Cases 491**, wherein the Hon'ble Supreme Court took into account that the charge in the criminal case is for offence under section 409/34 of the I.P.C. and further held that the pendency of the criminal case against the respondent Neelam Nag cannot be

the sole basis to suspend the disciplinary proceedings initiated against the respondent for an indefinite period and in larger public interest, the order as passed in the case of **Stanzen Toyotetsu -Vrs.- Girish V. and others reported in (2014) 3 Supreme Court Cases 636** be followed even in the fact situation of the case, to balance the equities. The Hon'ble Supreme Court considered Clause-IV of the Memorandum of settlement and held that it is to be kept in mind the larger public interests (at least in cases of involvement of the employees of the Public Sector Banks in offence of breach of trust and embezzlement), the arrangement predicated in the case of **Stanzen** (supra) would meet the ends of justice. The Disciplinary Proceedings instituted against the respondent cannot brook any further delay which was already pending for more than ten years and accordingly, the Hon'ble Court exercised the discretion in favour of the respondent in staying the ongoing Disciplinary Proceedings until the closure of recording of evidence of prosecution witnesses cited in the criminal trial with a further direction that the criminal case, which was pending against the respondent is to be decided expeditiously but not later than one year from the date of order and the trial Court shall take effective steps to ensure that the witnesses are served, appear and are examined on day-to-day basis. It was further held that if the trial is not completed within one year from the date of order, despite the steps which the trial Court was directed to take, the disciplinary proceeding against the respondent shall be resumed by the enquiry officer concerned and the protection given to the respondent of keeping the disciplinary proceeding in abeyance shall stand vacated forthwith upon expiring of the period of one year from the date of order.

8. Ms. Sulochana Patra, learned Central Government Counsel with Mr. P.K. Parhi, learned Deputy Solicitor General of India, on the other hand, supported the impugned order and placed reliance on the ratio laid down in the case of **State Bank of India and others -Vrs.- R.B. Sharma reported in (2004) 7 Supreme Court Cases 27**.

9. Adverting to the contentions raised by the learned counsel for the respective parties, we find that the contention that has been made by the learned counsel for the petitioner that the learned Central Administrative Tribunal has committed error of record in observing that the charge sheet in the T.R. Case is yet to be filed, is correct. In fact, the charge sheet was filed on 30.09.2023 under sections 7 and 12 of the Prevention of Corruption Act (as amended in 2018), 1988 read with section 120-B of the I.P.C. against Suvasish Pal, Debendra Kumar Puhan and the petitioner Deepak Kumar. As per the charge sheet, Suvasish Pal, Assistant Engineer (Civil), Postal Civil Sub-Division, Sambalpur demanded bribe of Rs.1.5 lakhs from the complainant Prasanna Manika, Contractor, Bhubaneswar on 04.04.2023 to release his withheld bill amount of Rs.3,77,585/-. Due to compulsion, the complainant gave Rs.25,000/- at the first instance and for the remaining bribe amount of Rs.1.25 lakhs and further instruction to pay the bribe of Rs.18,500/- to the petitioner for releasing withheld bill amount, the complaint was lodged before the C.B.I. Authorities, trap was laid and the trap became successful and after investigation of the case, the

Investigating Officer came to the conclusion that from the oral evidence, documentary evidence and the material exhibits, it appeared that the accused Suvasish Pal while functioning as a public servant demanded and accepted the bribe/undue advantage of Rs.1,22,500/- for himself and Rs.18,500/- for the petitioner and further he arranged another contractor Debendra Kumar Puhan (co-accused) for depositing the bribe amount of the petitioner in the bank account of the said co-accused and the said Suvasish Pal entered into criminal conspiracy with the petitioner and thus, it was found out that they have demanded and obtained the bribe amount of Rs.1.41 lakhs (Rs.1,22,500/- for himself and Rs.18,500/- for petitioner Deepak Kumar) from the complainant.

10. From the Article of Charge, which was placed by the learned counsel for the petitioner, it appears that the charge is very specific that the petitioner entered into criminal conspiracy with Shri Suvasish Pal and withheld the amount of Shri Prasanna Manika, Contractor from 1st and 2nd RA Bill to obtain undue advantage from the contractor for releasing the withheld amount. There is obviously nothing in the Article of Charge that Suvasish Pal demanded any bribe from the contractor and he accepted the bribe amount, which is obviously the subject matter of the criminal case subjudice in the Court of learned Special Judge (C.B.I), Court No.1, Bhubaneswar in T.R. Case No.14 of 2023.

In the case of **Capt. M. Paul Anthony -Vrs.- Bharat Gold Miner Ltd. and another reported in (1999) 3 Supreme Court Cases 679**, the Hon'ble Supreme Court held as follows:-

“22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employees is of a grave nature, which involved complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

In the case of **Secretary, Ministry of Home Affairs and others -Vrs.- Tahir Ali Khan Tyagi reported in 2003 (2) SCT 227 (SC) : MANU/SC/0540/2002**, it is held that the Departmental Proceeding and criminal proceeding can run simultaneously and departmental proceeding can also be initiated even after acquittal in a criminal proceeding particularly when the standard of proof in a criminal proceeding is completely different from the standard of proof that is required to prove the delinquency of a government servant in a departmental proceeding, the former being one of proof beyond reasonable doubt, whereas the latter being one of preponderance of probability.

In the case of **R.B. Sharma** (supra), the Hon'ble Supreme Court also relied upon the case of **Capt. M. Paul Anthony** (supra) and held as follows:-

“8. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872 (in short “the Evidence Act”). Converse is the case of departmental enquiry. The enquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer, to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.

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11. There can be no straitjacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by the delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.”

In the case of **R. Subba Rao -Vrs.- Chief Vigilance Officer reported in 2022 LiveLaw (AP) 121**, the Hon'ble Court in paragraphs-23 and 34 held as follows:-

“23. In view of the settled law, the Court has to draw a balance between the need for a fair trial to the accused on the one hand and an expeditious conclusion of the ongoing disciplinary proceedings on the other hand as it is always in the interest of the employee and the employer both that the departmental proceedings be brought to an expeditious conclusion at an early date in as much as if the employee is not guilty, his honour should be vindicated at the earliest possible and if he is guilty he should be dealt with properly according to law.

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34. In view of the settled legal position that if a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary proceedings; as also that the delinquent official cannot be permitted to prolong the criminal case on the one hand and at the other hand to contend that the disciplinary proceedings be stayed on the ground that the criminal case is pending, this Court does not find it a case for stay on disciplinary proceedings on the ground of pendency of the criminal proceedings, which are pending since 2010 without making any progress in view of the fact that in Cr.R.C. No.2345 of 2018 filed by the petitioner's wife, who is Accused No.2, with the petitioner in criminal case, there is stay of those proceedings, may be with respect to Accused No.2, but because of that, the entire criminal proceedings have come to stand still, to the benefit of the petitioner as well. The criminal trial under the circumstances would take long time and the disciplinary proceedings cannot be stayed indefinitely awaiting decision in criminal proceedings.”

In the case of **B.K. Meena and Ors.** (supra), it is held as follows:-

“17.....The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the Prevention of Corruption Act (and the Penal Code, 1860, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the Rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.”

Thus, it is well settled in law that the disciplinary proceedings and criminal proceedings can continue simultaneously and pendency of the criminal proceedings is no legal bar in conducting the departmental proceedings, unless there is a statutory provision barring the continuation of the disciplinary proceedings in such circumstances. A crime is an act of commission, in violation of law or misconduct of public duty. The departmental enquiry is to maintain discipline in service and officials of the public service. In criminal cases, strict rules of evidence are applicable. In departmental proceedings, the rules of evidence do not strictly apply. The delinquent employee is liable to be punished on proof of misconduct. The disciplinary authority is under a statutory obligation to ensure that the delinquent employee does not get any undue benefit because of long pendency of criminal proceedings. It is, expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible and the authority needs not to await the outcome of the decision of the investigating/

prosecuting agency or Court trial. There are no inflexible rules, in which the departmental proceedings may be stayed pending trial in criminal case against the Delinquent Officer, but, mainly what is required to be seen is whether the departmental enquiry would definitely prejudice the defence of the delinquent employee at a time in a criminal case, if the charge in the criminal trial is of grave nature involving complicated questions of fact and law. If it is so, the stay of the disciplinary proceedings may be a possible course. However, the gravity of the charge is not by itself enough to determine the question, unless the charge involves complicated question of law and fact. Even when the charge is found to be serious involving complicated questions of fact and law as also the likelihood of the prejudice to be caused to the delinquent in criminal proceedings, the Court has to keep in consideration that the criminal trials get prolonged indefinitely, and the departmental proceedings cannot be suspended indefinitely or delayed unduly and has to draw a balance between the need for a fair trial to the accused delinquent on the one hand and an expeditious conclusion of the on-going disciplinary proceedings on the other as it is always in the interest of the employee and the employer both because if the employee is not guilty, his honour should be vindicated at the earliest possible and if he is guilty, he should be dealt with properly according to law as it would not be in the interest of the administration to continue with such employee awaiting the result of the criminal proceedings. Each case requires to be considered in the back drop of its own facts and circumstances.

11. In the case in hand, so far as the institution of criminal case is concerned, even though the complaint was lodged on 10.04.2023 and charge sheet was submitted on 30.09.2023, but the police papers are yet to be supplied to the petitioner so also to the two co-accused persons. The charge sheet indicates that as many as thirty six documents are to be proved so also thirty witnesses are yet to be examined. Obviously, it would take a long time for the prosecution to conclude the trial. So far as the Departmental Proceeding is concerned, the learned Central Administrative Tribunal is quite justify in holding that the Departmental Proceeding has been initiated for violation of departmental rules for withholding the RA bills of the contractor to get undue advantage. Obviously, in the Departmental Proceeding, it is not to be enquired into whether the petitioner or any one at his instance demanded or accepted any bribe amount, which is the subject matter of the criminal trial. In view of the settled position of law and particularly when the scope of the two proceedings are different in nature, staling the Departmental Proceeding till the conclusion of the criminal trial would not be proper and justified particularly when their scope, ambit and consequences in the fact and law are distinct and different.

12. For the above reasons, we are of the humble view that the learned Tribunal was quite justified in not staying the disciplinary proceeding pending the criminal proceeding against the petitioner. The order of the learned Tribunal needs no interference.

Accordingly, the writ petition being devoid of merits, stands dismissed.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Writ Petition dismissed.

2025 (I) ILR-CUT-1082

**THE MANAGEMENT OF M/s. HARE KRUSHNA
MAHATAB LIBRARY, BHUBANESWAR
V.
PRASANNA KUMAR SETHI**

[W.P.(C) NO. 20644 OF 2017]

11 MARCH 2025

[K.R. MOHAPATRA, J. & SANJAY KUMAR MISHRA, J.]**Issues for Consideration**

1. Whether the Opposite Party working as unskilled DLR against a vacant post of 'Chowkidar' is coming under the definition of workman.
2. Whether "continuous service" of 240 days in the preceding twelve months as on the date of refusal of employment of the workman should include Sundays/ weekly rest days as well as National Holidays.

Headnotes

(A) INDUSTRIAL DISPUTES ACT, 1947 – Section 2(s) – Workman – The Petitioner Management stated that the Opposite Party was engaged as an unskilled DLR against a vacant post of Chowkidar and not coming under the definition of Workman – Whether the Opposite Party working as unskilled DLR against a vacant post of Chowkidar is coming under the definition of workman.

Held: Yes – From the admission of Management, it is apparent that the nature of job, the Opposite Party-Workman was discharging comes under the preview of Section 2(s) of the Act. (Para 15)

(B) INDUSTRIAL DISPUTES ACT, 1947 – Section 25-B (2) – Petitioner/Management took a plea that the workman never worked continuously for more than 240 days without any break for the period from 02.04.2004 till 20.08.2010 and only worked for the said period on working days – Whether the "continuous service" of 240 days in the preceding twelve months as on the date of refusal of employment of the workman should include Sundays/Weekly rest days as well as National Holidays.

Held: Yes – Law is well settled that apart from the reasons of interruption, as detailed under Section 25-B(1), interruption due to Sundays/ weekly rest days as well as National Holidays, which are paid holidays, are also to be

M/s. HARE KRUSHNA MAHATAB LIBRARY V. PRASANNA K. SETHI [BY THE BENCH]

counted for the purpose of calculation of 240 days, as prescribed under Section 25-B(2)(a)(ii) of the Act. (Para 18)

Citations References

Co-operative Urban Bank Ltd. Parlakhemundi Vs. Presiding Officer, Labour Court, Jeypore & Ors., **2010 (Supp.I) OLR 772**; Workman of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, **(1985) 4 SCC 71**; U.P. Drugs & Pharmaceuticals Co. Ltd. Vs. Ramnuij Yadav & Ors., **(2003) 8 SCC 334** – Syed Yakoob Vs. K.S. Radhakrishnan & Ors., **AIR 1964 SC 477** – referred to.

List of Acts

Industrial Disputes Act, 1947.

Keywords

Workman; Vacant post; Continuous Service; 240 days; Sundays; Rest Days; National Holidays.

Case Arising From

Award dated 19.09.2013 passed by learned Presiding Officer, Industrial Tribunal, Bhubaneswar in Industrial Dispute Case No.02 of 2012.

Appearances for Parties

For Petitioner : Mr. Swayambhu Mishra, ASC

For Opp. Party : Mr. P.K. Chand

Judgment/Order

Judgment

BY THE BENCH:

1. This matter is taken up through hybrid mode.
2. Petitioner-Management in this writ petition seeks to assail the award dated 19.09.2013 (Annexure-3) passed by learned Presiding Officer, Industrial Tribunal, Bhubaneswar in Industrial Dispute Case No.02 of 2012, whereby it has been directed to reinstate the Opposite Party-Workman against a similar post, in which he was continuing at the time of termination, and to release his unpaid wages from 01.03.2009 to 20.08.2010.
3. Mr. Mishra, learned Additional Standing Counsel, appearing for the Petitioner-Management, submitted that the Opposite Party-Workman was engaged as an unskilled DLR against the vacant post of Chowkidar in Hare Krushna Mahatab Library, Bhubaneswar with effect from 02.08.2004 and his services were dispensed

with due to abolition of the post of Chowkidar pursuant to Government Order No.2650/TC dated 25.06.2007. But the Opposite Party-Workman was allowed to work as unskilled Workman till February, 2009. On receiving clarification with regard to release of his unpaid wages, the Workman was paid up to February, 2009 as per the instruction of the Joint Secretary to Government in Culture Department.

4. It is his submission that since the Opposite Party was engaged as an unskilled DLR, the provision under section 25-F of the Industrial Disputes Act, 1947 (for brevity “the Act”) need not be complied with.

5. Further the Opposite Party-Workman worked during working days only from 02.08.2004 till 20.08.2010. He never worked for 240 days continuously, as required under section 25-F of the Act.

6. Learned Tribunal, although referred to the rival contentions of the parties in the impugned award, but without recording any finding on the same, more particularly, with regard to continuous service of the Opposite Party-Workman, jumped to a conclusion that the Workman is entitled to reinstatement in the post from which he was terminated and to pay his unpaid wages. The post against which the Workman was continuing has already been abolished. Hence, it is very difficult to reinstate the Workman, as directed.

7. Mr. Mishra, learned ASC further submitted that the Petitioner-Management being M/s. Harekrushna Mahatab State Library, Bhubaneswar, is not an industry within the meaning of section 2-(j) of the Act. No finding to that effect has also been recorded by learned Tribunal. Even though such a stand was not taken in the written statement filed by the Management before the Tribunal, but the same being a question of law, was required to be answered by the learned Tribunal.

8. Mr. Mishra, learned ASC further submitted that since the Opposite Party-Workman was engaged as unskilled DLR, provision under Section 25-F of the Act was not required to be complied with.

9. Mr. Mishra, learned ASC thus submitted that the impugned award under Annexure-3 is cryptic and non-speaking. Hence, the same may be set aside and the matter be remitted back to the learned Tribunal for fresh consideration.

10. Per contra, Mr. Chand, learned Counsel for the Opposite Party-Workman submitted that the Workman had worked for 240 days in each calendar year, including in the preceding 12 months from the date of his termination and the same was also not disputed by the Management. Hence, he was in continuous service in terms of section 25-B of the Act.

11. Admittedly, provision under section 25-F of the Act was not complied with by the Management before dispensing with the services of the Workman. When the Workman was in continuous service, provision under Section 25-F of the Act was

required to be complied with before dispensing with the services of the Opposite Party-Workman.

12. He further submitted that in spite of the direction of this Court dated 25.04.2019 passed in I.A. No.2677 of 2019 so also subsequent order dated 15.05.2019, the Petitioner-Management has not yet complied with the provision under section 17-B of the Act. As such, the writ petition is liable to be dismissed in view of the ratio decided in 2010 (Supp.I) OLR 772 (**Co-operative Urban Bank Ltd. Parlakhemundi Vs. Presiding Officer, Labour Court, Jeypore and others**). He, therefore, submitted that the writ petition is liable to be dismissed in limine.

13. Heard learned Counsel for the parties.

14. Perused the case record. In view of the submission made by learned State Counsel that the Opposite Party was working as an unskilled DLR and is not a workman, for which it was not obligatory on the part of the Petitioner to comply Section 25F of the Act before retrenching him, it would be apt to reproduce below Section 2(s) of the Act.

*“2(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, **unskilled**, skilled, technical, operational, clerical or supervisory work for hire or reward, **whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute**, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—*

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”
(Emphasis supplied)

15. As has been admitted by the Petitioner-Management in para-2 of its Written Statement, the Opposite Party was engaged as an unskilled DLR against a vacant post of Chowkidar. From such admission of the Management, it is apparent that the nature of job, the Opposite Party-Workman was discharging, comes under the purview of Section 2(s) of the Act. That apart, as is revealed from the written statement filed by the Management, such a plea was never taken before the learned Tribunal. Admittedly, provision under section 25-F of the Act was not complied with before dispensing with the services of the Opposite Party-Workman on the plea that he never worked continuously for more than 240 days without any break for the period from 02.04.2004 till 20.08.2010, and only worked for the said period on

working days. Para-5 of the written statement, being relevant, is reproduced below for ready reference:-

“5. In reply to the para, it is submitted that the applicant/petitioner was engaged as un-skilled DLR w.e.f. 02.04.2004 to 20.08.2010 only on working days. But he was not working continuously more than 240 days without any break.”

(Emphasis supplied)

16. Thus, it is to be seen as to whether the Workman was in continuous service of 240 days in the preceding twelve months as on the date of refusal of employment. Section 25-B mandates the preconditions before retrenching a workman, who has been in ‘Continuous Service’ for not less than one year under an employer. Section 25-B of the Act defines ‘Continuous Service’, the relevant portion of which is quoted hereunder for ready reference:-

“25-B, Definition of continuous service.-For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

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(Emphasis supplied)

17. Admittedly, the Opposite Party-Workman was under engagement from 02.04.2004 till 20.08.2010 on working days, as has been admitted by the Petitioner-Management in its written statement. If the total working days in a calendar year are taken into consideration, the same would be more than 240 days in that calendar year. That apart, the minimum wages notified by the State Government, which is paid to a workman/daily wager, includes wages for the weekly rest day and the said days should also be taken into consideration for the purpose of counting 240 days.

18. Law is well settled that apart from the reasons of interruption, as detailed under Section 25-B(1), interruption due to Sundays/ weekly rest days as well as National Holidays, which are paid holidays, are also to be counted for the purpose of calculation of 240 days, as prescribed under Section 25-B(2)(a)(ii) of the Act.

19. In Workman of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, reported in (1985) 4 SCC 71, the Supreme Court held as follows:

“2. The facts very briefly are that the workman joined the service of the American Express International Banking Corporation on November 4, 1974 as a typist-clerk in a temporary capacity and was employed as such, with a number of short breaks, till October 31, 1975 when his services were terminated. According to the workman excluding the breaks in service, he “actually worked under the employer” for 275 days during the period of 12 months immediately preceding October 31, 1975 whereas according to the employer he actually worked for 220 days only. The difference between the two computations is due to the circumstance that the workman has included and counted Sundays and other paid holidays as days on which he “actually worked under the employer”, while the employer has not done so. The question for consideration is whether Sundays and other holidays for which wages are paid under the law, by contract or statute, should be treated as days on which the employee “actually worked under the employer” for the purposes of Section 25-F read with Section 25-B of the Industrial Disputes Act. Section 25-F of the Industrial Disputes Act reads as follows:

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5. Section 25-F of the Industrial Disputes Act is plainly intended to give relief to retrenched workmen. The qualification for relief under Section 25-F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section 25-B of the Industrial Disputes Act. In the present case, the provision which is of relevance is Section 25-B (2)(a)(ii) which to the extent that it concerns us, provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman, during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. The expression which we are required to construe is “actually worked under the employer”. This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The learned counsel for the Management would urge that only those days which are mentioned in the Explanation to Section 25-B(2) should be taken into account for the purpose of calculating the number of days on which the workmen had actually worked though he had not so worked and no other days. We do not think that we are entitled to so constrain the construction of the expression “actually worked under the employer”. The explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. If the expression “actually worked under the employer” is capable of comprehending the days during which the workman was in employment and was paid wages - and we see no impediment to so construe the expression - there is no reason why the expression should be limited by the explanation. To give it any other meaning than what we have done would bring

the object of Section 25-F very close to frustration. It is not necessary to give examples of how Section 25-F may be frustrated as they are too obvious to be stated.

(Emphasis supplied)

20. In ***U.P. Drugs & Pharmaceuticals Co. Ltd. Vs. Ramnuj Yadav and others***, reported in (2003) 8 SCC 334, the Supreme Court held that even though a workman has not worked for more than 240 days during the preceding 12 months of his retrenchment, if a workman has worked for more than 240 days in any of the preceding years, he would be deemed to be in continuous service and his retrenchment would be illegal, if the same has been done by the Employer without adhering to the provisions under the Act. Paragraphs 10 & 11 of the said judgment, being relevant, are reproduced below:

“10. Under the aforesaid legislative background, the question involved is required to be reconsidered. Section 2(g) of the U.P. Act does not require a workman, to avail the benefit of the deeming provision of completion of one year of continuous service in the industry, to have worked for 240 days during the “preceding” period of twelve calendar months. The word “preceding” has been used in Section 25-B of the ID Act as incorporated in the year 1964. Section 2(g) does not use the word “preceding”. The concept of “preceding” was introduced in the ID Act so as to give complete and meaningful benefit of the welfare legislation to the working class. The approach to be borne in mind while interpreting the welfare legislation is illustrated in Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court [(1980) 4 SCC 443 : 1981 SCC (L&S) 16 : (1981) 1 SCR 789] where this Court has observed that semantic luxuries are misplaced in the interpretation of “bread-and-butter” statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions.

11. The learned counsel for the appellant, however, relies upon *Mohan Lal v. Bharat Electronics Ltd.* [(1981) 3 SCC 225 : 1981 SCC (L&S) 478] In that case, the Court was considering the scope of Section 25-B of the ID Act. It was observed that in order to invoke the fiction enacted in clause (2)(a) of Section 25-B, it is necessary to determine first the relevant date i.e. the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of twelve months just preceding the date of retrenchment and then ascertain whether within a period of twelve months, the workman has rendered service for a period of 240 days. It was held that if these three factors are affirmatively answered in favour of the workman pursuant to the deeming fiction enacted in clause (2)(a), it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F. In *Mohan Lal* case [(1981) 3 SCC 225 : 1981 SCC (L&S) 478] the appellant was employed with the respondent from 8-12-1973. His services were abruptly terminated by a letter dated 12-10-1974 w.e.f. 19-10-1974. This Court said that it is not necessary for the purpose of clause (2)(a) of Section 25-B that a workman should be in service for a period of one year. It was held that if he is in service for a period of one year and that his service is continuous service within the meaning of sub-section (1), his services would be governed by sub-section (1) and his case need not be covered by sub-section (2). Sub-section (2) envisages the situation not governed by sub-section (1). Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered

uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of twelve calendar months counting backward and just preceding the relevant date i.e. the date of retrenchment. These were the facts under which it was held as to how the period of 240 days was to be calculated. The decision in the case of Mohan Lal [(1981) 3 SCC 225 : 1981 SCC (L&S) 478] does not lay down that if a workman had worked for more than 240 days in any number of years and if during the year of his termination, he had not worked for the said number of days, he would not be entitled to the benefit of Section 25-B. The question with which we are concerned was not under consideration in Mohan Lal case [(1981) 3 SCC 225 : 1981 SCC (L&S) 478] . **If the viewpoint propounded by the management is accepted, then every year the workman would be required to complete more than 240 days. If in any one year the employer gives him actual work for less than 240 days, the service of the workman can be terminated without compliance with Section 6-N of the U.P. Act, despite his having worked for a number of years and for more than 240 days in each year except the last. Such an intention cannot be attributed to the U.P. Act.** In the present case, as already noticed, the finding of the Labour Court is that the respondents worked for more than 240 days in each year from 1983 to 1986 but not having worked for 240 days in the year of termination, the termination was held by the Labour Court not to be violative of Section 6-N. Reference may also be made to the decision in Ramakrishna Ramnath v. Presiding Officer, Labour Court, Nagpur [(1970) 3 SCC 67] where this Court observed that the provision requiring an enquiry to be made to find out whether the workman has actually worked for not less than 240 days during a period of twelve calendar months immediately preceding the retrenchment does not show that a workman, after satisfying the test, has further to show that he has worked during all the period he has been in service of the employer for 240 days in the year. The interpretation propounded for the appellant is wholly untenable. The decision in U.P. State Coop. Land Development Bank Ltd. v. Taz Mulk Ansari [1994 Supp (2) SCC 745 : 1994 SCC (L&S) 1188] relied upon by the learned counsel for the appellant has no applicability since that was a case of clause (a) of Section 6-N and, therefore, Section 2(g) had no relevance.” **(Emphasis supplied)**

21. As per the statute as well as the settled position of law uninterruptedly working for 240 days in the preceding twelve months from the date of termination of service is not necessary to constitute ‘continuous service’. Thus, this Court is of the view that the plea taken by the Management in its written statement, at para 5, as quoted above, is misconceived.

22. Apart from the same, it has been observed by the learned Tribunal that the Management Witness, in his evidence, categorically admitted that the second party workman was engaged as an unskilled DLR with effect from 02.04.2004 and was terminated with effect from 20.08.2010 as Chowkidar. Thus, this Court is of the view that learned Tribunal rightly came to a finding that the workman worked for more than 240 days in a calendar year.

23. So far as the limits of the jurisdiction of High Courts in a writ of certiorari, the Constitution Bench of Hon’ble Supreme Court in **Syed Yakooob Vs. K.S. Radhakrishnan and others**, reported in AIR 1964 SC 477, held as follows:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Ahmad Ishaque*, 1955-1 SCR 1104: ((S) AIR 1955 SC 233): *Nagendra Nath v. Commr. of Hills Division*, 1958 SCR 1240: (AIR 1958 SC 398) and *Kaushalya Devi v. Bachittar Singh*, AIR 1960 SC 1168.”

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a

character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each cases and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”
(Emphasis Supplied)

24. Although the impugned award is not elaborative, in view of the detailed discussion made above, this Court is of the view that learned Tribunal has discussed the relevant issues to be considered for answering the reference. That apart, though the impugned award was passed on 19.09.2013, the writ petition has been preferred on 20.09.2017, without explaining the delay of around four years. In that view of the matter, more particularly the admitted pleadings on record so also settled position of law, as detailed above, this Court finds no infirmity in the impugned award under Annexure-3 deserving interference.

25. Accordingly, the impugned award stands confirmed. The writ petition, being devoid of any merit, stands dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

26. As the Opposite Party workman is out of employment since 20.08.2010 and despite order passed by this Court, payment in terms of Section 17-B of the Act has not been made during pendency of the writ petition, in order to save the poor workman from further hardship, the Petitioner-Management is directed to reinstate the Opposite Party-Workman forthwith in terms of the direction given vide the impugned Award. It is made clear that so far as unpaid wages from 01.03.2009 to 20.08.2010, as awarded by the learned Tribunal, as well as wages for the post award period, it would be open for the Opposite Party-Workman to approach the appropriate forum for computation of the same and payment of wages for the period from the date of the award till the date of his actual reinstatement, in addition to the wages from 01.03.2009 to 20.08.2010.

Headnotes prepared by:
 Smt. Madhumita Panda, Law Reporter
 (Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:
 Writ Petition dismissed.

2025 (I) ILR-CUT-1092

**M/s. ADITYA ALUMINIUM, LAPANGA,
THROUGH ITS CHIEF EXECUTIVE, SAMBALPUR
V.
THE PRESIDING OFFICER, LABOUR COURT,
SAMBALPUR & ANR.**

[W.P.(C) NO. 38399 OF 2023]

11 MARCH 2025

[K.R. MOHAPATRA, J. & SANJAY KUMAR MISHRA, J.]**Issue for Consideration**

Whether pre-condition of exhausting remedy of appeal as prescribed in the standing order is mandatory before approaching the industrial adjudicator.

Headnotes

INDUSTRIAL DISPUTES ACT, 1947 – Section 2-A(2) – Maintainability of Application U/s. 2(A) – The Workman was terminated from service on being found guilty in a domestic enquiry – The Workman without exhausting the remedy under Clause-26 of the Certified Standing Orders moved to the Industrial Adjudicator U/s. 2-A of the Act – Whether pre-condition of exhausting remedy of appeal as prescribed in the standing order is mandatory before approaching the industrial adjudicator.

Held: No – The statutory remedy under Section 2-A (2) of the Act does not contain any pre-condition of exhausting remedy of appeal before approaching the authority – The only pre-condition to be satisfied to file an application under Section 2-A (2) of the Act is that if in a case of termination of a Workman the Conciliating Officer fails to conciliate and conclude the proceeding within a period of forty-five days then the Workman has the remedy to approach the Industrial Adjudicator within three years from the date when the cause of action arose to initiate the industrial dispute – Section 2-A (2) of the Act does not mandate any pre-condition of exhausting appellate remedy provided under the Standing Orders. (Para 10.1)

Citations Reference

State of Uttar Pradesh v. Jogendra Singh, **AIR 1963 SC 1618**; Sarla Goel v. Kishan Chand, **(2009) 7 SCC 658**; Mohan Singh v. International Airport Authority of India, **(1997) 9 SCC 132**; Official Liquidator v. Dharti Dhan (P) Ltd., **(1977) 2 SCC 166**; Rakesh Ranjan Shrivastava v. State of Jharkhand,

M/s. ADITYA ALUMINIUM V. LABOUR COURT, SAMBALPUR [BY THE BENCH]

(2024) 4 SCC 419; Sharif-ud-Din v. Abdul Gani Lone, **(1980) 1 SCC 403**; State of Haryana v. Raghubir Dayal, **(1995) 1 SCC 133 – referred to.**

List of Acts

Industrial Disputes Act, 1947.

Keywords

Domestic Inquiry; Pre-condition; May; Shall; Certified standing order; Mandatory; Directory.

Case Arising From

Order dated 18th October, 2023 passed by learned Presiding Officer, Labour Court, Sambalpur in ID Case No.3 of 2022.

Appearances for Parties

For Petitioner : Mr. Somanath Mishra

For Opp. Parties : Mr. Pradeep Kumar Sahoo, ASC (O.P. 1)
Mr. Rabindra Nath Debata (O.P. 2)

Judgment/Order

Judgment

BY THE BENCH:

1. This matter is taken up through hybrid mode.
2. Consent Memo filed by Mr. Mishra, learned counsel on behalf of the Petitioner is taken on record.
3. Order dated 18th October, 2023 (Annexure-1) passed by learned Presiding Officer, Labour Court, Sambalpur (for brevity ‘Labour Court’) in ID Case No.3 of 2022 is under challenge in this Writ Petition, whereby an application filed by the Management-Petitioner challenging maintainability of the proceeding under Section 2-A (2) of the Industrial Disputes Act, 1947 filed by the Workman-Opposite Party No.2, has been rejected.
- 3.1. For the sake of convenience in discussion, the parties are described as per their status before the Labour Court, Sambalpur.
4. Mr. Mishra, learned counsel for the Management submits that the Workman was terminated from service on 10th October, 2019, on being found guilty in a domestic enquiry. The Workman without exhausting the remedy under Clause-26 of the Certified Standing Orders of Aditya Aluminium (for brevity ‘the Standing Orders’) moved to the Industrial Adjudicator under Section 2-A (2) of the Industrial Disputes Act, 1947 (for brevity ‘the Act’). On being noticed, the Management appeared before learned Labour Court and raised objection with regard to

maintainability of the application under Section 2-A (2) of the Act. The said application was rejected vide order dated 2nd December, 2022 by learned Labour Court holding that maintainability of the application is a mixed question of fact and law and the Management having not filed the written statement by then, the question of maintainability of the application could be adjudicated along with other issues. The Management, being not satisfied, filed an application to recall/modify the said order dated 2nd December, 2022, which was dismissed vide order dated 2nd March, 2023. The Management, being aggrieved, assailed both the orders before this Court in W.P.(C) No.8253 of 2023. Upon hearing learned counsel for the parties, this Court, vide judgment dated 10th August, 2023 (Annexure-5), disposed of the said Writ Petition with the following observation and directions:-

“5. Having heard the submissions of the learned counsel for the Parties and the objection taken herein and in course of hearing, this Court has gone through the provision at Order 26 of the Certified Standing Orders of Aditya Aluminium further also reading together with the provision at Order 25 therein. On perusal of both the orders, this Court finds, the Management may be justified in bringing such a serious question of law. For a justified decision required to be taken by the Labour Court, this Court is not delving into answering on such issue at this stage and leaving it open for a justified decision by Labour Court itself but after entering into further argument from both sides.

6. For the nature of dispute, there is no requirement of going or adverting through the facts involving the dispute. A decision can very well be taken simply going through the provision referred therein in the Certified Standing Orders. It is at this stage of the matter, this Court going through the discussions and observations finds, there has been mechanical consideration of the legal aspect involved herein. While declaring the decision unwarranted and in disapproval of the decision involved herein, this Court interfering with the impugned order at Annexure-1 and the consequential order at Annexure-2 sets aside both. The matter is remitted to the Labour Court, Sambalpur for re-adjudication the question raised in the application of the Petitioner at Annexure-3 herein after involving fresh argument of the Counsel appearing for both sides and taking into consideration the legal provision through the provisions in the Certified Standing Orders of Aditya Aluminium.

7. Since the matter is remitted for re-consideration of the Labour Court, both the Management and the Workman are directed to appear before the Labour Court, Sambalpur either in person or through their representatives on 25th August, 2023 along with copy of this judgment. Decision on the question of maintainability should also be taken at least within a period of two months from the date of appearance of the Parties.

8. The Writ Petition succeeds to the extent indicated herein above. There is no order as to cost.”

Pursuant to the aforesaid direction of this Court, learned Labour Court took up the objection with regard to maintainability of the application filed under Section

2-A (2) of the Act as preliminary issue. It is submitted that while adjudicating the matter, learned Labour Court overstepped the observation and direction of this Court and by misinterpreting Clause-26 of the Standing Orders, held that the application under Section 2-A (2) of the Act filed by the Workman is maintainable. The said order under Annexure-1 is assailed in the present Writ Petition.

5. Mr. Mishra, learned counsel for the Petitioner further submits that the Standing Orders of the Management has been certified by the competent authority in terms of the provisions under Section 5 of the Industrial Employment (Standing Orders) Act, 1946 and the same is binding on both the employer and the employee(s). Since the Workman has a remedy of appeal under Clause-26 of the Standing Orders against the order of dismissal by way of punishment, which was not exhausted by the workman, learned Labour Court should not have entertained the application filed by the Workman under Section 2-A (2) of the Act. Learned Labour Court appears to have confused with the word ‘may’ used in Clause-26 of the Standing Orders. The word ‘may’ used in Clause 26 (a) of the Standing Orders should have been construed as ‘shall’ keeping in mind the object and intent behind it. Thus, the Workman, if wished to challenge the order of punishment, should have preferred an appeal under Clause-26 against the order of dismissal before availing any other remedy, including remedy under Section 2-A (2) of the Act. These material aspects were not taken into consideration by the learned Labour Court while adjudicating the matter and passing the impugned order under Annexure-1. Hence, the impugned order is not sustainable and is liable to be set aside.

6. Mr. Debata, learned counsel for Opposite Party No.2, refuting such submission, contended that Sub-Clause-26 of the Standing Orders has three Sub-clauses. Clause (a), stipulates that *“A workman aggrieved by an order imposing punishment ‘may’ within twenty-one days from the date of receipt of the order appeal to the appellate authority”*, but Sub-clause (c) stipulates that *“The appellate authority after giving an opportunity to the workman of being heard ‘shall’ pass such order”*, which leaves no ambiguity that a workman at his option may file an appeal before the appellate authority, But, Sub-clause(c) mandates the appellate authority to adjudicate the appeal within a period of fifteen days of its filing after providing an opportunity of hearing to the Workman. Since the words ‘may’ and ‘shall’ have been used in different Sub-Clauses of the same provision, i.e., Clause-26 of the Standing Orders, the same has distinct purpose and connotation. Thus, in no circumstance, the word ‘may’ used in Clause-26 (a) can be construed to be mandatory; rather it is directory in nature. It is at the option of the Workman to prefer an appeal against the order of punishment of dismissal imposed upon him. In the instant case, the Workman was dismissed from service on 10th October, 2019 and he filed the petition in ID Case No.3 of 2022 under Section 2-A (2) of the Act within the period of limitation, as the Conciliation Officer failed to do the needful within the stipulated period. The Management, without filing the written statement,

is protracting the litigation to harass the Workman who is out of employment since 2019. Learned Labour Court, in the impugned order under Annexure-1, has vividly discussed the purpose and object of use of word ‘*may*’ in Clause-26(a) of the Standing Orders. That apart, drawing attention to Para 12 of the impugned order, Mr. Debata, learned counsel for the Workman further contended that it is the case of the Workman that after dismissal from service, he approached the HR-Eastern Cluster. Because of inaction of the Management, finding no other way out, the Workman had to approach the forum under the I.D. Act. There being no perversity in the impugned order and the same being as reasoned one, warrants no interference by this Court. Hence, he prays for dismissal of the Writ Petition.

7. Heard learned counsel for the Parties. Perused the records.

8. In order to appreciate the rival contentions of learned Counsel for the parties, this Court reproduces Clause-26 of the Standing Orders for ready reference.

“26. Appeal Against Punishment:

a. A workman aggrieved by an order imposing punishment ***may within twenty-one days from the date of receipt of the order*** appeal to the appellate authority;

b. For the purpose of Clause (a) the appellate authority is President – HR of Eastern Cluster;

c. The appellate authority after giving an opportunity to the workman of being heard ***shall*** pass such order as he thinks (sic) proper on appeal ***within fifteen days of the receipt*** and communicate the same to the workman in writing.”

(Emphasis supplied)

Clause-26 (a) of the Standing Orders stipulates that if a Workman is aggrieved by the order imposing punishment, ‘*may*’ within twenty-one days from the date of receipt of the order, appeal to the Appellate Authority. A plain reading of the Clause-26 (a) of the Standing Orders makes it clear that it is at the option of the aggrieved Workman to prefer an appeal against the order of punishment within twenty-one days or not. However, Sub-clause (c) of Clause-26 stipulates that the appellate authority, after giving an opportunity of being heard, ‘*shall*’ make such order as thinks proper within fifteen days of receipt of the appeal, if any, preferred by the Workman. Thus, the Appellate Authority, if receives an appeal, as stipulated in Sub-clause (a), is bound to dispose of the appeal within a period of fifteen days of receipt of the appeal memo and communicate the order to the Workman.

9. The question thus arises for consideration in the instant case is that ‘*whether the word ‘may’ in Clause-26 (a) be construed to be mandatory or directory?*’ In the case of ***State of Uttar Pradesh -v- Jogendra Singh; AIR 1963 SC 1618***, it is held that:

“8. There is no doubt that the word “*may*” generally does not mean “*must*” or “*shall*”. But it is well settled that the word “*may*” is capable of meaning “*must*” or

“shall” in the light of the context. It is also clear that where a discretion is conferred upon a public authority coupled with an obligation, the word “may” which denotes discretion should be construed to mean a command. Sometimes, the legislature uses the word “may” out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed.....”

Further, in the case of **Sarla Goel v. Kishan Chand**; (2009) 7 SCC 658, a similar view has been taken. Further, in the case of **Mohan Singh v. International Airport Authority of India**; (1997) 9 SCC 132, it is held as under:-

“17. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word ‘shall’ or ‘may’ depends on conferment of power. In the present context, ‘may’ does not always mean may. May is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes duty to exercise. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty. In Craies on Statute Law (7th Edn.), it is stated that the court will, as a general rule, presume that the appropriate remedy by common law or mandamus for action was intended to apply. General rule of law is that where a general obligation is created by statute and statutory remedy is provided for violation, statutory remedy is mandatory. The scope and language of the statute and consideration of policy at times may, however, create exception showing that the legislature did not intend a remedy (generality) to be exclusive. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. Therefore, it is necessary to ascertain the intention. The word ‘shall’ is not always decisive. Regard must be had to the context, subject-matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under consideration. As stated earlier, the question as to whether the statute is mandatory or directory depends upon the intent of the legislature and not always upon the language in which the intent is couched. The meaning and intention of the legislature would govern design and purpose the Act seeks to achieve. In Sutherland’s Statutory Construction, (3rd Edn.) Vol. 1 at p. 81 in para 316, it is stated that although the problem of mandatory and directory legislation is a hazard to all governmental activity, it is peculiarly hazardous to administrative agencies because the validity of their action depends upon exercise of authority in accordance with their charter of existence — the statute. If the directions of the statute are mandatory, then strict compliance with the statutory terms is essential to the validity of administrative action. But if the language of the statute is directory only, then variation from its direction does not invalidate the administrative action. Conversely, if the statutory direction is discretionary only, it

may not provide an adequate standard for legislative action and the delegation. In Crawford on the Construction of Statutes, at p. 516, it is stated that:

“The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other....”

The interpretation of the words ‘may’ and ‘shall’ also came up for consideration in the case of **Official Liquidator v. Dharti Dhan (P) Ltd.**; (1977) 2 SCC 166, **Rakesh Ranjan Shrivastava v. State of Jharkhand**, (2024) 4 SCC 419, **Sharif-ud-Din v. Abdul Gani Lone**, (1980) 1 SCC 403 and **State of Haryana v. Raghubir Dayal**; (1995) 1 SCC 133.

9.1 In common parlance, the word ‘may’ denotes discretionary or directory, but in certain circumstances, the word ‘may’ used in a particular provision of a statute is construed as mandatory. It depends upon the context it is used. In the instant case, the remedy of appeal is provided to a Workman against an order of punishment under Clause- 26 (a) of the Standing Orders. If Clause of the Standing Orders, as quoted above, is read as a whole, it can never be perceived that the word ‘may’ used in said Sub-Clause (a) of Clause 26, to be mandatory. It is more so because of the word ‘shall’ used in Sub-Clause (c) of the said Clause. In Sub-clause (a), it is at the option of the Workman to prefer an appeal or not against an order of punishment. A Workman cannot be compelled to file an appeal against an order of punishment. The Workman may choose not to file an appeal against the order of punishment and go with it. But once an appeal is filed, the appellate authority is bound to provide an opportunity of being heard to the Workman and pass the order within fifteen days of filing of the appeal. The word ‘shall’ used in such context in Sub-clause (c) of Clause-26, makes it mandatory keeping in mind the object behind the provision itself. Words ‘may’ and ‘shall’ used in different Sub-clauses of the same Clause-26 make the context and purpose of their use more significant.

10. An argument is advanced by Mr. Mishra, learned counsel for the Petitioner/Management that unless the provision under Clause-26 of the Standing Orders is exhausted by an aggrieved Workman, industrial discipline will be affected and it would encourage other similarly situated Workmen to bypass the remedy available under the Standing Orders and directly approach the Industrial Adjudicator for redressal of their grievances, which is not the intent and object of the statute.

10.1 We are unable to accept the submission made by Mr. Mishra, learned counsel for the Petitioner for the reason that the provision of appeal provided under Clause-26 of the Standing Orders, no doubt creates a forum

for the aggrieved Workman to redress his grievance, but at the same time, the statutory remedy under Section 2-A (2) of the Act does not contain any such pre-condition of exhausting remedy of appeal before approaching the authority. The only pre-condition to be satisfied to file an application under Section 2-A (2) of the Act is that if in a case of termination of a Workman the Conciliating Officer fails to conciliate and conclude the proceeding within a period of forty-five days then the Workman has the remedy to approach the Industrial Adjudicator within three years from the date when the cause of action arose to initiate the industrial dispute. Section 2-A (2) of the Act does not mandate any pre-condition of exhausting appellate remedy provided under the Standing Orders. Thus, the application under Section 2-A (2) of the Act is maintainable, as rightly held by the learned Labour Court in the impugned order. No doubt, the Industrial Adjudicator may be burdened with adjudicating an application under Section 2-A (2) of the Act, but that itself does not preclude a Workman to avail the remedy without exhausting the provision of appeal under the Standing Orders. That apart, in Para-12 of the impugned order, the learned Labour Court has also observed that the Workman has also pleaded that he had approached the H.R. of the Eastern Cluster for consideration of his dismissal order dated 10th October, 2019, which was not considered. It has further been observed in the said paragraph that, as per Clause 26(b) of the Standing Orders, the President–HR of the Eastern Cluster is the Appellate Authority to hear the Appeal.

11. In view of the above, we find no reason to interfere with the impugned order under Annexure-1. While parting with the order, we feel it proper to observe that the Workman was dismissed from service with effect from 10th October, 2019. In the meantime, almost six years have already elapsed. Hence, learned Labour Court, Sambalpur shall do well to consider and adjudicate the dispute, as expeditiously as possible, in accordance with law, without granting any unnecessary and/or long adjournment(s) to any of the parties and make an endeavour to conclude the same within three months from the date of communication of this order.

12. The Writ Petition is accordingly dismissed. In the facts and circumstances, there shall be no order as to costs.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Writ Petition dismissed.

2025 (I) ILR-CUT-1100

**MADHUSMITA SAMANTA
V.
RAJESH SINGH**

[MATA NOS. 315 & 316 OF 2023]

19 MARCH 2025

[B.P. ROUTRAY, J. & CHITTARANJAN DASH, J.]**Issues for Consideration**

- (i) Whether filing of multiple legal cases including 45 FIRs to pressurize a spouse constitutes cruelty U/s. 13(1)(i-a) of the Hindu Marriage Act.
- (ii) Whether repeated threats to commit suicide, to harm the spouse and their family members amounts to cruelty.

Headnotes

(A) HINDU MARRIAGE ACT, 1955 – Section 13(1)(i-a) – The learned Judge, Family Court granted the prayer for divorce holding that the conduct of Appellant/ wife amounts to mental cruelty U/s. 13(1)(i-a) of the Act – The Appellant/wife systematically harassed the Respondent and his family by filing multiple false cases, including over 45 FIRs against him and his family members – Learned Family Court, Cuttack found that the filing of multiple legal cases, including over 45 FIRs was not merely an exercise of legal rights but a deliberate attempt to harass and intimidate the Respondent and his family – It was held that while seeking legal remedies is a legitimate right, the misuse of legal process to pressurize a spouse constitutes cruelty, justifying the dissolution of the marriage – Whether filing of multiple legal cases including over 45 FIRs to pressurize a spouse constitutes cruelty U/s. 13(1) (i-a) of the Act.

Held: Yes – The Appellant’s contradictory legal actions filing for restitution of conjugal rights while simultaneously initiating domestic violence cases and excessive criminal complaints only deepened the emotional chasm between the parties, leaving the Respondent with no reasonable prospect of reconciliation – The Appellant’s conduct, far from reflecting a desire to rebuild the marriage, displayed a deliberate pattern of harassment and control, causing the Respondent severe mental agony and emotional exhaustion. (Para 23)

In light of these circumstances, the findings of the Family Court are rooted in sound legal reasoning and supported by overwhelming evidence – The Appellant’s actions, viewed collectively, meet the threshold of mental cruelty as defined under Section 13(1) (i-a) of the Hindu Marriage Act –

Therefore, this Court finds no infirmity in the impugned judgment granting divorce to the Respondent-Husband, and the appeal is liable to be dismissed. (Para 24)

(B) HINDU MARRIAGE ACT, 1955 – Section 13(1)(i-a) – Mental cruelty – Whether repeated threats to commit suicide, to harm the spouse and their family members amounts to cruelty.

Held: Yes – This Court is of the considered opinion that the repeated threat of suicide or violence is not merely misconduct; it is an insidious form of emotional blackmail and psychological oppression – Such conduct crosses the boundaries of personal conflict and touches upon the very core of harassment, making it impossible for the aggrieved spouse to continue leading a peaceful and dignified marital life. (Para 18)

Citations Reference

K. Srinivas Rao vs. D.A. Deepa, [2013] 2 S.C.R. 126; G.V.N. Kameswara Rao vs. G. Jabilli, [2002] 1 S.C.R. 153; V. Bhagat vs. D. Bhagat, (1994) 1 SCC 337; Samar Ghosh vs. Jaya Ghosh, [2007] 4 S.C.R. 428 – referred to.

List of Acts

Hindu Marriage Act, 1955

Keywords

Mental cruelty; Multiple FIRs; Threat of suicide; False case; Divorce; Deliberate attempt to harass; Intimidation.

Case Arising From

Judgment dated 07.08.2023 passed by the learned Judge, Family Court, Cuttack in C.P. No. 153 of 2009 & C.P. No. 531 of 2009.

Appearances for Parties

For Appellants : Mr. A.P. Bose

For Opp. Parties : Mr. Bibekanda Bhuyan, Sr. Adv. & Mr. S.S. Bhuyan.

Judgment/Order

Judgment

CHITTARANJAN DASH, J.

1. By means of this appeal, the Appellant has challenged the joint judgment dated 07.08.2023 passed by the learned Judge, Family Court, Cuttack, granting the dissolution of marriage subject to payment of Rs.63,00,000/- towards permanent alimony in C.P. No. 153/2009, filed by the Respondent, and consequently, dismissing the petition for restitution of conjugal rights in C.P. No. 531/2009.

2. The background facts of the case are that, the marriage between the Appellant and the Respondent was solemnised on 11.05.2003, in Cuttack. After the marriage, they resided in their matrimonial house in Haripur, Jagatsinghpur, and subsequently resided in Bhubaneswar, Bangalore, USA, Japan, etc. Their marriage soon became strained, with the Respondent alleging that the Appellant pressured him to sever ties with his parents, demanded financial control by insisting on being the sole nominee in his insurance policies, and frequently engaged in quarrels. On the other hand, the Appellant accused the Respondent of emotional neglect, financial control, and isolation, stating that he restricted her access to money and humiliated her in front of others

After facing continuous marital discord, the Respondent filed for divorce under Section 13 of the Hindu Marriage Act in C.P. No. 153/2009, seeking dissolution of marriage on the grounds of cruelty, where he alleged that the Appellant's conduct had made it impossible for him to continue the marriage. His primary grievances included constant quarrels, financial control, and the forced eviction of his elderly parents from their home by the Appellant and local goons. In response to the divorce petition, the Appellant contested the allegations and sought to prevent the dissolution of the marriage. To counter the Respondent's claim, she subsequently filed C.P. No. 531/2009 under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights. She denied all allegations and claimed that the Respondent abandoned her without justifiable cause and that she had always been willing to reconcile and resume cohabitation, but the Respondent refused to continue the marriage by being influenced by his parents. She contended that her marital rights had been unfairly denied.

3. The learned Judge, Family Court, Cuttack, delivered a consolidated judgment, addressing both cases together. The Court granted the prayer for divorce in C.P. No. 153/2009, holding that the Appellant's conduct amounted to mental cruelty under Section 13(1)(i-a) of the Hindu Marriage Act. It also observed that her persistent behaviour of quarrelling, financial control, and acts of intimidation against the parents of the Respondent, when she, along with local goons, forcibly ousted the Respondent's elderly parents, deeming it a significant act of cruelty. Consequently, since the marriage was legally dissolved, the Court dismissed the Appellant's prayer for restitution of conjugal rights, in C.P. No. 531/2009.

4. Mr. A.P. Bose, learned counsel appearing on behalf of the Appellant, submits that the impugned judgment dated 07.08.2023, passed by the Family Court, Cuttack, is erroneous, legally unsustainable, and liable to be set aside. He contends that the dispute arose not from any cruelty inflicted by her but due to the Respondent's deliberate desertion and abandonment of the marital relationship. Her bona fide intention to resume cohabitation was clearly demonstrated by filing C.P. No. 531/2009 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. Mr. Bose argues that the Family Court misinterpreted the concept of mental cruelty, wrongly equating marital disputes, financial disagreements, and conflicts

with in-laws with cruelty under Section 13(1)(ia) of the Hindu Marriage Act. The allegation that she forcibly ousted the Respondent's parents is baseless and unsupported by independent evidence, with the court relying only on the Respondent's family's testimonies. Additionally, the multiple legal cases filed by her were a legitimate exercise of her legal rights and cannot be construed as cruelty or harassment. It is further contended that the Family Court proceeded with the divorce decree despite ongoing mediation efforts before the Hon'ble High Court of Orissa and the Hon'ble Supreme Court of India. Instead of awaiting the outcome, the court adjudicated the matter prematurely, causing serious prejudice.

Mr. Bose highlighted another error in presuming that the marriage was irretrievably broken, despite this not being a statutory ground for divorce. According to Mr. Bose, the Court overlooked documentary evidence such as emails, flight tickets, and communication records that demonstrated her attempts to maintain the marital bond, and the learned Court, without providing sufficient opportunities for reconciliation, wrongly concluded that cohabitation was impossible. Mr. Bose asserts that with respect to financial relief, the Court's award of ₹63,00,000/- as permanent alimony is grossly inadequate considering the Respondent's substantial income and assets. Despite multiple I.A. filed for enhanced financial support, the court failed to properly adjudicate these claims. Mr. Bose finally concludes his argument stating that the judgment is based on conjecture and surmises, wrongly assuming that the Appellant was unwilling to cooperate in the marriage and for these reasons, the Appellant prays that this Hon'ble Court set aside the impugned judgment of the learned Family Court, Cuttack, and allow her appeal in restoring her matrimonial rights.

5. Mr. B. Bhuyan, the learned Senior Advocate, on the other hand, submits that the present appeal filed by the Appellant-Wife is devoid of merit and is merely an attempt to prolong the litigation and harass him despite the Family Court's well-reasoned decision granting him a decree of divorce in C.P. No. 153/2009. He further submits that the Appellant's claims of false abandonment and willingness to cohabit were rightly rejected, as her conduct was found to be inconsistent with a spouse seeking restitution of conjugal rights. Mr. Bhuyan highlights that the Appellant systematically harassed the Respondent and his family by filing multiple false cases, including over 45 FIRs against him and his family members. The Respondent, who resided abroad for employment, has been forced to defend himself in multiple jurisdictions and has been subjected to continuous harassment at the hands of the Appellant. Mr. Bhuyan asserts that the repeated abuse of legal processes was solely intended to create mental distress for the Respondent and to prevent him from leading a peaceful life. This pattern of malicious litigation further reinforces the cruelty inflicted upon the Respondent, justifying the dissolution of the marriage.

He further argues that the Appellant's deliberate acts of financial manipulation and suppression of facts played a significant role in the dispute. She was awarded interim maintenance in 2017, yet she intentionally withheld this

information from the Court while filing additional maintenance claims under Section 24 of the Hindu Marriage Act. The most egregious act of cruelty on the part of the Appellant was her forcible ousting of the Respondent's elderly parents from their home in Hariharpur, Jagatsinghpur, by bringing local goons to threaten them, which was witnessed by the neighbours vide their sworn testimonies.

Mr. Bhuyan further submits that the appeal lacks any substantial legal ground, as the Appellant has failed to point out any fundamental error in the Family Court's judgment. The findings of the Family Court are based on well-documented evidence, including the Respondent's consistent pleadings, witness testimonies, and legal precedents supporting his claim of cruelty. The Appellant's attempt to challenge the divorce decree is nothing but a desperate measure to prolong the litigation and continue exerting control over the Respondent's life. The Respondent, who has dutifully complied with all Court procedures, has been forced to return to India repeatedly to address these matters, which has caused undue hardship in both his personal and professional life, and subsequently led him to resign from his job last year. Mr. Bhuyan finally concludes his argument, stating that in light of the overwhelming evidence of cruelty, misuse of legal processes, and clear findings of the Family Court, the present appeal deserves to be dismissed.

6. The main grounds for challenging the impugned judgment dissolving the marriage between the Appellant and the Respondent are as follows, that –

a) The learned trial Court considered the filing of multiple cases by the wife as an act of cruelty, failing to recognise that seeking legal remedies and challenging orders are legitimate rights and cannot be equated with mental cruelty.

b) The trial Court proceeded with the divorce decree despite being informed that mediation was pending before both the Hon'ble High Court vide CRLMC No. 2174 of 2021 and the Hon'ble Supreme Court vide SLP (CRL) No. 6956/23. It should have adjourned the proceedings and awaited the mediation outcome instead of prematurely dissolving the marriage.

c) The judgment proceeded on the assumption that the parties could not live together, without any substantive proof that reconciliation was impossible. No concrete evidence was provided to show that the wife had inflicted mental cruelty on the husband.

d) The Court based the judgment on conjectures and surmises rather than evidence in concluding that the wife was not interested in returning to the husband's company. The Court ignored the fact that the wife had already filed a case for restitution of conjugal rights (C.P. No. 531/2009), which itself proves her intention to continue the marriage. Granting divorce on the ground that she was unwilling to cooperate was contrary to the facts on record.

7. Having regard to the abovementioned grounds, the learned Family Court, Cuttack, found that the filing of multiple legal cases, including over 45 FIRs, was not merely an exercise of legal rights but a deliberate attempt to harass and intimidate the Respondent and his family. It was held that while seeking legal

remedies is a legitimate right, the misuse of legal processes to pressurise a spouse constitutes cruelty, justifying the dissolution of the marriage. Regarding the presumption that the parties could not live together, the Court did not make this assumption arbitrarily but based its conclusion on clear findings that reconciliation was neither practical nor desirable, given the history of disputes, legal battles, and separation. Furthermore, the Court held that the Appellant's filing of a restitution of conjugal rights petition (C.P. No. 531/2009) was contradicted by her actions, including filing multiple cases against the Respondent and allegedly ousting his elderly parents from their home. The Court reasoned that a mere formal request for restitution could not override overwhelming evidence demonstrating the impossibility of cohabitation. Accordingly, the Family Court granted the Respondent-Husband a decree of divorce in C.P. No. 153/2009 and dismissed the Appellant-Wife's petition for restitution of conjugal rights in C.P. No. 531/2009, concluding that the marriage was beyond repair and that forcing the parties to continue cohabitation would be unjust.

It is true that the Court below did not address the order of mediation pending before the Hon'ble High Court and the Hon'ble Supreme Court. However, since the parties had remained estranged for an extended period, and the Respondent having clearly refused to cohabit due to emotional distress, the Court found no justification to delay the proceedings further.

8. Having regard to the grounds raised by the Appellant-Wife in challenging the impugned judgment, as well as the Family Court's findings, we find it imperative to examine the overall circumstances of the case.

9. The Hon'ble Supreme Court, in the case of **K. Srinivas Rao vs. D.A. Deepa** reported in [2013] 2 S.C.R. 126, has observed that –

15. In Naveen Kohli¹, the wife had filed several complaints and cases against the husband. This Court viewed her conduct as a conduct causing mental cruelty and observed that the finding of the High Court that these proceedings could not be taken to be such which may warrant annulment of marriage is wholly unsustainable.

16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh², we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the Court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.

10. The first contention raised by the Appellant is that the filing of multiple cases cannot amount to mental cruelty as it is her legitimate right to seek legal

¹ (2006) 4 SCC 558

² (2007) 4 SCC 511

remedies. However, while the mere filing of cases may not always constitute cruelty, when the legal process is abused to cause constant harassment and mental agony, it crosses into the realm of mental cruelty. In the said case, where the wife had filed several complaints and cases against the husband, the Court held that the filing of repeated false complaints and cases, in the facts of the case, amounted to causing mental cruelty. In the instant case, where the Appellant has filed over 45 FIRs along with numerous civil and criminal proceedings against the Respondent and his family, the same principle applies here too. Such a high volume of cases reflects a pattern of vexatious litigation rather than a genuine pursuit of justice. The frequency and nature of these cases go beyond a reasonable exercise of legal rights and instead demonstrate a calculated effort to exert pressure and inflict mental agony upon the Respondent. Therefore, the contention that multiple cases alone cannot amount to mental cruelty fails when viewed against the sheer extent of litigation initiated by the Appellant and the prolonged harassment faced by the Respondent and his family.

11. Furthermore, the Respondent-Husband has submitted a copy of his resignation email from 30th August, 2024, wherein he explicitly cited his wife's repeated interruptions in his day-to-day work life at TCS, as the sole reason for his resignation. In the email, he conveyed that the Appellant's persistent attempts to contact him at his workplace not only disrupted his professional responsibilities but also created an uncomfortable environment for his colleagues and staff members. The Respondent stated that the situation had become untenable, as the Appellant's behaviour caused undue stress and embarrassment, making it impossible for him to continue working. Consequently, he felt compelled to resign from his employment, further reflecting the profound impact of the Appellant's conduct on his personal and professional life. This resignation serves as crucial evidence of the sustained harassment faced by the Respondent, extending beyond the confines of the matrimonial relationship and into his career and livelihood.

12. Another ground of challenge raised by the Appellant is that the Court presumed the impossibility of cohabitation without substantive proof. In **G.V.N. Kameswara Rao vs. G. Jabilli**, reported in [2002] 1 S.C.R. 153 the Hon'ble Supreme Court has held that –

“Under Section 13(1) (ia) of the Hindu Marriage Act, on a petition presented either by the husband or wife, the marriage could be dissolved by a decree of divorce on the ground that the other party has, after the solemnization of the marriage, treated the petitioner with cruelty. ‘Cruelty’ is not defined in the Act. Some of the provisions of the Hindu Marriage Act were amended by Hindu Marriage Laws (Amendment) Act, 1976. Prior to the amendment, ‘cruelty’ was one of the grounds for judicial separation under Section 10 of the Act. Under that Section, “cruelty” was given an extended meaning by using an adjectival phrase, viz. “as to cause reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party.”

13. In the instant case, the case record reveals several instances of physical violence and abusive behaviour inflicted upon the Respondent and his family, which squarely meet this threshold of cruelty.

The first instance to take note of is with regard to the abusive nature of the Appellant. According to the parents of the Respondent, the Appellant, from the very early days of the marriage, has been abusive towards their family, both verbally and physically. In their sworn testimonies, they deposed that soon after the marriage, the Appellant hurled abusive words at them, consistently referring to them as “bastard,” “chhoto loko,” and “bhikari”. The Appellant even assaulted the Respondent with a Lohakhadika (an iron pot). Upon the advice of family elders, the Respondent relocated to Bhubaneswar with the Appellant, hoping to resolve matters. However, the violent behaviour continued, resulting in facial injuries to the Respondent. The deposition of Narayan Sahoo (P.W.3), a neighbour in Bhubaneswar, corroborates the occurrence of this assault and the resulting nose and facial injuries.

The second incident occurred on 26.11.2006 while the Respondent was posted in Dallas, Texas, and living with the Appellant. On that night, the Appellant allegedly quarrelled with the Respondent and struck him with a speaker of their music system, causing a scalp laceration. The Respondent’s medical records from Parkland Health & Hospital System vide Ext. 5 confirm that he was admitted to the emergency ward for his injuries, which required sutures before being discharged.

The third incident that stands out is the alleged forcible ousting of the Respondent’s elderly parents from their home in Jagatsinghpur. As per the testimony of the Respondent’s mother, on 11.12.2008, at about 8:00 p.m., the Appellant arrived at their village along with her parents and some antisocial elements, demanding the whereabouts of the Respondent. She screamed at the Respondent’s mother, saying – “*Mo swami ku de, nochet tote murder karidebi.*” (Give me my husband, or I will kill you.) The Appellant then grabbed the mother by her neck and attempted to choke her. The Respondent’s father, arriving at the scene, tried to rescue his wife but was confronted by the Appellant and her accomplices. The Appellant allegedly threatened him, saying – “*Mo bapa chief engineer, tote sesa karibi.*” (My father is a chief engineer; I will finish you off.) The Respondent’s father fled to the local Matha, where some neighbours gathered and rescued both parents from the Appellant’s aggression.

Another incident took place on 11.11.2009, when the Appellant returned to the Respondent’s parents’ house with her sister. Despite being welcomed by them, the Appellant allegedly began verbally abusing and physically assaulting them with fists and kicks, demanding to know the Respondent’s whereabouts. Matters escalated further on 13.11.2009, when the Appellant locked the elderly parents out of the house, forcing them to spend the night at the Matha and later seek shelter at their daughter’s house. Subsequently, the Respondent’s mother filed D.V. Misc Case No. 110/09 before the S.D.J.M., Jagatsinghpur, resulting in a protection order and police intervention to restore their residence.

14. These allegations were not made in isolation. The testimonies of the neighbours and independent witnesses corroborated these events, providing independent evidence of the Appellant's violent and threatening behaviour. The pattern of conduct established through these incidents and the prolonged separation between the parties makes reconciliation impossible. Additionally, the Appellant's inability to answer straightforward questions regarding the residence of the Respondent's parents in the double-storied matrimonial home further substantiates the prolonged estrangement and her lack of connection with the Respondent's family.

15. Furthermore, the Appellant's conduct, as evidenced by incidents reported to authorities in Thailand and India, further substantiates the claim of mental cruelty inflicted upon the Respondent. The Daily Report of The Royal Thai Police in Bangkok, Thailand, dated 11.05.2016, reveals that the Appellant disturbed the Respondent at his workplace at Sino-Thai Company and threatened to commit suicide if he refused to meet her. The report, acknowledged and recorded by the Inquiry Officer of Thong Lo Police Station, serves as official documentation of the Appellant's extreme and coercive behaviour, intended to emotionally manipulate and mentally distress the Respondent.

Additionally, the incident on 22.06.2016 at N.S.C.B.I. Airport, Kolkata, as evidenced by the written complaint filed by the Respondent on 24.06.2016 with the Officer-in-Charge of N.S.C.B.I. Airport P.S., further corroborates the Appellant's persistent pattern of harassment. The complaint details that while the Respondent was about to board a flight from Kolkata to Bhubaneswar to attend a hearing for C.P. No. 153/2009, the Appellant heckled him, obstructed his path, switched off his mobile phone, and threatened his life as well as his family's if he proceeded to attend the Court hearing.

16. It has to be noted that marriage is a partnership where both individuals are expected to nurture the bond with compassion and patience, even in times of disagreement or hardship. However, when one partner resorts to repeated threats of self-harm or violence, the very foundation of this sacred bond is shattered, giving rise to a climate of fear and emotional torment. While an attempt to commit suicide is an act of desperation, a repeated threat to do so is a calculated act of manipulation, often deployed to exert psychological control over the other spouse.

17. The Hon'ble Supreme Court, in cases such as in *V. Bhagat vs. D. Bhagat*, reported in (1994) 1 SCC 337, has observed that persistent mental stress, caused by threats and coercion, may amount to mental cruelty, justifying the dissolution of marriage, held –

“15. If so, the question arises what kind of cruel treatment does clause (i-a) contemplate? In particular, what is the kind of mental cruelty that is required to be established? While answering these questions, it must be kept in mind that the cruelty mentioned in clause (i-a) is a ground now for divorce as well as for judicial

separation under Section 10. Another circumstance to be kept in mind is that even where the marriage has irretrievably broken down, the Act, even after the 1976 (Amendment) Act, does not permit dissolution of marriage on that ground. This circumstance may have to be kept in mind while ascertaining the type of cruelty contemplated by Section 13(1)(i-a).

16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be Determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

The Hon’ble Supreme Court has made further observations in **K. Srinivas Rao (Supra)** that –

“26. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the Courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the Court’s verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the Court’s decree.

27. In *V. Bhagat* this Court noted that divorce petition was pending for eight years and a good part of the lives of both the parties had been consumed in litigation, yet the end was not in sight. The facts were such that there was no question of reunion, the marriage having irretrievably broken down. While dissolving the marriage on the ground of mental cruelty this Court observed that irretrievable breakdown of marriage is not a ground by itself, but, while scrutinizing the evidence on record to determine whether the grounds alleged are made out and in determining the relief to be granted the said circumstance can certainly be borne in mind. In *Naveen Kohli*, where husband and wife had been living separately for more than 10 years and a large number of criminal proceedings had been initiated by the wife against the husband, this Court observed that the marriage had been wrecked beyond the hope of salvage and public interest and interest of all concerned lies in the recognition of the fact and to declare *defunct de jure* what is already *defunct de facto*. It is

important to note that in this case this Court made a recommendation to the Union of India that the Hindu Marriage Act, 1955 be amended to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce.

18. Repeated threats to commit suicide, or worse, to harm the spouse and their family members, transcend mere emotional outbursts, they represent a gross misuse of emotional vulnerability and a blatant form of psychological warfare. The effect of such behaviour is not just confined to the four walls of the matrimonial home but leaves a lasting scar on the mental health and emotional stability of the aggrieved spouse. When coupled with physical aggression and public humiliation, as seen in the present case, the cumulative effect is devastating, irreparably corroding the marital bond. Furthermore, such acts cannot be brushed aside as isolated emotional expressions. In a relationship as intimate as marriage, repeated threats become tools of coercion, forcing the other spouse to remain trapped in a state of perpetual anxiety and emotional paralysis.

This Court is of the considered opinion that the repeated threat of suicide or violence is not merely misconduct; it is an insidious form of emotional blackmail and psychological oppression. Such conduct crosses the boundaries of personal conflict and touches upon the very core of harassment, making it impossible for the aggrieved spouse to continue leading a peaceful and dignified marital life.

19. It further appears from the impugned judgment that the trial Court has duly considered the aspect of financial control exerted by the Appellant and her family, particularly during the period when the Respondent was out of the country for work. The Court took note of the fact that, in the absence of the Respondent, the father of the Appellant took over possession of the matrimonial house and let it out on rent without the Respondent's consent, depriving him of his rightful access to his property. Furthermore, the Appellant's repeated insistence on living separately from the Respondent's parents and her demand that the nomination for the Respondent's LIC insurance policy be changed in her favour, replacing the Respondent's mother, demonstrated her intent to sever the Respondent's ties with his family and gain financial control over his assets. The trial Court also placed weight on the incident where the Appellant allegedly ousted the Respondent's elderly parents from their home, an act that not only caused emotional distress but also further underscored the Appellant's desire to exercise dominion over the matrimonial property and alienate the Respondent from his family.

20. In light of the above discussions, it is evident that while the Appellant claims that the Family Court overlooked her willingness to reconcile, as demonstrated by her filing of C.P. No. 531/2009 for restitution of conjugal rights, the totality of her actions paints a contradictory picture. The Family Court carefully evaluated the evidence and rightly found that the Appellant's conduct was inconsistent with a genuine intention to preserve the marriage. Filing for restitution of conjugal rights while simultaneously engaging in acts of legal harassment,

financial exploitation, and emotional distress against the Respondent cannot be reconciled as efforts to restore the marital relationship. Rather, the restitution petition appeared to be a strategic countermeasure to resist the divorce proceedings. The Court correctly observed that the Appellant's actions pushed the Respondent to a point where continuing the marriage would be unjust and emotionally damaging, thereby warranting its dissolution.

Additionally, the Appellant's challenge to the ₹63,00,000/- awarded as permanent alimony was carefully considered. The Family Court, after a thorough assessment of the Respondent's financial standing, liabilities, and the standard of living enjoyed by the parties during the marriage, concluded that the awarded sum struck a delicate balance. It aimed to ensure that the Appellant received adequate support for her future needs while ensuring that the burden on the Respondent remained proportionate and fair. The Appellant's claim of inadequacy does not stand in light of the Court's reasoned approach in ensuring equitable financial relief.

21. The Apex Court, in the matter of ***Samar Ghosh vs. Jaya Ghosh***, reported in [2007] 4 S.C.R. 428, has detailed an elucidative guideline to anchor the understanding of "mental cruelty"

"101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

22. The institution of marriage rests upon the pillars of trust, compassion, and mutual respect, that form the very essence of a harmonious marital bond. In the instant case, however, the fabric of this relationship has been irreparably torn apart by a sustained pattern of mental cruelty inflicted upon the Respondent-Husband by the Appellant-Wife. Amidst the to and fro complaints exchanged between the parties, this Court cannot overlook the fact that the Appellant and Respondent once shared moments of happiness and companionship. The Appellant pursued her M.Sc. degree from the New York Institute of Technology, U.S.A. and the Respondent not only supported her academic journey but also attended her convocation ceremony, celebrating her achievement. The couple also took pleasure trips together, creating memories that reflected an attempt to nurture their bond. However, it is after these trips that tensions began to surface, giving rise to misunderstandings and grievances that gradually escalated into irreconcilable differences. The evidence paints a heart-wrenching picture of a marriage that once held promise but gradually descended into a cycle of emotional turmoil, intimidation, and relentless litigation. From physical assaults and verbal abuse to repeated acts of financial control and emotional

blackmail, the Respondent was subjected to a state of perpetual distress, where fear and anxiety overshadowed any hope of marital peace.

23. The Appellant's contradictory legal actions filing for restitution of conjugal rights while simultaneously initiating domestic violence cases and excessive criminal complaints only deepened the emotional chasm between the parties, leaving the Respondent with no reasonable prospect of reconciliation. The Appellant's conduct, far from reflecting a desire to rebuild the marriage, displayed a deliberate pattern of harassment and control, causing the Respondent severe mental agony and emotional exhaustion. The prolonged separation, coupled with acts of physical violence, humiliation, and calculated financial exploitation, has rendered the marital bond beyond repair.

24. In light of these circumstances, the findings of the Family Court are rooted in sound legal reasoning and supported by overwhelming evidence. The Appellant's actions, viewed collectively, meet the threshold of mental cruelty as defined under Section 13(1)(i-a) of the Hindu Marriage Act. Therefore, this Court finds no infirmity in the impugned judgment granting divorce to the Respondent-Husband, and the appeal is liable to be dismissed. The law cannot compel a person to endure a marriage that has become a source of suffering and torment, and the Respondent is entitled to the peace and emotional relief that can only be found in the dissolution of this broken bond.

25. In the absence of a specific prayer by the Appellant with respect to permanent alimony, this Court finds that the financial relief granted by the learned Judge, Family Court, Cuttack, is just and equitable. Marriage, even when dissolved, carries with it certain obligations that cannot be overlooked, particularly in cases where one party may face financial hardship post-separation. Taking into consideration the income, assets, and liabilities disclosed by both parties, as well as their educational qualifications and social backgrounds, this Court too deems it necessary to fix the permanent alimony. Consequently, the permanent alimony of Rs.63,00,000/- awarded by the learned Judge, Family Court, Cuttack, is not to be interfered with. This amount seeks to strike a balance between providing the Appellant with reasonable financial security and ensuring that the Respondent is not unduly burdened, thereby upholding the principles of fairness and equity in matrimonial disputes.

26. The Appeal is hence dismissed on merit.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Appeal dismissed.

2025 (I) ILR-CUT-1114

**STATE OF ODISHA
V.
PRATAP KR. DAS & ANR.**

[CRLLP NO. 53 OF 2006]

26 MARCH 2025

[B.P. ROUTRAY, J. & CHITTARANJAN DASH, J.]

Issue for Consideration

Whether the evidence of police dog in the absence of proper procedural safeguards and corroboration be relied upon to prove the guilt of the accused.

Headnotes

CRIMINAL TRIAL – The Trial Court acquitted the accused persons (Respondents) from the offences U/s. 364, 376(2)(f), 302 and 34 of the Indian Penal Code, 1860 – The deceased, a minor girl was reported missing after playing with other children on the day of temple pratistha in the village Gangeswarpur Sasan – The body of deceased was found on the next day lying in a dried pond amidst Amari bushes near the Siva Temple – The prosecution’s case rested heavily on circumstantial evidence – The prosecution case is based on last seen theory alleging that the respondents were lastly seen with the deceased – The prosecution further used the police dog to track a scent from the crime scene to one of the respondent’s cabin – Whether the evidence of police dog in the absence of proper procedural safeguards and corroboration be relied upon to prove the guilt of the accused.

Held: No – While assessing the police dog evidence, it is observed that the investigation lacked critical elements – The prosecution did not present evidence of the dog’s training, skill, or past performance to establish its reliability – No forensic evidence, such as fingerprints, bloodstains, or incriminating materials, was recovered from the locations identified by the dog – The prosecution failed to demonstrate that the conditions under which the dog conducted the tracking were controlled or that there were no other scent trails that could have confused the animal. (Para 18)

The dog is a mere “tracking instrument” rather than a witness, with the handler reporting the dog’s behavior – The police dog evidence, in the instant case, is unreliable in the absence of corroboration – It cannot form the basis for implicating Respondent No.1, as the investigation did not meet the necessary safeguards to ensure the reliability of the dog’s actions.

(Para 18)

Citations References

Sharad Birdhi Chand Sarda vs. State of Maharashtra, **AIR 1984 SC 1622**; Satpal vs. State of Haryana, **(2018) 6 SCC 610**; Abdul Rajak Murtaja Dafedar vs. State of Maharashtra, **1970 AIR 283 – referred to.**

List of Acts

Indian Penal Code, 1860; Indian Evidence Act, 1872

Keywords

Evidentiary value of police dog; Tracking instrument; Procedural safeguard; Last seen theory; Corroboration.

Case Arising From

Judgment and Order of acquittal dated 07.01.2005, passed by the learned Adhoc Additional Sessions Judge, F.TC. No-I, Bhubaneswar in S.T. No. 30/292 of 2003.

Appearances for Parties

For Appellant : Mr. S.B. Mohanty, AGA

For Respondent : Ms. A. Mishra (for Res. No.1), Mr. P. Jena (for Res. No.2)

Judgment/Order**Judgment****CHITTARANJAN DASH, J.**

1. The Petitioner, the State of Odisha, has filed this application seeking leave to appeal challenging the judgment and order of acquittal dated 07.01.2005, passed by the learned Adhoc Additional Sessions Judge, F.TC. No-I, Bhubaneswar, in S.T. No. 30/292 of 2003 arising out of Lingaraj P.S. Case No. 76/2003, wherein, the learned trial Court acquitted both the accused persons (Respondents) of offences under sections 364, 376(2)(f), 302 and 34 of the Indian Penal Code, 1860.

2. The prosecution case, in brief, is that on the night of 01.05.2003, a Yajna was being performed at the newly constructed Siva Temple for its *pratistha*, situated near the river embankment in the village of Gangeswarpur Sasan. During the night, children from the village, including the deceased, were playing there. As the night progressed, the other children returned home, but the deceased did not. A thorough search was conducted throughout the night by the villagers, but the deceased could not be found. Early the next morning, P.W.3, the brother of the Informant, discovered the deceased lying in a dried pond amidst Amari bushes near the Siva Temple. The deceased had visible injuries on her cheek, neck, private parts, and other areas. P.W.3 carried the deceased back to their house, where other villagers gathered. Subsequently, P.W.3, along with others, proceeded to Lingaraj Police

Station to lodge the FIR. On receipt of the written complain, P.W.22, the I.O., registered the F.I.R. vide Lingaraj P.S. Case No. 76/2003 for offences under sections 364, 376(2)(f), 302 and 34 of the Indian Penal Code, 1860, prompting the commencement of investigation.

3. In the course of the investigation, P.W.22, the IIC of Lingaraj and the Investigating Officer (I.O.) of this case, examined the complainant, visited the crime scene, and requisitioned the services of a scientific officer and a police dog. He conducted an inquest over the deceased-victim's body in the presence of witnesses, marked as Ext.1, and sent the body to the Chief Medical Officer, Capital Hospital, for a post-mortem examination. The police dog was used in the investigation by being given a scent, which led from the crime scene to the complainant's house where the body was kept, touching the cabin of Respondent No.1 along the way. The I.O. seized blood stained and sample leaves from a creeper and an Amari plant. After the post-mortem, he also seized the deceased's clothing. Confidential inquiries in the village revealed that Respondent No.1 had previously committed rape on three other minor girls on different occasions and was allegedly involved in an illicit relationship with another woman in the village. Respondent No.2 was frequently seen with Respondent No.1, as they often indulged in intoxication together. On the night of the incident, both Respondents were seen consuming bhaang near Pratap Das's cabin and heading towards the riverbank road. The post-mortem report was received on 20.05.2003. On the same day, the I.O. received information that both accused had been spotted near Samantarapur. He conducted searches and raids at probable locations, ultimately arresting both Respondents in the village of Gangeswarpur. The I.O. seized their clothing and sent them for medical examination. On 21.05.2003, the I.O. received the post-mortem and query reports from the Medical Officer (P.W.13). The material objects were sent for further medical examination, and the corresponding report was marked as Ext.13. Upon completing the investigation and finding a prima facie case against the accused persons, a charge sheet was filed against Respondent Nos. 1 and 2 on 16.09.2003, to face trial.

4. The case of the defence is one of complete denial and false accusations.

5. To bring home the charge, the prosecution examined 22 witnesses in all. The defence, on the other hand, examined none.

6. The learned trial Court having believed the evidence of the prosecution witnesses, found the prosecution to have proved its case beyond all reasonable doubt and held the Appellant guilty and convicted him awarding sentence as described above.

7. Mr. S. B. Mohanty, learned Additional Government Advocate, submitted that the circumstances surrounding the incident, when viewed collectively, point conclusively to the guilt of the Respondents. The prosecution relies on the last-seen

theory, asserting that Respondent No.1 was the last person seen with the deceased on the night of the *pratistha* ceremony, as testified by P.W.2. He further argues that the police dog tracked a scent trail from the location where the deceased's body was found to Respondent No.1's shop and a nearby tube well, strengthening the inference of his involvement. Another circumstance highlighted by the learned counsel is Respondent No.1's suspicious behaviour during the search, such as avoiding questions about the deceased and opening his shop the next morning while appearing distracted and giving wrong items to customers, allegedly acting like someone burdened with guilt. Mr. Mohanty further emphasises that Respondent No.1's past conduct, specifically the allegations of sexual misconduct against P.W.8 and other minors, portrays a pattern of predatory behaviour. As for Respondent No.2, Mr. Mohanty argues that his close association with Respondent No.1 on the night of the incident, along with his alleged gestures prompting Respondent No.1 to close the shop and leave after the body was discovered, indicate a degree of complicity. He finally concludes that these circumstances, taken together, form a chain of evidence sufficient to establish guilt beyond a reasonable doubt.

8. Ms. A. Mishra, learned counsel for the Respondent, on the other hand, argues that the prosecution has failed to establish their guilt beyond reasonable doubt, as the case rests entirely on weak circumstantial evidence. She contends that the last-seen theory is unreliable, relying on the testimony of P.W.2, who later turned hostile and admitted that due to darkness, he could not clearly see anything. She further highlights that the police dog evidence is equally inconclusive, as no proper protocols were shown to have been followed, and no forensic evidence was recovered to corroborate the dog's actions. Ms. Mishra asserts that their alleged suspicious behaviour during the search, such as, Respondent No.1 opening his shop the next morning and appearing distracted does not amount to proof of guilt. As for the allegations of past misconduct involving P.W.8, Ms. Mishra argues that such unreported incidents cannot be relied upon to establish a pattern of behaviour, nor do they have any direct bearing on the present case. Ms. Mishra also asserts that Respondent No.2's presence with Respondent No.1, without any independent evidence implicating him, does not prove criminal involvement. She finally concludes that the prosecution has failed to present a coherent chain of circumstances leading unerringly to their guilt and that the benefit of doubt must be extended to them.

9. Having regard to the arguments advanced by the learned counsel for the respective parties, it is incumbent to deal with the testimonies of the relevant witnesses for better appreciation of the case.

P.W.1 is a co-villager and an inquest witness. He stated that he heard about the incident and the background of Respondent No.1. He further mentioned that whenever the police dog was brought to the scene, it consistently went under Respondent No.1's cabin. The police dog was taken to the pond, from where it led

the police team to the spot where the deceased's body was kept, i.e., the Informant's house. The dog then guided the team to Respondent No.1's shop and the nearby tubewell.

P.W.2 is a minor, and during his examination, he underwent a *voir dire* test to assess his understanding of the questions posed. It was determined that he understood the implications of the questions and provided rational answers. Since he did not comprehend the meaning of an oath, no oath was administered. He stated that on the night of the incident, during the *pratistha* ceremony, he was playing with other children, including the deceased, around 9 p.m. In his cross-examination, he clarified that they were playing in front of the school near the river embankment, as the temple had lights and a microphone arrangement. He saw the deceased standing on the embankment, facing towards Tikarpada village, when Respondent No.1 called her and took her in that direction. P.W.2 called out to the deceased, but she did not respond. He admitted that due to the darkness, he could not see much and eventually went home. Later, the deceased's father came searching for her. P.W.2 turned hostile during his testimony.

P.W.3 is the deceased's uncle. He stated that during the *pratistha* ceremony, his daughter was also playing with the other children. Around 8:30 p.m., while heading to the temple, his daughter ran to him, frightened, and said someone was scaring them by pretending to be a ghost. He did not take it seriously at the time and told her to go home. As he moved around the temple, the children left and went inside the village to the old Gopinath temple. Around 9:30 p.m., the deceased's mother came to the temple but could not find the deceased. The villagers started searching for her, except for the Respondents. P.W.3 further stated that Respondent No.2 was his agnate and lived nearby, while Respondent No.1 lived farther away. He recalled an incident when P.W.5 went near the dried pond to search for the deceased. Respondent No.1 asked P.W.5 if he was collecting mangoes from a nearby tree, which annoyed him. The next morning, when P.W.3 revisited the new Shiva temple, he noticed the Amari bushes near the dried pond were disturbed. Upon inspection, he found the deceased lying about 4 to 5 feet away. He asked her why she was sleeping there but quickly realised she was dead. He carried her body on his shoulders to P.W.4's house and observed injuries on her cheeks, neck, and private parts. The villagers soon gathered, and P.W.3, along with P.W.5, went to Lingaraj Police Station to lodge the FIR. P.W.3 also stated that Respondent No.1 had previously raped three other minor girls, including P.W.8. No criminal case was initiated as Respondent No.1 begged for forgiveness from the villagers and was let off. P.W.3 suspected Respondent No.1 as the perpetrator in this incident because he avoided participating in the search for the deceased. Moreover, while the village mourned, Respondent No.1 opened his shop and appeared distracted, giving wrong products to customers. He further testified that when the police dog arrived, it first went to the spot where the body was found, then led the team to the deceased's house, and finally ran toward Respondent No.1's shop, circling it and heading to the

nearby tube well. In his cross-examination, P.W.3 mentioned that Respondent No.1 opened his shop at 7 a.m. and closed around 10 a.m., during which the police dog circled his shop. He also noted some stains on the deceased's clothing and body.

P.W.4 is the father of the deceased and the Informant. He states that during the *pratistha* ceremony, the children from his joint family were playing near the temple including the deceased. He was chatting with the neighbours in front of his house, when his wife came to him saying that all the children returned to their houses by 10 p.m. except the deceased. This is when everyone started to look for his daughter. At about 10:45 p.m., his wife saw both the Respondents taking bath, so she asked Respondent no.1 if he had seen the deceased, to which he did not say anything and went away keeping his face down. She then asked Respondent no.2 to have seen the deceased, to which he just nodded. P.W.4 along with the villagers went in search for the deceased but could not trace her. P.W.5 even took P.W.4's auto rickshaw to search for her but could not find her. The next morning, P.W.4 was nearby his house when he saw his brother P.W.3 carrying the deceased on his shoulder. He noticed finger marks on the left side of the neck of the dead body. There was also bite marks on both of her cheeks. Her wearing pants were also opened. We suspected both the Respondents to be the perpetrators because of their conduct. Respondent No.1 has called the deceased into his cabin multiple times before. The wife of P.W.3 had forbidden the deceased to not go to Respondent No.1's shop as he had raped P.W.8, which P.W.3 did not know about. After lodging the FIR, P.W.3 went to the river embankment near the new Shiva temple and he noticed Respondent No.1 sitting there and Respondent No.2 gave him some sought of indications and they both left. He further mentioned that when he, along with P.W.5 and P.W.17, was looking for the deceased, on the night of deceased's disappearance, Respondent No.1 asked if they were collecting mangoes. In his cross-examination, he states that Respondent No.1 was sitting in his shop when Respondent No.2 indicated something to him before they left keeping their face down.

P.W.5 is a co-villager. During the Pratistha ceremony, the children of the village including the deceased were playing near the temple. He forbade the children from entering inside the temple as it was newly constructed. He did not see the deceased after that. After a while, the deceased father, P.W.4 told him that he cannot find his daughter and hence everyone started looking for her. While he was searching near the river embankment, some people were sitting there including Respondent No.1, who asked him sarcastically "tu kan amba khojuchu." He got annoyed and left. The next morning, P.W.3 found his niece dead inside the Amari bush near the banyan tree.

P.W.6 is the co-villager. He also corroborated the fact that the police dog went to the spot where the dead body was found and then to the Informant's house. From there, it went to Respondent No.1's shop and then to the nearby tube well. In

his sworn testimony, he states that his daughter who is 8 years old was forcibly taken by Respondent No.1 to a half-constructed temple of our village by tempting her with chocolates and then raped her. The daughter returned back weeping and disclosed the incident before her mother and grandmother who were in the house. P.W.6 went to the father of the Respondent No.1 when got the information but he did not take any action. After 7 days, P.W.6 stopped Respondent No.1 at Samantarapur crossing and forcibly made him sit in the ambassador car, which he was driving and took him to DAV school where he was working as a driver. When confronted, Respondent No.1 admitted to the fact and begged apology by falling on P.W.6's feet. P.W.6 excused him and warned him that if he would repeat such action god will not forgive. P.W.6 also states that Respondent No.1 admitted to have raped two other minor girls before. The incident about P.W.6's daughter was admittedly known to the villagers.

P.W.8 is the minor daughter of P.W.6. She underwent voir dire test. She understood the implication of the questions put to her and answered rationally. The deceased was her classmate. She explains that three years ago, Respondent No.1 called her and took her to a half-constructed room of the temple. He then spread a napkin on the floor of that room, made her lie there, opened her pants and raped her. She wore her pants and went home crying and told everything to her mother and grandmother. Her grandmother upon noticing traces of semen on the pants of P.W.8, took her to the house of Respondent no.1, and complained to his father. Respondent no.1 admitted to the act and begged apology, to which, the grandmother warned him that if he ever did it again, she will complain to the police. P.W.8 further states that the deceased told her that the Respondent no.1 would do the same to her what he did to P.W.8. P.W.8 never told the deceased about the incident. In her cross-examination, P.W.8 says that the villagers knew about her incident and denied to the question if she was deposing falsely by instigated by her father as Respondent no.1 had committed rape on her.

P.W.9 is the mother of the deceased. On the night of Pratistha ceremony, at about 6.15 P.M, the deceased had returned home from Tikarapada. She changed her dress, went to the temple, returned back home at 8.45 P.M. Thereafter, the deceased took her dinner at about 9.15 P.M with her mother, and went to the temple again. Around 9.40 P.M, when the deceased did not return, P.W.9 went looking for her near the temple. After searching for her a while, she informed others and everyone started looking for the deceased. Around 10.45 P.M, P.W.9 noticed both the Respondents returning after taking bath while sitting in her house dandapindha. She asked Respondent no.1 if he had seen the deceased, to which he did not say anything and went away keeping his face down. She then asked Respondent no.2 to have seen the deceased, to which he just nodded. She suspected both the respondents to be involved because Respondent no.1 used to give the articles more in quantity to her daughter whenever they visited his shop and often called the deceased inside his shop.

P.W.9 often forbade the deceased to go to the Respondent No.1's shop and she did not inform this to her husband because he would get mad. P.W.9 suspected the Respondent No.1 as he had committed rape on P.W.8.

10. Since it is not disputed that the nature of death is homicidal, we do not find it relevant to discuss on this issue to make the judgment bulky.

11. Coming to the culpability of the Accused-Respondents, the case of the prosecution is based on circumstantial evidence, and it is trite law that in a case of circumstantial evidence, before reaching a conclusion, the Court is required to examine the evidence on the touchstone of the decision reported in the matter of ***Sharad Birdhi Chand Sarda vs. State of Maharashtra*** reported in **AIR 1984 SC 1622** –

“3:3. Before a case against an accused vesting on circumstantial evidence can be said to be fully established the following conditions must be fulfilled as laid down in *Hanumant's v. State of M.P.* [1953] SCR 1091.

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;
2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
3. The circumstances should be of a conclusive nature and tendency;
4. They should exclude every possible hypothesis except the one to be proved; and
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These five golden principles constitute the panchsheel of the proof of a case based on circumstantial evidence and in the absence of a corpus delicti.

Hanumant v. The State of Madhya Pradesh [1952] SCR 1091; *Tufail (Alias) Simmi v. State of Uttar Pradesh* [1969] 3 SCC 198; *Ramgopal v. State of Maharashtra* AIR 1972 SC 656; and *Shivaji Sahabrao Babode & Anr. v. State of Maharashtra* [1973] 2 SCC 793 referred to.

3:4. The cardinal principle of criminal jurisprudence is that a case can be said to be proved only when there is certain and explicit evidence and no pure moral conviction.”

12. One of the circumstances appearing in the prosecution case is with regard to the last-seen theory. While appreciating the prosecution case, in this regard, reference may be made to the decision of the Hon'ble Apex Court in the matter of ***Satpal vs. State of Haryana*** reported in **(2018) 6 SCC 610, para 6**, as under: –

“Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused and the recovery of the corpse being in very close proximity of time, the accused owes an

explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have been taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established and there is corroborative evidence available *inter alia* in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstance, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine”

13. In the instant case, the Respondents were allegedly the last persons seen with the deceased before her death. However, upon careful scrutiny, the evidence fails to meet the standards required for invoking this doctrine. In **Satpal vs. State of Haryana** (*Supra*), the Hon’ble Supreme Court observed that the last-seen theory is a weak form of evidence and cannot be the sole basis for conviction unless supported by other circumstances. In the present case, the prosecution primarily relied on the testimony of P.W.2, a minor witness, to establish the last-seen theory. P.W.2 initially stated that during the *pratistha* ceremony, at around 9:00 p.m., he saw Respondent No.1 calling the deceased towards Tikarpada village while she was standing on the river embankment. However, during cross-examination, P.W.2 admitted that due to the darkness, he could not see much and eventually went home. Importantly, P.W.2 later turned hostile, thereby weakening the prosecution’s case.

13. Moreover, there is no credible evidence to suggest that the Respondents were in the company of the deceased in close proximity to the time of her death. The deceased was reported missing around 10:00 p.m., and her body was discovered the following morning. The time gap between the alleged last sighting and the discovery of the body is substantial, leaving ample room for the involvement of other persons. The absence of any direct evidence placing the Respondents with the deceased immediately before her death breaks the chain of circumstances necessary for applying the last-seen theory. Additionally, the prosecution failed to recover any incriminating material from the Respondents or establish any other conclusive circumstances linking them to the crime. As per **Satpal** (*Supra*), the evidence presented does not form a continuous chain leading to the inescapable conclusion that the Respondents were responsible for the death of the deceased.

14. Secondly, the prosecution highlighted Respondent No.1’s supposed suspicious behaviour during the search for the deceased as a significant circumstance to support the last-seen theory. From the testimonies of P.W.4, P.W.5, and P.W.9, it appears that Respondent No.1 did not actively participate in the search for the deceased. P.W.4 stated that when his wife questioned Respondent No.1 about the whereabouts of the deceased, Respondent No.1 remained silent and walked away with his head down. Similarly, P.W.9 recounted a similar interaction, where Respondent No.1 avoided eye contact and did not respond when asked about the deceased’s whereabouts. The prosecution argued that this silence indicated guilt.

P.W.5 testified that during the search, he encountered Respondent No.1 near the river embankment, at about 11:30 p.m., who sarcastically asked, “*Tu kan amba khojuchu?*” (“Are you searching for mangoes?”). The prosecution interpreted this remark as an attempt to divert attention. However, in the absence of further evidence, such a comment could be construed as a careless or inappropriate remark, rather than proof of involvement in a heinous crime.

Moreover, the prosecution failed to demonstrate that Respondent No.1 deliberately avoided participating in the search. The evidence merely suggests that he was present in the village while the search was on going. No witness testified that Respondent No.1 actively obstructed the search or exhibited behaviour that directly linked him to the crime. Mere non-participation in the search for a missing person does not automatically lead to the inference of guilt unless it is coupled with other incriminating circumstances forming a complete chain of evidence. In the present case, there is no concrete evidence linking Respondent No.1’s conduct during the search to the crime. His behaviour, while arguably indifferent or inappropriate, cannot be deemed sufficient to establish guilt beyond reasonable doubt.

15. Another key circumstance relied upon by the prosecution is the alleged past conduct of Respondent No.1, specifically the accusation that he previously raped P.W.8, which was purportedly resolved within the village without any formal complaint. The prosecution contended that this past act establishes a pattern of behaviour, thereby implicating him in the present crime. However, upon closer examination, the evidence fails to establish any direct nexus between the alleged past conduct and the present incident. The cornerstone of this argument rests on the testimony of P.W.8, who stated that three years prior, Respondent No.1 lured her into a half-constructed temple, spread a napkin on the floor, removed her pants, and raped her. P.W.8 claimed that upon returning home, she informed her mother and grandmother, who confronted Respondent No.1’s father. Allegedly, Respondent No.1 admitted his guilt, begged for forgiveness, and was let off with a warning by the villagers. However, no formal complaint or police report was filed, and there is no corroborative evidence to substantiate this claim.

Furthermore, the notion that a serious crime such as rape could be resolved informally within the village, without any formal action, seriously questions its credibility. It is unlikely that such a grave offense would be quietly settled, especially considering the gravity of the allegation. Additionally, no independent witnesses from the village confirmed that such an incident occurred. Even P.W.6, P.W.3, and other witnesses who claimed to have “heard” about Respondent No.1’s antecedents provided no further details, nor did they witness any act that could establish a pattern of misconduct of Respondent No.1. Mere rumours or village gossip cannot form the basis for conviction without concrete evidence.

Moreover, the prosecution failed to draw any cogent link between the alleged incident involving P.W.8 and the present case. No evidence was presented to

demonstrate a recurring pattern of behaviour. Even if it is assumed that the incident with P.W.8 occurred, it does not automatically implicate Respondent No.1 in the present case without substantive proof of his involvement. Past conduct or bad character cannot be used as substantive evidence of guilt in a separate crime unless it is part of a larger chain of circumstances that leads to the inescapable conclusion of the accused's guilt. Additionally, the defence rightly pointed out that no other instances of misconduct by Respondent No.1 were directly reported. The allegations remained unsubstantiated, with no pattern of behaviour conclusively established.

16. Another circumstance highlighted by the prosecution is the conduct of Respondent No.1 on the morning the deceased's body was discovered. The prosecution claimed that while the entire village was mourning, Respondent No.1 opened his shop and behaved in a distracted manner, giving customers the wrong items. It was further alleged that upon receiving some gestures from Respondent No.2, Respondent No.1 abruptly closed his shop and left, implying guilt. However, upon closer scrutiny, this conduct does not establish any incriminating inference. The mere act of opening one's shop during a time of communal mourning cannot, by itself, be deemed evidence of guilt. Furthermore, the allegation that Respondent No.1 appeared distracted and provided wrong items to customers is speculative at best. Human reactions to distressing events vary widely, and any unusual behaviour could just as easily be attributed to anxiety, confusion, or even curiosity about the unfolding events in the village, rather than consciousness of guilt.

Additionally, the prosecution itself has admittedly placed that Respondent No.1 was in habit of taking *ganja* (cannabis). This raises the plausible explanation that his alleged distracted state and erratic behaviour could have been a result of intoxication rather than any criminal involvement. In the absence of any direct evidence linking Respondent No.1 to the crime, his conduct at the shop does not satisfy the threshold required to form part of a conclusive chain of circumstances. Moreover, the alleged gesture by Respondent No.2, prompting Respondent No.1 to close the shop and leave, lacks any corroboration or clear implication. The prosecution failed to explain the nature of the gesture, nor did it establish how this interaction could be linked to the crime. Without any substantive evidence, interpreting these actions as an indication of guilt is speculative and unwarranted. The prosecution's attempt to construe Respondent No.1's conduct as indicative of guilt fails to meet this standard. The possibility that his behaviour resulted from his known habit of consuming *ganja*, rather than any involvement in the crime, is a reasonable alternative hypothesis that cannot be ruled out.

17. The prosecution relied heavily on the police dog's trail leading to Respondent No.1's shop and the nearby tube well. The Hon'ble Apex Court has time and again relied on the decision in the matter of **Abdul Rajak Murtaja Dafedar vs. State of Maharashtra** reported in **1970 AIR 283**, as held under –

“There are three objections which are usually advanced against the reception of such evidence. First, since it is manifest that the dog cannot go into the box and give his evidence on oath, and consequently submit himself to cross-examination, the dog's human companion must go into the box and report the dog's evidence, and this is clearly hearsay. Secondly, there is a feeling that in criminal cases the life and liberty of a human being should not be dependent on canine inferences. And, thirdly, it is suggested that even if such evidence is strictly admissible under the rules of evidence it should be excluded because it is Rely to have a dramatic impact on the jury out of proportion to its value. In *R. v. Montgomery*, a police constable observed men stealing wire by the side of a railway line. They ran away when he approached them. Shortly afterwards the police got them on a nearby road. About an hour and half later the police tracker dog - was taken to the base of the telegraph pole and when he had made a few preliminary sniffs he set off and tracked continuously until he stopped in evident perplexity at the spot where the accused had been put into the police car. At the trial it appeared that other evidence against the accused that they had been stealing the wire was inconclusive and that the evidence of the behaviour of the tracker dog was crucial to sustain the conviction. In these circumstances the Court of Criminal Appeal ruled that the evidence of the constable who handled the dog on its tracking and reported the dog's reactions was properly admitted. The Court did not regard its evidence as, a species of hearsay but instead the dog was described as “a tracking instrument” and the handler (1) Para 378, Am. Juris. 2nd edn. Vol. 29, p. 429. (2) 1866 N.T. 160.”

18. In the instant case, while assessing the police dog evidence, it is observed that the investigation lacked critical elements. The prosecution did not present evidence of the dog's training, skill, or past performance to establish its reliability. No forensic evidence, such as fingerprints, bloodstains, or incriminating materials, was recovered from the locations identified by the dog. The prosecution failed to demonstrate that the conditions under which the dog conducted the tracking were controlled or that there were no other scent trails that could have confused the animal. Applying the principles laid down in **Abdul Razak Murtaza Dafedar** (*Supra*), since the dog cannot testify in court, its handler must provide evidence regarding the dog's behaviour. This introduces a layer of hearsay, as the handler is merely interpreting the dog's reactions rather than providing direct evidence. The dog is a mere “tracking instrument” rather than a witness, with the handler reporting the dog's behaviour. The police dog evidence, in the instant case, is unreliable in the absence of corroboration. It cannot form the basis for implicating Respondent No.1, as the investigation did not meet the necessary safeguards to ensure the reliability of the dog's actions.

19. The chemical examination report vide Ext.13 also fails to provide any conclusive evidence linking the Respondents to the crime. Despite the police seizing various items, including the deceased's clothing and the apparel of the Respondents, the prosecution could not produce any forensic findings to corroborate its allegations. There is no evidence of the presence of blood, semen, or any other incriminating material on the Respondents' clothing or at the locations identified during the investigation. Furthermore, the prosecution failed to establish that any

samples collected from the crime scene matched those of the Respondents. The absence of concrete forensic evidence significantly weakens the prosecution's case, as it leaves a crucial gap in the chain of circumstances required to establish guilt beyond a reasonable doubt. The inconclusive chemical examination, coupled with the lack of other corroborative evidence, renders the prosecution's case speculative at best.

20. To sum up, the circumstances presented are neither cogent individually nor do they form an unbroken chain pointing solely to the guilt of Respondent No.1. There is no direct evidence linking him to the crime, nor has the prosecution successfully established a motive. The *last-seen theory* is shaky, relying on the inconsistent testimony of P.W.2, who later turned hostile. The police dog evidence, in the absence of proper procedural safeguards and corroboration, cannot be relied upon to prove guilt. Furthermore, Respondent No.1's alleged suspicious behaviour during the search and his past misconduct regarding P.W.8, while raising questions about his character, do not directly connect him to the present offense. The chemical examination report is inconclusive, providing no forensic support to the prosecution's narrative.

21. As for Respondent No.2, his culpability is even less convincing. He has neither been specifically named nor seriously implicated in the crime. The only allegation against him is that he was seen in the company of Respondent No.1 on the night of the incident and allegedly made some gestures to him after the deceased's body was discovered. Mere association with the principal accused is insufficient to establish guilt. No independent evidence links Respondent No.2 to the crime, nor has the prosecution demonstrated any active role played by him. The circumstances surrounding both Respondents fail to satisfy the rigorous standards required for conviction in cases based on circumstantial evidence, making their acquittal inevitable.

22. In view of the above, and considering the prosecution has failed to establish a cogent and unbroken chain of circumstances linking the Respondents to the crime, under Sections 364, 376(2)(f), 302, and 34 of the IPC beyond reasonable doubt. As such, the judgment of the learned Adhoc Addl. Sessions Judge, F.T.C. No-I, dated 07.01.2005, acquitting the Respondents does not warrant interference and is liable to be upheld. Accordingly, the Criminal Leave Petition is dismissed on merit upon question of admission.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:
CRLLP dismissed.

2025 (I) ILR-CUT-1127

**DEBABRATA DEBADARSAN PALEI
V.
SUBHAKANTI PATRA & ANR.**

[MATA NO. 370 OF 2023]

03 APRIL 2025

[B.P. ROUTRAY, J. & CHITTARANJAN DASH, J.]**Issue for Consideration**

Whether the statutory bar/period provided U/s. 14 of the Hindu Marriage Act is mandatory in nature.

Headnotes

HINDU MARRIAGE ACT, 1955 – Section 14 – Statutory bar – The Appellant challenged the order of learned Family Court where the prayer of the husband to grant decree of divorce has been rejected on the ground of non-completion of statutory period as provided in Section 14 of the 1955 Act – Whether the statutory bar/period provided U/s. 14 of the Hindu Marriage Act is mandatory in nature.

Held: Yes – Section 14 starts with a non-obstante clause, meaning it overrides all other provisions of the HMA – It explicitly prohibits not just Court from entertaining a divorce petition within one year of marriage but also prevents a party from presenting such a petition – The decision further emphasizes that the statutory bar is absolute unless a specific application for leave is filed and allowed – In cases where an application under the proviso is not made, the divorce petition itself is not maintainable – However, the proviso to section 14(1) permits a relaxation of this bar in exceptional cases where the petitioner can demonstrate either exceptional hardship suffered by the petitioner, or exceptional depravity on the part of the Respondent – The Court retains discretion in such cases to allow the petition to be presented within one year, provided the plea is substantiated through a separate application seeking permission to file for divorce prematurely – Further, even if permission is granted, the Court has the power to withhold the operation of the decree until after one year from the date of marriage, or dismiss the petition if it finds that leave was obtained through misrepresentation or concealment. (Para 8)

Citation Reference

Smt. Alka Saxena Vs. Sri Pankaj Saxena, Allahabad High Court dated 24th October, 2024, **FIRST APPEAL No. 239 of 2015:2024:AHC:170550-DB – referred to.**

List of Acts

Hindu Marriage Act, 1955.

Keywords

Statutory bar; One year of marriage; Divorce Petition; Maintainability; Relaxation; Exceptional hardship.

Case Arising From

Judgment dated 26th September, 2023 passed by the Judge, Family Court, Bhadrak.

Appearances for Parties

For Appellants : Mr. S.K. Mishra, Sr. Adv.
For Respondent : Mr. H.S. Panda

Judgment/Order**Judgment*****BY THE BENCH.***

1. Heard learned counsel for the Parties.
2. Present Appeal is directed against the impugned judgment dated 26th September, 2023 of learned Judge, Family Court, Bhadrak, wherein the prayer of the husband to grant decree of divorce has been rejected on the ground of non-fulfillment of statutory period prescribed under Section 14 of the Hindu Marriage Act, 1995 (hereinafter referred to as “HMA”).
3. The background facts of the case are that the marriage between the Appellant-husband and the Respondent-wife was solemnized on May 13, 2020, following Hindu rites and customs. The marriage was arranged by their families, and after the solemnisation, the couple began their matrimonial life at the husband's residence. However, within a short span of time, marital discord arose between the parties, leading to serious disputes and allegations from both sides. The situation allegedly deteriorated further when, on June 24, 2020, just over a month after the marriage, the Respondent-wife left the matrimonial home and did not return despite repeated requests by the Appellant and his family. The Appellant claims that all efforts for reconciliation. Subsequently, on July 7, 2020, the Appellant filed a petition filed a petition for divorce before the Family Court, Bhadrak, invoking grounds under the HMA. However, this petition was filed within two months of the marriage, raising concerns under Section 14 of the HMA, which mandates that no petition for divorce can be entertained with one year of marriage unless exceptional hardship or depravity is established. Despite this statutory bar, the Family Court proceeded with the matter, and both parties adduced evidence and contested the case on its merits without raising the issue of maintainability.

4. The learned Judge, Family Court, Bhadrak, after examining the pleadings, evidence, and arguments presented by both parties, dismissed the Appellant-husband's petition for divorce. The Family Court found that the Appellant failed to establish sufficient grounds for cruelty or desertion under the HMA. The Court also found that the Appellant failed to make sincere efforts for reconciliation before seeking divorce, and instead, hastily approached the Court within two months of marriage, which was in clear conversation of Section 14 of the HMA, barring divorce petitions within the first year if the marriage unless exceptional hardship is demonstrated. Despite this statutory bar, the Family Court proceeded with the case on merits but ultimately concluded that the Appellant did not establish a valid ground for divorce, leading to the dismissal of the petition. .

5. The limited issue before this Court pertains to the procedural lapse under Section 14 of the HMA. Mr. S.K. Mishra, learned Senior Counsel for the Appellant, has submitted that the matter should be remanded to the Family Court for fresh adjudication, considering the procedural defect and the lapse of substantial time.

6. Section 14 of HMA creates a statutory bar on the presentation of a divorce petition within one year of marriage. This provision ensures that matrimonial disputes are not brought prematurely before Courts, allowing spouses a reasonable opportunity to reconcile and prevent hasty dissolutions of marriage. The section reads as –

14. No petition for divorce to be presented within one year of marriage.–

(1) Notwithstanding anything contained in this Act, it shall not be competent for any Court to entertain any petition for dissolution of a marriage by a decree of divorce, [unless at the date of the presentation of the petition one year has elapsed] since the date of the marriage:

Provided that the Court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented [before one year has elapsed] since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the Respondent, but if it appears to the Court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the Court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the [expiry of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after [expiration of the said one year] upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

(2) in disposing of any application under this section for leave to present a petition for divorce before the [expiration of one year] from the date of the marriage, the Court shall have regard to the interests of any children of the

marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the [said one year].

However, in rare and exceptional circumstances, strict application of Section 14 could lead to undue hardship to a spouse who has genuinely suffered grave cruelty or deprivation within a short period of marriage.

7. The interpretation of Section 14 of HMA is extensively analysed in the recent decision of Hon'ble Allahabad High Court in the matter of *Smt. Alka Saxena Vs. Sri Pankaj Saxena* passed in **FIRST APPEAL No. - 239 of 2015¹** on **24th October, 2024**—

13. Clearly, the bar thus created is not on the entertainment of a petition within one year of the Hindu marriage. Rather, the bar arises on the presentation of a petition within one year of a marriage. Therefore, the statute prevents a party to a Hindu marriage to 'present' any petition to dissolve their marriage before any competent Court, within one year from the solemnization of their marriage. The upshot of the above discussion is that the bar operates against the cause of action arising to a party to a Hindu marriage within one year from solemnization of their marriage.

14. The exception to the above bar is contained in the proviso to Section 14 of the H.M.A. First that exception may be invoked only upon specific application being filed by a party seeking to dissolve a Hindu Marriage within one year of its solemnization. Second, the bar may be lifted by passing an appropriate order, keeping in mind the statutory safeguards. Thus, it may 'allow' a petition to be presented within one year from the solemnization of a Hindu marriage. That may be done if the case involves 'exceptional hardship' to the petitioner or it involves 'exceptional depravity on the part of the Respondent'. That power once exercised has not been made absolute. The competent Court would retain its jurisdiction to provide that the decree of divorce, if passed, in such a case, may not be given effect until after expiry of one year from the date of the marriage or it may dismiss the petition (after allowing the presentation of such petition in exercise of power under the proviso of Section 14 (1) of the H.M.A), if it later reaches a conclusion that the permission was obtained by the petitioner on misrepresentation or concealment of the nature of the case. Further consideration is to be made by the competent Court while granting permission under the proviso to Section 14 (1) of the H.M.A. in terms of Section 14 (2) of the H.M.A. Thus, the competent Court would also have regard to the interest of children of marriage and reasonable probability of reconciliation.

15. Thus, the presentation of the petition within one year is not permitted under the Act by way of general law. In fact on a wholesome reading of the provision it reveals that cause of action to dissolve a Hindu marriage may not arise to a party thereto, within the first year of marriage, except in cases involving 'extreme hardship' or 'extreme depravity' suffered by the petitioner. Barring those two contingencies, no other exists. Even then, that cause of action is not available on its own. Its existence has to be claimed by the petitioner, by filing a specific application to the Competent Court and it has to be first established before that Court. Only upon that plea being accepted, such a petition may be entertained. Here, no application was filed or considered or allowed by

¹ Neutral Citation No. - 2024:AHC:170550-DB

the learned Court below, before entertaining the divorce petition filed by the Respondent. For that reason, the ratio of the Madras High Court in **Indumati Vs. Krishnamwrthy 1998 SCC Online Mad 477** is distinguishable as in that case an application made under the proviso to Section 14 (1) was allowed. In our opinion a divorce petition filed under H.M. A. within one year of marriage cannot be entertained unless the petitioner/s first file an application in terms of the proviso to Section 14 (1) and unless that application is first allowed.

8. The principles laid down in **Alka Saxena** (Supra) provide a legal framework ensuring that Courts do not lightly entertain divorce petitions within one year of marriage. The rationale behind this restriction is twofold –

- i. To protect the sanctity of marriage and ensure spouses make sincere efforts at reconciliation before seeking dissolution.
- ii. To prevent frivolous or premature litigation, which may arise from transient disputes or impulsive decisions.

Section 14 starts with a non-obstante clause, meaning it overrides all other provisions of the HMA. It explicitly prohibits not just the Court from entertaining a divorce petition within one year of marriage but also prevents a party from presenting such a petition. The decision further emphasises that the statutory bar is absolute unless a specific application for leave is filed and allowed. In cases where an application under the proviso is not made, the divorce petition itself is not maintainable. However, the proviso to section 14(1) permits a relaxation of this bar in exceptional cases where the petitioner can demonstrate either exceptional hardship suffered by the petitioner) or exceptional depravity on the part of the Respondent. The Court retains discretion in such cases to allow the petition to be presented within one year, provided the plea is substantiated through a separate application seeking permission to file for divorce prematurely. Further, even if permission is granted, the Court has the power to withhold the operation of the decree until after one year from the date of marriage, or dismiss the petition if it finds that leave was obtained through misrepresentation or concealment.

9. In the instant case, given that the marriage took place on 13th May 2020 and the divorce petition was filed on 7th July 2020, it is evident that the petition was presented within two months of the marriage, falling squarely within the statutory bar imposed by Section 14 of the Hindu Marriage Act, 1955. The Family Court, in strict adherence to the law, ought to have nipped the proceedings in the bud at the outset, refusing to entertain the petition without a separate application for leave. However, what is striking in the present case is that both parties actively contested the case on merits, led evidence, and participated in the adjudication process without ever raising an objection regarding its maintainability under Section 14. It is further observed that by the time the learned Judge, Family Court, Bhadrak delivered the judgment, more than three years had already elapsed since the solemnisation of marriage. Additionally, it is undeniable that the husband never made any separate prayer for grant of leave under Section 14, nor did the wife raise any challenge on that ground until the commencement of final argument. It was only at a belated stage

that the issue was raised as an objection, not as a fundamental challenge to the proceedings but merely to highlight a procedural lapse. Furthermore, no specific issue regarding the maintainability of the petition under Section 14 of the HMA was framed by the learned Judge, Family Court, Bhadrak.

10. In light of the above discussion, we find that remanding the matter for fresh adjudication is a more just and equitable approach than dismissing it purely on procedural grounds, particularly, given the peculiar circumstances of the case and the significant passage of time. The parties have been residing separately for nearly five years and have actively contested the case before the learned Judge, Family Court, Bhadrak, by adducing their respective evidence. At this stage, setting aside the proceedings solely on a technicality would serve no meaningful purpose.

11. Therefore, we deem it appropriate to condone the statutory limitation prescribed under Section 14 of the Hindu Marriage Act, 1955, and grant leave in favour of the husband. Consequently, the learned Judge, Family Court, Bhadrak, is directed to adjudicate the matter afresh on merits, ensuring that both parties are given a fair and adequate opportunity to be heard. The parties present before us are directed to appear before the learned Judge, Family Court, Bhadrak, on 21st April 2025, with a certified copy of this order. The learned Judge, Family Court, Bhadrak, shall make every endeavour to dispose of the matter afresh within a period of four months thereafter.

12. It is imperative to clarify that this Court's decision to grant leave and remand the matter for fresh adjudication should not be construed as a general precedent to entertain divorce petitions in violation of Section 14 of the HMA. The statutory mandate under Section 14 serves a crucial purpose in discouraging hasty dissolution of marriages and ensuring due deliberation before seeking divorce. In the present case, the exceptional circumstances specifically, the prolonged separation of the parties and the advanced stage of litigation warranted an equitable approach. This judgment is, therefore, confined strictly to the facts of the present case and should not be misinterpreted as diluting the legislative intent behind Section 14 of the HMA.

13. The Appeal is disposed of with the aforesaid direction and observation.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Appeal disposed of.

2025 (I) ILR-CUT-1133

THE DEPUTY GENERAL MANAGER, (ELECT.),
ELECTRICAL CIRCLE, BERHAMPUR
V.

M/s. MAA BHAI RABI TRADERS,
LOCHAPADA ROAD, GANJAM & ANR.

[ARBA NO. 3 OF 2023 WITH BATCH]

S.E. (TPSODL, ELECTRICAL CIRCLE, BIDYUTPURI COLONY),
BERHAMPUR V. M/S. MAA BHAI RABI TRADERS, GANJAM & ANR.
(IN ARBA NO. 37 OF 2022)

CHIEF OPERATING OFFICER, SOUTHCO UTILITY,
CORPORATE OFFICE, BERHAMPUR V. DIRECTOR OF INDUSTRIES,
CUTTACK, ODISHA & ORS.
(IN ARBA NOS. 4 & 5 OF 2023)

14 FEBRUARY 2025

[Dr. S.K. PANIGRAHI, J.]

Issue for Consideration

Whether the order of the Learned District Judge warrants interference keeping in mind the limitations of the High Court's power U/s. 37 of the Arbitration and Conciliation Act, 1996.

Headnotes

ARBITRATION AND CONCILIATION ACT, 1996 – Section 37 r/w Section 18(2) and 18(3) of MSMED Act – In the facts of the present case, upon a perusal of the orders of the Facilitation Council, this Court is perturbed to note that the Council did not refer the parties for a proper attempt of conciliation despite the statutory mandate prescribed under Section 18(2) – Firstly, no reference to Section 18(2) of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) was made, and secondly, no conciliator was appointed – Whether the order of the Learned District Judge warrants interference keeping in mind the limitations of the High Court's power U/s. 37 of the 1996 Act.

Held: Yes – When the statute mandates that upon receipt of a reference, the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation, the Council was bound to conduct the conciliation itself or refer the parties for such conciliation – There is no whisper of either things being done and therefore, given the gross irregularities as well as

non-conformity committed by the MSEFC in its awards, the same in the opinion of this Court and for the reasons stated above, shocks the conscience of this Court. (Para 26)

Citations References

National Aluminium Co. Ltd. v. Orissa Coal Chem. (P) Ltd., **2023 SCC OnLine Ori 5234**; Jharkhand Urja Vikas Limited v. The State of Rajasthan and Ors., **Judgement dated 15.12.2021 in Civil Appeal No. 2899 of 2021**; Oil & Natural Gas Corporation Ltd. v. Western Geco International Limited, **(2014) 9 SCC 263**; Associate Builders v. Delhi Development Authority, **(2015) 3 SCC 49**; Ssangyong Engg. & Construction Co. Ltd. v. NHAI, **(2019) 15 SCC 131**; UHL Power Company Ltd. v. State of Himachal Pradesh, **(2022) 4 SCC 116**; Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., **(2020) 2 SCC 455**; Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., **(2022) 1 SCC 75**; Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, **(2012) 5 SCC 306**; MMTC Limited v. Vedanta Limited, **(2019) 4 SCC 163**; K. Sugumar v. Hindustan Petroleum Corpn. Ltd., **(2020) 12 SCC 539 – referred to.**

List of Acts

Arbitration and Conciliation Act, 1996; Micro, Small and Medium Enterprises Development Act, 2006; Limitation Act, 1963

Keywords

Conciliation; Interference, Power of High Court; Micro and Small Enterprises Facilitation Council; Settlement.

Case Arising From

Order dated 14.09.2022 passed by the Learned District Judge, Ganjam, Berhampur in Arbitration Petition No.1 of 2021 arising out of award dated 18.07.2018 passed by the Micro and Small Enterprises Facilitation Council in MSEFC Case No. 33 of 2017.

Appearances for Parties

For Petitioner : Mr. Anindya Kumar Mishra (In ARBA Nos. 3,4,5 of 2023)
Mr. Suresh Ch. Dash (In ARBA No. 37 of 2022)

For Opp. Parties : Mr. Rajeev Roy, Mr. Suryakanta Dwivedi,
Mr. R.K. Mahanta (In ARBA Nos. 3,4,5 of 2023)
M/s. G.M.Rath, Mr. S.S.Padhy (In ARBA No. 37 of 2022)

Judgment/Order

Judgment

Dr. S.K. PANIGRAHI, J.

1. These Appeals under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “A&C Act”) have been filed against the Judgments dated 12.1.2023 passed by the Ld. District Judge, Ganjam in Arbitration Petition No. 1 of 2021 as well as FAO No. 19 of 2022 and FAO No. 20 of 2022 arising out of award dated 18.7.2018 passed by Micro and Small Enterprises Facilitation Council in MSEFC Case No. 33 of 2017, award dated 19.1.2019 passed by Micro and Small Enterprises Facilitation Council in MSEFC Case No. 34 of 2017 and award dated 19.1.2019 passed by Micro and Small Enterprises Facilitation Council in MSEFC Case No. 35 of 2017. As all the aforesaid Appeals involve the same contesting parties and raise the same questions of law, it is considered prudent to deal with them together.

I. FACTUAL MATRIX OF THE CASE:

2. For the sake of brevity, the facts involved in the aforesaid appeals are summarily discussed herein:

i. ARBA No. 3 of 2023

i. This Appeal u/s 37 of the A&C Act challenges the Judgment dated 12.1.2023 passed by the Ld. District Judge, Ganjam in Arbitration Petition No. 1 of 2021. The same arises out of award dated 18.7.2018 passed by Micro and Small Enterprises Facilitation Council in MSEFC Case No. 33 of 2017.

ii. As desired by the Asst. Engineer, PH Division Aska for a 11 KV dedicated feeder for strengthening the water supply system of NAC, Polasara a tender call notice was issued by the office of the G.M. Electrical Circle, Berhampur. M/s Maa Bhairabi being the lowest bidder in the said tender was selected and work order was issued on 8.2.2016 for construction of 11KV dedicated feeder for power supply to Ranipada & Rameswar PHD Substation under Polasara Electrical Sub Division.

iii. As per clause 3.1 of the work order M/s Maa Bhairabi had to complete the work within a period of 120 days from the date of issuance of the work order. The same was not completed in time and M/s Bhairabi time and again request for extension of time for completion of the work.

iv. Subsequently, after allegedly not completing the entire work and leaving glaring deficiencies in the same, the present Petitioner was intimated that M/s Maa Bhairabi has filed a claim before the MSEFC, Cuttack, Odisha for payment of Rs. 32,32,580.00 out of which principal amount is Rs. 31,28,823.00 and interest amount is Rs. 1,03,757.00 on the ground that M/s Maa Bhairabi has completed the work and energized the same on 23.6.2017.

v. After receipt of notice, a detailed reply was filed disputing the averments made in the claim petition and bringing it to the notice of the authority that the original

Claimant has not completed the work as per the terms of the work order. It was also pointed out that the line was not handed over in time, therefore there is no question of paying a final bill. It was also contended that the bills so contended having not been paid, were never sent to the present Petitioner.

vi. After hearing the parties, the Ld. Council vide order dated 18.7.2018 in MSEFC Case No. 33 of 2017 was pleased to direct the present Petitioner to pay the principal amount of Rs. 31,28,823.00 (Rupees Thirty one Lakhs twenty eight thousand eight hundred twenty three) only and interest claim of Rs. 1,03,757.00 (Rupees One Lakh three thousand seven hundred fifty seven) only calculated up to 31.07.2017 (statement enclosed as Annexure-II) as per Section 15 & 16 of MSMED Act, 2006. It was further directed that compound interest with monthly rests shall be payable at the rate of 3 times of the Bank rate as notified by Reserve Bank of India from time to time till realization of dues.

vii. Thereafter, after a slew of litigation to condone delay, this Court directed the Ld. District Judge, Ganjam to hear the present Petitioner's appeal u/s 34 of the A&C Act on merits, which was not entertained by the Ld. District Judge, hence the present Appeal.

ii. ARBA No.37 of 2022

i. This Appeal under Section 37 of the A & C Act arises out of the order dated 14.09.2022 passed by the Learned District Judge, Ganjam, Berhampur in C.M.A. No.05 of 2022 arising out of Arbitration Petition No.1 of 2021, wherein the application filed by the Appellant under Sections 5 and 14 of the Indian Limitation Act, 1963 has been rejected. In the process, the Arbitration Petition No.1 of 2021 filed under Section 34 of the & C Act was dismissed.

ii. Challenging the order/ award dated 18.07.2018 passed in MSEFC Case No.33 of 2017 by the Director of Industries-cum- Chairman, MSEFC Industries, Directorate Odisha, Cuttack, the present Appellant had filed a Writ Petition being W.P.(C) No.19024 of 2018 which was disposed of on 16.09.2019 with a direction that if along with the Appeal, a Petition for condonation of delay is filed by the Petitioner therein within three weeks from passing of the order, the same shall be disposed of in accordance with law quite liberally.

iii. Aggrieved by the aforesaid order of this Court, the present Appellant filed W.A. No.551 of 2019 before the Division Bench of this Court which was disposed of as withdrawn with liberty to approach the appropriate forum under Section 34 of the A & C Act. vide order dated 27.07.2021.

iv. Pursuant to the aforesaid order dated 27.07.2021 passed in W.A. No.551 of 2019, the Appellant preferred ARBP No.01 of 2021 in the court of the learned District Judge, Ganjam, Berhampur assailing the order/ award dated 18.07.2018 passed in MSEFC Case No.33 of 2017 by the Director of Industries-cum-Chairman, MSEFC Industries, Directorate Odisha, Cuttack along with a petition under Section 5 of the Limitation Act i.e. CMA No.05 of 2022 for condonation of delay in preferring the ARBP No.01 of 2021.

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v. Learned District Judge, Ganjam, Berhampur vide order dated 14.09.2022 passed in CMA No.05 of 2022 dismissed the ARBP No.01 of 2021 being barred by limitation. Hence, the present Appeal.

iii. ARBA No. 4 of 2023

i. This Appeal u/s 37 of the A&C Act arises out of judgment dated 12.1.2023 passed by the Ld. District Judge, Ganjam in FAO No. 20 of 2022 arising out of award dated 19.1.2019 passed by Micro and Small Enterprises Facilitation Council in MSEFC Case No. 35 of 2017.

ii. The present Respondent No.2 as petitioner therein had filed MSEFC Case No.35/2017 against the Chief Operating Officer, Southco Utility. Alleging therein that the management of Southco Utility had placed three numbers of work order on National Small Industries Corporation Ltd. (NSIC Ltd.) vide Work Order No. 14732 dated 24.11.2014, Work Order No.14733 dated 24.11.2014 and Work Order No.14734 dated 24.11.2014 respectively. Thereafter, M/s Maa Bhairabi Traders had been awarded the work orders by NSIC vide Letter No. NSIC/BAM/SUB-BR/Maa Bhairabi/14-15/0363, dated 3.12.2014 of Branch Manager. NSIC, Berhampur being a registered MSME vendor for execution.

iii. Soon after receipt of the said work orders from NSIC, the petitioner started execution of work assigned against package IV and package V of work order under the guidance, supervision and direction of the Engineer-in-charge and Project Manager. In spite of some field problems in conducting joint verification by various inter departmental officers and delayed support of Southco Utility for resolving the site problem, M/s Maa Bhairabi was able to execute the said two package of works after expiry of scheduled completion period and the said line was energised on 8.8.2015. Accordingly, it is submitted that the entire newly constructed asset was handed over and taken over by the Southco Utility as per the formality of the work order.

iv. Thereafter, M/s Maa Bhairabi submitted its invoices to NSIC and consequently NSIC submitted the invoices to Project Manager, Southco Utility. In response, an advance payment against NSIC for the amount of 32,16,840/- was released on 6.11.2015 through RTGS. Thereafter NSIC released the amount of Rs.31,33,492/- in favour of M/s Maa Bhairabi after deducting statutory taxes and duties of Rs.83,348/-. But an amount of Rs.13,11,823/- was kept pending by Southco Utility without showing any reason at the time of release of payment.

v. Further, due to non-support for joint survey, revised bill of quantity and single line diagram according to route alignment against pending package VI of work order, the work of package VI was hampered. Due to delayed execution of work of package VI of work order, M/s Maa Bhairabi had purchased and deployed materials to the site to the tune of Rs. 24,82,894/- which remained unutilized and suffered severe depreciation of materials and thereby cost escalation occurred.

vi. Therefore, for release of the dues of Rs.84,29,765/- out of which the principal, amount Rs.39,62,511/- and Rs.44,67,254 towards interest, M/s Maa Bhairabi filed an application before the MSEFC for realization of the same.

vii. As being noticed by the MSEFC, Cuttack the Appellant appeared in this case and filed his written objection denying the averments made in the claim petition. The Appellant (Opposite Party in the MSEFC below) in his written objection has stated that at no point of time any work orders have been placed with the respondent No.2 by Southco and all the work orders have been placed with the NSIC Ltd. with different terms and conditions. Accordingly, as per the work order placed by the NSIC Ltd., the respondent No.2 has executed the work. It was also brought to the notice of the council that as against the invoice raised by the claimant through NSIC for execution of his works, an amount of Rs. 31,33,492/- has already been released in favour of the respondent No.2 by deducting statutory dues and taxes amounting to Rs.83,348/-. As the respondent No.2 had not complied with the observations of the Engineer-in-charge and Project Manager, an amount of Rs.13,11,823/- has been kept and the same shall be released after compliance of the observations.

viii. That on 19.1.2019 in its 64th sitting it is alleged that the MSEFC conducted a hearing and passed an order without considering the matter in its proper perspectives, without going through the factual aspect of the case and without applying its judicial mind and sans any suitable reasons observed that M/s Maa Bhairabi has approached the present Appellant for amicable settlement but the Appellant did not pay any attention to it, therefore the Appellant is liable to pay the legitimate outstanding dues of M/s Maa Bhairabi. Accordingly it was directed that the present Appellant would pay the principal amount of Rs.39,62,511/- and interest claim of Rs.44,67,254/- calculated up to 31.7.2017 as per Section 15 & 16 of MSMED Act, 2006 and further compound interest with monthly rest shall be payable at three times of bank rate as notified by the Reserve Bank of India from time to time till realization of the dues.

ix. Thereafter, after a slew of litigation to condone the delay, this Court directed the Ld. District Judge, Ganjam to hear the present Appellant's appeal u/s 34 of the A&C Act on merits, which was not entertained by the Ld. District Judge, hence the present Appeal.

iv. ARBA No. 5 of 2023

i. This Appeal u/s 37 of the A&C Act arises out of judgment dated 12.1.2023 passed by the learned District Judge, Ganjam in FAO No. 19 of 2022 arising out of award dated 19.1.2019 passed by Micro and Small Enterprises Facilitation Council in MSEFC Case No. 34 of 2017.

ii. That the present respondent No.2 as petitioner had filed MSEFC Case No.34/2017 against the Chief Operating Officer, Southco Utility alleging therein that the petitioner participated in the tender under CAPEX programme for replacement of single phase meter for Ganjam North Electrical Division (GNED), Purushottampur Electrical Division (PSED), Aska Electrical Division No.II (AED-II), Ganjam Southern Electrical Division (GSED) & Aska Electrical Division No.I (AED No.I), the Divisions functioning under Southern Electricity Supply Company (Now TPSODL) erstwhile Southco Utility.

iii. The procurement committee for CAPEX after considering Techno commercial evaluation of meter replacement and price bid on different dates awarded the work

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in favour of the claimant O.P. No.2 for single phase meter replacement with or without shifting as per the Work Order issued on 26.6.2015 for different divisions.

iv. Thereafter, it is submitted that the M/s. Maa Bhairabi Traders completed the order in phased manner as per the direction and under direct supervision of the Executive Engineer-in-Charge and submitted Invoice date wise/ division wise against each completed work.

v. Due to delayed releasing of payment by the Southco Utility against the invoices for release of payment, M/s. Maa Bhairabi Traders issued several reminders.

vi. Further, due to non-release of payment invoice wise in time (as alleged by), M/s. Maa Bhairabi Traders, they filed an application before MSME for realization of an amount of Rs.23,05,000/- as a principal and Rs.20,78,923/- as interest (Total amount of Rs.43,83,923/-) for realization of the same.

vii. Upon being noticed by the MSEFC, Cuttack, the Appellant appeared in the case and filed his written objection denying the averments made in the claim petition. The Appellant in his written objection has stated that in spite of repeated request by the Engineer-in-Charge, the claimant has failed to execute the Work order within time. Due to slow progress of the work by the claimant on 28.10.2016, the procurement committee meeting for CAPEX was held at OPTCL office, Bhubaneswar and decision was taken to cancel the Work order along with forfeiture of the EMD dues. As per the Para-36 of the Work order it is stipulated that if any disputes arises the party to approach the competent authority and the competent authority is to resolve the dispute in accordance with the provisions of the arbitration and conciliation Act 1996. In fact, without exhausting the remedy available under the work order, the present application has been filed for realization of the arrear dues is not maintainable. It is also submitted that there has been no such delay as alleged in payment of dues to the claimant for the bills submitted by him.

viii. On 19.1.2019 in its 64th sitting it is alleged that the MSEFC conducted a hearing and passed an order without considering the matter in its proper perspectives and without going through the factual aspect of the case and without applying its judicial mind and sans any reasons observed that M/s Maa Bhairabi has approached the present Appellant for amicable settlement but the Appellant did not pay any heed to it, therefore the Appellant is liable to pay the legitimate outstanding dues of M/s Maa Bhairabi. Accordingly, it was directed that the present Appellant would pay the principal amount of Rs. 39,62,511 and interest claim of Rs. 44,67,254/- only calculated up to 31.7.2017 as per Section 15 & 16 of MSMED Act, 2006 and further compound interest with monthly rest shall be payable at three times of bank rate as notified by the Reserve Bank of India from time to time till realization of the dues.

3. Now the facts leading up to the instant Appeals have been laid down, this Court shall endeavour to summarise the contentions of the Parties and the broad grounds that have been raised to seek the exercise of this Court's limited jurisdiction available under S. 37 of the A&C Act.

II. APPELLANTS' SUBMISSIONS:

4. The counsels for the Appellants assail the judgment of the Ld. District Judge mainly on the ground that the Ld. District Judge has not considered the mandatory provision of conciliation as provided in Section 18(2) of the MSMED Act, has not been complied with and therefore, the award is bad in law and liable to be set aside.

III. SUPPLIER'S SUBMISSIONS:

5. *Per contra*, learned counsel for the Supplier submits that there is no infirmity with the order of the Ld. District Judge who has considered all the grounds raised by the Appellants in their proper perspective to pass a well reasoned judgment and order.

IV. ISSUE FOR CONSIDERATION:

6. Having heard the parties and perused the materials available on record, this Court here has identified the following solitary issue to be determined:

A. Whether the order of the Ld. District Judge warrants interference keeping in mind the limitations of this Court's powers under Section 37 of the A&C Act?

V. ISSUE A: WHETHER THE ORDER OF THE LD. DISTRICT JUDGE WARRANTS ANY INTERFERENCE KEEPING IN MIND THE LIMITATIONS OF THIS COURT'S POWERS UNDER SECTION 37 OF THE A&C ACT?

7. This Court has had the pleasure of delving into the contours of the MSMED Act in *National Aluminium Co. Ltd. v. Orissa Coal Chem. (P) Ltd.*¹

8. As held earlier, the very object of enacting the MSMED Act, 2006 was to facilitate the promotion and development, and enhance the competitiveness of micro, small and medium enterprises. The Act also aimed to ensure timely and smooth flow of credit to the micro, small and medium enterprises, and to minimise the incidence of sickness. One of the main objects of the Act was to delete the Interest on Delayed Payments under Small Scale and Ancillary Industrial Undertakings Act, 1993, and to include stringent provisions as also to provide dispute resolution mechanism for resolving the disputes of non-payment of dues to the micro and small enterprises. Thus, the seed of the MSMED Act, 2006 had sprouted from the need for a comprehensive legislation to provide an appropriate legal framework and extend statutory support to the micro and small enterprises to enable them to develop and grow into medium ones.

¹ 2023 SCCOnLineOri 5234

9. Sections 15 to 25 contained in Chapter V of the MSMED Act, 2006 pertain to the “delayed payments to micro and small enterprises”. A bare perusal of the said provisions contained in Chapter V shows that a strict liability is fastened on the buyer to make payment to the supplier who supplies any goods or renders any services to the buyer, prescribing the time-limit in Section 15. Section 16 further fastens the liability on the buyer to pay compound interest if any buyer fails to make payment to the supplier as required under Section 15. Such compound interest is required to be paid at three times of the bank rate notified by the Reserve Bank, notwithstanding contained in any agreement between the buyer and supplier or in any law for the time being in force. An obligation to make payment of the amount with interest thereon as provided under Section 16 has been cast upon the buyer and a right to receive such payment is conferred on the supplier in Section 17. Thus, Section 17 is the ignition point of any dispute under the MSMED Act, 2006. Section 18 of the Act provides for the mechanism to enable the party to the dispute with regard to any amount due under Section 17, to make a reference to the Micro and Small Enterprises Facilitation Council.

10. Further, if there is any dispute related to delayed payment, reference can be made to the Micro and Small Enterprises Facilitation Council (hereinafter, ‘Facilitation Council’) for dispute resolution. Furthermore, it has been provided in the said act that the provisions contained under Section 15 to Section 23, will have an overriding effect on any law which is in contravention of the same.

11. The MSMED Act has, therefore, provided for the establishment of MSME Facilitation Councils as the one-stop shop for resolution of disputes under the MSMED Act. Section 18 of the MSMED Act reads as:

“18.(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17 (Recovery of Amount Due), make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

...

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.” [Emphasis is ours]

12. A bare perusal of the above, it appears that there is a two tiered dispute resolution system provided in the MSMED Act itself for facilitating the promotion and development, and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.

13. Section 18 starts with a non obstante clause i.e. “notwithstanding anything contained in any other law for the time being in force”. It means that the said provision has been enacted with the aim to supersede other laws for the time being in force. Further, a dedicated statutory forum i.e. the Micro and Small Enterprises Facilitation Council (as established under Section 20 of the MSMED Act, 2006), has been provided so that a reference could be made by any party to the dispute. Sub-section (2) of Section 18 empowers the Facilitation Council, on receipt of such reference made under sub-section (1), to conduct conciliation in the matter or seek assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation, as contemplated in Sections 65 to 81 of the Arbitration Act, 1996. If the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council is further empowered under sub-section (3) to either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration. The provisions of the Arbitration Act, 1996 are then made applicable to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996. Sub-section (4) of Section 18 again starts with a non obstante clause i.e. “*notwithstanding anything contained in any other law for the time being in force*”, and confers jurisdiction upon the Facilitation Council to act as an arbitrator or a conciliator in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India. Sub-section (5) of Section 18 fixes the time-limit of ninety days to decide such reference.

14. It is, therefore, clear that only when the conciliation initiated under Section 18 (2) is not successful, then in the absence of any settlement between the parties, the Facilitation Council under Section 18 (3) is to either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration.

15. The conciliation envisioned in the MSMED Act, not being a voluntary but compulsory step, any failure to initiate/conduct the same would render a consequent award passed by the MSEFC bad in law and liable to be set aside. The same view has also been reiterated by the Supreme Court **in *Jharkhand Urja Vikas Limited v. The State of Rajasthan and Ors.***² wherein the Apex Court held as under:

² Judgement dated 15.12.2021 in Civil Appeal No. 2899 of 2021

“9. From a reading of Section 18(2) and 18(3) of the MSMED Act it is clear that the Council is obliged to conduct conciliation for which the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 would apply, as if the conciliation was initiated under Part III of the said Act.” (emphasis is ours)

16. As far as this Court’s powers of interference under Section 37 of the A&C Act is concerned, it is apt to advert to the decision of the Supreme Court in ***Oil & Natural Gas Corporation Ltd. v. Western Geco International Limited***³ which was subsequently discussed in ***Associate Builders v. Delhi Development Authority***⁴. The position of law was clarified and laid down recently by the Supreme Court in ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI***⁵ and more recently reiterated in ***UHL Power Company Ltd. v. State of Himachal Pradesh***⁶.

17. The award passed in pursuance of an arbitration under Section 18(3) of the MSMED Act can therefore also only be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to, (a) fundamental policy of Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal.

18. A cumulative reading of the UNCITRAL Model Law and Rules, the legislative intent with which the 1996 Act is made, Section 5 and Section 34 of the 1996 Act would make it clear that judicial interference with the arbitral awards is limited to the grounds in Section 34. While deciding applications filed under Section 34 of the Act, Courts are mandated to strictly act in accordance with and within the confines of Section 34, refraining from appreciation or re-appreciation of matters of fact as well as law. This Court may refer to the Apex Court’s judgment in ***Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd.***⁷, ***Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.***⁸ And ***Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran***⁹ for the same.

19. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the Courts. There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds

³ (2014) 9 SCC 263

⁴ (2015) 3 SCC 49

⁵ (2019) 15 SCC 131

⁶ (2022) 4 SCC 116

⁷ (2020) 2 SCC 455

⁸ (2022) 1 SCC 75

⁹ (2012) 5 SCC 306

available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards.

20. The scope of Section 37 of the Arbitration Act was further analysed by the Supreme Court in *MMTC Limited v. Vedanta Limited*¹⁰ where it was held that any such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. A similar view, as stated above, has been taken by the Supreme Court in *K. Sugumar v. Hindustan Petroleum Corpn. Ltd.*¹¹.

21. This Court had the opportunity to peruse the Awards passed by MSEFC, Cuttack, Odisha and the Ld. District Judge's judgments.

22. Section 18(2) of the MSME Act provides, on receipt of a reference, the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation. It is only in the event that such conciliation fails, shall the Council proceed to enter into the realm of arbitration under Section 18 (3) of the MSMED Act. Section 18(2) of the MSMED Act further provides that Sections 65 to 81 of the A&C Act shall apply to such a conciliation attempt.

23. It is pertinent to mention herein that the basic tenet of a conciliation proceeding is derived from a person being appointed as the conciliator who shall then assist the parties in an "independent" manner in their attempt to reach an amicable settlement of their dispute. The purpose behind making this a mandatory pre-cursor to the MSEFC entering into the realms of arbitration is that the parties have the opportunity to explore the possibility of privately settling their issue with the assistance and support of an independent person, who would facilitate and buttress such dialogue.

24. In the facts of the present case, upon a perusal of the orders of the Facilitation Council, this Court is perturbed to note that the Council did not refer the parties for a proper attempt of conciliation despite the statutory mandate prescribed under Section 18(2). Firstly, no reference to Section 18(2) of the MSMED Act was made, and secondly, no conciliator was appointed. There is only one line pertaining to M/s. Maa Bhairabi approaching the Appellant for 'settlement' and then complete silence.

25. This ground and glaring infirmity was raised by the Appellants before the Ld. District Judge who was, however, of the opinion that the fact that the party had allegedly approached the Appellant for settlement satisfied the statutory requirement under Section 18(2) of the MSMED Act.

¹⁰ (2019) 4 SCC 163

¹¹ (2020) 12 SCC 539

26. This Court is unable to accept the same. When the statute mandates that upon receipt of a reference, the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation, the Council was bound to conduct the conciliation itself or refer the parties for such conciliation. There is no whisper of either things being done and therefore, given the gross irregularities as well as non-conformity committed by the MSEFC in its awards, the same in the opinion of this Court and for the reasons stated above, shocks the conscience of this Court.

27. Violating the mandate that was laid down by the same statute that created the Facilitation Council and a step that it was bound to follow tantamounts to contravention with the fundamental policy of Indian law and being in conflict with the most basic notions of justice. Hence, such contravention affords a ground under Section 34, including its explanations.

VI. CONCLUSION:

28. In light of the discussion above, keeping the settled principles of law in mind and for the reasons given above, this Court is of the considered view that the judgment dated 12.1.2023 passed by the learned District Judge, Ganjam in Arbitration Petition No.1 of 2021, FAO No.19 of 2022 and FAO No.20 of 2022 arising out of award dated 18.7.2018 passed by Micro and Small Enterprises Facilitation Council in MSEFC Case No.33 of 2017, award dated 19.1.2019 passed by Micro and Small Enterprises Facilitation Council in MSEFC Case No.34 of 2017 and award dated 19.1.2019 passed by Micro and Small Enterprises Facilitation Council in MSEFC Case No.35 of 2017 are all liable to be interfered with and set aside.

29. The parties are directed to appear before the concerned MSEFC within 15 days from the date of this judgment/order to facilitate the Council to adjudicate afresh on the dispute between the parties in strict terms of Section 18 of the Act.

30. ARBA No.3 of 2023, ARBA No.37 of 2022, ARBA No.4 of 2023 and ARBA No.5 of 2023 are disposed of on the abovementioned terms. No order as to costs.

31. Interim order, if any, passed earlier in any of the aforesaid Appeals stands vacated.

**TATHAGATA SATAPATHY
V.
HDFC BANK LTD., MUMBAI & ORS.**

[W.P.(C) NO. 875 OF 2024]

14 FEBRUARY 2025

[Dr. S.K. PANIGRAHI, J.]

Issue for Consideration

Whether the linkage of Aadhaar with PAN violates the right to privacy and personal liberty as enshrined under Article 21 of the Constitution of India, 1950.

Headnotes

CONSTITUTION OF INDIA, 1950 – Article 21 r/w Section 139 AA of Income Tax Act, 1961 – The petitioner challenges the mandatory linkage of Aadhaar with PAN under Section 139 AA of the Income Tax Act and its impact on Demat account operations – Whether the linkage of Aadhaar with PAN violates the right to privacy and personal liberty as enshrined under Article 21 of the Constitution.

Held: No – The impugned provision mandating Aadhaar-PAN linkage for Demat accounts stands on firm constitutional and legal footing – It satisfies the triple test established in *Puttaswamy* (case), serving a legitimate state interest in curbing tax evasion and ensuring financial transparency. (Para 42)

While concerns regarding data security and privacy are acknowledged, they do not outweigh the compelling need for regulatory oversight in the securities market – Adequate safeguards have been implemented to mitigate risks, and the measure remains a proportionate and reasonable restriction on privacy – Therefore, the provision does not warrant interference by this Court. (Para 43)

Citations References

K.S. Puttaswamy v. Union of India, [2018] 8 S.C.R. 1; Olmstead v. United States, 277 U.S. 438 (1928); Griswold v. Connecticut, 381 U.S. 479 (1965); Binoy Viswam v. Union of India & Ors., (2017) 7 SCC 59 – referred to.

List of Acts

Constitution of India, 1950, Income Tax Act, 1961; Income Tax Rules, 1962

Keywords

Linkage of Aadhar and PAN; Violation; Right to life and personal liberty; Demat Account; Tax evasion; Financial transparency.

Appearances for Parties

For Petitioner : Mr. Yasobanta Dash, Sr. Adv. & Mr. N. C Mohanty
 For Opp. Parties : Mr. Gautam Mukherjee, Sr. Adv. & Mr. D. N. Mishra,
 Mr. Rajeet Roy & Mr. S. Sourav,
 Mr. Tapes Roy & Mr. S. Roy

Judgment/Order

Judgment

Dr. S.K. PANIGRAHI, J.

1. The Petitioner, through this Writ Petition challenges the actions of the Opposite Parties in depriving the Petitioner of access to his Invest Right app and Demat Account No. 50100193966720, linked to HDFC Bank Savings Account No. 50100193966720. It is alleged that the bank withheld the petitioner's funds and profits and made his accounts dormant in July 2023, citing the lack of Aadhaar linkage, despite Aadhaar not being required when the accounts were opened.

I. FACTUAL MATRIX OF THE CASE:

2. The brief fact of the case is that:

(i). On 20.04.2017, the petitioner opened Savings Bank Account No. 50100193966720 in his name at HDFC Bank, Cuttack-Puri Road Branch, Bhubaneswar. Since opening the aforementioned account, the petitioner has been operating it regularly.

(ii). During the course of banking transactions with the Opp. party bank, the branch manager of the said bank persuaded the petitioner to utilize the amount deposited in the savings account to earn more profit by investing it in trading through HDFC Securities, a subsidiary of HDFC Bank Ltd.

(iii). Acting on the advice of the HDFC Bank officials, the petitioner invested an amount of ₹25 lakhs from his HDFC Bank savings account into trading through HDFC Securities on 24.12.2019 in Demat Account No. 50100193966720 (73229001) linked to his Savings Bank Account No. 50100193966720. Trading transactions under this arrangement commenced on 06.01.2020.

(iv). While the petitioner was trading through HDFC Securities, in July 2023, the HDFC Bank made the petitioner's trading account/Demat account dormant on the grounds that it was not linked to Aadhaar. It is pertinent to note that the petitioner's Savings Bank Account and Demat Account were not linked to Aadhaar at the time of opening, as the petitioner had not enrolled under Aadhaar.

(v). Upon becoming aware of this development, the petitioner informed the bank authorities that he had not enrolled under Aadhaar and that Aadhaar is not mandatory for banking services or transactions, as per the decision of the Supreme Court. The petitioner requested the bank to resolve the issue accordingly.

(vi). Despite this, HDFC Bank continued to send emails stating that the petitioner's service requests had been registered and would be resolved at the earliest. However,

to date, no positive steps have been taken by the bank to address the petitioner's grievance.

(vii). When the opposite party bank failed to resolve the issue, the petitioner, on 16.11.2023, requested the bank to close the Demat/Trading account and transfer all shares and funds to his nominee, his wife, Ms. Adyasha Satpathy's Demat account.

(viii). On 05.01.2024, the Head Office of the opposite party bank sent an email to the Branch Manager of HDFC Bank, stating that the suspension of the Demat/Trading account could not be removed without mapping the PAN with Aadhaar.

(ix). The petitioner states and submits that the action of the opposite party bank in not allowing him to operate the Invest Right App Demat Account under his Savings Bank Account, on the grounds that the account is not linked to Aadhaar, is ex facie illegal, arbitrary, and contrary to the decision of the Supreme Court. Therefore, the petitioner asserts that this action is liable to be quashed, and he is entitled to operate the Invest Right App Demat and Trading Account through HDFC Securities/HDFC Bank.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions.

(i) The petitioner submits that he is a senior citizen and a four-term Member of Parliament. He has deliberately not enrolled under Aadhaar, as it has been his consistent stance in Parliament that biometric data should not be collected from citizens unwilling to enroll under Aadhaar. Therefore, since he has not enrolled under Aadhaar, furnishing an Aadhaar enrollment number to the bank to operate the "Invest Right App" Demat Account does not arise.

(ii) The petitioner also points out that HDFC Bank allows him to operate his Savings Bank Account No. 50100193966720 for deposits and withdrawals. Thus, the action of HDFC Bank in keeping the Demat Account dormant/suspended on the plea of not being linked to Aadhaar is arbitrary, lacks legal sanction, and is therefore liable to be quashed.

(iii) The petitioner further states and submits that the action of the opposite party bank in demanding the Aadhaar enrollment number to link the petitioner's bank account is a clear violation of Articles 14, 19(1)(g), 21, and 300-A of the Constitution of India. Therefore, this action is liable to be quashed.

(iv) The petitioner also submits that the action of the opposite parties in making the trading app Demat account dormant/suspended under the petitioner's Savings Bank Account is contrary to the decision of the Supreme Court in *K.S. Puttaswamy v. Union of India*¹. As such, the action is liable to be quashed.

(v) The petitioner prays that he be allowed to operate the trading app Demat Account No. 50100193966720 (73229001) under his HDFC Savings Bank Account No. 50100193966720, maintained at the Cuttack-Puri Road Branch.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES :

¹ [2018] 8 S.C.R. 1

4. In reply, learned counsel for the HDFC Bank (“Opp. Party 1 & 2”) earnestly made the following submissions in support of his contentions:

(i) It is submitted that the Writ Petition against a private entity is not maintainable for a writ application can only be maintained and filed against an entity that satisfies the requirements of Article 12 of the Constitution of India.

(ii) HDFC Bank Limited (hereinafter 'the Bank') is a company registered under the Companies Act and also registered with the Reserve Bank of India. It has its registered office in Mumbai, Maharashtra, and is engaged in the legitimate business of providing banking services. Being a private sector bank, it does not satisfy the requirements of Article 12 of the Constitution of India and, therefore, does not fall within its scope. Thus, the present writ application is not maintainable.

(iii) The Petitioner, having a savings account with Opposite Party No.2, expressed his interest in opening a Demat Account, which is required for holding shares in electronic form for the purpose of investing and trading in the stock market. Therefore, it is incorrect to state that the Bank persuaded the Petitioner to invest his money through HDFC Securities.

(iv) While the Demat Account of the Petitioner was operational, the Central Board of Direct Taxes (CBDT), Ministry of Finance, and the Department of Revenue, Government of India, issued Circular No.7 of 2022 dated 30.03.2022. This circular referred to the provisions of the Income Tax Act regarding the linkage of Aadhaar with Permanent Account Numbers (PANs). Based on this circular, the Securities and Exchange Board of India (SEBI) issued a press release dated 08.03.2023, directing all existing investors to ensure the linkage of their PAN with Aadhaar by 31.03.2023 for continuity and smooth transactions in the securities market. The release also warned of the consequences of non-compliance with the CBDT circular.

(v) Following the CBDT circular, the National Securities Depository Limited (NSDL), a depository registered with SEBI, issued a circular dated 21.03.2023. This circular reiterated the importance of linking Aadhaar with PAN and instructed all depository participants registered with NSDL to inform their clients about the compliance requirement. It further stated that non-compliance would result in the Demat Accounts being made inactive.

(vi) In view of these regulatory guidelines, the Demat Account of the Petitioner was suspended by NSDL through its circular dated 30.06.2023, and not by the Respondent Bank. Due to this suspension by NSDL, the Petitioner's request for the closure of his Demat Account and the transfer of shares to his wife's Demat Account could not be acted upon. The Bank duly informed the Petitioner about this through an email dated 22.11.2023. Additionally, the NSDL circular dated 30.06.2023 prescribes the procedure for the removal of the suspension of Demat Accounts, which mandates linking PAN with Aadhaar. In the absence of such compliance, the Petitioner's Demat Account would continue to remain suspended.

(vii) It is submitted that the contention of the Petitioner that the Bank's action in not allowing him to operate the Demat Account is illegal and arbitrary, being contrary to the judgment of the Supreme Court, is incorrect. The Bank, as a depository

participant, is governed by SEBI regulations and cannot be faulted for acting in accordance with such regulations.

(viii) In view of the authoritative pronouncement in the case of **K.S. Puttaswamy** (supra), SEBI, as the regulatory authority of the securities market, has issued directions requiring investors to ensure compliance with the linkage of Aadhaar with PAN for smooth and uninterrupted transactions in the securities market by 31.03.2023. PAN serves as a key identification number and is part of the KYC requirements for all transactions in the securities market. Accordingly, all SEBI-registered entities and market infrastructure institutions were required to ensure valid KYC for all participants.

(ix) The Petitioner contends that the Bank's action of allowing him to operate his savings account while keeping his Demat Account suspended is misconceived. The suspension was due to his failure to link Aadhaar with his PAN card. However, this argument is incorrect.

(x) The Supreme Court, in **Puttaswamy** (supra), upheld the constitutional validity of Section 139-AA of the Income Tax Act, 1961. At the same time, it ruled that Rule 9 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005, was unconstitutional. The Court also struck down notifications that mandated the linkage of Aadhaar with bank accounts.

(xi) The Petitioner incorrectly compares a Demat Account to a bank account. The Supreme Court ruled that linking Aadhaar with bank accounts does not meet the test of proportionality. Therefore, it was declared unconstitutional. As a result, the Petitioner is allowed to operate his savings account. However, this does not apply to his Demat Account. PAN is a key identification number. It is also an essential part of the KYC requirements for all transactions in the securities market.

(xii) The Bank's action of keeping the Demat Account under suspension is not illegal or arbitrary. It does not violate the Petitioner's constitutional rights. The Bank must follow SEBI regulations. Without compliance, it cannot allow the Petitioner to operate his Demat Account. If the Petitioner seeks a resolution, he has the option to approach SEBI with his grievances.

(xiii) The Bank has made several attempts to request the Petitioner to link his PAN with Aadhaar. It has taken steps to address his concerns and values him as a customer. However, without compliance, the Bank is unable to assist him further. Interestingly, during the pendency of this Writ Petition, the Bank Authority has agreed to allow the Petitioner's prayer rendering the Writ Petition to an academic exercise. Considering the gravity of the issue and its socio-economic importance, this Court attempts to discuss the issue in its perspective.

5. Learned counsel for SEBI ("Opp. Party No. 4") earnestly made the following submissions in support of his contentions:

(i) It is submitted that no cause of action has arisen for the petitioner to file the present writ petition. Furthermore, there exists no valid ground for impleading Opp. Party No.4 as a necessary party in this matter. The petitioner's demat account is currently in "ACTIVE" status, thereby negating any basis for grievance.

(ii) Opp. Party No.4 had issued a Master Circular on Know Your Client (KYC) Requirements for the Securities Market (Circular No. SEBI/HO/MIRSD/

SECFATF/P/CIR/2023/169, dated 12.10.2023), which consolidates all relevant circulars and directions issued by SEBI up to 30.09.2023 to ensure an effective Anti-Money Laundering framework. The said circular outlines the KYC process applicable to all SEBI-registered intermediaries, mandating them to obtain and verify Proof of Identity (PoI) and Proof of Address (PoA) from clients before establishing an account-based relationship.

(iii) It is pertinent to note that the use of Aadhaar for KYC purposes is purely voluntary. However, since April 2007, PAN has been made mandatory (with limited exceptions) as the unique identification number for all securities market participants, irrespective of the transaction amount. Given its significance, PAN submitted by a client must be valid and linked to Aadhaar as per Rule 114AAA of the Income Tax Rules, 1962.

(iv) In accordance with Section 139-AA(2) of the Income Tax Act, 1961, and Rule 114AAA of the Income Tax Rules, 1962, SEBI's regulatory measures align with directives issued by the CBDT. Based on stakeholder feedback and to facilitate ease of transactions, SEBI reviewed and simplified the risk management framework at KYC Registration Agencies (KRAs) through Circular No. SEBI/HO/MIRSD/SECFATF/P/CIR/2024/41, dated 14.05.2024. Under this revised framework, the PAN-Aadhaar linkage validation is now required only for KYC portability within the securities market, thereby removing any hindrance to clients conducting transactions.

(v) As SEBI has never mandated Aadhaar as a compulsory document for KYC and since the petitioner's Demat account is currently active and fully operational, there remains no impediment preventing the petitioner from transacting. Consequently, the writ petition has become infructuous and unsustainable.

6. Learned counsel for the Reserve Bank of India ("Opp. Party No. 5"), Senior Advocate Gautam Mukherjee, orally submitted that the RBI has no direct involvement in the petitioner's grievance, as the issues raised pertain solely to the actions of HDFC Bank Ltd. and NSDL. He emphasized that RBI's regulatory framework does not govern the operational decisions related to the petitioner's Demat or Savings Account. Consequently, the petitioner has failed to establish a justifiable cause of action against RBI, making the writ petition unsustainable in its current form.

7. Learned counsel for the NSDL ("Opp. Party No. 6") earnestly made the following submissions in support of his contentions:

(i) NSDL contends that the petitioner's grievances pertain solely to HDFC Bank Ltd. ("Opp. Party No.1"), as all actions regarding the Demat Account were undertaken by HDFC. Given that NSDL merely implemented regulatory directives without any independent role in freezing or unfreezing the account, the writ petition is unsustainable against it and warrants dismissal.

(ii) The petitioner's concerns have been rendered moot following the SEBI and NSDL circulars, which led to the unfreezing of the Demat Account on 03.06.2024. NSDL issued its Circular No. NSDL/POLICY/2023/0038 dated 21.03.2023 in accordance with the press release PR No.05/2023 issued by SEBI, on 08.03.2023

which, in turn, was aligned with the CBDT Circular No.7 of 2022, dated 30.03.2022, which provided clarification regarding the relaxation of provisions under Rule 114AAA of the Income Tax Rules, 1962.

(iii) Pursuant to SEBI's Circular and later produced FAQs, Opp. Party No.6, through its Circular No. NSDL/POLICY/2024/0071 dated 30.05.2024, issued a directive. Based on NSDL's circular, the Depository Participant (DP), HDFC Bank, unfroze the Petitioner's Demat account on 03.06.2024. It is humbly submitted that the Petitioner's demat account is currently in "ACTIVE" status and is not subject to any freeze. This makes this petition purely an academic discourse.

IV. COURT'S REASONING AND ANALYSIS:

8. First and foremost, it is important to highlight that the grievance of the petitioner has already been resolved; leaving no subsisting dispute that requires adjudication. In light to this, any further deliberation on the issues raised would be purely academic, serving only to address questions that, with the passage of time, may not have been adequately answered. While courts generally refrain from engaging in academic exercises, in certain circumstances, an authoritative pronouncement may be warranted to settle legal uncertainties and provide clarity for future cases.

9. I have heard the representations of the counsels appearing for the respective parties at length.

10. The concept of "I" or the "self" has been a central theme in Indian philosophy since its inception. In Indian culture, the term "Swa (स्व)" directly translates to "self," signifying one's individual identity, essence, or inner being. It embodies not just personal identity but also a profound spiritual dimension, emphasizing self-reliance, autonomy, and the realization of one's true nature.

11. The Brihadaranyaka Upanishad narrates an interesting conversation between Emperor Janaka and the great sage Yajnavalkya.

The emperor asked, "*Yajnavalkya, what is the light by which man is served?*"

The sage replied, "*The light of the sun, O Emperor, for it is by the sun that man sits, moves, works, and returns home.*"

Janaka then inquired, "*But when the sun has set, what then is the light by which man is served?*"

Yajnavalkya answered, "*The moon then becomes his light.*"

The emperor continued, "*And when both the sun and moon are absent, what then?*"

The sage responded, "*Fire becomes his light.*"

Janaka pressed further, "*When the sun and moon have set and the fire has gone out, what then is the light by which man is served?*"

Yajnavalkya replied, "*Sound then serves as light, for in darkness, one follows sound to navigate.*"

Finally, Janaka asked, “*But when the sun and moon have set, the fire is out, and there is no sound, what then is the light by which man is served?*”

Driven to the ultimate truth, Yajnavalkya declared, “***The Self, becomes his light, for it is by the light of the Self that man sits, moves, works, and returns home.***”

[Verse 4.3.6]

Pleased with the answer, the emperor then posed the most profound question: “*Of the many principles within man, which is the Self?*”

The sage smiled and only at this moment did the sage begin his true teaching.

12. While the idea of the “self” exists in Western philosophy, often in relation to consciousness, reason, and personal identity, “Swa” in Indian traditions, particularly in Hinduism, Jainism, and Buddhism, extends beyond the individual to encompass a connection with the greater cosmic order.

13. In Upanishadic texts, “Swa” is regarded as the ultimate reality, an eternal and unchanging essence that is one with Brahma (ब्रह्म), the universal consciousness. Jainism, on the other hand, presents the self as an independent, eternal entity responsible for its own liberation through self-discipline and righteousness. These perspectives highlight that in Indian thought, the self is not merely an individual entity but an integral part of a larger metaphysical framework. This deep-rooted understanding of “Swa” shapes Indian perspectives on duty, morality, and self-realization, reinforcing the idea that true fulfillment comes not just from outer perspectives but self-awareness. “Swa” does not mean selfish, not self-centered, not self-absorbed, not self-consumed, it is just the self.

14. In the west, from Descartes to modern jurisprudence, philosophical discourses underscore a fundamental tension between individual autonomy and societal regulation. As digital technology and surveillance expand, ongoing legal debates continue to balance the self’s right to privacy with public security and governance.

15. The philosophy of the self has evolved through centuries, shaping legal and jurisprudential thought on identity, autonomy, and privacy. From ancient Greece to contemporary legal debates, thinkers have grappled with questions of selfhood, individual rights, and the limits of state power.

16. The ancient Greeks laid the foundation for understanding the self, particularly through Plato and Aristotle. Plato, in his magnum opus, *The Republic*, viewed the self as a tripartite soul composed of reason, spirit, and desire, advocating for a just society where rationality governs impulses. Aristotle, in *Nicomachean Ethics*, emphasized the self as an agent of virtue, linking personal development to communal well-being. These early notions of selfhood influenced later debates on personal identity and legal responsibility.

17. In modern philosophy, René Descartes' famous dictum, *cogito, ergo sum* (“I think, therefore I am”), positioned self-awareness as the foundation of knowledge. This rationalist view influenced liberal political philosophy, particularly John

Locke's "*Theory of Personal Identity*," which saw the self as continuous consciousness and a bearer of natural rights. Locke's *Second Treatise of Government* argued for the individual's right to life, liberty, and property, forming a basis for legal concepts of personal autonomy and privacy. His idea that "*every man has a property in his own person*" remains central to modern rights discourse. John Stuart Mill, in *On Liberty*, defended personal freedom against state interference, famously stating, "*Over himself, over his own body and mind, the individual is sovereign.*" His harm principle became foundational for privacy law, arguing that individuals should be free unless their actions harm others. In the 20th century, legal scholars and judges further refined the concept of self and privacy. Justice Louis Brandeis, in *Olmstead v. United States*², described privacy as "the right to be let alone," advocating for protections against government intrusion. This idea shaped later rulings, such as *Griswold v. Connecticut*³, which recognized privacy in personal decision-making. More recently, legal theorist Alan Westin defined privacy as "*the claim of individuals...to determine for themselves when, how, and to what extent information about them is communicated to others,*"⁴ influencing contemporary data protection laws.

18. While the concept of "Privacy" does not truly reflect the essence of "Swa", it is important that the former is understood in light of the latter. In modern governance, the recognition of privacy as a fundamental right ensures that individuals retain control over their personal data, bodily integrity, and lifestyle choices. Just as "Swa" denotes the true essence of an individual, privacy safeguards this essence in the legal domain, preventing state and private actors from infringing upon the dignity and autonomy of individuals. By linking privacy to "Swa", one can see that privacy is not just a legal right but a deeply philosophical principle that upholds the core of human existence: the right to be oneself.

19. Privacy is no mere indulgence; it is the shadow in which free thought germinates, the barricade behind which the soul remains its own. Treating privacy as property is problematic for property is an illusion, a temporary indulgence granted and withdrawn at the whim of power. No man may lay claim to the land beneath his feet or the roof over his head, for these are but fleeting possessions, borrowed for a time and reclaimed by the great machinery of the state. What a man builds, another shall inherit; what he owns, another shall confiscate. Yet, there exists one realm beyond the reach of force, law, or tyranny; the "self": the mind, the will, the silent dominion of thought. These are the last and truest possessions of the individual. Strip a man of his privacy, and you do not merely expose his secrets; you erode his very selfhood.

² 277 U.S. 438 (1928)

³ 381 U.S. 479 (1965)

⁴ Alan Westin, *Privacy and Freedom* (New York: Atheneum 1967)

20. The Indian judiciary has recognized this intrinsic connection between selfhood and privacy. In **K.S. Puttaswamy** (supra), the Supreme Court affirmed that the right to privacy is an integral part of the right to life and personal liberty under Article 21 of the Constitution. The judgment emphasized that privacy is essential for dignity, autonomy, and self-determination that align closely with the Indian philosophical tradition, which views the self as sacred and inviolable. Just as “Swa” signifies self-governance in a spiritual sense, “privacy” in a legal sense empowers individuals to make decisions about their bodies, beliefs, and personal affairs without external coercion.

21. The Apex Court held that right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 of the Constitution of India. Following passages from different opinions reflect the aforesaid proposition:

“Dr. D.Y. Chandrachud, J.:

42. Privacy is a concomitant of the right of the individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in a human being. Natural rights are inalienable because they are inseparable from the human personality. The human element in life is impossible to conceive without the existence of natural rights. In 1690, John Locke had in his *Second Treatise of Government* observed that the lives, liberties and estates of individuals are as a matter of fundamental natural law, a private preserve. The idea of a private preserve was to create barriers from outside interference. In 1765, William Blackstone in his *Commentaries on the Laws of England* spoke of a “natural liberty”. There were, in his view, absolute rights which were vested in the individual by the immutable laws of nature. These absolute rights were divided into rights of personal security, personal liberty and property. The right of personal security involved a legal and uninterrupted enjoyment of life, limbs, body, health and reputation by an individual.

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46. Natural rights are not bestowed by the State. They inhere in human beings because they are human. They exist equally in the individual irrespective of class or strata, gender or orientation.

xx xx xx

318. Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian Constitution.

S.A. Bobde, J. :

415. Therefore, privacy is the necessary condition precedent to the enjoyment of any of the guarantees in Part III. As a result, when it is claimed by rights bearers before constitutional courts, a right to privacy may be situated not only in Article 21, but also simultaneously in any of the other guarantees in Part III. In the current state of things, Articles 19(1), 20(3), 25, 28 and 29 are all rights helped up and made meaningful by the exercise of privacy.”

22. Be that as it may, the self (“Swa”), for all its importance, does not exist in isolation. It finds its highest purpose not merely in self-preservation but in self-

offering, in aligning with a duty greater than personal desire. This is where “Swadharma” emerges, not as a force that suppresses “Swa”, but as the path through which it finds its fullest expression. Just as fire does not lose its essence by giving warmth, “Swa” does not weaken by serving its higher calling; rather, it burns brighter, illuminating its true strength. The concept of “Swadharma” i.e. one’s personal duty, is not a negation of the self (Swa), but its highest fulfillment. It teaches that “Swa” is not an isolated entity, existing for its own sake, but a thread woven into the grand fabric of the universe. This does not mean blind adherence to imposed duty, rather an acknowledgment that true strength lies in acting in harmony with one’s place in the world. “Swadharma” is not a cage that limits “Swa”; it is the force that gives it meaning, anchoring the self in a larger purpose. When “Swa” aligns with duty, it does not diminish; it transcends, transforming the individual into something far greater than the sum of personal wants.

23. On similar lines, the Apex Court has held that right to privacy is not an unqualified one. Courts play a crucial role in balancing individual liberty with state interests, ensuring that restrictions on privacy are justified, proportionate, and in line with constitutional principles. The relevant excerpts are produce hereinbelow:

“324. This Court has not embarked upon an exhaustive enumeration or a catalogue of entitlements or interests comprised in the right to privacy. The Constitution must evolve with the felt necessities of time to meet the challenges thrown up in a democratic order governed by the Rule of Law. The meaning of the Constitution cannot be frozen on the perspectives present when it was adopted. Technological change has given rise to concerns which were not present seven decades ago and the rapid growth of technology may render obsolescent many notions of the present. Hence the interpretation of the Constitution must be resilient and flexible to allow future generations to adapt its content bearing in mind its basic or essential features.

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.” (Emphasis supplied)

24. The right to privacy, though fundamental, is not absolute. It is a principle deeply rooted in the traditions of ordered liberty, yet, like all rights, it must yield when the exigencies of governance demand reasonable constraint. The law does not recognize an unfettered dominion of the self against every interest of the state, for society itself is an intricate balance between personal autonomy and the common good. The courts, as the sentinels of constitutional equilibrium, bear the solemn duty of drawing this boundary, not arbitrarily, but with care, with reason, with an unwavering fidelity to justice. In every case where the veil of privacy is sought to be

pierced, the hand of the state must be scrutinized with the greatest vigilance, ensuring that any encroachment is neither excessive nor capricious but justified by necessity, proportionate in scope, and bound by the very constitutional principles that give life to the right itself. It is in this delicate balance that liberty is preserved, and in this measured restraint that law finds its nobility.

25. Now, turning to the substantive issue at hand, the petitioner challenges the mandatory linkage of Aadhaar with PAN for the operation of his DEMAT account. The respondents, in defense, have relied upon the legal principles established in **K.S. Puttaswamy** (supra) to justify the requirement. Accordingly, this Court shall undertake a detailed examination of the Supreme Court's interpretation in **Puttaswamy** and assess the legal questions arising in the present matter to determine their applicability to the petitioner's grievance.

26. In the digital era, privacy is increasingly understood as “informational privacy”, recognizing that personal data is an extension of the self. Information today is not merely a collection of facts but a reflection of an individual's identity, autonomy, and choices. With advancements of technology, vast amounts of personal data, ranging from financial records and biometric details to online activities and communications, are constantly collected, stored, and analyzed. This makes it imperative for courts and policymakers to acknowledge that the self is now embedded in data more than ever before. A breach of informational privacy is not just a violation of confidentiality but an intrusion into an individual's very sense of selfhood. The right to control one's data, therefore, becomes synonymous with the right to personal autonomy and dignity. Courts, as the guardians of fundamental rights, must ensure that legal protections evolve in tandem with these realities, safeguarding individuals from unwarranted surveillance, data misuse, and erosion of personal freedom in an age where information is power. This has been adequately accepted and explicitly mentioned in **Puttaswamy** (supra).

27. The Supreme Court delved into the intricate and often paradoxical nature of informational privacy. The Court recognized that personal information is both the exclusive dominion of the individual and at the same time, a crucial element in the functioning of the state, particularly in matters of security, welfare, and governance. However, this duality requires a delicate balance: while the state may require access to data for legitimate purposes such as national security, law enforcement, and public welfare, such power, if left unchecked, can easily transform into an instrument of surveillance and control. The Court cautioned against the dangers of a data-driven state apparatus that, under the guise of efficiency, could erode individual freedoms, reduce citizens to mere data points, and pave the way for an Orwellian surveillance regime. It emphasized that any intrusion into informational privacy must be tested on the principles of necessity, proportionality, and legality; ensuring that personal data is neither indiscriminately collected nor arbitrarily used. The relevant excerpts are produced hereinbelow:

“326. Privacy has both positive and negative content. The negative content restrains the State from committing an intrusion upon the life and personal liberty of a citizen. Its positive content imposes an obligation on the State to take all necessary measures to protect the privacy of the individual.

.....

(v) Informational Privacy is a facet of right to privacy: The old adage that ‘knowledge is power’ has stark implications for the position of individual where data is ubiquitous, an all-encompassing presence. Every transaction of an individual user leaves electronic tracks without her knowledge. Individually these information silos may seem inconsequential. In aggregation, information provides a picture of the beings. The challenges which big data poses to privacy emanate from both State and non-State entities. This proposition is described in the following manner:

Dr. D.Y. Chandrachud, J.:

300. Ours is an age of information. Information is knowledge. The old adage that “knowledge is power” has stark implications for the position of the individual where data is ubiquitous, an all-encompassing presence.

Technology has made life fundamentally interconnected. The internet has become all-pervasive as individuals spend more and more time online each day of their lives. Individuals connect with others and use the internet as a means of communication. The internet is used to carry on business and to buy goods and services. Individuals browse the web in search of information, to send e-mails, use instant messaging services and to download movies. Online purchases have become an efficient substitute for the daily visit to the neighbouring store. Online banking has redefined relationships between bankers and customers. Online trading has created a new platform for the market in securities. Online music has refashioned the radio. Online books have opened up a new universe for the bibliophile. The old-fashioned travel agent has been rendered redundant by web portals which provide everything from restaurants to rest houses, airline tickets to art galleries, museum tickets to music shows. These are but a few of the reasons people access the internet each day of their lives.

Yet every transaction of an individual user and every site that she visits, leaves electronic tracks generally without her knowledge. These electronic tracks contain powerful means of information which provide knowledge of the sort of person that the user is and her interests. Individually, these information silos may seem inconsequential. In aggregation, they disclose the nature of the personality: food habits, language, health, hobbies, sexual preferences, friendships, ways of dress and political affiliation. In aggregation, information provides a picture of the being: of things which matter and those that do not, of things to be disclosed and those best hidden.

xx xx xx

304. Data mining processes together with knowledge discovery can be combined to create facts about individuals. Metadata and the internet of things have the ability to redefine human existence in ways which are yet fully to be perceived. This, as Christina Moniodis states in her illuminating article, results in the creation of new knowledge about individuals; something which even she or he did not possess. This poses serious issues for the Court. In an age of rapidly evolving technology it is impossible for a Judge to conceive of all the possible uses of information or its consequences.”

“... The creation of new knowledge complicates data privacy law as it involves information the individual did not possess and could not disclose, knowingly or otherwise. **In addition, as our State becomes an “information State” through**

increasing reliance on information—such that information is described as the “lifeblood that sustains political, social, and business decisions. It becomes impossible to conceptualize all of the possible uses of information and resulting harms. Such a situation poses a challenge for courts who are effectively asked to anticipate and remedy invisible, evolving harms.” [Christina P. Moniodis, “Moving from Nixon to NASA: Privacy’s Second Strand — A Right to Informational Privacy”, *Yale Journal of Law and Technology* (2012), Vol. 15 (1), at p. 154.] The contemporary age has been aptly regarded as “an era of ubiquitous dataveillance, or the systematic monitoring of citizen’s communications or actions through the use of information technology” [Yvonne McDermott, “Conceptualizing the Right to Data Protection in an Era of Big Data”, *Big Data and Society* (2017), at p. 1.] . It is also an age of “big data” or the collection of data sets. These data sets are capable of being searched; they have linkages with other data sets; and are marked by their exhaustive scope and the permanency of collection. [Id, at pp. 1 and 4.] The challenges which big data poses to privacy interests emanate from State and non-State entities. Users of wearable devices and social media networks may not conceive of themselves as having volunteered data but their activities of use and engagement result in the generation of vast amounts of data about individual lifestyles, choices and preferences. Yvonne McDermott speaks about the quantified self in eloquent terms:

“... The rise in the so-called ‘quantified self’, or the self-tracking of biological, environmental, physical, or behavioural information through tracking devices, Internet-of-things devices, social network data and other means (?Swan.2013) may result in information being gathered not just about the individual user, but about people around them as well. Thus, a solely consent-based model does not entirely ensure the protection of one’s data, especially when data collected for one purpose can be repurposed for another.” [Id, at p. 4.] xx xx xx

328. Informational privacy is a facet of the right to privacy. The dangers to privacy in an age of information can originate not only from the State but from non-State actors as well. We commend to the Union Government the need to examine and put into place a robust regime for data protection. The creation of such a regime requires a careful and sensitive balance between individual interests and legitimate concerns of the State. The legitimate aims of the State would include for instance protecting national security, preventing and investigating crime, encouraging innovation and the spread of knowledge, and preventing the dissipation of social welfare benefits. These are matters of policy to be considered by the Union Government while designing a carefully structured regime for the protection of the data. Since the Union Government has informed the Court that it has constituted a Committee chaired by Hon’ble Shri Justice B.N. Srikrishna, former Judge of this Court, for that purpose, the matter shall be dealt with appropriately by the Union Government having due regard to what has been set out in this judgment.

S.K. Kaul, J.:

585. The growth and development of technology has created new instruments for the possible invasion of privacy by the State, including through surveillance, profiling and data collection and processing. Surveillance is not new, but technology has permitted surveillance in ways that are unimaginable. Edward Snowden shocked the world with his disclosures about global surveillance. States are utilising technology in the most imaginative ways particularly in view of increasing global terrorist attacks and heightened public safety concerns. One such technique being adopted by the States is “profiling”. The European Union Regulation of 2016 [Regulation No. (EU) 2016/679

of the European Parliament and of the Council of 27-4-2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive No. 95/46/EC (General Data Protection Regulation).] on data privacy defines “profiling” as any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements [Regulation No. (EU) 2016/679 of the European Parliament and of the Council of 27-4-2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive No. 95/46/EC (General Data Protection Regulation).] . Such profiling can result in discrimination based on religion, ethnicity and caste. However, “profiling” can also be used to further public interest and for the benefit of national security.

586. *The security environment, not only in our country, but throughout the world makes the safety of persons and the State a matter to be balanced against this right to privacy.*

587. *The capacity of non-State actors to invade the home and privacy has also been enhanced. Technological development has facilitated journalism that is more intrusive than ever before.*

588. *Further, in this digital age, individuals are constantly generating valuable data which can be used by non-State actors to track their moves, choices and preferences. Data is generated not just by active sharing of information, but also passively, with every click on the “world wide web”. We are stated to be creating an equal amount of information every other day, as humanity created from the beginning of recorded history to the year 2003 — enabled by the “world wide web”. [Michael L. Rustad, SannaKulevska, “Reconceptualizing the right to be forgotten to enable transatlantic data flow”, (2015) 28 Harv JL & Tech 349.]*

590. *These digital footprints and extensive data can be analysed computationally to reveal patterns, trends, and associations, especially relating to human behaviour and interactions and hence, is valuable information. This is the age of “big data”. The advancement in technology has created not just new forms of data, but also new methods of analysing the data and has led to the discovery of new uses for data. The algorithms are more effective and the computational power has magnified exponentially. A large number of people would like to keep such search history private, but it rarely remains private, and is collected, sold and analysed for purposes such as targeted advertising. Of course, “big data” can also be used to further public interest. There may be cases where collection and processing of big data is legitimate and proportionate, despite being invasive of privacy otherwise.*

591. *Knowledge about a person gives a power over that person. The personal data collected is capable of effecting representations, influencing decision-making processes and shaping behaviour. It can be used as a tool to exercise control over us like the “big brother” State exercised. This can have a stultifying effect on the expression of dissent and difference of opinion, which no democracy can afford.” (Emphasis supplied)*

28. The Petitioner's Demat Account was suspended by NSDL, not the Respondent Bank, due to non-compliance with Aadhaar-PAN linkage regulations under Section 139AA of the Income Tax Act. As per CBDT Circular No. 7 of 2022 and SEBI's directive, investors were required to link their PAN with Aadhaar by

31.03.2023 to ensure seamless transactions. NSDL reinforced this mandate through its circular dated 21.03.2023, warning that non-compliance would render Demat Accounts inactive. Consequently, NSDL suspended the Petitioner's account via its 30.06.2023 circular, preventing the requested closure and transfer of shares. The Bank informed the Petitioner of this via email on 22.11.2023, clarifying that account reactivation required Aadhaar-PAN linkage per NSDL's prescribed procedure. The Petitioner's challenge primarily revolves around the Aadhaar-PAN linkage mandated under Section 139AA of the Income Tax Act and its impact on Demat account operations.

29. Let us first examine Section 139AA of the Income Tax Act. In light of the Statement of Objects and Reasons, the Supreme Court, in **Binoy Viswam v. Union of India & Ors**⁵, reiterated the legislative intent behind Section 139AA, emphasizing its critical role in curbing the duplication of PAN cards and preventing tax evasion. The Court underscored that the provision was introduced to enhance the integrity of financial transactions and ensure compliance with tax laws by mandating the linkage of Aadhaar with PAN. The relevant excerpts are produced hereinbelow:

“92. On the one hand, enrollment under Aadhaar card is voluntary, however, for the purposes of Income Tax Act, Section 139AA makes it compulsory for the assessee to give Aadhaar number which means insofar as income tax assessee are concerned, they have to necessarily enroll themselves under the Aadhaar Act and obtain Aadhaar number which will be their identification number as that has become the requirement under the Income Tax Act. The contention that since enrollment under Aadhaar Act is voluntary, it cannot be compulsory under the Income Tax Act, cannot be countenanced. As already mentioned above, purpose for enrollment under the Aadhaar Act is to avail benefits of various welfare schemes etc. as stipulated in Section 7 of the Aadhaar Act. Purpose behind Income Tax Act, on the other hand, is entirely different which has already been discussed in detail above. For achieving the said purpose, viz., to curb black money, money laundering and tax evasion etc., if the Parliament chooses to make the provision mandatory under the Income Tax Act, the competence of the Parliament cannot be questioned on the ground that it is impermissible only because under Aadhaar Act, the provision is directory in nature. It is the prerogative of the Parliament to make a particular provision directory in one statute and mandatory/compulsory in other. That by itself cannot be a ground to question the competence of the legislature. After all, Aadhaar Act is not a mother Act. Two laws, i.e., Aadhaar Act, on the one hand, and law in the form of Section 139AA of the Income Tax Act, on the other hand, are two different stand alone provisions/laws and validity of one cannot be examined in the light of provisions of other Acts. In Municipal Corporation of Delhi v. Shiv Shanker, if the objects of two statutory provisions are different and language of each statute is restricted to its own objects or subject, then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface.....

.....

93. In view of the above, we are not impressed by the contention of the petitioners that the two enactments are contradictory with each other. A harmonious reading of the two

⁵ (2017) 7 SCC 59

enactments would clearly suggests that whereas enrollment of Aadhaar is voluntary when it comes to taking benefits of various welfare schemes even if it is presumed that requirement of Section 7 of Aadhaar Act that it is necessary to provide Aadhaar number to avail the benefits of schemes and services, it is upto a person to avail those benefits or not. On the other hand, purpose behind enacting Section 139AA is to check a menace of black money as well as money laundering and also to widen the income tax net so as to cover those persons who are evading the payment of tax.

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105. Unearthing black money or checking money laundering is to be achieved to whatever extent possible. Various measures can be taken in this behalf. If one of the measures is introduction of Aadhaar into the tax regime, it cannot be denounced only because of the reason that the purpose would not be achieved fully. Such kind of menace, which is deep-rooted, needs to be tackled by taking multiple actions and those actions may be initiated at the same time. It is the combined effect of these actions which may yield results and each individual action considered in isolation may not be sufficient. Therefore, rationality of a particular measure cannot be challenged on the ground that it has no nexus with the objective to be achieved. Of course, there is a definite objective. For this purpose alone, individual measure cannot be ridiculed. We have already taken note of the recommendations of SIT on black money headed by Justice M.B. Shah. We have also reproduced the measures suggested by the Committee headed by Chairman, CBDT on “Measures to Tackle Black Money in India and Abroad”. They have, in no uncertain terms, suggested that one singular proof of identity of a person for entering into finance/business transactions, etc. may go a long way in curbing this foul practice. That apart, even if solitary purpose of de-duplication of PAN cards is taken into consideration that may be sufficient to meet the second test of Article 14. It has come on record that 11.35 lakh cases of duplicate PAN or fraudulent PAN cards have already been detected and out of this 10.52 lakh cases pertain to individual assesseees. Seeding of Aadhaar with PAN has certain benefits which have already been enumerated. Furthermore, even when we address the issue of shell companies, fact remains that companies are after all floated by individuals and these individuals have to produce documents to show their identity. It was sought to be argued that persons found with duplicate/bogus PAN cards are hardly 0.4% and, therefore, there was no need to have such a provision. We cannot go by percentage figures. The absolute number of such cases is 10.52 lakhs, which figure, by no means, can be termed as miniscule, to harm the economy and create adverse effect on the nation. The respondents have argued that Aadhaar will ensure that there is no duplication of identity as biometrics will not allow that and, therefore, it may check the growth of shell companies as well.

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119. Whether such a scheme should remain voluntary or it can be made mandatory imposing compulsiveness on the people to be covered by Aadhaar is a different question which shall be addressed at the appropriate stage. At this juncture, it is only emphasized that malafides cannot be attributed to this scheme. In any case, we are concerned with the vires of Section 139AA of the Income Tax Act, 1961 which is a statutory provision. This Court is, thus, dealing with the aspect of judicial review of legislation. Insofar as this provision is concerned, the explanation of the respondents in the counter affidavit, which has already been reproduced above, is that the primary purpose of introducing this provision was to take care of the problem of multiple PAN cards obtained in fictitious names. Such multiple cards in fictitious names are obtained with

the motive of indulging into money laundering, tax evasion, creation and channelising of black money. It is mentioned that in a de-duplication exercises, 11.35 lakhs cases of duplicate PANs/fraudulent PANs have been detected. Out of these, around 10.52 lakhs pertain to individual assesseees. Parliament in its wisdom thought that one PAN to one person can be ensured by adopting Aadhaar for allotment of PAN to individuals. As of today, that is the only method available i.e. by seeding of existing PAN with Aadhaar. It is perceived as the best method, and the only robust method of de-duplication of PAN database. It is claimed by the respondents that the instance of duplicate Aadhaar is almost non-existent. It is also claimed that seeding of PAN with Aadhaar may contribute to widening of the tax base as well, by checking the tax evasions and bringing in to tax hold those persons who are liable to pay tax but deliberately avoid doing so. It would be apposite to quote the following discussion by the Comptroller and Auditor General in its report for the year 2011:

“Widening of Tax Base

The assessee base grew over the last five years from 297.9 lakh taxpayers in 2005-06 to 340.9 lakh taxpayers in 2009-10 at the rate of 14.4 per cent.

The Department has different mechanisms available to enhance the assessee base which include inspection and survey, information sharing with other tax departments and third party information available in annual information returns. Automation also facilitates greater cross linking. Most of these mechanisms are available at the level of assessing officers. The Department needs to holistically harness these mechanisms at macro level to analyse the gaps in the assessee base. Permanent Account Numbers (PANs) issued upto March 2009 and March 2010 were 807.9 lakh and 958 lakh respectively. The returns filled in 2008-09 and 2009-10 were 326.5 lakh and 340.9 lakh respectively. The gap between PANs and the number of returns filed was 617.1 lakh in 2009-10. The Board needs to identify the reasons for the gap and use this information for appropriately enhancing the assessee base. The gap may be due to issuance of duplicate PAN cards and death of some PAN card holders. The Department needs to put in place appropriate controls to weed out the duplicate PANs and also update the position in respect of deceased assessee. It is significant to note that the number of PAN card holders has increased by 117.7 per cent between 2005-06 to 2009-10 whereas the number of returns filed in the same period has increased by 14.4 per cent only.

(emphasis supplied)

.....

121. The respondents have also claimed that linking of Aadhaar with PAN is consistent with India's international obligations and goals. In this behalf, it is pointed out that India has signed the Inter-Governmental Agreement (IGA) with the USA on July 9, 2015, for Improving International Tax Compliance and implementing the Foreign Account Tax Compliance Act (FATCA). India has also signed a multilateral agreement on June 3, 2015, to automatically exchange information based on Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters under the Common Reporting Scheme (CRS), formally referred to as the Standard for Automatic Exchange of Financial Account Information (AEOI). As part of India's commitment under FATCA and CRS, financial sector entities capture the details about the customers using the PAN. In case the PAN or submitted details are found to be incorrect or fictitious, it will create major embarrassment for the country. Under Non-filers Monitoring System (NMS), Income Tax Department identifies non-filers with potential tax liabilities. Data analysis is carried out to identify non-filers about whom specific information was available in CIB data and TDS/TCS Returns. Email/SMS and letters are sent to the

identified non-filers communicating the information summary and seeking to know the submission details of Income tax return. In a large number of cases (more than 10 lac PAN every year) it is seen that the PAN holder neither submits the response and in many cases the letters are return unserved. Field verification by fields formations have found that in a large number of cases, the PAN holder is untraceable. In many cases, the PAN holder mentions that the transaction does not relate to them. There is a need to strengthen PAN by linking it with Aadhaar/biometric information to prevent use of wrong PAN for high value transactions. (Emphasis supplied)

30. In **Puttaswamy** (supra), the Supreme Court acknowledged the judgement of the division bench in **Binoy Viswam** (supra) and upheld the validity of Section 139AA of the Income Tax Act, 1961 by repelling the contention predicated on Articles 14 and 19 of the Constitution of India. The relevant paragraphs are as follows:

“418. In the present case, there is no dispute that first requirement stands satisfied as Section 139AA is a statutory provision and, therefore, there is a backing of law. Mr. Tushar Mehta, learned ASG had argued that not only other two requirements are also satisfied, rather these have been specifically dealt with by the Division Bench in Binoy Viswam inasmuch as these aspects were eluded to, consider, examined and the Court recorded its findings on these aspects. We find force in this submission of Mr. Mehta. Insofar as requirement of ‘legitimate State interest’ is concerned, he pointed out that though Nariman, J. provided for a lenient test, namely, ‘larger public interest’ as against ‘legitimate State interest’, the provision satisfies both the tests. We agree with his submission, as Section 139AA of the Income Tax Act, 1961 seeks to safeguard the following interest:

“To prevent income tax evasion by requiring, through an amendment to the Income Tax Act, that the Aadhaar number be linked with the PAN.”

419. The mandatory requirement of quoting/producing PAN number is given in Rule 114 and the Form 49A. While mandating that “every person”, (the term “person” as defined under Section 2(31) of the Act), shall apply for and get a PAN, the legislature also provided for the requirement so as to how such number will be given to every “person” in Rule 114 of the Income Tax Rules, the relevant part of which is Rule 114(1). While complying with the mandatory requirement (which have been in existence since 1989) and that for all “persons”, many facts were required to be disclosed and such disclosure was/is in public interest including demographic details and biometrics i.e. left thumb impression/signature.

420. The Parliament, considering the “legitimate State interest” as well as the “larger public interest” has now introduced Section 139AA which is only an extension of Section 139A which requires linking of PAN number with Aadhaar number which is issued under the Act for the purpose of eliminating duplicate PANs from the system with the help of a robust technology solution. Therefore, those who have PAN number and have already provided the information required to get PAN number cannot claim to have any legitimate expectation of withholding any data required for Aadhaar under the ground of “privacy”.

421. The respondents have demonstrated with empirical data, in the common additional affidavit of respondent Nos. 1 and 3 the existence of the “legitimate State interest” and “larger public interest”. Being a unique identifier, the problem of bogus or duplicate PANs can be dealt with in a more systematic and full-proof manner (though, in the

context of Articles 14 and 19 of the Constitution, but at the same time, relevant from the perspective of legitimate State interest also)."

31. It is essential to acknowledge that the securities market has historically been misused as a channel for money laundering and tax evasion. Unscrupulous individuals and entities have used layered transactions, shell companies, and offshore accounts to obscure the origins of illicit funds. One of the most common methods has been circular trading, where stocks are bought and sold repeatedly among related parties to artificially inflate prices and create a facade of legitimate gains. This practice allows black money to be converted into white through capital gains exemptions, often at the expense of market integrity and government revenue.

32. Additionally, the anonymity afforded by multiple (read: fake) PAN cards and unverified accounts has further facilitated tax evasion. Fraudulent market participants have used benami Demat accounts to conduct high-value transactions while avoiding taxation. The lack of robust verification mechanisms in the past enabled individuals to hold multiple PAN cards, which allowed them to siphon money through the stock market without detection. As a result, tax authorities often faced significant hurdles in tracing taxable income and enforcing financial transparency.

33. Recognizing these loopholes, the government introduced the mandatory linkage of PAN with Aadhaar under Section 139AA of the Income Tax Act. This measure aims to eliminate duplicate and fraudulent PANs, ensuring that every financial transaction is traceable to a verifiable individual. By linking Aadhaar, a unique biometric-based identity, with PAN, the authorities can effectively track income, detect discrepancies, and curb tax evasion within the securities market. This move enhances accountability, strengthens anti-money laundering efforts, and reinforces the credibility of India's financial system. The linkage requirement, coupled with strict enforcement by regulatory bodies like SEBI and NSDL, ensures that Demat accounts remain a legitimate channel for investment rather than a tool for illicit financial activities.

34. The mandatory linking of Aadhaar with PAN and Demat accounts under Section 139AA of the Income Tax Act aligns with the constitutional principles laid down in **Puttaswamy** and its triple test: legality, necessity, and proportionality. Section 139AA satisfies this test as it is backed by a valid legislative mandate, serves a legitimate state interest, and imposes only a proportionate restriction on privacy.

35. Further, it meets the legality requirement as it is a statutory provision enacted through the Finance Act, 2017, and reinforced by CBDT, SEBI, and NSDL regulations. The necessity of this measure lies in its objective to curb tax evasion, eliminate fraudulent PANs, and enhance financial transparency, particularly given the historical misuse of Demat accounts for money laundering. As for proportionality, Aadhaar is already a widely accepted authentication tool, and

linking it with PAN does not impose an excessive burden on individuals. While data security concerns exist, the state's compelling interest in preventing financial fraud and tax evasion justifies this limited restriction on privacy, especially with safeguards like encryption and data protection protocols in place.

36. Therefore, even though the Aadhaar-PAN linkage does not guarantee absolute privacy, it does not amount to an unconstitutional infringement of fundamental rights. The measure is a reasonable restriction in furtherance of public interest, ensuring that financial transactions remain transparent and that the securities market is not misused for illicit purposes. As long as adequate security measures are in place to protect Aadhaar data, the linkage requirement remains a constitutionally valid and proportionate policy aimed at strengthening the financial ecosystem.

37. Be that as it may, the concern of the petitioner is also a genuine one. In recent years, India's middle class has increasingly embraced the securities market, mutual funds, and various investment avenues as a means to grow their wealth. This shift has been actively encouraged by the Government and financial institutions, which have vigorously advertised investment opportunities, urging people to move beyond traditional savings methods. Campaigns promoting Systematic Investment Plans (SIPs), Equity-linked Savings Schemes (ELSS), and other financial instruments have led to a significant rise in retail participation in the stock market. Digital investment platforms and Government-backed schemes like the PM Jan Dhan Yojana and Sovereign Gold Bonds have further facilitated this transition, making investments more accessible to the common citizen.

38. However, as more people invest their hard-earned money in these financial markets and instruments, concerns about privacy and security have also surfaced. Investors are now questioning how their financial data is handled, who has access to their transaction details, and what measures are in place to protect them from potential breaches or misuse. With increased digital transactions and mandatory KYC (Know Your Customer) norms, people rightfully demand transparency and accountability regarding their financial privacy. It is no longer acceptable for regulators, banks, or the government to turn a deaf ear to these concerns. If investment is to be encouraged, the trust of the people must be earned by ensuring stringent data protection laws, secure investment channels, and a commitment to safeguarding investor rights in a rapidly evolving financial landscape.

39. While the Aadhaar framework was introduced as a robust and unique identification system to streamline financial transactions and curb fraud, concerns regarding its security persist. Reports of Aadhaar data leaks and unauthorized access have surfaced repeatedly, raising serious questions about the safety of sensitive personal information. Incidents where Aadhaar details, including biometric data, have been exposed due to inadequate cybersecurity measures have fueled public apprehension. Given that Aadhaar is now a mandatory requirement for linking with

PAN and Demat accounts, the potential risk of financial fraud and identity theft has become a significant concern for investors and account holders.

40. The fear among individuals mandated to link their Aadhaar with PAN and Demat accounts is not unfounded. Any vulnerability in the Aadhaar database can lead to misuse of personal and financial information, with grave consequences such as unauthorized access to bank accounts, cloning of identities, and financial fraud. The very system designed to prevent tax evasion and money laundering may inadvertently expose people to new risks if adequate safeguards are not in place. As financial institutions and regulatory bodies increasingly rely on Aadhaar for verification, the risks associated with a compromised database could have far-reaching consequences for the economy and public trust in digital governance.

41. Thus, the need of the hour is to strengthen the security framework of Aadhaar by implementing state-of-the-art encryption, multi-layered authentication protocols, and stringent access controls. The government must prioritize cyber security measures, conduct regular audits, and ensure that data protection laws are rigorously enforced. Transparency in addressing data breaches, along with proactive steps to fortify the Aadhaar infrastructure, is essential to instill confidence in the system. Without these measures, the very objective of Aadhaar-PAN linkage i.e. to ensure financial transparency and curb fraud, may be undermined by the risk of data breaches and privacy violations.

V. CONCLUSION:

42. In view of the above and for the reasons stated above, the impugned provision mandating Aadhaar-PAN linkage for Demat accounts stands on firm constitutional and legal footing. It satisfies the triple test established in *Puttaswamy* (supra), serving a legitimate state interest in curbing tax evasion and ensuring financial transparency.

43. While concerns regarding data security and privacy are acknowledged, they do not outweigh the compelling need for regulatory oversight in the securities market. Adequate safeguards have been implemented to mitigate risks, and the measure remains a proportionate and reasonable restriction on privacy. Therefore, the provision does not warrant interference by this Court.

44. The present Writ Petition is, accordingly, disposed of.

45. Interim order, if any, passed earlier stands vacated.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Writ Petition disposed of.

2025 (I) ILR-CUT-1168

**KRUSHNA CHANDRA SWAIN
V.
THE COMMISSIONER-CUM-SECRETARY,
FOOD SUPPLY & CONSUMER WELFARE DEPARTMENT,
GOVERNMENT OF ODISHA & ORS.**

[W.P.(C) NO. 8419 OF 2024]

14 FEBRUARY 2025

[Dr. S.K. PANIGRAHI, J.]

Issue for Consideration

Whether mere continuation in an *ad hoc* capacity confers an enforceable right to regularization.

Headnotes

SERVICE JURISPRUDENCE – Regularization – The petitioner seeks regularization of the service of his sister-in-law, despite her engagement on an *ad hoc* basis – Whether mere continuation in an *ad hoc* capacity confers an enforceable right to regularization.

Held: No – Regularization is not an automatic consequence of prolonged service but is contingent upon compliance with prescribed rules, policies, and the availability of sanctioned posts – The petitioner has not demonstrated that Late Geetarani Swain was appointed through a duly sanctioned process or that she met the requisite criteria for regularization.

(Para 12)

This Court is not inclined to grant the relief sought for regularization of the services of Late Geetarani Swain – The process of regularization involves an administrative determination based on policy considerations, service requirements, and statutory compliance, which fall within the exclusive domain of the executive – The Court cannot direct regularization in contravention of settled principles of law, particularly in cases where the engagement was *ad hoc* and not pursuant to a regular selection process – Any relief in such matters must emanate from executive policy decisions rather than judicial directives.

(Para 15)

Citations References

Satya Charan Dutta v. Urmilla Sundari Dassi & Ors., **1970 AIR 1714**; State of Karnataka v. Umadevi (3), **(2006) 4 SCC 1**; Indian Drugs and Pharmaceuticals Ltd. v. Workmen, **(2007) 1 SCC 408**; Union of India v. Ilmo Devi, **(2021) 20 SCC 290**; State of Rajasthan v. Daya Lal, **(2011) 2 SCC 429** – referred to.

Keywords

Regularization of service; *Ad hoc* employee; No work No pay; Sanctioned Post; Policy decision; Administrative determination.

Appearances for Parties

For Petitioner : Mr. Ashok Kumar Behera

For Opp. Parties : Mr. Sonak Mishra, ASC
Mr. Samir Kumar Mishra, Sr. Adv &
Mr. J. Pradhan for O.Ps. 2 & 3

Judgment/Order

Judgment

Dr. S.K. PANIGRAHI, J.

1. The Petitioner, in the present Writ Petition, is challenging the action of the Opposite Parties in not considering the regularization of service of his deceased sister-in-law, Late Geetarani Swain, along with all consequential financial benefits.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

(i) The petitioner's brother, Late Basudeba Swain, was appointed as an Inspector of Civil Supply under the Odisha State Civil Supply Corporation Ltd. (OSCSC Ltd.) in 1987. He served in this capacity until his demise in a road accident on 04.11.1995 while commuting to his office.

(ii) Following the demise of the petitioner's brother, the petitioner's sister-in-law, Late Geetarani Swain, was nominated by her family and subsequently appointed as a 'Kantawala' in the office of the Civil Supply Officer, Karanjia under the District Manager, Odisha State Civil Supply Corporation Ltd, Mayurbhanj, on 05.12.1997. She continued in service until her passing on 04.04.2012 due to cardiac arrest.

(iii) After her demise, the petitioner's mother, also the mother-in-law of Late Geetarani Swain, submitted a composite claim before the Employees' Provident Fund Commissioner for the disbursement of all service-related death benefits.

(iv) The claim was delayed due to difficulties in obtaining service records and other necessary documents. Meanwhile, the family facing financial distress, the petitioner's mother approached this Court by filing W.P.(C) No. 7937/2023.

(v) In an earlier round, while disposing of W.P.(C) No.7937/2023, this Court, vide order dated 24.03.2023, directed the Provident Fund Commissioner to consider and dispose of the representation within two months.

(vi) As the Provident Fund Commissioner failed to comply within the stipulated period, the petitioner's mother filed a contempt petition, CONTC No. 6256/2023. Disposing of the contempt petition, this Court, by order dated 02.09.2023, reiterated its earlier direction and directed the filing of a compliance report within two months.

(vii) Despite these directions, compliance was not ensured. Meanwhile, the petitioner's mother, who had pursued both the writ and contempt petitions, passed away on

11.10.2023. Consequently, the petitioner, as her legal heir, filed a second contempt petition, being CONTC No. 9713/2023, which remains pending adjudication.

(vii) In the interim, the General Manager (Admin.), OSCSC Ltd., through letter No. 17067 dated 18.11.2023, instructed all District Managers of OSCSC Ltd. to collect undertakings from 'Until Further Order' employees in the prescribed format for the extension of financial benefits in lieu of regularization.

(vii) Upon receiving intimation from the District Manager, the petitioner submitted his undertaking in the prescribed format along with a representation dated 21.11.2023. Additionally, his mother had earlier submitted representations dated 15.09.2021 and 25.10.2021 during her lifetime.

(viii) Following the submission of undertakings, a list of 111 Until Further Order employees from across Odisha was published for the extension of financial benefits in lieu of regularization.

(ix) While all other enlisted Until Further Order employees have received financial benefits, but the petitioner has not. Aggrieved by this, the petitioner has been constrained to seek the intervention of this Court.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:

(i) The petitioner contended that the service of his deceased sister-in-law must be regularized by the Opposite Parties, similar to the other Until Further Order employees.

(ii) The petitioner submitted that despite submitting an undertaking dated 21.11.2023 in the prescribed format in compliance with the intimation received from the District Manager, he has not been granted the benefits of regularization of service of his deceased sister-in-law along with consequential financial benefits, whereas other Until Further Order employees have received the same.

(iii) The petitioner asserted that as the only surviving legal heir, he is entitled to receive such financial benefits after the death of his mother, Late Jhulani Swain, who, during her lifetime, had approached the Opposite Parties for all service benefits. He has the necessary locus standi to claim the same.

(iv) The petitioner contended that the Opposite Parties have failed to take any action on his representation. Despite seeking information regarding the final order and the status of his representation under an application under the Right to Information Act, the authorities have unjustifiably denied supplying the same.

(v) The petitioner submitted that he has been verbally denied the benefits on the ground that his mother, who was eligible to receive them, has since passed away. Such denial is arbitrary and unjust.

(vi) The petitioner asserted that any service benefits due to his deceased sister-in-law were rightfully claimable by his mother. Upon her demise, the petitioner, as a Class-II legal heir of the deceased employee, is entitled to receive the same in accordance with the settled position of law as laid down by the Supreme Court in *Satya Charan Dutta v. Urmilla Sundari Dassi & Ors.*¹

¹ 1970 AIR 1714.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. The Learned Counsel for the Opposite Parties earnestly made the following submissions in support of his contentions:

(i) The petitioner lacks locus standi to file the present Writ Petition, as he is neither a legal heir of the deceased employee nor an employee of the Corporation.

(ii) The relief sought by the petitioner is misconceived, as the service of the deceased employee, Late Geetarani Swain, was never regularized during her lifetime. She was merely upgraded to *ad-hoc* status w.e.f. 01.04.2012 until her demise on 03.04.2012, as per Corporation Head Office Order No. 24070 dated 27.12.2012. The available records indicate that neither Until Further Order benefits nor any extended financial benefits were granted to her. Further, no salary was drawn by her after December 2011, and her absence from duty was treated under the *No Work, No Pay* principle.

(iii) After the demise of Late Geetarani Swain, her mother-in-law, Late Jhulani Swain, had submitted the requisite documents, including the death certificate and legal heir certificate, to the District Office, Mayurbhanj, for payment of death benefits. The composite claim form, along with supporting documents, was forwarded to the Provident Fund Commissioner, Keonjhar, vide letter No. 2413 dated 29.08.2022. Necessary clarifications were subsequently provided vide letters No. 1027 dated 02.05.2023 and No. 1057 dated 04.05.2023, as per the requirements of the EPFO Enforcement Officer, Keonjhar. The present writ petition suffers from non-joinder of necessary parties, as the petitioner has failed to implead the Provident Fund Commissioner, Keonjhar, as an Opposite Party.

(iv) As per the legal heir certificate dated 05.12.1995, issued by the Tahasildar, Kujang, in Misc. Case No. 5315/95, Late Geetarani Swain was the sole legal heir of Late Basudev Swain. Neither the name of Late Jhulani Swain nor the name of the present petitioner appears in the said legal heir certificate.

(v) Late Jhulani Swain had claimed in W.P.(C) No. 7937 of 2023 that she was the sole legal heir of Late Geetarani Swain. The legal heir certificate furnished in the said writ petition did not include the present petitioner.

(vi) An Office Letter No. 170 dated 18.11.2023, which enclosed a tentative list of employees engaged after 12.12.1995, was issued to all District Managers of OSCSC Ltd. for the purpose of obtaining undertakings from enlisted persons. However, the inclusion of an employee's name in the said list does not amount to an acknowledgment of entitlement to prescribed service benefits for a deceased individual. Subsequent to this, an Office Order No. 18801 dated 20.12.2023 was issued, communicating the Board's decision to extend service benefits to 124 employees who had submitted undertakings in pursuance of Letter No. 17067 dated 18.11.2023. Since the present petitioner is neither the legal heir of Late Geetarani Swain nor was the deceased employee upgraded to UFO status, his claim is baseless and devoid of merit.

(vii) A Contempt Petition No. 6256 of 2023 (arising out of W.P.(C) No. 7937 of 2023) was filed by Late Jhulani Swain against the Provident Fund Commissioner, seeking initiation of contempt proceedings for non-compliance with the order dated 24.03.2023. The said contempt petition was disposed of by this Court on 02.09.2023, directing compliance with the order dated 24.03.2023. Subsequently, the present petitioner filed a second Contempt Petition (No. 9713 of 2023), through which the Corporation came to know that Late Jhulani Swain had expired on 11.10.2023. The present petitioner, claiming to be her sole legal heir, filed the said contempt petition for the payment of

death claims of Late Geetarani Swain. However, the order dated 24.03.2023 had been passed in favor of Late Jhulani Swain, who had initiated W.P.(C) No. 7937 of 2023 in her capacity as the legal heir of her daughter-in-law. The legal heir certificate furnished in the said writ petition establishes that Late Jhulani Swain was the sole legal heir of Late Geetarani Swain. Consequently, the present claim is barred by constructive res judicata.

(viii) During her service period, Late Geetarani Swain was paid all her dues, and her death claim is to be disbursed by the Provident Fund Commissioner, Keonjhar, as per the directions of this Court. The present writ petition, seeking financial benefits on the basis of alleged regularization, is misconceived, as the deceased employee was never regularized during her tenure.

IV. COURT'S REASONING AND ANALYSIS:

5. Heard the learned counsel for the Parties and perused the materials placed on record.

6. It is a well-settled principle of law that regularization of service cannot be granted arbitrarily or in contravention of the governing rules and regulations. Further, a contractual employee has no vested right to regularization. Mere continuation in service in an ad hoc appointment does not confer an enforceable right of regularization.

7. In *State of Karnataka v. Umadevi* (3)², the Supreme Court observed that:

"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

8. The Supreme Court has consistently reiterated this position. In *Indian Drugs and Pharmaceuticals Ltd. v. Workmen*³, it was observed:

"34. Thus it is well settled that there is no right vested in any daily wager to seek regularization. Regularization can only be done in accordance with the rules and not de hors the rules. In the case of E. Ramakrishnan & others vs. State of Kerala & others 1996 (10) SCC 565 this Court held that there can be no regularization de hors the rules. The same view was taken in Dr. Kishore vs. State of Maharashtra 1997(3) SCC 209, Union of India & others vs. Bishambar Dutt 1996 (11) SCC 341. The direction issued by

² (2006) 4 SCC 1

³ (2007) 1 SCC 408

the services tribunal for regularizing the services of persons who had not been appointed on regular basis in accordance with the rules was set aside although the petitioner had been working regularly for a long time.”

9. In **Union of India v. Ilmo Devi**⁴, the Supreme Court further emphasized the limitations of judicial interference in matters of administrative discretion, holding that:

“13. ...The High Court cannot, in exercise of the power under Article 226, issue a Mandamus to direct the Department to sanction and create the posts. The High Court, in exercise of the powers under Article 226 of the Constitution, also cannot direct the Government and/or Department to formulate a particular regularization policy. Framing of any scheme is no function of the Court and is the sole prerogative of the Government. Even the creation and/or sanction of the posts is also the sole prerogative of the Government and the High Court, in exercise of the power under Article 226 of the Constitution, cannot issue Mandamus and/or direct to create and sanction the posts.”

10. The proposition that inclusion in a list of eligible candidates does not confer an automatic right to regularization is well recognized in law. Such inclusion merely signifies eligibility for consideration and does not create an enforceable entitlement. The discretion to regularize vests solely with the executive, subject to compliance with constitutional and statutory norms.

11. In **State of Rajasthan v. Daya Lal**⁵, the Supreme Court observed that while exercising jurisdiction under Article 226 of the Constitution, should not direct regularization unless the employees in question were appointed through a regular recruitment process, adhering to relevant rules, and against sanctioned vacant posts. In this regard, it was observed:

“12. ...High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized...”

12. In the present case, the petitioner seeks regularization of the service of his sister-in-law, Late Geetarani Swain, despite her engagement on an ad hoc basis. It is a well-established principle of service jurisprudence that mere continuation in an ad hoc capacity does not confer an enforceable right to regularization. Regularization is not an automatic consequence of prolonged service but is contingent upon compliance with prescribed rules, policies, and the availability of sanctioned posts.

⁴ (2021) 20 SCC 290

⁵ (2011) 2 SCC 429

The petitioner has not demonstrated that Late Geetarani Swain was appointed through a duly sanctioned process or that she met the requisite criteria for regularization.

13. Furthermore, the issue under consideration is materially distinguishable from cases concerning grant of death benefits, where considerations of social welfare and compassionate appointments apply. However, the present case does not involve such considerations. Instead, it pertains to regularization,, which is governed by settled principles of service jurisprudence and does not fall within the scope of discretionary judicial intervention. Interference in such matters would amount to judicial overreach into the exclusive domain of the executive.

14. Additionally, the records indicate that Late Geetarani Swain had not drawn any salary after December 2011, and her absence from duty was treated under the principle of 'No Work, No Pay.' The application of this principle underscores the fact that financial entitlements arise from actual service rendered and that an employee who has not performed duties during a specific period, hence, cannot claim salary or service-related benefits for that duration. In light of this, no financial benefits can accrue to her estate on account of the alleged regularization, as she was neither in receipt of salary at the time of her demise nor had her services been regularized.

15. Given the legal position discussed hereinabove, this Court is not inclined to grant the relief sought for regularization of the services of Late Geetarani Swain. The process of regularization involves an administrative determination based on policy considerations, service requirements, and statutory compliance, which fall within the exclusive domain of the executive. The Court cannot direct regularization in contravention of settled principles of law, particularly in cases where the engagement was ad hoc and not pursuant to a regular selection process. Any relief in such matters must emanate from executive policy decisions rather than judicial directives.

V. CONCLUSION

16. In light of the foregoing, this Court finds no ground to intervene or issue a direction for regularization. The Petitioner has failed to establish any legal entitlement, as Late Geetarani Swain's engagement was purely on an ad hoc basis and did not confer any vested right to regularization.

17. Accordingly, this Writ Petition is **dismissed**.

18. Interim order, if any, passed earlier stands vacated.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Writ Petition dismissed.

2025 (I) ILR-CUT-1175

**NIRANJAN SAHOO @ BABUNI
V.****STATE OF ODISHA**

[BLAPL NO. 4991 OF 2024]

13 MARCH 2025

[Dr. S.K. PANIGRAHI, J.]**Issue for Consideration**

What are the relevant factors the Court should consider while granting bail to an accused?

Headnotes

CODE OF CRIMINAL PROCEDURE, 1973 – Section 439 – Bail – Offence under Section 302 of Indian Penal Code, 1860 – What are the relevant factors the Court should consider while granting bail to an accused?

Held: The grant of bail in cases involving serious offenses such as Section 302 IPC requires a judicious and cautious approach – The nature of the allegations, gravity of the offense, severity of punishment, and prima facie involvement of the accused must all be carefully weighed before granting such relief – The Courts must remain vigilant against any decision that may inadvertently undermine the administration of justice or allow interference with the investigation. (Para 11)

Citations References

Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496; Anil Kumar Yadav v. State (NCT of Delhi), 1991 Supp (2) SCC 133– referred to.

List of Acts

Code of Criminal Procedure, 1973.

Keywords

Bail; Nature of allegations; Gravity of offence; Severity of punishment; *Prima facie* involvement of the accused.

Case Arising From

G.R. Case No.73 of 2024 arising out of Dhamnagar P.S. Case No.45 of 2024 pending in the Court of the learned J.M.F.C., Dhamnagar.

Appearances for Parties

For Petitioner : Mr. Biplab Kumar Dash

For Opp. Party : Ms. Gayatri Patra, ASC

Judgment/Order**Judgment**

Dr. S.K. PANIGRAHI, J.

F.I.R. No.	Dated	Police Station	Case No. and Courts' Name	Sections
0045	24.01.2024		G.R. Case No.73 of 2024 arising out of Dhamnagar P.S. Case No.45 of 2024 pending in the court of the learned J.M.F.C.,Dhamnagar.	Section 302 of the I.P.C.

1. This matter is taken up through hybrid arrangement.
2. The Petitioner, who is in custody in connection with Dhamnagar P.S. Case No.45 of 2024, corresponding to G.R. Case No. 73 of 2024, pending in the court of the learned J.M.F.C., Dhamnagar and registered for the alleged commission of offence under Section 302 of the I.P.C., has filed this petition seeking for his release on bail.
3. The facts, as disclosed in the First Information Report, reveal that on January 24, 2024, at 9:56 A.M., the complainant, Sudarsan Parida, approached Dhamnagar Police Station with a written report. He stated that on January 4, 2024, he had admitted his younger brother, Kedar Parida/ to the “Bastav Nisha Nibarana Center” for treatment. However/ on January 23, 2024, at approximately 5:00 P.M., he received a phone call from the center informing him that his brother was unwell. Shortly thereafter/ he was informed of his brother’s demise. Distressed by this news, the complainant, accompanied by other villagers, rushed to the center, where they found Kedar Parida deceased. Based on their observations and suspicions, they alleged that physical torture and severe assault inflicted at the center had caused Kedar Parida’s death, leading to the initiation of these proceedings.
4. Learned counsel for the petitioner contended that the petitioner, serving as a caretaker at the “Bastav Nisha Nibarana Kendra” has been falsely implicated and has no connection with the alleged offense. It was asserted that the center adhered to all requisite legal and technical standards for the de-addiction treatment provided to the complainant’s brother. Counsel further highlighted that the post-mortem report concluded that the deceased had succumbed to a “myocardial infarction” negating allegations of foul play. The petitioner/ who has been in custody since January 24, 2024, argues that with the charge sheet already filed, there is no justification for his continued detention. On these grounds, the petitioner seeks to be released on bail.
5. Learned counsel for the State, opposing the petitioner’s plea for bail with vigor, submitted that the mere filing of the charge sheet does not constitute a material change in circumstances warranting such relief. It was argued that the inquest report, FIR, post-mortem findings, seizure lists, statements of witnesses recorded under Section 164 of the Cr.P.C., and other relevant materials on record unequivocally point to the petitioner’s unprofessional conduct as the caretaker of the center. Counsel further contended that the injuries observed on the deceased’s body could have precipitated a myocardial infarction or heart attack due to the severe pain inflicted. In light of these considerations, the State urged the Court to reject the petitioner’s bail application.
6. Heard Learned Counsel for the parties and perused the documents placed before the Court.

7. The determination of whether a case warrants the grant of bail requires a careful balancing of multiple factors, including the nature of the offense, the severity of the prescribed punishment, and a prima facie assessment of the accused's involvement. There exists no rigid or inflexible formula for courts to apply when deciding bail applications; rather, each case must be assessed on its own merits. At the stage of considering bail, the court is not expected to conduct a detailed evaluation of the evidence to establish the guilt of the accused beyond reasonable doubt as that remains the domain of trial. However, the court must examine whether prima facie or reasonable grounds exist to believe that the accused has committed the offense and, upon weighing all relevant considerations, whether the continued custody of the accused advances the interests of the criminal justice system.

8. Furthermore, when bail has been denied by a lower court, an appellate court must exercise restraint in interfering with such an order and must be guided by well established principles governing the power to set aside bail.

9. The principles governing this Court's assessment of the correctness of an order granting bail by the High Court were succinctly articulated in **Prasanta Kumar Sarkar v. Ashis Chatterjee**¹. In that case, the accused was facing trial for an offense punishable under Section 302 of the Indian Penal Code. Despite multiple bail applications being dismissed by the Additional Chief Judicial Magistrate, the High Court subsequently allowed the bail application. In setting aside the order of the High Court, the Supreme Court, delivering the judgment for a two-judge Bench of the Court, expounded on the legal principles and held as follows:

"9. ...It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.*

...

12. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal..."

¹ (2010) 14 SCC 496.

10. Likewise, such view was also resonated by the Supreme Court in the case of **Anil Kumar Yadav v. State (NCT of Delhi)**² wherein it was held as follows:

“While granting bail, the relevant considerations are: (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard and fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court.”

11. The abovementioned precedents make it amply clear that the grant of bail in cases involving serious offenses such as Section 302 IPC requires a judicious and cautious approach. The nature of the allegations, gravity of the offense, severity of punishment, and prima facie involvement of the accused must all be carefully weighed before granting such relief. The courts must remain vigilant against any decision that may inadvertently undermine the administration of justice or allow interference with the investigation.

12. Rehabilitation centers are meant to be places of care and renewal, but too often, they become sites of quiet suffering. Behind closed doors, where patients seek refuge from addiction, there is sometimes neglect, coercion, and even violence. The line between discipline and abuse blurs. The vulnerable, already struggling with dependency, find themselves subjected to harsh treatment under the guise of therapy. Walls meant to protect instead confine, stripping them of dignity. What should be a path to recovery instead becomes a place where silence hides cruelty, and pain is mistaken for progress.

13. This case brings these concerns into sharp focus. The deceased was admitted to *Bastav Nisha Nibarana Kendra* with the hope of reclaiming his life but did not leave the facility alive. The allegations go beyond negligence and suggest mistreatment. While the post mortem report attributes the cause of death to a myocardial infarction, the presence of multiple injuries cannot be ignored. The circumstances surrounding his death raise serious concerns about the conditions within the center and whether the treatment he received contributed to his suffering rather than his recovery.

14. Given the seriousness of the offense, the prima facie involvement of the Petitioner, and the stage of the proceedings, this Court finds no justification for interfering with the order rejecting bail. Accordingly, the present bail application stands dismissed.

Accordingly, this BLAPL stands dismissed.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

BLAPL dismissed.

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² 1991 Supp (2) SCC 133.

2025 (I) ILR-CUT-1179

RADHA KRUSHNA PADHY
V.
ADDITIONAL DISTRICT MAGISTRATE, RAYAGADA & ANR.

[W.P.(C) NO. 18025 OF 2008]

17 MARCH 2025

[R.K. PATTANAIK, J.]

Issues for Consideration

1. Whether a married daughter should be considered as family as per the definition provided under section 37(b) of the Orissa Land Reforms Act, 1960 (OLR Act).
2. Whether the land gifted in favour of a married daughter in 1995 was to be considered as part of the ceiling surplus in a *suo motu* proceeding under the OLR Act, which was initiated in the year 2002.

Headnotes

(A) ORISSA LAND REFORMS ACT, 1960 – Section 37(b) – Family – Petitioner submitted that the authority has not considered the married daughter as family U/s. 37 (b) of the Act, for which the order is legally not tenable – Whether the married daughter should be considered as family as per the definition of Section 37 (b) of the OLR Act.

Held: No – When the Legislature specifically intended to exclude a major married son, who had separated by partition or otherwise before the appointed date, there would be no justification for not giving the same privilege or benefit to a married daughter, who by virtue of her marriage stands at a more distant place than a separated son on partition from the joint family and at last, concluded that a harmonious construction being the essence of the rule of interpretation, a daughter, who is already married by the appointed date would not come under the definition of “family”. (Para 8)

(B) ORISSA LAND REFORMS ACT, 1960 r/w OLR (Amendment) Act, 1973 – Section 52 – Cut-off date – Petitioner pleaded that the land measuring Ac.4.90 decimals which was gifted to the daughter of the petitioner at the time of her marriage, needs to be excluded while determining the ceiling area – Whether the land gifted in favour of the married daughter in 1995 is to be considered as a part of the ceiling surplus in a *suo motu* proceeding under OLR Act, which was initiated in 2002.

Held: No – The *suo motu* proceeding under the OLR Act was initiated in 2002 and by then, the petitioner had already disposed of Ac.4.9 decimals of

land in favour of the married daughter in 1995 and therefore, in view of the provisions of the Act and for the purpose of the proceeding under Section 52, he is to be so held liable on account of acquisitions or deemed date of subsequent acquisitions – On a sincere reading of the law in place, irrespective of the reasons for the suo motu ceiling proceeding against the petitioner, according to the Court, for all intents and purposes, the cut-off date shall have to be held from the date of such subsequent acquisitions and obviously the same is to exclude the transfer of Ac.4.90 decimals of land in favour of the petitioner's daughter in 1995 and hence, is not referable to the cut-off date i.e. 26th September, 1970. (Para 9)

Citations References

Anusuya Rath and another Vrs. State of Orissa and another, **AIR 1989 Ori 11**; Maharani Bewa Vrs State of Orissa through the Sub-Divisional Officer, Athmallik and others, **(1985) 60 CLT 55**; Srimati Dei Vrs. Revenue Officer-cum-Tahasildar, Dharamgarh and others, **OJC No.2553 of 1981 and disposed of on 5th July, 1983**; Kashinath Panda and others Vrs. State of Orissa and others, **84 (1997) CLT 676**; Premananda Moher Vrs. Revenue Officer-cum-Additional Tahasildar, Bargarh and others, **AIR 1982 Ori 77 – referred to.**

List of Acts

Orissa Land Reforms Act, 1960; Orissa Land Reforms (Amendment) Act, 1973.

Keywords

Cut-off date; Family; Married daughter; Gifted property; Ceiling surplus land; Suo motu proceeding; Determination of ceiling area.

Case Arising From

Order dated 17th October, 2008 passed in connection with OLR Revision Case No.01 of 2007.

Appearances for Parties

For Petitioner : Mr. J.R. Dash
For Opp. Parties : Mr. B. Nayak, AGA

Judgment/Order

Judgment

R.K. PATTANAİK, J.

1. Instant writ petition is filed by the petitioner assailing the impugned order dated 17th October, 2008 passed in connection with OLR Revision Case No.01 of 2007 on the grounds inter alia that the same is legally not tenable and hence, therefore, liable to be interfered with and set aside.

2. By the impugned order in revision, the decision in OLR Ceiling Case No.06 of 2002 and order dated 4th June, 2007 in OLR Appeal No.01 of 2006 have been set aside. In fact, a proceeding under Section 52 of the Orissa Land Reforms Act, 1960 (herein after referred as to 'the OLR Act') was initiated against the petitioner vide OLR Ceiling Case No.06 of 2002 for being in possession of ceiling surplus land out of Ac.22.18 decimals and in that connection, notice was issued and served on him, whereafter, he filed objection by claiming that the family consists of six members, hence, entitled to retain 12 standard acres of land and the case land not to have been irrigated one and yet was declared Class II land and in such proceeding, he was allowed to retain 15 acres of land accepting the family consisting of five members declaring the balance Ac.7.18 decimals of land as ceiling surplus. Against the decision of the Revenue Officer-cum-Additional Tahasildar, Gunupur in the ceiling proceeding, the petitioner approached learned Sub-Collector, Gunupur in OLR Appeal Case No.04 of 2003 and the same was disposed of by order dated 21st June, 2003 with a remand, later to which, enquiry was held as per the directions issued in the appeal and ultimately, by order dated 14th September, 2004, it was held and concluded that the petitioner has no other land at Padampur except a pucca house and after exclusion of Ac.4.90 decimals, thereby, declaring Ac.2.28 decimals as ceiling surplus and confirming the draft statement. As further made to appear, the petitioner thereafter, filed OLR Appeal No.01 of 2005 and the same was disposed of by order dated 4th June, 2007 upholding the order of the learned court below with a conclusion that the petitioner has five family members and the married daughter was to be excluded from the family as she received a separate share by way of a gift. Against the aforesaid decision, the petitioner preferred OLR Revision Case No. 01 of 2007 and it was disposed of on 17th October, 2008 with the decisions of lower courts below being set aside concluding that the petitioner to be in possession of ceiling surplus land of Ac.7.18 decimals inclusive of the land measuring Ac.4.90 decimals gifted to the daughter in the year 1995 subsequent to the cut-off date i.e. 26th September, 1970 and as per the size of the family, the petitioner is entitled to retain 10 standard acres i.e. 15 acres of land. The said decision is under challenge at the behest of the petitioner.

3. Heard Mr. Dash, learned counsel for the petitioner and Mr. Nayak, learned AGA for the State.

4. The question is, whether, the decision by order dated 17th October, 2008 under Annexure-2 is in accordance with law?

5. Before considering the plea of the petitioner vis-à-vis ceiling surplus land to be declared in a proceeding under Section 52 of the OLR Act, the Court is inclined to refer to the relevant provisions of law applicable to the case. As per Section 52 of the OLR Act, the ceiling surplus is in respect of future acquisitions and the provisions of the Act to apply mutatis and mutandis, where, lands have been acquired and held subsequent to the commencement of the Odisha Land Reforms (Amendment) Act, 1973 by any person through inheritance, gift, family settlement, purchase, lease or otherwise. The definition of "ceilings area" as per Section 37-A of the OLR Act is in respect of a person to be having 10 standard acres where he has a family consisting of more than five members,

but the same shall be increased by 2 standard acres per each member in excess of five, however, the ceiling area shall not exceed 18 standard acres. The family, as occurring in Section 37-A of the OLR Act, has a definition in Section 37(b) thereof which means, an individual, the husband or wife, as the case may be, of such individual and their children, whether, major or minor but does not include a major married son, who had separated by partition or otherwise before 26th September, 1970. The principles which is applied in the determination of ceiling area have been prescribed in Section 39 of OLR Act, as per which, homestead lands, or tanks with their embankments, or both, to the extent of 03 acres in the aggregate shall not be taken into account and in so far as, the transfer of any land by sale, gift or otherwise or the partition by a person during period between 26th September, 1970 and ending with the commencement of the OLR (Amendment) Act, 1973 shall be deemed to be void, if such person was holding the land in excess of the ceiling area notwithstanding any law or agreement or decree or order of any court and the lands so transferred or partitioned shall be taken into account, as if it had not taken effect and the Revenue Officer may, at his discretion, ignore the selection made by the person of lands to be retained in his possession.

6. In so far as the case at hand is concerned, the petitioner claims that his family consists of six members, hence, retention of land would be more, the fact, which has not been taken judicial notice of by the Court in revision. It is pleaded that the land measuring Ac.4.90 decimals since was gifted to the daughter of the petitioner at the time of her marriage; the same was to be excluded, while determining the ceiling area. The conclusion of the revisional authority is that the petitioner is possessed of the Ac.22.18 decimals of the land while considering his family size, he would be entitled to 10 standard acres i.e. Ac.15.00 decimals and to an extent of Ac.7.18 decimals which becomes Ac.4.78 standard acres should have been vested to the Government as ceiling surplus land and accordingly, set aside the order in OLR Ceiling Case No.06 of 2002. As earlier stated, according to Section 37(b) of the OLR Act, a family is comprised of husband or wife of such individual and their children whether a major or minor and excludes a major married son only if he had separated by partition or otherwise before the cut-off date. In the case at hand, the petitioner is said to have a family comprised of six members and for the alleged gift in favour of the daughter in 1995, the claim is that it cannot be excluded from the family so defined.

7. Before proceeding further, it is necessary to elaborately state the facts of the case. In fact, a ceiling proceeding was initiated against the petitioner vide OLR Ceiling Case No.361 of 1975, however, the same was closed on 22nd February, 1977 by the order of learned Revenue Officer-cum-Additional Tahasildar, Gunupur. In fact, a revision under Section 59(2) of the OLR Act was filed by the Collector, Rayagada vide OLR Revision Case No.35 of 2004, however, the reopening of the ceiling proceeding for further enquiry was declined by order dated 12th July 2010. In the meantime, Ac.4.90 decimals of land under Indupur Mouza was gifted to the married daughter, namely, Jagnyseni Choudhury by the petitioner through an unregistered deed on 5th September, 1995. The petitioner also sold Ac.1.00 decimals of land to one Pano Sahu vide RSD No.796 dated 25th June, 2001 in respect of Plot No.9/156 corresponding to Khata No.29/21. Thereafter, the suo motu ceiling proceeding was initiated in 2002 by the

Revenue Officer-cum-Additional Tahasildar, Gunupur under Section 52 of the OLR Act, which ultimately led to the passing of order dated 21st March, 2003 declaring Ac.7.18 decimals of land as ceiling surplus, which as earlier stated, was challenged in OLR Appeal Case No.04 of 2003. The said appeal was disposed of by order dated 21st June, 2003 with the remand of the matter carrying directions to enquire into the genealogy of the petitioner and any such landholding situate in village Padmapur being possessed by him; and to consult the OLR Committee as required under the Act. After such remand, the Revenue Officer-cum-Additional Tahasildar, Gunupur while disposing of OLR Ceiling Case No.06 of 2002 declared Ac. 2.28 decimals of land as ceiling surplus vide Annexure-1 excluding the land gifted in favour of the daughter of the petitioner in 1995 after complying with the directions issued in OLR Appeal Case No.04 of 2003. Again, an appeal was preferred under Section 58 of the OLR Act in the year 2005 during the pendency of OLR Revision Case No.35 of 2004. On 4th June, 2007, OLR Appeal Case No. 01 of 2005 was disposed of against which OLR Revision Case No.01 of 2007 was filed. The revision was disposed of vide Annexure-2 declaring Ac.7.18 decimals of land as the ceiling surplus with the order in OLR Ceiling Case No. 06 of 2002 dated 14th September, 2004 being set aside along with the decision in OLR Appeal Case No.01 of 2005. The legality and judicial propriety of the aforesaid order dated 17th October, 2008 is in question at the instance of the petitioner on the following grounds, such as, the family is entitled to 12 standard acres of land including his daughter as a member of the family and that apart, the case land could not have been categorized under Class-II, as it had no provision of irrigation supply despite a project in place.

8. As per Section 2(5) of the OLR Act, ceiling area means to the extent of land, which a raiyat or land-holder shall be entitled to hold under Section 37-A. The classes of land stands defined in Section 2(5-A) and considering the same and in the context of land ceiling under the OLR Act, 10 standard acre is equivalent to 10 acres of Class-I land; 15 acres of Class-II land; 30 acres of Class-III land; and 45 acres of Class-IV land. In fact, the definition of standard acre as per Section 2(30) means the unit of measurement of land equivalent to one acre of Class-I; one and one-half acres of Class-II land; three acres of Class-III; or four and one-half acres of Class-IV. According to the OLR Act, a family in view of Section 37(b) is in relation to an individual either husband or wife as the case may be of such individual and their children whether major or minor but does not include a major married son, who, as such, had separated by partition or otherwise before 26th September, 1970. Under the OLR Act, a married daughter is generally considered part of the husband's family for land ceiling purposes and not her parents. While the OLR Act does not explicitly exclude married daughters from their parents family, but the law is well settled that for land ceiling proceedings, they are not considered as a part of the family defined under Section 37(b). In this connection, it would be profitable to refer to a decision of the Court in **Anusuya Rath and another Vrs. State of Orissa and another AIR 1989 Ori 11** and therein, the earlier decisions in **Maharani Bewa Vrs State of Orissa through the Sub-Divisional Officer, Athmallik and others (1985) 60 CLT 55** and **Srimati Dei Vrs. Revenue Officer-cum-Tahasildar, Dharamgarh and others** decided in OJC No.2553 of 1981 and disposed of on 5th July, 1983 were held to be not laying down the correct proposition of law. It has been concluded therein that the concept of family as per the OLR Act carries an artificial

definition. It is further observed that the definition as such does not cause obstruction or occasions in conflict for taking a view upon a sincere reading of the scheme of the law and the policy decision of the Govt. and even applying the principles underlying Article 14 of the Constitution of India, when the Legislature specifically intended to exclude a major married son, who had separated by partition or otherwise before the appointed date, there would be no justification for not giving the same privilege or benefit to a married daughter, who by virtue of her marriage stands at a more distant place than a separated son on partition from the joint family and at last, concluded that a harmonious construction being the essence of the rule of interpretation, a daughter, who is already married by the appointed date would not come under the definition of “family”. When such is the legal position, the contention of Mr. Dash, learned counsel for the petitioner that to consider the family as per the definition of Section 37(b) of the OLR Act, the married daughter of the petitioner is to be included, is entirely misconceived. In other words, the family of the petitioner would be entitled to 15 acres of Class-II lands in case the same has been rightly categorized with an inquiry held by the Revenue Officer-cum-Additional Tahasildar, Gunupur since such a conclusion has been reached at or otherwise, it could be more in the eventuality, the land falls in the category of Class-III. A Class-II land is a land which is irrigated but has no more than one crop grown in any year within a period of three years before commencement of the OLR (Amendment) Act, 1973 or can be grown in a year. As to Class-III land, it includes such land other than the irrigated land in which paddy was grown within the aforesaid period or can be grown in a year. In the present case, the land in possession of the petitioner is found to be Class-II land assured of irrigation. Apart from the above and as previously discussed, in view of Section 37-A, the ceiling area in respect of a person shall be ten standard acres provided, where the family is consisting of more than five members, the ceiling area to be increased by two standard acres for each member in excess of five. In the case herein, the family of the petitioner consisted of five members, since as of the appointed date, his daughter had already married and hence, she cannot be held as a member of the family in the context of the OLR Act.

9. The next question is, whether, the land gifted in favour of the married daughter was to be considered as a part of the ceiling surplus? In this regard, one more decision of this Court in **Kashinath Panda and others Vrs. State of Orissa and others 84 (1997) CLT 676** needs a reference. After considering the relevant provisions of the OLR Act, this Court in the aforesaid decision concluded that the cut-off date i.e. 26th September, 1970 is relevant for the purpose of determining ceiling area of a person at the time of commencement of the OLR (Amendment) Act, 1973 and if a person holds property in excess of the ceiling area, the same has to be determined irrespective of the date of initiation or conclusion of the ceiling proceeding but when a person becomes liable to be proceeded under Chapter-IV because of subsequent acquisition of property or events contemplated in Section 52 and the cut-off date cannot be considered to be 26th September, 1970 but should be taken to be the date of which land held by him exceeds the ceiling area. After a threadbare analysis as to the scheme of the OLR Act, this Court, in the above decision, reached at a conclusion that if a person subsequently becomes liable to be proceeded by virtue of the events contemplated in Section 52, the relevant date for considering, whether, he was or his family members were major, married and

separated and for considering the validity of transfers effected by him, would be the date on which he becomes so liable which means the date of subsequent acquisitions or the deemed date of subsequent acquisitions as contemplated in Explanations I, II and III thereof and evidently, such date which may be compendiously described as the relevant date or the cut-off date is to vary from case to case depending upon the facts and circumstances of each case. The initial ceiling proceeding was closed in the year, 1977 and the same attained finality upon disposal of OLR Revision Case No.35 of 2004. The suo motu proceeding under the OLR Act was initiated in 2002 and by then, the petitioner had already disposed of Ac.4.9 decimals of land in favour of the married daughter in 1995 and therefore, in view of the provisions of the Act and for the purpose of the proceeding under Section 52, he is to be so held liable on account of acquisitions or deemed date of subsequent acquisitions. On a sincere reading of the law in place, irrespective of the reasons for the suo motu ceiling proceeding against the petitioner, according to the Court, for all intents and purposes, the cut-off date shall have to be held from the date of such subsequent acquisitions and obviously the same is to exclude the transfer of Ac.4.90 decimals of land in favour of the petitioner's daughter in 1995 and hence, is not referable to the cut-off date i.e. 26th September, 1970.

10. Mr. Dash, learned counsel for the petitioner relied on a decision of this Court in **Premananda Moher Vrs. Revenue Officer-cum-Additional Tahasildar, Bargarh and others AIR 1982 Ori 77**, wherein, it has been held that a cardinal principle of administration of justice is that justice must not only be done but seem manifestly to have been done while considering a challenge to the classification of land in a proceeding under Section 43 of the OLR Act, which necessitated a spot verification with notice to the land-holder and for receiving evidence in that regard. In the instant case, it is claimed that there has been no such inquiry held before the land of the petitioner being categorized as Class-II. But, from the impugned order under Annexure-1, it has been so held in the presence of the petitioner. What was the evidence received during such inquiry has not been discussed upon perusal of the impugned order i.e. Annexure-1. The land has been considered to be irrigated land defined in Section 2(13) of the OLR Act assured of irrigation from an irrigation project constructed or maintained or improved or controlled by the Central Government or State Government or a Body Corporate and includes land, which is assured of irrigation from any private source by means of lift irrigation from any perennial water source operated by diesel or electric power but does not include continually waterlogged lands or sandcast lands. As per the aforesaid definition, a land which assured of irrigation is considered to be an irrigated land. In such view of the matter and for the reason that the Court does not have the comfort of looking at the evidence received during the inquiry held by the Revenue Officer-cum-Additional Tahasildar, Gunupur vis-à-vis classification of land, it has to be held that the petitioner would be entitled to either fifteen acres as applicable to Class-II land as has been held against him or thirty acres as Class-III land in case, the same is found to be a non-irrigated one. Since, it has been claimed by the petitioner that the case land, despite an irrigation project was unable to bear crops twice a year, yet, could not have been held as Class-II land in absence of proper field inquiry.

Considering the above claim of the petitioner, it has to be held that such classification of land as Class-II must receive evidence upon an inquiry to substantiate the same. Having said that, the Court, hence, concludes that if proper inquiry has been held at the time of classification of the case land, the petitioner's claim is to fall flat or in case, no inquiry or field visit has been made before such classification, it would require reconsideration. Such a finding can be reached upon perusal of the evidence received on classification of the land of the petitioner after initiation of the proceeding under Section 52 of the OLR Act, which in the humble view of the Court, may be gone through by the Revenue Officer-cum-Additional Tahasildar, Gunupur. With the aforesaid discussion and at the cost of the repetition, the Court holds that the cut-off date shall be from the date of subsequent acquisitions or deemed acquisitions in view of Explanations I, II, III of Section 52 as the case may be and not from 26th September, 1970 and the gifted land, hence, shall have to be excluded and in so far as the daughter of the petitioner is concerned, she is not to be treated as a member of the family after her marriage prior to the appointed date, at last, leaving the decision for considering the evidence received during the field inquiry with respect to the classification of the land, which is being questioned by the petitioner.

11. Hence, it is ordered.

12. In the result, the writ petition stands disposed of with a direction to opposite party No.1 to determine the ceiling area to be surplus upon considering the evidence received during field inquiry vis- à -vis classification of the land and thereafter, to pass necessary order in connection with OLR Ceiling Case No. 06 of 2002 keeping in view observations made hereinabove and discussions held in the light of the settled position of law. As a necessary corollary, the impugned order dated 17th October, 2008 passed in connection with OLR Revision Case No.01 of 2007 is hereby set aside with the directions as aforesaid. It is further directed that the above exercise shall be accomplished followed by an order at the earliest, preferably within a period of six weeks from the date of receipt of a copy of this judgment.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Writ Petition disposed of.

2025 (I) ILR-CUT-1187

**KARUNAKAR SETH
V.
STATE OF ODISHA & ORS.**

[W.P.(C) NO. 29340 OF 2024]

17 MARCH 2025

[R.K. PATTANAİK, J.]**Issue for Consideration**

Whether non-compliance of 15 days statutory period as specified in the statute can be construed to be a ground to challenge the motion of no confidence, where no prejudice to the petitioner has been established.

Headnotes

ORISSA GRAMA PANCHAYATS ACT, 1964 – Section 24(2)(c) – Non-compliance of 15 days statutory period – The petitioner challenges the impugned notice for convening special meeting for the no confidence motion initiated against him in contravention of Section 24(2)(c) of the Act – Whether non-compliance of 15 days statutory period as specified in the statute can be construed to be a ground to challenge the motion of no confidence, where no prejudice to the petitioner has been established.

Held: No – The inescapable conclusion of the Court is that compliance of Section 24(2)(c) of the Act with regard to the mode of service of notice even with less than 15 days as a margin between the date of notice and meeting cannot be a ground to challenge the action, especially when, there is no evidence of any such prejudice being caused to the petitioner. (Para 10)

Citations References

Sarat Padhi Vrs. State of Orissa & Others, **65 (1988) CLT 122**; Nirakar Sethi Vrs. State of Odisha & Others, **2022 (I) OLR 377**; Brundabati Pradhan Vrs. State of Odisha & Others, **2015 (II) CLR 906**; Debaraj Mallika Vrs. Collector, Puri & Others, **45 (1978) CLT 313**; Shri Ajaya Kumar Sahoo Vrs. State of Odisha, **121 (2016) CLT 597**; Smt. Heeramani Munda Vrs. The Collector, Keonjhar & Others, **99 (2205) CLT 180**; Nilambar Majhi Vrs. Secretary to Govt. of Orissa, Panchayati Raj Department & Others, **2005 (II) CLR 493**; Jayaram Nayak Vrs. State of Odisha & Others, **W.P.(C) No. 26726 of 2024 dated 19th February 2025 – referred to.**

List of Acts

Orissa Grama Panchayats Act, 1964.

Keywords

No Confidence motion; Special meeting; Statutory period; Mandatory; Directory.

Case Arising From

Notice dated 11th November, 2024 passed by Opposite Party No.3.

Appearances for Parties

For Petitioner : Mr. Kishore Kumar Mishra

For Opp. Parties : Ms. U.R. Padhi, ASC, Mr. P.K. Mohanty (Caveators)

Judgment/Order**Judgment**

R.K. PATTANAIK, J.

1. Instant writ petition is filed by the petitioner challenging the impugned notice dated 11th November, 2024 as at Annexure-2 issued by opposite party No.3 for convening a special meeting for the no confidence motion initiated against him on the grounds inter alia that the same is in contravention of Section 24(2)(c) of the Odisha Grama Panchayats Act, 1964 (hereinafter referred to as 'the Act').

2. The petitioner is the elected Sarpanch of the G.P. in question, against whom, the vote of no confidence has been initiated with a requisition submitted to opposite party No.3, who, thereafter, issued the notice as per Annexure-2 for the special meeting to be convened for the said purpose. The decision of opposite party No.3 is challenged on the ground that statutory period of 15 days as contemplated under Section 14(2)(c) of the Act has not been complied with, as there was delay in dispatch of such notice. It is pleaded on record that the petitioner was duly elected as Sarpanch of the G.P. situate in the district of Jharsuguda and he took over charge of the office on 10th March, 2022 but, thereafter, opposite party No.9, who is a Ward Member called the meeting on 7th October, 2024 to initiate a motion of no confidence against him on the ground of corruption and it ultimately led to the issuance of the impugned notice i.e. Annexure-2. The further pleading is that the requisition was signed by eleven Ward Members though some of them were absent on 7th October, 2024 and in so far as the allegation of corruption is concerned, the same is a falsehood. The pleading is that opposite party No.3 received the requisition on 9th October, 2024 and issued the impugned notice on 11th November, 2024 for a meeting to be held on 27th November, 2024. The claim of the petitioner is that the notice under Annexure-2 was dispatched on 13th November, 2024 by registered post and was delivered to him on 16th November, 2024 hence, there was no clear 15 days available before the meeting was to be held, hence, the mandatory requirement of

law in view of Section 24(2)(c) of the Act was not adhered to, therefore, the entire exercise upon receiving the requisition by opposite party No.3 stands vitiated.

3. The State filed the counter affidavit through opposite party Nos.2 & 3 and it is pleaded therein that there has been due compliance of all such provisions of the Act allowing 15 days before the special meeting was to be held and the same is in consonance with Section 24(2)(c) thereof. It is further pleaded that the notice was dispatched in terms of Section 24(2)(d) of the Act and as in the instant case, when there was such compliance, the vote of no confidence with the issuance of a notice by opposite party No.3 cannot be challenged by the petitioner. Opposite party Nos.5 to 17 filed the counter affidavit and support the view that there has been proper compliance of Section 24(2)(c) of the Act. A reference has been made to the decisions of this Court including a case law in **Sarat Padhi Vrs. State of Orissa & others 65(1988) CLT 122** with the pleading on record that 15 days clear notice was allowed before the special meeting was scheduled to be held, hence, there is no violation of Section 24(2)(c) of the Act.

4. Heard Mr. Mishra learned counsel for the petitioner, Mr. Mohanty, learned counsel for opposite party Nos. 5 to 17 and Ms. Padhi, learned ASC for the State.

5. The requisition was received by opposite party No.3 for the vote of no confidence initiated against the petitioner after a resolution was passed in that behalf. It is claimed that a copy of the resolution was not received by the petitioner along with the notice and requisition. But, in course of hearing, Mr. Mishra, learned counsel for the petitioner confined the challenge with a plea as to non-compliance of Section 24(2)(c) of the Act with the submission that no clear 15 days' time was allowed as contemplated under law. The contention of Mr. Mishra learned counsel is that the notice was dispatched on 13th November, 2024 and was received by the petitioner on 16th November, 2024 and hence, 15 days is to be counted from the date of receipt of the same and since, it becomes less than the statutory period stipulated in Section 24(2)(c) of the Act, therefore, the action with the issuance of notice by opposite party No.3 cannot be sustained in law.

6. Mr. Mohanty, learned counsel for opposite party Nos. 5 to 17 submits that the law is well settled as decided by this Court in **Sarat Padhi** (supra) that the mode of service or the failure by any member to receive the notice at all or allowing him less than 15 clear days before the date of the meeting to be held is not to render such meeting invalid. Besides the above, referring to a decision of a Division Bench of this Court in **Nirakar Sethi Vrs. State of Odisha & others 2022(I) OLR 377**, Mr. Mohanty, learned counsel would further submit that the gap between the issuance of notice and date of meeting is directory in nature and not mandatory, a conclusion which has been reached at referring to the ratio decided in the case of **Sarat Padhi**. One more case law in **Brundabati Pradhan Vrs. State of Odisha & others 2015 (II) CLR 906** is placed reliance on by Mr. Mohanty, learned counsel to submit that the motion is not defeated nor the impugned notice i.e. Annexure-2 and for that

matter, the entire exercise on any such ground as has been advanced by the petitioner.

7. Ms. Padhi, learned ASC for the State supports the contention of Mr. Mohanty, learned counsel for opposite party Nos. 5 to 17 with the submission that there has been no irregularity or any illegality committed by opposite party No.3, who received the requisition from the Ward Members and thereafter, proceeded to fix up the date for the special meeting to be convened for the no confidence motion initiated against the petitioner. It is further submitted that law is no more *res integra* that the period of 15 days is directory in nature and delay in dispatch is no more fatal and since in the case at hand, the notice was immediately dispatched in the manner contemplated under Section 24(2)(d) of the Act and was received by the petitioner well before the special meeting was to be held, even with the availability of less than 15 days, there is no violation of Section 24(2)(c) of the Act and the no confidence motion is therefore not to fail and in the meantime, it has been held without the result of the same being published in view of the Court's interim order dated 24th November, 2024 in I.A. No. 15627 of 2024.

8. As it appears, opposite party Nos. 5 to 17 moved the requisition for the no confidence motion against the petitioner and upon receiving the requisition, opposite party No.3 issued the notice. The said notice is challenged on account of non-compliance of 15 clear days statutorily required before the special meeting is held. It is not in denial that the notice was dispatched on 13th November, 2024, whereas, it is dated 11th November, 2024 and claims to have been received by the petitioner on 16th November, 2024. As per the notice i.e. Annexure-2, 15 days period was allowed before the meeting was fixed. The question is, whether, such 15 days period is to be counted from 16th November, 2024? According to Mr. Mishra, learned counsel for the petitioner, the very intent and purport of the law in place is that before the special meeting is convened, it should be intervened by a clear 15 days from the date of issuance of notice and since it was dispatched on 13th November, 2024 and received on 16th November, 2024 there is no compliance of Section 24(2)(c) of the Act.

9. In **Sarat Padhi** (supra), the Full Bench of this Court had the occasion to consider and examine the provisions of the Act vis-à-vis notice contemplated under Section 24(2)(c) of the Act and observed in the following words such as:

“18. On a circumspection of the various authorities discussed above dealing with the analogous provisions in different statutes. I would now proceed to record my own conclusions:

The scheme of the notice contemplated under Section 24(2)(c) may be divided into three parts-(i) requirement of giving the notice,(ii) fixing the margin of time between the date of the notice and the date of the meeting, and, (iii) service of notice on the members, I am of the view, which is also conceded by the learned Advocate General, that the first two parts, namely, the duty of issue the

notice and the margin of clear 15 days between the date of the notice and the date of the meeting, are mandatory. In other words, if there is any breach of these two conditions, then the meeting will be invalid without any question of prejudice. But the third condition, i.e. the mode of service or the failure by any member to receive the notice at all or allowing him less than 15 clear days before the date of the meeting, will not render the meeting invalid. This requirement is only directory. This is also based on a sound public policy as in that event any delinquent Sarpanch or Naib-Sarpanch can frustrate the consideration of the resolution of non-confidence against him by tactfully delaying or avoiding the service of the notice on him and thus frustrate the holding of the meeting. The legislation has also accordingly taken care to provide in unequivocal terms a provision to obviate such contingencies by incorporating clause (e) to sub-section (2) of section 24.”

10. In the aforesaid decision, the view expressed in **Debaraj Mallika Vrs. Collector, Puri & Others, 45(1978) CLT 313** received disapproval which was to the effect that the whole of the provisions under Section 24(2)(c) of the Act to be directory in nature but held and concluded that such service of notice with 15 days’ time is mandatory. Similarly, in **Shri Ajaya Kumar Sahoo Vrs. State of Odisha 121 (2016) CLT 597**, this Court concluded that the date on which the notice is posted is immaterial and therein, the decision in the case of **Sarat Padhi** (supra) was placed reliance on. Referring to the case laws, such as, **Smt. Heeramani Munda Vrs. The Collector, Keonjhar & others 99(2205) CLT 180** and **Nilambar Majhi Vrs. Secretary to Govt. of Orissa, Panchayati Raj Department & others 2005(II) CLR 493**, this Court in **Brundabati Pradhan** (supra) held that 15 days’ notice as contemplated under Section 24(2)(c) of the Act is to be counted excluding the date of issuance of notice and the date of meeting fixed for the no confidence motion. Reading of the decisions (supra), the Court finds that while complying with Section 24(2)(c) of the Act, requirement of giving notice fixing the margin of time between the date of such notice and the meeting to be mandatory in nature and not the service of notice in the manner stipulated therein. If there is any breach of the above mandatory conditions, then the meeting shall have to be held as vitiated without any question of prejudice. The last of the conditions regarding the mode of service or failure by any member to receive such notice without 15 clear days available from the date of its issuance and the meeting, the same is not to render such meeting invalid. In other words, the said requirement is only directory in nature. In a recent judgment of this Court in **Jayaram Nayak Vrs. State of Odisha & Others** dated 19th February, 2025 in W.P.(C) No. 26726 of 2024, such a view was reiterated. The question is, if any such delay in dispatch is questioned, the Court is to consider as to what prejudice it caused to any of the Ward Members or particularly, the Sarpanch or Naib Sarpanch as the case may be against whom the vote of no confidence was initiated. The settled law is that in absence of any prejudice even with a delay in dispatch of the notice giving less than 15 days margin is not to invalidate the exercise and the action for the motion. In case of any such prejudice

due to delay and dispatch of the notice, the same has to be demonstrated. Mere delay and dispatch of the notice with intimation to all concerned for the special meeting by itself is not sufficient to claim that the action is invalid. The mandate of law is to allow 15 days' period before the meeting is held and the same is to be counted from the date of notice signed and not from the date of dispatch or receipt of the same by the Sarpanch or Naib Sarpanch. In the present case, the petitioner had the knowledge about the vote of no confidence and the resolution for such motion, he having received requisition from opposite party No.3 with reasonable time in hand. Even assuming that the notice was received on 16th November, 2024, there was sufficient time left for him to respond. As it has been held that prejudice is to be prima facie shown and proved and in the case of the petitioner, the same is not demonstrated. Keeping in view the settled law in **Sarat Padhi** (supra) and followed thereafter in other decisions referred to herein before, the inescapable conclusion of the Court is that compliance of Section 24(2)(c) of the Act with regard to the mode of service of notice even with less than 15 days as a margin between the date of notice and meeting cannot be a ground to challenge the action, especially when, there is no evidence of any such prejudice being caused to the petitioner. In other words, considering the plea advanced by the petitioner, reply and response of the State besides opposite party Nos. 5 to 17 and in view of the settled position of law, it has to be held that there is no illegality committed by opposite party No.3 with the issuance of notice under Annexure-2 for the vote of no confidence initiated against the petitioner which is in compliance of law as contemplated under the Act.

11. Hence, it is ordered.

12. In the result, the writ petition stands dismissed. As a necessary corollary, the interim order in I.A. No. 15627 of 2024 dated 26th November, 2024 is vacated as a result.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Writ Petition dismissed.

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2025 (I) ILR-CUT-1193

**SANTIBRATA PANDA
V.
STATE OF ODISHA & ORS.**

[W.P.(C) NO. 13566 OF 2007]

17 JANUARY 2025

[SASHIKANTA MISHRA, J.]**Issue for Consideration**

Whether the appointment of the petitioner should be cancelled after 27 years, if there was any procedural irregularity committed by the management at the relevant time.

Headnotes

SERVICE JURISPRUDENCE – The petitioner having been appointed against the termination vacancy and continuing as such for the last 27 years and his services have been duly approved – It is also evident that there was some procedural irregularity in the appointment of petitioner which was committed by the management at the relevant time – The Opposite Party No. 5 was validly appointed in the year 1987 and continued as such till 1995 whereas the petitioner has been refused employment without following due procedure – The Inspector of Schools holds the termination of Opposite Party as illegal – Whether the order passed by the School Inspector is not valid.

Held: No – The petitioner cannot also be blamed for the mistake committed by the Managing Committee and that too, at this distance of time – If the impugned order is to be implemented strictly, it would result in termination of services of the petitioner, which obviously would affect his right to livelihood guaranteed under Article 21 of the Constitution of India – Therefore, taking an overall view of the matter, particularly in the peculiar facts and circumstances of the case and without setting a precedent, this Court holds that ends of justice would be best served if the interests of both the petitioner and opposite party No. 5 are protected. (Para 11)

Keywords

Appointment; Termination; Reinstatement; Violation of natural justice; Right to livelihood, Procedural irregularity.

Case Arising From

Order dated 08.10.2007 passed by the Inspector of Schools, Balasore Circle

and inquiry report dated 16.05.2005 of the Special Secretary, School and Mass Education Department.

Appearances for Parties

For Petitioner : Mr. Budhadeb Routray, Sr. Adv. & M/s. S. Das,
K. Mohanty, R.P. Dalai, K. Jena, S.K. Samal, P. Mohanty,
S.P. Nath, S.D. Routray & B. Behera

For Opp. Parties : Mr. S.N. Pattanaik, AGA

Mr. J.K. Rath, Sr. Adv., & M/s. S.K. Mishra, P.K. Rout,
D.N. Rath, A.K. Saa (for O.P. No. 5),

Mr. G.N. Pattanaik (for O.P. 4)

Judgment/Order

Judgment

SASHIKANTA MISHRA, J.

The petitioner in the present writ application seeks to challenge the order dated 08.10.2007 passed by the Inspector of Schools, Balasore Circle directing reinstatement of opposite party No. 5 as Classical Teacher and declaring the petitioner's appointment as such as invalid. The petitioner also seeks to quash the inquiry report dated 16.05.2005 of the Special Secretary, School and Mass Education Department.

2. The facts of the case, briefly stated, are that the present opposite party No.5 was appointed as a Classical Teacher in Kumari (B.C.) High School, Kumari in the district of Balasore on 10.07.1987. While working as such, because of her long unauthorised absence, the Managing Committee terminated her services in 1995 after issuing a show cause notice and conducting due inquiry. After termination of the service of opposite party No.5, the petitioner was appointed as Classical Teacher on 28.02.1997 in the said vacancy. In the meantime, the opposite party No.5 challenged the action of the Management before the Director of Secondary Education by filing an appeal. The appeal came to be dismissed on 27.05.1997 confirming the order of termination passed by the Management. Opposite party No.5 challenged the order of dismissal of appeal before this Court in OJC No. 10540 of 1997, which was disposed of granting liberty to her to submit representation before the appropriate authority. Accordingly, a fresh inquiry was conducted by the Special Secretary to the Government in Department of School and Mass Education which concluded that the termination of opposite party No.5 was unjustified. Basing on such report, the Inspector of Schools, vide order dated 08.10.2007 directed reinstatement of opposite party No.5 and also declared appointment of the petitioner as invalid.

3. The petitioner challenged said order initially before this Court in the present writ application but the same was dismissed by order dated 15.07.2009 by holding that he had no cause of action. The petitioner moved the Supreme Court in Civil Appeal No. 6905 of 2011 against such dismissal of the writ application. The Supreme Court, by order dated 14.05.2015 set aside the order passed by this Court and remanded the matter for fresh adjudication. According to the petitioner, the Director as appellate authority had dismissed the appeal preferred by the opposite party No.5 way back on 27.05.1997 after considering all relevant facts including the inquiry conducted by the then Assistant Inspector of Schools. Therefore, the Inspector of Schools being a subordinate officer had no authority to review or override the decision of the Director. That apart, the Special Secretary's inquiry was also unauthorised and conducted without notice to the petitioner or the Managing Committee. It is also stated that the termination of the opposite party No.5 was legally justified and the petitioner was appointed in the termination vacancy after following due procedure.

4. The case of the opposite party No.5 is that she was appointed as Classical Teacher on 10.07.1987. Because of her illness, she could not attend the duties in the School from 15.11.1991 to 26.11.1991. Subsequently, after recovering from illness, she submitted her joining report on 27.11.1991 along with leave application but the same was not received by the Headmaster or the Secretary of the Managing Committee. As such, she sent her joining report along with her leave application and Medical Certificate to the Inspector of Schools, Balasore Circle by registered post on 26.12.1991. Thereafter, she submitted several representations to the Inspector of Schools ventilating her grievance but no action was taken. Further, she was not paid her monthly salary from November, 1991 and suddenly she was prevented from signing on the attendance register with effect from 26.12.1991. The Inspector of Schools, by order dated 18.11.1992 directed the Secretary of the Managing Committee to allow her to sign on the attendance register and accordingly, the Managing Committee allowed her to sign as such. Again, the opposite party No.5 fell ill from 21.10.1992 to 07.11.1992 and accordingly, she remained on leave by submitting appropriate application with medical certificate but the Secretary of the Managing Committee refused to receive the leave application but due to intervention of the Inspector of School, the leave period was also regularised. Again from 29.03.1993 to 24.06.1993, the opposite party No.5 being in an advanced stage of pregnancy availed maternity leave for the said period. But after completion of the period of leave, when she went to the school, she was not allowed to sign on the attendance register. She again approached the Inspector of Schools by letter dated 06.07.1993. The Inspector of Schools, vide letter dated 25.10.1994 directed the headmaster of the school to remain present along with other members of the staff in course of an inquiry to be conducted in the matter. The Assistant Inspector of Schools conducted an inquiry on 31.10.1994 and submitted appropriate report. The opposite party No.5 claims to have continued to discharge her duties by attending

her classes regularly and by signing the attendance register till 04.01.1995. However, on 05.01.1995, the headmaster of the school prevented her to attend examination duty and to sign the attendance register. When she protested, she was driven out from the school with the help of a peon. She met the Inspector of Schools and submitted her grievance, but no action was taken. Accordingly, she filed an appeal before the Director, Secondary Education. In the meantime, the petitioner, who happens to be the son of the President of the Managing Committee, was appointed as Classical Teacher in place of the opposite party No.5 with effect from 01.03.1997.

5. The Director without taking into consideration the materials available or record and basing on an ex-parte inquiry report of the Assistant Inspector of Schools and without giving any opportunity to the opposite party No.5 rejected the appeal by order dated 16.05.2005. The opposite party No.5 therefore, submitted a representation to the Government to conduct further enquiry into the matter. Accordingly, two responsible officers of the Government being the Special Secretary and the Inspector of Schools conducted a spot inquiry by going through the documents available in the school and also questioned the villagers and ex-teachers present at the relevant time. Basing on such inquiry, they submitted a report, wherein it was clearly indicated that the opposite party No.5 was wrongfully terminated from service without following due procedure. In the meantime, the opposite party No.5 had approached this Court in OJC No.10540 of 1997 challenging the order passed by the Director. Said writ application was disposed of by order dated 16.08.2007 granting her liberty to move representation before the appropriate authorities under the Government on the basis of the inquiry report. Pursuant to such order, the opposite party No.5 submitted representation on 18.09.2007 before the Inspector of Schools, Balasore Circle. By order dated 08.10.2007, the Inspector of Schools after considering the inquiry report allowed the representation by directing the Managing Committee to allow the opposite party No.5 to work as Classical Teacher by disallowing the petitioner to work in that school. According to the opposite party No.5, she was prevented from discharging her duties with effect from 04.01.1995 which amounts to termination of her service, but the same being violative of the principles of natural justice, the appeal filed by her should have been allowed by the Director. However, the Director was swayed away by the statement of a senior clerk attached to the office of the Inspector of Schools and therefore, the appeal was rejected. In any case, the action of the Managing Committee in refusing employment to the opposite party No.5 was actuated by malafides, inasmuch as the petitioner, who happens to be the son of the then President of the Managing Committee, was appointed in place of the opposite party No.5 and in order to do so, the opposite party No.5 was wrongfully deprived of employment. It is further stated that the matter was enquired into by two responsible officers of the Government, who found that there was no valid reason to terminate the services of the opposite party No.5 and moreover, proper procedure had not been

SANTIBRATA PANDA V. STATE OF ODISHA & ORS. [SASHIKANTA MISHRA, J.]

followed. Therefore, the impugned order was passed directing the Managing Committee to take back opposite party No.5 into employment by disallowing the petitioner to work as Classical Teacher. It is also stated that the petitioner has no valid right to continue in employment.

6. The stand of the State Government is that the Managing Committee of the School terminated the services of the opposite party No.5 without following due procedure. Further, the Managing Committee without being aware of Government Rules and norms prescribed for aided/unaided Educational Institutions engaged the petitioner in the post held by the opposite party No.5 with effect from 10.07.1987. The petitioner was appointed without following any procedural method regulating the service conditions under the above category of schools and therefore, no right is conferred upon him. Moreover, an inquiry was conducted jointly by the Special Secretary and the Inspector of Schools on the basis of school records. It was established in course of inquiry that the action of the Managing Committee in terminating the services of opposite party No.5 was illegal and in contravention of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974. The inquiring authority also suggested both the parties to settle the problem amicably after discussion.

7. Heard Mr. Budhadev Routray, learned Senior Counsel with Mr. J. Biswal, learned counsel for the petitioner; Mr. S.N. Pattnaik, learned Addl. Government Advocate for the State; and Mr. J.K. Rath, learned Senior Counsel with Mr. A.K. Saa, learned counsel for the opposite party No.5.

8. Mr. Routray would argue that once the Director being the appellate authority had dismissed the appeal preferred by the opposite party No.5 after considering all the relevant facts including the inquiry conducted by the Assistant Inspector of Schools, the Inspector of Schools lacked authority to pass any order overriding the order passed by the appellate authority, which almost amounts to reviewing the order passed by higher authority. According to Mr. Routray, this is impermissible in law. Mr. Routray further argues that the inquiry conducted by the Special Secretary was without any legal basis and conducted without notice to the petitioner or the Managing Committee.

9. Mr. J.K. Rath, learned Senior Counsel appearing for the opposite party No.5 would argue that the entire objective of the managing committee was to somehow appoint the petitioner in place of the opposite party No.5 as he happened to be the son of the then President of the Managing Committee. Moreover, the refusal of employment to opposite party No. 5, which amounts to termination of her services, was entirely without following the due procedure laid down in law. The inquiry committee formed by two senior officers of the Government, after perusing the records of the school, clearly found that proper procedure had not been followed either in terminating the services of the opposite party No.5 or in appointing the

petitioner in her place. As such, the Inspector of Schools rightly held that the termination of opposite party No. 5 is illegal.

10. Mr. Pattnaik, learned State Counsel also makes similar arguments as Mr. Rath noted above. He further submits that the petitioner was appointed in the termination vacancy of opposite party No.5 without following due procedure by the Management. That apart, the termination of opposite party No.5 in the form of refusal of employment was also without following due process of law.

11. I have carefully considered the rival submissions and have also gone through the materials available on record. The facts of the case, as narrated, are not disputed. The opposite party No.5 was appointed as a Classical Teacher in the school way back in the year 1987. She continued as such till 1995 when she claims to have been illegally terminated by way of refusal of employment. There is also no dispute that the petitioner was appointed in the vacancy so caused in the year 1997 and has been continuing as Classical Teacher till date. In the additional affidavit filed by the petitioner it is seen that a certificate has been issued by the headmaster certifying that the petitioner has been performing his duties continuously since 01.03.1997 till date and that his performance is satisfactory. Further his services have been approved by the Government. At the same time, this Court is also conscious of the fact that as per the inquiry conducted by the Special Secretary and the Inspector of Schools jointly, it was revealed that the opposite party No.5 was terminated without following proper procedure of law. The parties have been litigating since 1997. In course of hearing, on a query posed by this Court, learned State Counsel has obtained instructions to the effect that there is a vacancy of Classical Teacher due to retirement of the incumbent in a similar category school i.e. Mohan Charan High School, Aladiha (new aided) under Baliapal Block in the district of Balasore. This is a peculiar case where the petitioner having been appointed against the termination vacancy, has been continuing as such for the last 27 years and his services have been duly approved. If there was any procedural irregularity in his appointment, the same obviously cannot be agitated at this distance of time. Moreover, he cannot be faulted with for the wrong committed by the management at the relevant time. At the same time it must also be borne in mind that the opposite party No. 5 was validly appointed in the year 1987 and continued as such till 1995 when she appears to have been refused employment without following the due procedure. The question is, whether in such peculiar facts and circumstances is it necessary or would it be equitable to implement the order passed by the Inspector of Schools holding the termination of the opposite party No.5 as illegal. It would rather enure to the benefit of all parties if the opposite party No. 5 is restored her position and at the same time the petitioner, who has been discharging his duties satisfactorily for the last 27 years, is also protected. Since there is a vacancy available in a similar school in the very same district, this Court is of the considered view that the opposite party No. 5 or the petitioner can be adjusted in the said vacancy without causing any prejudice to the other person. This Court is

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conscious of the fact that the impugned order may not require any interference in view of the fact that the Managing Committee did not follow proper procedure while terminating the services of the opposite party No.5 but then, as has already been stated hereinbefore, the petitioner cannot also be blamed for the mistake committed by the Managing Committee and that too, at this distance of time. If the impugned order is to be implemented strictly, it would result in termination of services of the petitioner, which obviously would affect his right to livelihood guaranteed under Article 21 of the Constitution of India. Therefore, taking an overall view of the matter, particularly in the peculiar facts and circumstances of the case and without setting a precedent, this Court holds that ends of justice would be best served if the interests of both the petitioner and opposite party No. 5 are protected. In other words, the petitioner having been appointed subsequently to the opposite party No. 5 can be conveniently adjusted in the aforementioned vacancy while the opposite party No.5 can be reinstated in her former post.

12. For the foregoing reasons therefore, the writ petition is disposed of with the following directions:

- (i) The opposite party No.5 shall be reinstated in her former post as directed by the Inspector of Schools in the impugned order.
- (ii) The opposite party authorities shall pass necessary orders to appoint the petitioner in any available vacancy in a nearby school by granting him continuity of service.
- (iii) The impugned order is modified accordingly.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

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Result of the case:

Writ Petition disposed of.

2025 (I) ILR-CUT-1200

**PURNA CH. MAJHI
V.
STATE OF ODISHA & ORS.**

[W.P.(C) NO. 23102 OF 2024]

12 FEBRUARY 2025

[SASHIKANTA MISHRA, J.]**Issue for Consideration**

Whether absorption of the petitioner can be denied on the plea of initiation of criminal case although he has been acquitted and fulfills all the necessary conditions for absorption.

Headnotes

ODISHA ACCOUNTANT-CUM-DATA ENTRY OPERATOR (METHOD OF RECRUITMENT & CONDITIONS OF SERVICE) RULES, 2024 – Appointment to the post of Accountant-Cum-Data Entry Operators one for each Panchayat – As per Rule 70% of the posts are to be filled up by direct recruitment and 30% amongst from GRS –The Rules also provides that as an one time measure, the GRS who have completed 5 years of continuous service shall be absorbed on regular basis against vacant post – Petitioner being a GRS applied for absorption into the post – The authority denied absorption on the ground of involvement in criminal case though he has been acquitted – Although the petitioner has been acquitted from criminal case, the authority taking plea of the date of selection board meeting i.e. 14.03.2024 as cut-off date denied absorption – Whether the plea of cut-off date is sustainable in case of absorption of the petitioner when he has fulfilled all the conditions and has been acquitted by the Court.

Held: If a cut-off date is fixed and his case is not considered as he was facing a criminal case before such date, it would be akin to treating him guilty – This Court fails to understand as to how the date of selection board meeting, 14.03.2024 can have any relevance in this regard – The subsequent order of acquittal, as already stated, only goes to legally acknowledge the fact of innocence of the Petitioner – It must therefore, be held that he was innocent all through notwithstanding pendency of the criminal case – Such being the case, he cannot be discriminated on the basis of the date of judgment of acquittal, which obviously is not under his control.

(Para 11)

Citations Reference

Ashis Kumar Debta vs. State of Odisha and Others, **W.P.(C) No.5838 of 2024 – referred to.**

List of Acts

Odisha Accountant-cum-Data Entry Operator (Method of Recruitment and Conditions of Service) Rules, 2024

Keywords

Absorption; Cut-off date; Pendency of Criminal Case; Acquittal; Appointment; Post of Accountant-cum-Data Entry Operator.

Appearances for Parties

For Petitioner : Mr.Srinivas Mohanty

For Opp. Parties : Mr. S.N. Pattnaik, AGA

Judgment/Order

Judgment

SASHIKANTA MISHRA, J.

The Petitioner was appointed as Gram Rojgar Sevak (GRS) on 25.7.2016 and is working as such since then. The Government created 7142 posts of Accountant-cum-Data Entry Operators, one for each Panchayat. As per the provisions of the Odisha Accountant-cum-Data Entry Operator (Method of Recruitment and Conditions of Service) Rules, 2024 (for short Rules 2024) , 70% of aforesaid posts are to be filled up by way of direct recruitment and 30% from amongst the GRS. The Rules also provide that as an One-Time-Measure, the GRS who have completed 5 years of continuous service shall be absorbed on regular basis against vacant posts of Accountant-cum-Data Entry Operator subject to fulfillment of other conditions of service and relaxation of upper age limit, if required.

2. A criminal case was instituted against the Petitioner being Jaipatna P.S. Case No.142/2021 corresponding to C.T. Case No.136/2021/T.R. No.33/2024 of the Court of learned J.M.F.C., Jaipatna for commission of offences under Sections 341/294/323/355/506 of I.P.C. Said criminal case arose out of a private and village dispute. In any case, by judgment passed on 20.3.2024 by the learned J.M.F.C., Jaipatna, the Petitioner was fully acquitted of the offences.

3. The Petitioner's grievance is that while considering the case of GRS of the District for their absorption in the regular post of Accountant-cum-Data Entry Operator as per the 2024 Rules, his case was not considered on the ground that the order of acquittal in his case was passed after 14.3.2024. It is stated that the

Petitioner otherwise fulfills all eligibility criteria and is therefore, eligible for being absorbed but has been grossly discriminated on the unconscionable ground of being acquitted after the cut-off date.

On such facts, the Petitioner has filed this Writ Petition with the following prayer;

“The petitioner, therefore, prays that your lordship would graciously be pleased to admit this petition, call for the records and after hearing the parties issue Rule Nisi calling upon the Opp. Parties as to how the petitioner stands discriminated from his similarly situated other colleagues on fixation of cut-off date of acquittal on or before 14.03.2024 under Annexure-5.

And further be pleased to show cause as to how the cut-off date of acquittal is fixed contrary to the statutory guidelines.

And showing their no cause or insufficient cause make the Rule Absolute.

And further be pleased to direct the authority to appoint the petitioner as ADEO (Accountant cum DEO) on the basis of the guideline dtd 12.03.2024 in quashment of the observation made in the order dtd 07.08.2024 under ANNEXURE-5.

And pass any other and /or further order as deemed fit and proper under the circumstances of the case,

And for this act of kindness the petitioner as in duty bound shall forever pray.

4. The State has not filed any counter affidavit but an affidavit was filed by the B.D.O. (Opp.Party No.2), inter alia, stating that a District Selection Committee was constituted vide Office order dated 13.3.2024 and basing on its recommendation, the selection of GRS was made. Further, in the absence of specific guiding provisions, the calculation of 5 years has been made up to the date of commencement of the Rules, i.e. 12.3.2024. The cut-off date for pendency of criminal case and other cases were also taken into consideration by the Committee as 12.3.2024, i.e. the date of notification of the 2024 Rules.

5. Heard Mr. Srinivas Mohanty, learned counsel for the Petitioner and Mr. S.N. Patnaik, learned Addl. Government Advocate for the State.

6. Mr. Mohanty would argue that admittedly, the Petitioner was entangled in a criminal case which had no relation to his official work as GRS but had arisen out of a purely private dispute. In any case, he was honourably acquitted from the offences. The District Selection Committee arbitrarily fixed a cut-off date i.e. 14.3.2024 without backing or sanction of law. Once a person has been acquitted there cannot be any cut-off date to hold him innocent. Mr. Mohanty further submits that even otherwise as per the ratio decided by this Court in the case of **Ashis Kumar Debita vs. State of Odisha and others**; W.P.(C) No.5838/2024, even pendency of a criminal case is not relevant in so far as absorption of GRS in the regular post of Accountant-cum-Data Entry Operator is concerned. According to Mr. Mohanty therefore, by

depriving the Petitioner of his right to be considered for absorption despite his acquittal from the criminal case is grossly unfair, unjust and highly discriminating.

7. Per contra, Mr. S.N.Patnaik, learned Addl. Government Advocate would argue that the selection board meeting was held initially on 14.3.2024 when as many as 207 GRS were found eligible for being absorbed in the regular post of Accountant-cum-Data Entry Operator and therefore, their cases were recommended. Nineteen cases including that of the Petitioner were not taken into consideration due to pendency of criminal case/vigilance case and other reasons considering the provision under Rule 10(5) of the said Rules. After receipt of relevant information from different sources including the S.P., Kalahandi, it came to light that criminal cases against two candidates had ended in acquittal before 14.3.2024. The cases of four other candidates including the Petitioner were not considered on the ground that the date of disposal of the criminal cases was after 14.3.2024.

8. It would be apposite to refer to the relevant provisions of 2024 Rules at the outset. Rule 10, being relevant is quoted herein below;

“10. Procedure for filling up of vacancies by way of Selection:-

(1) A panel list of all eligible GRS shall be maintained at the District level (Zilla Parishad) basing upon their date of engagement. Candidates equal to vacancies arising in a year against 30% of the sanctioned strength of the Cadre shall be allowed to appear for recruitment through the Commission. In case suitable candidates are not available, the post shall remain vacant to be treated as carry forward vacancy for the next year.

Provided that as a one time measure, by way of relaxing the provisions of this Rule, those GRS who have completed 5 (five) Years of continuous service on the date of commencement of this Rule, shall be absorbed on regular basis against vacant posts of Accountant-cum-Data Entry Operators subject to fulfillment of other conditions of service and relaxation of upper age limit, if required. Subsequent vacant posts created in the cadre of Acct-cum-DEO shall be filled up as per the provisions prescribed in the Rules.

(2) The Schedule and Syllabus for the selection of the eligible GRS to Acct-cum-DEO shall be as decided by the PR & DW Department, however the recruitment shall be conducted by the Commission.

(3) A maximum of three chances shall be allowed to the GRS to pass the recruitment test.

(4) The Recruitment test may be held once each Year, preferably during the month of December.

(5) In order to be eligible for selection, the Selection Board constituted under Rule 11 for the purpose shall consider:

(a) Satisfactory performance report of preceding 5 Years to be issued by the CDO-cum-Executive Officer on the recommendation of the BDO concerned.

(b) Vigilance and Criminal clearance report.”

A bare reading of the Rules would suggest that ordinarily 30% of the sanctioned strength in the cadre shall be filled up by way of selection from the eligible GRS. However, as per the proviso to Sub-rule (1), as a onetime measure, provision for absorption on regular basis of those GRS who have completed five years of continuous service has been made by way of relaxing the provisions of the Rules. This carves out an exception to the normal procedure i.e., by way of selection.

9. The proceeding of the District Selection Board held on 7.8.2024 refers to sub-rule (5) of Rule 10, apparently to justify its decision of not considering the case of the Petitioner on the ground of pendency of criminal cases. However, this Court, in the case of **Ashis Kumar Debata (Supra)** has interpreted Rule 10 and held as follows;

“It would now be proper to examine the statutory provision keeping the settled position of law as referred to above in the perspective.

As is evident, Rule 10 lays down the procedure for filling of vacancies by way of selection. Rule 4 provides that not less than 70% of the cadre strength shall be filled up by way of direct recruitment and not more than 30% of the cadre strength shall be filled up by means of selection of the eligible GRS engaged under MGNREGS Scheme. Coming back to Rule 10, Rules (1)(2)(3)(4) and (5) relate to the procedure to be followed for selection of eligible GRS for the post of Accountant-cum-Data Entry Operator. The proviso to Sub-rule (1) however carves out an exception for those GRS who have completed 5 years of continuous service on the date of commencement of this Rule. The proviso speaks of ‘absorption’ and not ‘selection’. This is the most significant distinction. Such absorption has been made subject to fulfillment of ‘other conditions of service’ and ‘relaxation of upper age limit if required.’ The proviso thereafter goes on to state in clear and unambiguous terms that ‘subsequent vacant posts’ created in the cadre shall be filled up as per the provisions prescribed in the rules. Plainly understood, this means that while filling up of the post of Accountant-cum-Data Entry Operator is ordinarily to be done by way of selection of eligible GRS, the State also deemed it proper to provide for another avenue for filling up the post from amongst the existing GRS, who have completed 5 years of continuous service by way of ‘absorption’. Obviously, absorption cannot be equated with selection. That apart, the proviso itself makes it clear that the procedure laid down in the rules shall be applied only for those vacancies that arise after the one time measure of absorption is over. The use of the words ‘subsequent vacant posts’ can have no other meaning. Thus, in order to be eligible for absorption the GRS must have completed five years of continuous service as such. Though it is stated that such absorption shall be subject to fulfillment of other conditions of service but the same has not been clarified adequately. It would however suffice for the present purpose to note that in so far as the absorption on regular basis of an existing GRS is concerned, the rules would have no application”

10. Therefore, mere pendency of criminal case would not be a bar for considering the case of a GRS for his absorption as a onetime measure as per the proviso. Therefore, the decision taken by the Selection Board on 14.3.2024 to leave out the case of the Petitioner cannot be said to be correct.

11. Be that as it may, it is fundamental to criminal jurisprudence that a person is presumed to be innocent until proven guilty. Further, acquittal from a criminal case implies acknowledgement of innocence of the accused by the competent court. Therefore, both situations have to be considered together. Introducing a cut-off date would tantamount to creating an artificial barrier inasmuch as the status of the person before the said date would be that of a person against whom a criminal case is pending while his status after the cut-off date would be of a person acquitted in the criminal case. In the first case, it would be contrary to the fundamental principle of presumption of innocence. In other words, if a cut-off date is fixed and his case is not considered as he was facing a criminal case before such date, it would be akin to treating him guilty. This Court fails to understand as to how the date of selection board meeting, 14.3.2024 can have any relevance in this regard. The subsequent order of acquittal, as already stated, only goes to legally acknowledge the fact of innocence of the Petitioner. It must therefore, be held that he was innocent all through notwithstanding pendency of the criminal case. Such being the case, he cannot be discriminated on the basis of the date of judgment of acquittal, which obviously is not under his control.

12. Another significant aspect that needs mention is the apparent disparity in the stand taken by the State in the matter. In the affidavit, filed by the B.D.O., the cut-off date has been mentioned as 12.3.2024 and justified as being the date of commencement of the 2024 Rules. The proceeding of the Selection Board however, mentions something else. As already stated, it mentions 14.3.2024, which is the date on which the last selection meeting was held.

13. Thus, from a conspectus of the analysis of facts and law made hereinbefore, this Court is of the considered view that non-consideration of the case of the petitioner for absorption as Accountant-cum-Data Entry Operator was not justified firstly, on the ground of pendency of criminal case against him and secondly, despite his acquittal there from on the unconscionable ground of such acquittal being after 14.3.2024.

14. For the foregoing reasons therefore, the Writ Petition is allowed. The impugned order under Annexure-5 in so far as it relates to the Petitioner is hereby quashed. The Opp.Party-authorities are directed to consider the case of the Petitioner for his absorption as Accountant-cum-Data Entry Operator as per the 2024 Rules, if he is otherwise found to be eligible for the same as per the statutory provisions.

Headnotes prepared by:

Shri. Jnanendra ku. Swain (Judicial Indexer)

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Writ Petition allowed.

2025 (I) ILR-CUT-1206

**BAISHNAB CHARAN DAS
V.
STATE OF ODISHA & ORS.**

[W.P.(C) NO. 12265 OF 2024]

02 APRIL 2025

[ADITYA KUMAR MOHAPATRA, J.]**Issue for Consideration**

Whether the service rendered on job contract basis should be considered for pension and pensionary benefit.

Headnotes

SERVICE JURISPRUDENCE – Job contract period – The petitioner made representation to the authority to calculate the final pension by taking into account the job contract period from 18.12.1964 to 06.11.1989 & the period of regular service – The authority rejected the claim of petitioner – Whether the period of service rendered on job contract basis should be considered for pension and pensionary benefit.

Held: Yes – This Court observes that the order passed by this Court which was eventually confirmed by the Hon'ble Supreme Court has already been implemented by the State-Opposite Parties by including the length of service rendered in the job contract establishment in the total qualifying period of service for the purpose of determination of pension and pensionary benefits.
(Para 13)

This Court found that there is no justification in taking a different view than the one which has been approved by the Hon'ble Supreme Court and has attained finality and the same has also been acted upon – As such, denying the claim of the Petitioner to consider the length of service he has rendered in the job contract establishment i.e. from 18.12.1964 to 06.11.1989 is legally untenable.
(Para 14)

Citations Reference

Sri Priya Bhusan Jena Vrs. State of Odisha & Others, **O.A. No.38 of 2009**; Nityananda Biswal v. State of Orissa and others, **O.A. No.3020 (C) of 2003**; – referred to.

Keywords

Job contract period; Pension; Pensionary benefits.

Case Arising From

Order dated 17.03.2023 passed by the Settlement Officer, Cuttack.

Appearances for Parties

For Petitioner : Mr. Bikram Keshari Raj
For Opp. Parties : Smt. Siva Mohanty, ASC

Judgment/Order**Judgment****ADITYA KUMAR MOHAPATRA, J.**

The present writ petition has been filed by the Petitioner with a prayer to quash the order dated 17.03.2023 passed by the Opposite Party No.4-Settlement Officer, Cuttack under Annexure-7 to the writ petition. He has further prayed for a direction to the Opposite Parties to take into consideration the service of the Petitioner rendered in the job contract establishment from 18.12.1964 to 06.11.1989 while calculating his final pension and pensionary benefits by adding the aforesaid period to the period of his regular service and, accordingly, the pension and pensionary benefits be recalculated and released in favour of the Petitioner with interest @ 18% for the delay in making such payment.

2. The factual backdrop of the Petitioner's case leading to filing of the present writ petition, in short, is that the Petitioner was initially appointed on 06.12.1964 in the office of the Assistant Settlement Officer, Cuttack as an Amin Grade-III on a temporary basis to assist in major settlement work that was being carried out in the Cuttack District. Initially the appointment of the Petitioner was in the job contract establishment. While continuing in service in job contract establishment, the service of the Petitioner was regularized w.e.f. 04.11.1989 vide order under Annexure-2 to the writ petition passed by the Opposite Party No.4. After regularization of his service w.e.f. 04.11.1989, the Petitioner continued to discharge his service along with similarly situated many other employees, who were initially engaged in the job contract establishment. Finally, on attaining the age of superannuation w.e.f. 28.02.2002, the Petitioner had retired from service.

3. Learned counsel for the Petitioner, at the outset, contended that after his retirement, the Petitioner was initially paid provisional pension and thereafter he was extended with the benefits of final pension. He further contended that being aggrieved by the wrong calculation of pensionary benefits by taking into consideration the incorrect period of service of the Petitioner as a regular employee, the Petitioner submitted several representations before the authority with a prayer to take into consideration the period of service rendered by the Petitioner in the job contract establishment for the purpose of calculation of pension and other pensionary benefits. Since the same was not considered, the Petitioner was compelled to approach this Court by filing W.P.(C) No.12101 of 2022. This Court vide order dated 04.07.2022 disposed of the writ petition by directing the Opposite Party No.4 to consider the representation of the Petitioner dated 10.04.2018 under Annexure-6 to the said writ petition within a period of six weeks.

4. After disposal of the earlier writ petition, the Petitioner once again approached the Settlement Officer, Major Settlement Office, Cuttack, Opposite Party No.4 along with a copy of order dated 04.07.2022 passed in the previous writ application. The Opposite Party No.4 after considering the representation of the Petitioner pursuant to the order passed by this Court in the earlier writ petition disposed of the representation of the Petitioner by rejecting the claim of the Petitioner. Being aggrieved by such rejection vide order dated 17.03.2023 under Annexure-7, the Petitioner has once again approached this Court with a prayer as has been indicated hereinabove.

5. Learned counsel for the State, on the other hand, referred to the counter affidavit filed on behalf of the Opposite Parties No.1 and 4. At the outset, learned counsel for the State contended that the claim of the Petitioner has been duly considered by the Opposite Party No.4 pursuant to order passed by this Court in the earlier writ petition. After due consideration of the claim as indicated in the representation of the Petitioner, the Opposite Party No.4 found that the same is not legally tenable. Accordingly, vide order dated 17.03.2023 under Annexure-7 the prayer of the Petitioner and his representation has been rejected. He further contended that by passing order dated 17.03.2023, the Opposite Party No.4 has not committed any illegality.

6. Further, referring to the counter affidavit filed by the State-Opposite Parties, learned counsel for the State contended that the Petitioner had initially joined in service as a job contract employee w.e.f. 18.12.1964 and continued as such till 04.11.1989. Thereafter, the Petitioner was appointed in the regular establishment vide Office Order No.13677 dated 04.11.1989 and finally, the Petitioner has retired from service w.e.f. 28.02.2002. She further emphatically submitted that the Petitioner has been sanctioned and disbursed with the provisional pension from 01.03.2002 and subsequently he has also been sanctioned and disbursed with the final pension amount by the office of the Accountant General, Odisha by taking into the consideration the period of regular service of the Petitioner for 12 years 3 months and 22 days.

7. Learned counsel for the State further referring to paragraph-8 of the counter affidavit, contended before this Court that pursuant to the letter No.31252/R&DM of the Revenue and Disaster Management Department, the Director, Land Records & Surveys, Board of Revenue, Odisha, Cuttack have been asked to dispose of all pending cases relating to sanction of full pension by rejecting such cases with intimation to the concerned department citing the order dated 12.08.2016 passed by the learned O.A.T. in ***Sri Priya Bhusan Jena Vrs. State of Odisha & Others*** (O.A. No.38 of 2009). Further, a justification has been given in the counter affidavit to the effect that since the Petitioner has worked for more than 10 years in the regular establishment, there is no necessity to take into consideration the service rendered in the job contract establishment by the Petitioner for counting the minimum qualifying service. As such, the contention of the learned counsel for the Petitioner to take into

consideration the entire service period, including the job contract period, is devoid of merit. Accordingly, the entire writ petition is liable to be dismissed.

8. Heard the learned counsel for the Petitioner as well as the learned counsel for the State. Perused the pleadings of the respective parties as well as the documents annexed to the pleadings and placed before this Court in course of hearing.

9. On a careful analysis of the factual background of the present case by taking into consideration the pleadings of the respective parties as well as the submissions made by the learned counsels appearing for both sides, this Court observes that the issue that is involved in the present writ petition, which requires determination, is as to whether the service rendered by the Petitioner in the job contract establishment, i.e. from the date of his initial appointment on 18.12.1964 to 06.11.1989 is to be taken into consideration and added to the service period rendered in the regular establishment till his retirement on 28.02.2002 while calculating his pensionary benefits? At this point, it is pertinent to mention here that the issue involved in the present writ petition was directly and substantially an issue in the matter that was decided by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.3665(C)/2001.

10. The above noted O.A. was filed at the instance of the All Orissa Settlement and Consolidation Non-Gazetted Technical Officers Association, Dhenkanal. Moreover, the issue involved in the aforesaid O.A. and the factual background of the case are almost identical to the present case, i.e. whether the past service rendered by the employees in the job contract establishment can be taken into consideration for the purpose of deciding the pension and pensionary benefits? Learned Tribunal, vide order dated 10.03.2011, decided the issue against the Petitioners. Being aggrieved by the decision of the Tribunal, the Petitioner approached this Court by filing W.P.(C) No.21611 of 2011. A Division Bench of this Court after hearing the counsels appearing for the respective parties, vide order dated 19.04.2022, disposed of the writ petition by quashing the impugned order passed by the Tribunal dated 10.03.2011. While disposing the writ petition, the Hon'ble Division Bench has also referred to and relied upon the ratio decided by the learned Tribunal in the case of **Nityananda Biswal v. State of Orissa and others** (O.A. No.3020(C) of 2003) wherein the learned Tribunal directed the Opposite Parties to count the period of service rendered in the job contract establishment while calculating the qualifying period of service for the purpose of determination of pension and pensionary benefits.

11. In the rejoinder affidavit, learned counsel for the Petitioner has also referred to the order of Division Bench of this Court dated 19.04.2022 passed in W.P.(C) No.21611 of 2011. The rejoinder affidavit further reveals that although the State-Opposite Parties challenged the order dated 19.04.2022 before the Hon'ble Supreme Court by filing Special Leave Petition (Civil) Diary No(s). 36299 of 2022, however, the Hon'ble Supreme Court vide order dated 14.12.2022 dismissed the SLP preferred by the

State-Opposite Parties by holding that no ground was found to interfere with the impugned order of this Court. Thus, the issue with regard to counting of the period of service rendered in the job contract establishment along with the service period rendered in the regular establishment for the purpose of pension and pensionary benefits has attained finality in view of the judgments discussed hereinabove.

12. Referring to the rejoinder affidavit, learned counsel for the Petitioner further contended that after dismissal of the SLP preferred by the State-Opposite Parties, the Opposite Parties have already implemented the order vide their Office Order dated 23.11.2023 under Annexure-10 to the rejoinder affidavit. On perusal of the Office Order under Annexure-10 to the rejoinder affidavit, it clearly appears that the qualifying service period for the purpose of determination of pension and pensionary benefits has been arrived at by adding the length of service in job contract establishment to the length of service rendered in the regular establishment.

13. In the aforesaid factual background, this Court observes that the order passed by this Court which was eventually confirmed by the Hon'ble Supreme Court has already been implemented by the State-Opposite Parties by including the length of service rendered in the job contract establishment in the total qualifying period of service for the purpose of determination of pension and pensionary benefits.

14. In view of the aforesaid analysis of the factual as well as legal position, this Court found that there is no justification in taking a different view than the one which has been approved by the Hon'ble Supreme Court and has attained finality and the same has also been acted upon. As such, denying the claim of the Petitioner to consider the length of service he has rendered in the job contract establishment i.e. from 18.12.1964 to 06.11.1989 is legally untenable. Moreover, the principle laid down by this Court has already been affirmed by the Hon'ble Supreme Court as has been discussed hereinabove. In such view of the matter, this Court has no hesitation in quashing the impugned order dated 17.03.2023 passed by the Opposite Party No.4-Settlement Officer, Major Settlement, Cuttack under Annexure-7 to the writ petition. Accordingly, the same is hereby quashed.

15. The present writ petition is being disposed of by directing the Opposite Parties to extend similar benefits to the Petitioner as has been given to the persons under Annexure-10 to the rejoinder affidavit vide order dated 23.11.2023 by counting the period of service the Petitioner has rendered in the job contract establishment. Accordingly, the pension and pensionary benefits payable to the Petitioner be re-fixed within a period of two months from the date of communication of a certified copy of the judgment.

16. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Writ Petition allowed.

2025 (I) ILR-CUT-1211

**AKSHAYA KUMAR DASH
V.
STATE OF ODISHA & ORS.**

[W.P.(C) NO. 5483 OF 2024]

17 MARCH 2025

[A.K. MOHAPATRA, J.]**Issue for Consideration**

Whether the petitioner has any right to be reinstated in service after his acquittal in a vigilance case.

Headnotes

SERVICE JURISPRUDENCE – Reinstatement – The petitioner was entangled in a criminal case, as a result of which he was disengaged from service – The petitioner faced trial and was acquitted by the learned Trial Court – The authority rejected prayer for reinstatement even after the order of acquittal – Whether the petitioner has any right to reinstatement in service after his acquittal in a vigilance case.

Held: Yes – This Court is of the considered view that the Opposite Parties should have considered the case of the Petitioner for his reinstatement in service after his acquittal in the Vigilance case pursuant to the judgment under Annexure-6 to the Writ Petition. (Para 26)

Citations Reference

Ram Lal vs. State of Rajasthan & Ors., **(2024) 1 SCC 175**; Smt. Nirmala Sahoo vs. State of Odisha & Ors., **W.P.(C) No.25947 of 2022 dated 24.03.2023**; State of Odisha & Anr. vs. Anup Kumar Senapati & Anr., **2019 (12) Scale 387**; R. Muthu Kumar vs. Chairman & M.D., Tangeeco, 2022, **2022 live Law S.C. 140 – referred to.**

Keywords

Initiation of Criminal Case; Disengaged from service; Acquittal in criminal case; Reinstatement.

Case Arising From

Order dated 09.02.2024 passed by the Opposite Parties.

Appearances for Parties

For Petitioner : Mr. Mihir Kanta Rath
For Opp. Parties : Mr. M.R. Mohanty, A.G.A

Judgment/Order

Judgment***A.K. MOHAPATRA, J.***

1. By filing the present Writ Petition, the Petitioner has prayed for quashing of the impugned order dated 09.02.2024 under Annexure-9 to the Writ Petition and he has also prayed for a direction to the Opposite Party No.2 to reinstate the Petitioner in service within a stipulated period of time.

2. The present Petitioner who was serving as a Gram Panchayat Technical Assistant, (herein-after referred to as “GPTA” in short) was entangled in a criminal case, as a result of which, he was disengaged from service. In the meantime, the Petitioner faced a trial and he has been acquitted by the learned trial court. Since his prayer for reinstatement has been rejected by the Opposite Parties vide order dated 09.02.2024 under Annexure-9 to the Writ Petition, the Petitioner has approached this Court by filing a Writ Petition with a specific prayer to quash the impugned order and for a further direction to the Opposite Parties to reinstate the Petitioner in service.

3. The factual background leading to the filing of the present Writ Petition is as follows:

The Petitioner was initially appointed as GPTA on 22.08.2005 pursuant to Annexure-1. Thereafter, while discharging his duty as GPTA, he was arrested by the Vigilance Police on 19.08.2017 which resulted in a Vigilance P.S. Case being registered against the Petitioner. Thereafter, the Petitioner was released on bail on 30.08.2017. After his release on bail, the Petitioner was allowed to join in service on 01.09.2017. Consequently, on 20.09.2017, pursuant to the order under Annexure-2 to the Writ Petition, the Petitioner was disengaged from service as he was working on contractual basis.

4. Earlier, the Petitioner had approached this Court by filing W.P.(C) No.2252 of 2017 with a prayer to quash the order of disengagement dated 20.09.2017. A coordinate Bench of this Court vide judgment dated 10.12.2019 quashed the impugned order. However, learned coordinate Bench granted liberty to the Opposite Parties to take appropriate action as is deemed necessary in accordance with law against the present Petitioner. Pursuant to the order dated 10.12.2019 passed in the earlier Writ Petition, the Petitioner was reengaged on 24.01.2020 under Annexure-4 to the Writ Petition. Finally, the Petitioner was again disengaged on 08.10.2020 under Annexure-5 to the Writ Petition.

5. In the meantime, the Petitioner faced trial in Vigilance Case bearing VGR Case No.13 of 2017 pending in the Court of the learned Special Judge, Vigilance, Baripada, Mayurbhanj. Finally, vide judgment dated 29.04.2023 of the learned Special Judge, Vigilance, Baripada at Mayurbhanj, the Petitioner was acquitted from all the charges, as is evident from the judgment of the trial court which has been annexed to the Writ Petition as Annexure-6.

6. After his acquittal in the Vigilance Case vide judgment dated 29.04.2023, the Petitioner approached the authorities to reinstate him in service. Since no action was taken, the Petitioner again approached this Court vide W.P.(C) No.28341 of 2020. This Bench, vide order dated 03.01.2024, disposed of the said Writ Petition by granting liberty to the Petitioner to approach the Opposite Party No.5, i.e. the Director, Panchayati Raj Department, Government of Odisha, Bhubaneswar with a further direction to Opposite Party No.5 to consider the case of the Petitioner by taking into consideration the fact that the Petitioner has already been acquitted in the vigilance case.

7. After disposal of the aforesaid Writ Petition, the Petitioner approached the Opposite Party No.2 by filing a representation on 11.01.2024. The Opposite Party No.2, vide its order dated 09.02.2024 under Annexure-9, rejected the prayer of the Petitioner for reinstatement in service as GPTA.

8. Mr. M.K.Rath, learned counsel for the Petitioner at the outset contended that in view of the judgment of the Hon'ble Supreme Court in **Ram Lal vs. State of Rajasthan & Ors.** reported in (2024) 1 SCC 195 if an employee is acquitted in a Vigilance case as a result of the prosecution having miserably failed to prove the charges, the employee shall be reinstated in service with all consequential benefits, including seniority etc. along with all financial benefits. Applying the ratio decided in **Ramlal's case (Supra)** to the facts of the present case, the learned counsel for the Petitioner contended that the Petitioner has been acquitted from all the charges as the prosecution has failed to bring home the charges and, as such, the Petitioner is required to be reinstated in service as has been laid down by the Hon'ble Supreme Court in the aforesaid case. He further contended that the ratio laid down by the Hon'ble Supreme Court in the aforesaid case is squarely applicable to the facts of the present case.

9. Learned counsel for the Petitioner, further referring to the judgment of this Court in the case of **Smt. Nirmala Sahoo vs. State of Odisha & others** in **W.P.(C) No.25947 of 2022 disposed of on 24.03.2023**, contended that this Court has quashed the impugned order by declaring the termination of service as bad and illegal. Further, a direction was given to the Opposite parties to reinstate the Petitioner in service with benefit of continuity in service from the date of termination to the date of his reinstatement at par with her batch mate, however, without any financial benefits. Similarly, learned counsel for the Petitioner also contended that the ratio decided in the case of Smt. Nirmala Sahoo's case (supra) is clearly applicable to the facts of the present case. He further contended that the Opposite Parties have failed to apply the ratio of the aforesaid two judgments to the facts of the present case, as a result, the Petitioner has been seriously prejudiced.

10. Additionally, Mr.Rath, learned counsel for the Petitioner would further argue that two of the employees, who had been disengaged along with the Petitioner and were involved in a similar case, were subsequently acquitted by the learned trial court. However, the aforesaid two employees have been reinstated in service in the

meantime. Learned counsel for the Petitioner at this juncture contended that the conduct of the Opposite Parties in reinstating the two similarly placed employees while rejecting the prayer of the Petitioner, who stands in a similar footing amounts to gross discrimination. Therefore, the same is violative of principles enshrined in Articles 14 & 16 of the Constitution of India. In such view of the matter, learned counsel for the Petitioner submitted that the Opposite Parties be directed to reinstate the Petitioner in service, as has been done in the case of two similarly situated employees who were reinstated after their acquittal in a criminal case by the trial court.

11. Learned Additional Government Advocate on the other hand, referring to the Counter Affidavit filed on behalf of Opposite Party Nos. 1 & 2, submitted that the Opposite Parties have not committed any illegality in rejecting the prayer of the Petitioner for reinstatement in service vide order dated 09.02.2024 under Annexure-9. To justify the conduct of the Opposite Parties in rejecting the prayer for reinstatement of the Petitioner, learned counsel for the State argued that although the Petitioner was acquitted in the vigilance case bearing VGR Case No.13 of 2017, the judgment dated 29.04.2023 does not clearly indicate that the Petitioner has been honourably acquitted. He further submitted that that Petitioner has been given the benefit of doubt by the trial court while acquitting the Petitioner. In the aforesaid factual background, learned counsel for the State contended that the ratio laid down by the Hon'ble Supreme Court in **Ram Lal's** case and by this Court in **Smt.Nirmala Sahoo's** case cannot be applied to the facts of the Petitioner's case.

12. Learned Additional Government Advocate further contended that after the judgment dated 29.04.2023 was passed by the learned trial court in VGR Case No.13 of 2017, the Petitioner approached this Court by filing W.P.(C) No.28341 of 2020, which was disposed of on 03.01.2024. Pursuant to the direction of this Court dated 03.01.2024 the Opposite Parties considered the case of the Petitioner in terms of the judgment of the Hon'ble Supreme Court as well as of this Court. On such consideration, the Opposite Parties found that the ratio laid down by the Hon'ble Supreme Court as well as this Court in the aforesaid two judgments is not applicable to the facts of the present case. Accordingly, the prayer of the Petitioner for reinstatement in service, after acquittal in the criminal case, was rejected by the Opposite Parties vide order dated 09.02.2024. In such view of the matter, learned Additional Government Advocate submitted that the Opposite Parties have not committed any illegality which would call for any interference of this Court in the present Writ Petition.

13. In course of his argument, learned Additional Government Advocate has laid much emphasis on the fact that the Petitioner is a contractual employee and was working as GPTA under MGNREGS scheme. Employments under the aforesaid scheme are subject to the terms and conditions of agreement/contract executed by the hiring agency and they are not governed under the OCS (CCA) Rules, 1962. Further, referring to the agreement, learned counsel for the State contended that

Paragraph-9 of the said agreement envisages that in case of a prima facie evidence of serious lapse on the part of any GPTA and on being implicated in a criminal/vigilance case, the Opposite Parties have the power and authority to immediately disengage the GPTA.

14. In reply to the Petitioner's specific assertions that similarly situated two employees have already been reinstated in service, learned counsel for the Petitioner further referred to the doctrine of negative equality. In the aforesaid context, learned Additional Government Advocate contended that in law there is no such principle of negative equality. He further contended that the concept of negative equality does not come within the purview of Article 14 of the Constitution of India. In the aforesaid context, he also referred to the judgment of the Hon'ble Supreme Court in the matter of ***State of Odisha & anr. V Anup Kumar Senapati & anr*** reported in ***2019(12) Scale 387 and R. Muthu Kumar vs. Chairman & M.D., Tangeco, 2022 reported in 2022 live Law S.C. 140***. By referring to the aforesaid judgment, learned Additional Government Advocate resisted the prayer of the Petitioner for reinstatement in service.

15. Finally, learned Additional Government Advocate contended that the employees who have been acquitted in a criminal/vigilance case have no vested right to be reinstated in service. In the aforesaid factual background, Additional Standing counsel for the State contended that the prayer of the Petitioner for reinstatement in service is not supported by any valid reason. As such, the Writ Petition at the instance of the Petitioner is devoid of merit and the same should be dismissed.

16. Heard Mr.M.K.Rath, learned counsel for the Petitioner as well as Mr.M.R.Mohanty, learned Additional Government Advocate for the State. Perused the pleadings of the respective parties as well as the materials placed before this Court for consideration at the time of final hearing of the Writ Petition.

17. On a careful analysis of the pleadings of the respective parties, further keeping in view the prayer made in the present Writ Petition, this Court is required to examine the issue as to whether the Petitioner has any right to be reinstated in service after his acquittal in a vigilance case, particularly in view of the judgment in the case of ***Ram Lal (Supra)*** as well as ***Smt.Nirmala Sahoo's case (supra)?***. The second issue which requires adjudication by this Court is as to whether the reinstatement of the two similarly situated employees will come under the concept of negative equality while considering the case of the Petitioner for reinstatement in service after his acquittal in the vigilance case ?.

18. On a careful analysis of the submissions made by the learned counsels from both sides, this Court observes that with regard to the factual aspect of the present case, there is hardly any dispute between the both sides. Most of the factual aspects of the matters are admitted by both the sides. The only dispute that remains between both sides is with regard to the judgment rendered by the trial court in VGR Case No.13 of 2017 dated 29.04.2023 under Annexure-6 to the Writ Petition and the

interpretation of such judgment keeping in view the law laid down by the Hon'ble Supreme Court in **Ram Lal's case (supra)** and by this Court in **Smt. Nirmala Sahoo's case (supra)**. On a closer scrutiny of the judgment, dated 29.04.2023 passed by the learned trial court under Annexure-6 to the Writ Petition, this Court observes that the trial court has formulated three major points for determination in the trial. The same are quoted below:

"i) Whether on 19.08.2017 or before the accused was employed as Gram Panchayat Technical Assistant of Arapara G.P. in the district of Mayurbhanj and as such, was a public servant /

ii) Whether on 19.08.2017 at about 2.05 P.M., the accused demanded a sum of Rs.10,000/- as illegal gratification from the complainant abusing his position as public servant to process the file for release of first running bill worth Rs.4,50,000/- in respect of construction of P.E.O.- cum-V.L.W. quarters at Arapata G.P. ? and

iii) Whether the accused accepted the aforesaid tainted money voluntarily from complainant knowing it to be bribe other than legal remuneration as a motive or reward for doing his official acts ?"

While answering the aforesaid points in its judgment, learned trial court has discussed the evidence of the witnesses. Further, the learned trial court has correctly observed that in a case of this nature, the Prosecution is required to establish the demand of bribe, which is the foundation for the entire allegation made in the F.I.R. Moreover, such demand of bribe is required to be proved conclusively to bring home the charges leveled against the present Petitioner.

19. Learned trial court has made a detailed discussion of evidences of different witnesses and inconsistencies in evidence of P.Ws.2 & 3. In doing so, learned trial court has also found discrepancies with regard to place of trap as has been indicated in Paragraph-29 of the judgment and it has been indicated that there is an inconstancy as to whether the place of the trap is residence of the accused or residential house of P.W.3. Moreover, the learned trial court has also observed that there has been a material omission on the part of P.W.2, who has failed to disclose that he has heard the conversation between P.W.3 and the accused and overseen the transaction of money taking place between them. Thus, P.W.2, being a material witness and having failed to disclose certain material aspects in his chief evidence, particularly the failure to mention the place of trap in the chief evidence of P.W.2, learned trial court has observed that the prosecution should have proceeded to confront the witnesses with regard to the aforesaid fact under section 154 of the Evidence Act. However, the Prosecution did not do so, leaving the prosecution case in the hand of only P.W.2.

20. The learned trial court has also referred to the evidence of P.W.3 and expressed its shock over the manner in which the P.W.3 has conducted himself during his examination. Specifically, a reference has been made to the categorical outburst of the P.W.3 that the accused has never demanded any money on any occasion and that the PEO and the accused had to pay Rs.20,000/- for the work

executed by him. Moreover, there are also discrepancies with regard to acceptance of money by the accused and the manner in which the same was accepted and kept in his pocket, which does not tally with the evidence-in-chief of P.W.3. Therefore, learned trial court has come to a conclusion that the examination of P.Ws. 2 & 3 does not inspire confidence of the learned trial court in their version to arrive at an irresistible conclusion that the money was demanded by the accused and accepted from the complainant as bribe.

21. Additionally, learned trial court while discussing the evidence of the I.O. has also mentioned in Paragraph-36 of the judgment that on 04.03.2017 the bill has already been prepared following measurement and check measurement of the work undertaken by the P.E.O. Further he has observed that the testimony of P.W.4 supports the contention of the accused to the extent that, he has stated in his examination that on 06.03.2017 a sum of Rs.6,00,000/- was withdrawn from the joint account standing in the name of P.W.4 and the Sarpanch and by that date, construction work of the PEO quarters had already been completed. He has also observed that by the time, the trap was laid on 04.03.2017 the measurement and check measurement had already been done by the GPTA and the AEE had passed the bill of Rs.4,37, 216/-. On the basis of the critical evidence of the prosecution witnesses, the learned trial court has categorically disbelieved that there was any demand of bribe on the part of the accused.

22. Finally, in paragraph-42 of the judgment, learned trial court has categorically observed that on the basis of the materials placed on record, the prosecution case has failed to advance any clinching evidence so as to firmly establish the prosecution case on the touchstone of the legal provisions of the P.C.Act.. Accordingly, the trial Court has held that the prosecution has failed to prove the demand of illegal gratification, and as such, he has delivered the judgment of acquittal with the observation that it is wholly unsafe to record a conviction against the accused and accordingly, he has given the benefit of doubt to the Petitioner.

23. After going through the judgment of the trial court, on an analysis of the issues that have been considered while delivering the judgment of acquittal, this Court is of the considered view that the learned trial court has held that the accused is entitled to the benefit of doubt which is an effect of the prosecution having miserably failed to establish the case as per the standard laid down under the provisions of P.C.Act.

24. On a careful reading and analysis of the trial court judgment, it appears that the Prosecution has failed to prove the basic and foundational requirement of demand of bribe. Thus, the entire case of the prosecution case is bound to fall on that ground. Therefore, this Court has no hesitation to come to a conclusion that the trial court has deliberately used the word “benefit of doubt which was extended to the Petitioner”. However, this Court is convinced that the judgment of the trial court delivered in the case of the Petitioner under Annexure-6 is a case of clean acquittal

judgment. Therefore, this Court has no hesitation in coming to the conclusion that the present case falls within the ratio laid down by the Hon'ble Supreme Court in the case of Ram Lal (supra) and by this Court in Smt.Nirmala Sahoo's case (supra).

25. Next with regard to the ground taken by the learned State counsel that there is no concept of negative equality under Article-14 of the Constitution of India, this Court observes that there is no dispute with regard to the aforesaid position of law, which is evident from the judgment referred to by the learned counsel for the State. In the present case, the concept of negative equality would not come into play, inasmuch as, the concept of negative equality stands on a different set of facts than the present case. In the present case, the Petitioner has pleaded that similarly situated persons who were entangled in a criminal case and consequent upon their acquittal in such case, they have been reinstated in service. Nevertheless, mere reinstatement of some of the accused persons in service cannot itself confer any right for reinstatement of the Petitioner in service. To succeed in his attempt to get reinstatement in service, the Petitioner has to satisfy this Court that the parameter/criteria laid down in the aforesaid two judgments of the Hon'ble Supreme Court as well as this Court have been well satisfied in the present case. On a careful analysis of the judgment of the trial court, this Court is of the considered view that the case of the Petitioner can very well be considered by applying the ratio laid down in **Ram Lal's case** and **Smt.Nirmala Sahoo's case**.

26. In view of the aforesaid analysis of the factual position of the present case, this Court is of the considered view that the Opposite Parties should have considered the case of the Petitioner for his reinstatement in service after his acquittal in the Vigilance case pursuant to the judgment under Annexure-6 to the Writ Petition. Having failed to do so, the Opposite parties have committed an illegality and as such, the order dated 09.02.2024 under Annexure-9, whereby the prayer of the Petitioner for reinstatement in service was rejected, is unsustainable in law and the same is hereby quashed. Further, while disposing of the Writ Petition, the Opposite Parties are directed to reinstate the Petitioner in service in terms of the aforesaid two judgments within eight weeks from the date of communication of a copy of this judgments by the Petitioner. However, it is further made clear that since the Petitioner was engaged on contractual basis and after his disengagement he has not worked from the date of his disengagement till the time he is reinstated pursuant to the direction by this Court, the Petitioner is not entitled to claim arrear salary/wages. However, the period of disengagement shall be taken into consideration for the purpose of continuity in service while considering the other service benefits of the Petitioner.

27. Accordingly, the Wit Petition is disposed of. However, there shall be no order as to costs.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Writ Petition disposed of.

2025 (I) ILR-CUT-1219

**SYED SHAHRUDDIN AHMED
V.
STATE OF ORISSA & ORS.**

[W.P.(C) NO. 22134 OF 2024]

18 MARCH 2025

[ADITYA KUMAR MOHAPATRA, J.]**Issue for Consideration**

Whether the unutilized leave salary of the petitioner can be withheld by the authority on the ground of pendency of departmental/judicial proceeding.

Headnotes

SERVICE LAW – Encashment of unutilized leave salary – The petitioner retired from service on attaining the age of superannuation in the rank of a jailer – Since the petitioner was facing two departmental proceedings for his involvement in vigilance proceeding, the retiral dues including the pensionary benefits of the petitioner have been withheld by the authorities – The petitioner submitted an application for encashment of his unutilized leave of 291 days – The authority rejected the application on the ground of pendency of departmental/judicial proceeding – Whether the unutilized leave salary of the petitioner can be withheld by the authority on the ground of pendency of departmental/judicial proceeding.

Held: No – The Hon'ble division bench, on a careful analysis of the legal position, came to a categorical conclusion that in absence of any statutory rules, the leave encashment cannot be withheld by the authorities. (Para 8)

Citations References

Hira Lal vs. State of Bihar & Others, **AIR 2020 SC 1027**; State of Jharkhand & Others vs. Jitendra Kumar Srivastava & Another, **(2013) 12 SCC 210**; Pradipta Kumar Jagadev vs. State of Odisha and others, **W.P.(C) No.11034 of 2024 decided 06.05.2024**; State of Odisha and others vs. Nirmal Chandra Satpathy and another, **W.P.(C) No. 3442 of 2016 vide judgment dated 28.02.2017**; Chittaranjan Senapati vs. State of Odisha & another, **W.P.(C) No. 20808 of 2024 decided on 06.03.2025 – referred to.**

Keywords

Withholding of unutilized leave salary; Encashment of unutilized leave, Retiral dues, Departmental proceeding; Vigilance proceeding; Pensionary benefits.

Case Arising From

Order dated 03.03.2022 passed by the Opposite Party No. 2.

Appearances for Parties

For Petitioner : Mr. Jayananda Jena

For Opp. Parties : Mr. M.R. Mohanty, A.G.A

Judgment/Order**Judgment*****A.K. MOHAPATRA, J.***

1. The sole grievance of the petitioner in the abovenoted writ application is with regard to inaction of the Opposite Parties in sanctioning and releasing the retiral benefits of the petitioner including the unutilized leave salary and final pension. He has further prayed for quashing of the order under Annexure-10 to the writ application.

2. Heard Sri. Jayananda Jena, learned counsel for the petitioner as well as learned counsel for the State-Opposite Parties. Perused the writ application as well as the documents annexed thereto. The factual background leading to the filing of the present writ application, in a nutshell, is that the present petitioner while he was working in the rank of a Jailer has taken retirement from service on attaining the age of superannuation w.e.f. 30.04.2017. Preceding his retirement, i.e. 04.10.2016, a departmental proceeding was wrongly instituted against the present petitioner. Challenging the initiation of the departmental proceeding the petitioner approached the learned Odisha Administrative Tribunal by filing O.A. No.4812 (C) of 2016 and obtained an interim order of stay on 29.12.2016. Since the petitioner was facing two departmental proceedings bearing D.P. No.4 of 2017 and D.P. No.5 of 2018 as well for his involvement in a vigilance proceeding, the retiral dues including the pensionary benefits of the petitioner have been withheld by the authorities.

3. The writ petition further reveals that on 17.01.2019, the petitioner submitted an application for encashment of his unutilized leave of 291 days. On 18.01.2019 he had submitted an application in Orissa Jail Form No.70 for the early release of his dues. Since the authorities did not disburse the dues of the petitioner, the petitioner upon being aggrieved by such inaction submitted the representation on 02.08.2019 with a specific prayer for an early release of his leave salary under Annexure-8 to the writ application. Similarly, another representation was submitted on 21.09.2021. Since no action was taken by the Opposite Parties, the petitioner was compelled to approach this Court earlier by filing W.P.(C) No.40648 of 2021. A coordinate Bench of this Court vide order dated 27.01.2022 disposed of the writ application with a direction to the Opposite Parties to consider the representation of the petitioner in a time bound manner and to dispose of the same as expeditiously as possible.

4. While the matter stood thus, the Opposite Party No.2 without proper analysis of the factual background of the case and in ignorance of the law governing the subject matter of the dispute, rejected the representation of the petitioner vide order dated 03.03.2022 under Annexure-10 to the writ application. Being aggrieved by the rejection of his representation vide order dated 03.03.2022, the petitioner has approached this Court by filing the present writ application.

5. Mr. Jena, learned counsel appearing on behalf of the petitioner at the outset contended that the Home Department resolution dated 22.08.2024 imposing an embargo on release of the pensionary benefits of the retired government employees, against whom vigilance case has been registered, was issued after the retirement of the present petitioner. He further contended that in the absence of any specific bar in law i.e. in any of the statute or the rules framed thereunder, the executive cannot usurp the power to legislature and by virtue of such executive power they cannot impose any restriction on the service conditions of the petitioner which is absent in the statute or the statutory rules. In the aforesaid context, learned counsel for the petitioner referred to the judgment of the Hon'ble Supreme Court in **Hira Lal vs. State of Bihar & others** reported in **AIR 2020 SC 1027**. He also referred to the judgment of the Hon'ble Supreme Court in the case of **State of Jharkhand & others vs. Jitendra Kumar Srivastava & another** reported in **(2013) 12 SCC 210**. Learned counsel for the petitioner further referred to the order passed by this Court in **Pradipta Kumar Jagadev vs. State of Odisha and others (in W.P.(C) No.11034 of 2024 decided on 06.05.2024)**. On such grounds, learned counsel for the petitioner contended that the impugned order under Annexure-10, rejecting the claim of the petitioner for encashment of unutilized leave salary for 291 days, is absolutely illegal and arbitrary and as such the order under Annexure-10 is liable to be quashed.

6. Learned counsel for the State on the other hand contended that since both the departmental proceeding as well as vigilance proceeding is pending against the petitioner, the petitioner is not entitled to the retiral/pensionary benefits including the benefit of unutilized leave salary. In course of his argument, learned counsel for the State also referred to the Finance Department Office Memorandum No.7493 dated 26.03.2015 and contended that the State Government has taken a decision that the cash equivalent of the unutilized leave salary shall not be sanctioned to the retiring government servant if it is found that a departmental/judicial proceeding is pending against such government servant on the date of his retirement. Therefore, learned counsel for the State contended that since a departmental proceeding as well as a vigilance proceeding is pending against the petitioner, the petitioner will be covered under the Office Memorandum dated 26.03.2015. Therefore, he is not entitled to the cash equivalent of unutilized leave salary. On such grounds, learned counsel for the State further contended that the Opposite Parties have not committed any illegality in rejecting the prayer of the petitioner vide their order under

Annexure-10 and as such the writ application preferred by the present petitioner is devoid of merit and is liable to be dismissed.

7. Having heard the learned counsels appearing for both sides, on a careful analysis of the factual background of the petitioner's case, this Court is of the view that the factual aspect involved in the present writ application is not disputed by either side. The only difference between both sides is with regard to the applicability of the law so far as it relates to the sanction and disbursal of the retiral/pensionary benefits as is due and admissible to the petitioner. Learned counsel for the petitioner, in course of his argument, confined his prayer to the sanction and disbursal of the cash equivalent of unutilized leave salary on the ground that there exists no statutory embargo in releasing such amount in favour of the petitioner. Therefore, this Court confines the adjudication of the present writ application to the dispute involving sanction and disbursement of the cash equivalent of unutilized leave salary.

8. On a careful analysis of the submissions made by the learned counsels for both sides, this Court observes that the only surviving issue which is required to be adjudicated in the present writ application is no more *res integra* since a division bench of this Court in the matter of ***State of Odisha and others vs. Nirmal Chandra Satpathy and another*** bearing ***W.P.(C) No.3442 of 2016*** vide judgment dated 28.02.2017, took up for consideration, an issue identical to the one in the present matter. The Hon'ble division bench, on a careful analysis of the legal position, came to a categorical conclusion that in the absence of any statutory rules, the leave encashment cannot be withheld by the authorities. A similar view has also been taken by this bench in a recent judgment in the matter of Chittaranjan Senapati vs. State of Odisha & another in W.P.(C) No.20808 of 2024 decided vide judgment dated 6th March, 2025.

9. In view of the aforesaid analysis of the legal position, which is well settled by now, this Court is of the view that the issue involved in the present writ application requires no further adjudication in light of the judgment of this Court in Chittaranjan Senapati's case (*supra*). Accordingly, this Court has no hesitation in quashing the impugned rejection order under Annexure-10 and the same is hereby quashed. Further, the matter is remanded back to the Opposite Parties with a direction to sanction and disburse the cash equivalent of the unutilized leave salary for 291 days as is due and admissible to the petitioner within a period of six weeks from the date of communication of a certified copy of this order by the petitioner.

10. With the aforesaid observations and directions, the writ petition stands disposed of.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Writ Petition disposed of.

2025 (I) ILR-CUT-1223

**THE NEW INDIA ASSURANCE COMPANY LTD.,
REPRESENTED THROUGH ITS BRANCH MANAGER, BALANGIR
V.
BIHARI PARABHUE & ORS.**

[I.A NO. 150 OF 2025]
(ARISING OUT OF MACA NO. 324 OF 2016)

31 JANUARY 2025

[V. NARASINGH, J.]**Issue for Consideration**

Whether delay of 3,270 days in filing Appeal under Motor Vehicles Act can be condoned in absence of sufficient cause but on the basis of beneficial legislation.

Headnotes

MOTOR VEHICLES ACT, 1988 – Section 173(1) r/w Section 5 of Limitation Act – Period of limitation – Sufficient cause – There is delay of 3,270 days in filing the appeal – Whether the delay of 3,270 days in filing Appeal under the Motor Vehicles Act can be condoned in absence of sufficient cause but on the basis of beneficial legislation.

Held: No – This Court is not persuaded to hold, keeping in view that the Motor Vehicles Act is a beneficial legislation, that the grounds as set forth in the petition for condonation of delay constitute “sufficient cause” for condonation of delay of 3,270 days so as to engulf the sisters and brothers of the deceased of an accident which took place in 28.12.2008 in litigation.
(Para 14)

Citations References

Mrs. Sandhya Rani Sarkar Vrs. Smt. Sudha Rani Debi and Others, **AIR 1978 SC 537**; State of Patna Vrs. Ray Chandi Nath Sahay and others, **AIR 1983 Patna 189**; Dijabar and another Etc. Versus Sulabha and others, **AIR 1986 Ori 38**, Rajkumar Jindal Versus Orissa Forest Corporation and another, **AIR 1996 Ori 10**; Bikal Sethy Versus Gouranga Chandra Sethy and others, **1987 (II) OLR-312**; Balwant Singh (dead) Vrs. Jagdish Singh and Others, **(2010) 8 SCC 685**; Mool Chandra Vrs. Union of India & Anr., **2024 INSC 577** – referred to.

List of Acts

Motor Vehicles Act, 1988.

Keywords

Delay; Condonation of delay; Sufficient cause; Motor Vehicles Appeal; Beneficial legislation.

Case Arising From

Judgment dated 16.10.2015 passed by the learned Addl. District Judge-cum-MACT, Balangir in M.A.C Case No.65/88 of 2009-12.

Appearances for Parties

For Appellants : Mr. G.P. Dutta

For Respondents : --

Judgment/Order**Judgment****V. NARASINGH, J.**

Heard learned counsel for the Appellant.

1. This is an appeal Under Section 173(1) of the MV Act, 1988 (in short “the Act”) by the appellant- Assurance Company challenging the impugned judgment dated 16.10.2015 passed by the learned Addl. District Judge-cum-MACT, Balangir in M.A.C Case No.65/88 of 2009-12.

2. The MACA was filed on 14.03.2016. Admittedly, it was not accompanied by any petition for condonation of delay, though a petition seeking an extension of time to pay the Court fees was submitted.

3. While taking of the MACA for adjudication, by order dated 08.01.2025 in the present I.A (I.A No.150 of 2025), the direction was given to calculate the delay in filing the appeal in the background that the I.A seeking condonation of delay was filed in Court on the said date (08.01.2025). On further stamp reporting, Registry was pointed out the delay of 3,270 days in filing the appeal, as noted above.

4. Learned counsel for the Appellant submits that the Petition for delay can be filed at any stage of the proceeding and to fortify his submission, he relies on the judgment in the case of **Mrs. Sandhya Rani Sarkar Vrs. Smt. Sudha Rani Debi and Others; AIR 1978 SC 537** and in the case of **State of Patna Vrs. Ray Chandi Nath Sahay and others; AIR 1983 Patna 189, Dijabar and another Etc. Versus Sulabha and others, AIR 1986 Ori 38, Rajkumar Jindal Versus Orissa Forest Corporation and another, AIR 1996 Ori 10 and Bikal Sethy Versus Gouranga Chandra Sethy and others, 1987 (II) OLR-312.**

5. On a bare perusal of the aforementioned judgments relied on by the learned counsel for the Appellant- Insurance Company, it can be seen that the underlying principles, as decided, is that no straight jacket formula can be led for condonation of delay and each case has to be examined in the peculiar factual matrix thereof to

N.I.ASSURANCE CO. LTD, BALANGIR V. BIHARI PARABHUE [V. NARASINGH, J.]

decide what would constitute sufficient cause under Section 5 of the Limitation Act. In fact in the case of **Mrs. Sandhya Rani Sarkar Vrs. Smt. Sudha Rani Debi (Supra)**, relied upon by the learned counsel for the Appellant, the Apex Court has restated that the words “sufficient cause” under Section 5 of the Limitation Act should be liberally construed only when “negligence or any inaction or want of bona fides is imputable party” resulting in delay in filing the appeal.

6. The Apex Court further stated that “what would be such necessary steps will depend upon the circumstances of a particular case”.

7. The grounds taken in the I.A for condonation of delay have to be tested on anvil of the aforementioned dictum of the Apex Court and the other judgments cited on behalf of the Learned counsel for the Insurance Company.

8. As noted the appeal was filed assailing the award of Rs.3,00,000/- along with interests from the date of application i.e. 01.08.2009 till the actual payment is made and while preferring the appeal, though an application seeking extension of time to pay the Court fees under Section 149 of CPC was submitted for reasons based on known petition for condonation of delay was not filed and as already noted the same was filed on 08.01.2025 and in such petition for condonation of delay curiously enough the appellant has treated with delay in presenting the appeal as 50 days. The relevant paragraph-8 of the I.A is extracted hereunder:

xxx xxx xxx

“8. That in the process, there has been a delay of about fifty days in filing appeal.”

xxx xxx xxx

9. The MACA in question is filed in terms of the Section 173(1) of Motor Vehicle Act,1998. For convenience of ready reference the said Section 173(1) is extracted hereunder:

xxx xxx xxx

“173. Appeals.-(1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court, unless he has deposited with it twenty-five thousand rupees or fifty per cent. of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

xxx xxx xxx

10. On a bare perusal of second proviso to Section 173(1), it can be seen that the appeal has to be presented within 90 days, failing which the same can be

entertained by the High Court on the Appellant satisfying the Court that it was prevented by sufficient cause from preferring the appeal in time.

11. On a conjoint reading of Section 173(1) and the second proviso, it is manifestly clear that once the appeal is not presented on time, the limitation begins to run and it gets arrested only on filing of the petition for condonation of delay.

12. In this context, this Court relies on the judgment of the Apex Court in the case of **Balwant Singh(dead) Vrs. Jagdish Singh and Others, (2010) 8 SCC 685** and so far as the Law Governing limitation is concerned, this Court respectfully reiterates the dictum of the Apex Court in the case of **Mool Chandra Vrs. Union of India & Anr., 2024 INSC 577**. The relevant part of the said judgment is extracted hereunder:

“xxx xxx xxx

No litigant stands to benefit in approaching the courts belatedly. It is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is the cause for delay which has been propounded will have to be examined. If the cause for delay would fall within the four corners of “sufficient cause”, irrespective of the length of delay same deserves to be condoned. However, if the cause shown is insufficient, irrespective of the period of delay, same would not be condoned.

xxx xxx xxx”

13. The judgments cited bereft of their factual matrix have no bearing on the points at issue.

14. On a conspectus of materials on record, this Court is not persuaded to hold, keeping in view that the Motor Vehicles Act is a beneficial legislation, that the grounds as set forth in the petition for condonation of delay constitute “sufficient cause” for condoning the delay of 3,270 days so as to engulf the sisters and brothers of the deceased of an accident which took place in 28.12.2008 in litigation.

15. The I.A is accordingly dismissed and consequently MACA stands rejected.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

I.A dismissed &

MACA rejected.

2025 (I) ILR-CUT-1227

**MANORANJAN TAREI @ TARAI
V.
STATE OF ODISHA & ANR.**

[CRLREV NO. 152 OF 2024]

11 MARCH 2025

[V. NARASINGH, J.]

Issues for Consideration

1. What are the essential ingredients to attract the offence U/s. 306 of IPC?
2. Whether an accused can be charge sheeted U/ss.306 and 498-A of IPC in absence of any material to satisfy the ingredients of the sections.
3. Whether a *prima facie* case against the accused be made out in absence of sufficient grounds to sustain the charge.

Headnotes

(A) CODE OF CRIMINAL PROCEDURE, 1973 – Section 227 – The petitioner was charge sheeted U/ss. 498-A and 306 of IPC – The wife of petitioner has died in her matrimonial house within 07 years of marriage – There is no evidence indicating that the deceased was ever subjected to physical as well as mental cruelty by her husband and the in-laws on the demand of dowry – Whether a *prima facie* case against the accused be made out in absence of sufficient grounds to sustain the charge.

Held: No – When there is no material to show sufficient ground to sustain the charge, this Court is of the considered view that, the trial vis-à-vis charges would be radar less voyage and continuing the criminal proceedings would be an exercise in futility, resulting in wastage of precious judicial time.
(Para 10)

(B) INDIAN PENAL CODE, 1860 – Section 306 – What are the essential ingredients to attract an offence U/s. 306 of IPC?

Held: It is a well-established legal principle that the presence of *mens rea* the intention to abet the act is essential – Mere harassment, by itself, is not sufficient to find an accused guilty of abetting suicide – The prosecution must demonstratively establish an active or direct action by the accused that led the deceased to take his/her own life – The element of *mens rea* cannot simply be presumed or inferred; it must be evident and explicitly discernible.
(Para 8)

Citations Reference

Gian Singh v. State of Punjab & Anr., **(2012) 10 SCC 303**; Amalendu Pal @ Jhantu v. State of West Bengal, **(2010) 1 SCC 707**; Mariano Anto Bruno and Anr. v. Inspector of Police, **SCC OnLine SC 1387**; State of West Bengal v. Orilal Jaiswal and Anr., **(1994) 1 SCC 73**; S.S. Chheena v. Vijay Kumar Mahajan and Anr., **(2010) 12 SCC 190**; Sharad Birdhichand Sarda v. State of Maharashtra, **(1984) 4 SCC 116**; Ritu Makhija v. State of M.P. & Ors., **(2019) SCC OnLine MP 4198**; Union of India vs. Prafulla Kumar Samal & anr., **(1979) 3 SCC 4**; Priyanka Jaiswal vs. State of Jharkhand & Ors., **2024 SCC OnLine SC 685**; Jayedeepsinh Pravinsinh Chavda & Ors. vs State of Gujarat, **(2025) 2 SCC 116 – referred to.**

List of Acts

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

Keywords

Dowry death; Cruelty; Physical as well as mental cruelty; Physical and mental torture; Sufficient ground; *Mens rea*; Demand of dowry.

Case Arising From

Order dated 25.03.2022 passed by the Asst. Sessions Judge, Baripada in S.T. Case No.220 of 2021.

Appearances for Parties

For Petitioners : Mr. Sanket Kanungo

For Opp.Parties : Mr. P.K. Sahoo, AGA,
Mr. Pulakesh Mohanty (for informant)

Judgment/Order

Judgment

V. NARASINGH, J.

Heard learned counsel for the Petitioner, Mr. Kanungo, learned counsel for the State, Mr. Sahoo, AGA and learned counsel for the Opposite party No.2, Mr. Mohanty.

Revisionist-husband assails the framing of charge by the learned Asst. Sessions Judge, Baripada in S.T. Case No.220 of 2021 by order dated 25.03.2022 U/s. 498-A & 306 of IPC vide Annexure-1 and seeks the following relief.

“It is, therefore, most humbly prayed that this Hon'ble Court may graciously be pleased to set aside the order of charge dtd. 25.03.2022 framed against the petitioner U/s. 498-A, 306 IPC in S.T. Case No. 220 of 2021 arising out of Rasgovindapur

MANORANJAN TAREI@TARAI V. STATE OF ODISHA & ANR. [V. NARASINGH, J]

P.S. Case No. 226 of 2020 pending before the Court of the Learned Assistant Sessions Judge, Baripada, in the interest of justice.

xxx

xxx

xxx”

Case of the accused:-

1. The factual matrix of the case, is that on 19.11.2020 the Opp. Party No. 2 lodged FIR against his son in law-the petitioner to the effect that he and his family has murdered his daughter by giving poison and accordingly FIR was lodged against the petitioner and his family members U/s. 498-A, 302, 304-B, 34 of IPC and Section 4 of D.P. Act. However, charge sheet was submitted against the petitioner u/s. 498-A and 306 of IPC and on 25.03.2022 the learned court below has framed the charge against the petitioner for the said offences which is under challenge.

2. It is submitted by the petitioner that the marriage between the Petitioner - Husband and the Deceased -Wife was solemnized in the year 2018 and a male child was born out of wedlock in the year 2018. The Petitioner is working as a Constable in 5th Battalion, Laxmiposi, OSAP, Baripada, whereas the Deceased - Wife was posted as Shikhya Sahayak in U.P.S. at Astia, Mayurbhanj.

2-A. On the early hours of 18.11.2020, the Petitioner was informed by his Sister-in-Law i.e Chinmayi Behera (C.S.W - 2) that his wife has consumed poison. The Petitioner along with his elder brother and sister immediately took the Deceased to CHC, Rasgovindpur and after preliminary treatment she was shifted to DHH, Baripada. As her condition deteriorated, she was referred to SCB Medical College, Cuttack, but on the way as she became non-responsive and pulseless, she was taken to Vishakha Nursing Home, Cuttack, where she could not be revived and was declared dead.

Thereafter, Post Mortem was conducted at PRM, Medical College, Baripada on 19.11.2020 and the autopsy reveals that the cause of death as "death due to poisoning."

2-B. Thereafter, on 19.11.2020, the father of the Deceased lodged a complaint before the Rasgovindpur P.S. and an F.I.R, was registered as Rasgovindpur P.S. Case No. 226 of 2020 citing the Petitioner and his family members as accused for alleged commission of Offences punishable U/s- 498-A, 302, 304-B and 34 of the Indian Penal Code, 1860 r/w Section 4 of the Dowry Prohibition Act, 1961. After investigation charge sheet was filed under section 498A and 306 IPC.

2-C. It is argued by the petitioner that the material collected during investigation does not disclose anywhere that the Petitioner acted, with a view to either coerce his deceased wife or any person related to her to meet any unwanted demand of any property or valuable security. Only on the basis that the Petitioner quarreled with his deceased wife due to some domestic issues or vague allegations that the Petitioner used to harass his wife, the learned Trial Court erroneously came to a finding that

prima facie there existed materials to frame charges U/s 306 & 498-A against the Petitioner.

2-D. It is further contended by the petitioner that on a cumulative assessment of the statements of charge sheeted witnesses recorded U/s 161 Cr.P.C., more especially C.S.W. No. 3, namely Prafulla Dalei (Neighbour/ Independent Witness); C.S.W. No. 2, namely Chinmay Behera (sister-in-law of the Petitioner); C.S.W. No. 6, namely Manoranjan Singha (Independent Witness); C.S.W. No. 24, namely Chandra Mohan Guru (Independent Witness) and C.S.W. No. 34, namely Arati Tarei (Neighbour / Independent Witness), it could be well ascertained that there were no signs of animosity between the Petitioner and his deceased-wife except for the usual disagreement which is common in every matrimony. It is also stated that mere inquiry by the Petitioner regarding the expenses incurred by her and non-disclosure of money being transferred to unknown persons would not qualify as an act of cruelty let alone abetment for committing suicide. Such an act is at best can be termed as a disagreement.

2-E. In the case at hand, admittedly two days prior to date of occurrence, on 15.11.2020, the deceased-wife came to her matrimonial home to get treated for abdominal pain as could be ascertained from the statement of C.S.W. 21, i.e. Malati Pramanik (mother of the deceased-wife). Post occurrence, it is borne out that the Petitioner in spite of finding himself besieged by his in-laws and their henchmen at the hospital, ran from pillar to post in a desperate bid to save the life of his deceased-wife. The said act, according to the learned counsel for the Petitioner falsifies the allegation of prosecution of Petitioner's Mens Rea to drive his deceased-wife into such a state so as to compel her to commit suicide.

2-F. It is submitted that 161 Cr.P.C. Statements of C.S.W. 2 i.e. Smt. Chinmay Behera, C.S.W - 6 i.e. Manoranjan Singha, C.S.W - 7 i.e. Sanjib Kumar Mandal, C.S.W -8, i.e. Umakanta Bhoi, C.S.W - 23 i.e. Nalini Kumar Dash, C.S.W - 24, i.e. Chandra Mohan Guru, C.S.W - 26 i.e. Hemendra Mohan Sahu, C.S.W 32 i.e. Mandakini Singh reveals that the Petitioner and his deceased-wife shared a harmonious marital relationship without any serious disputes.

In this background, it is submitted by the Petitioner that in the absence of the essential ingredients constituting the offence of abetment to suicide & cruelty, coupled with the requisite Mens Rea or Knowledge, especially when there is no prima facie case against him to drive home the charge under section 498A and 306 IPC, the order framing charges is outcome of perverse exercise of jurisdiction warranting interference by this Court.

2G. The learned Counsel for the petitioner relied upon the following decisions:

I. Gian Singh v. State of Punjab & Anr., (2012) 10 SCC 303

II. Amalendu Pal @ Jhantu v. State of West Bengal, (2010) 1 SCC 707

III. Mariano Anto Bruno and Anr. v. Inspector of Police, SCC OnLine SC 1387

IV. **State of West Bengal v. Orilal Jaiswal and Anr.**, (1994) 1 SCC 73

V. **S.S. Chheena v. Vijay Kumar Mahajan and Anr.**, (2010) 12 SCC 190

VI. **Sharad Birdhichand Sarda v. State of Maharashtra**, (1984) 4 SCC 116

VII. **Ritu Makhija v. State of M.P & Ors.**, (2019) SCC OnLine MP 4198

ANALYSIS OF THE JUDGMENT CITED BY THE PETITIONER

I. In **Gian Singh (supra)**, is more of a leading judgment regarding exercise of power under section 482 Cr.P.C. for quashing of offence or criminal proceedings on the ground of settlement between an offender and victim, than the point at issue in the present case. It is distinguishable in the facts of the case and do not enure to the benefit of the petitioner.

II. In **Amalendu Pal @ Jhantu (supra)**, Apex Court after referring to some of the previous decisions held that it has been the consistent view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative to put an end to her life. It must be borne in mind that in a case of alleged abetment of suicide, there must be proof of direct or indirect act(s) of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the deceased to commit suicide, conviction in terms of Section 306 IPC would not be sustainable.

III. The Apex Court in the case of **Mariano Anto Bruno & Anr. (supra)** has held that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the Accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

It was further held that each suicide is a personal tragedy that prematurely takes the life of an individual and has a continuing ripple effect, dramatically affecting the lives of families, friends and communities. However, the Court of law while adjudicating is not to be guided by emotions of sentiments but the dictum is required to be based on analysis of facts and evidence on record.

In the light of the ruling of the Apex Court relied on by the learned Counsel for the petitioner in *Mariano Anto Bruno & Anr. Vs. The Inspector of Police*, to convict the Accused under Section 306 of IPC there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of

occurrence on the part of the Accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

IV. In **Orilal Jaiswal (supra)**, the Apex Court underlined that courts have to be extremely careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same had induced the person to end his/her life by committing suicide, with the caveat that if the victim committing suicide appears to be hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which he or she belonged and such factors were not expected to induce a similarly circumstanced individual to resort to such step, the accused charged with abetment could not be held guilty.

V. In case of **S.S. Chheena (supra)**, the Apex Court held that the intention of the legislature is that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option.

VI. The celebrated case of **Sharad Birdhichand (supra)** needs no emphasis wherein the Apex Court laid down five golden principles/panchsheel for proving a case based on circumstantial evidence.

Statement of the Prosecution and Informant

3. While supporting the framing of charge, it is contended by the learned counsel for the Opposite Party No.2, Informant as well as the learned counsel for the State that from the statements recorded under Section 161 Cr.P.C., it is evident that there was demand of dowry from the side of the Petitioner and his family members for which there was always physical and mental torture on the deceased and also there is quarrel between the husband and the deceased relating to salary of the deceased who was working as a teacher. There are consistent statements of all the witnesses is that there was disturbance relating to salary of the deceased and there was rancor on the said score.

3-A. On 18.11.2020 one witness namely Prafulla Dalei (C.W.3) had been to the house of the petitioner for dinner and witnessed the quarrel between the husband and the wife so also one Arati Tarei (C.W.34) who is the neighbour of the Petitioner heard quarrel between them on that evening and the next morning the deceased was found in serious condition because of consumption of poison. It is the version of all most all the witnesses that the deceased was driven to consume poison due to mental torture by the present Petitioner. The medical evidence sufficiently supports that the accused is the author of crime. Stand taken by the defence is untenable.

3-B. To fortify their submission, learned counsel for the Informant submitted the written note of submission and the learned counsel for the State relied on the following judgments.

(i) **Union of India vs. Prafulla Kumar Samal & anr., (1979) 3 SCC 4.**

(ii) **Priyanka Jaiswal vs. State of Jharkhand & Ors., 2024 SCC OnLine SC 685.**

The Apex Court in **Prafulla Kumar Samal (supra)**, has held thus;

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10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of flaming the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

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The Apex Court in **Priyanka Jaiswal (supra)** held that the Court while exercising extra-ordinary jurisdiction under Section 482 of Cr.P.C. and cannot conduct a mini-trial or enter into an appreciation of an evidence of a particular case. It was observed:-

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13. We say so for reasons more than one. This Court in catena of Judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the court exercising extra-ordinary jurisdiction can neither undertake to conduct a mini-trial nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of the probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside. This Court in the case of *Akhil Sharda* held to the following effect:

"28. Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in the exercise of powers under Section 482 Cr. P.C., it appears that the High Court has virtually conducted a mini-trial, which as such is not permissible at this stage and while deciding the application under Section 482 Cr. P.C. As observed and held by this Court in a catena of decisions no mini-trial can be conducted by the High Court in the exercise of powers under Section 482 Cr. P.C. jurisdiction and at the stage of deciding the application under Section 482 Cr. P.C., the High Court cannot get into appreciation of evidence of the particular case being considered.

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3-C. It is further asserted that the conduct of the accused was also doubtful as because the Petitioner is working as a Constable in Laxmiposi Battalion OSAP, has absconded from the medical leaving the dead body and was arrested after two days.

3-D. Charge sheet was filed under Section 498-A and 306 of IPC though there are materials on record for prima facie commission of offence under Section 302 & 304-B IPC and Section 4 D.P. Act.

3-E. From the statements of the witnesses, it appears that there are enough materials against the Petitioner that the poison which was consumed by the deceased was forcefully administered by the Petitioner and his family members in that fateful night and to find out as to how the deceased could get access to the poison, the trial is imperative.

It is thus submitted by the Opposite Party No.2 that deceased has died in her matrimonial house in an abnormal circumstance within 07 years of marriage. As such the petitioner ought to be put to trial for commission of offences under Section 498A and 306 IPC.

4. Law is well settled that one cannot be convicted or prosecuted only on the ground of having absconded unless there are other prima facie materials of involvement in the commission of crime especially in the background that the petitioner took the deceased to the hospital in Cuttack where she was declared dead. The petitioner has stated that after dropping dead body of deceased at Baripada DHH he fled away from Baripada DHH on the apprehension of being manhandled by the deceased's family.

5. Be that as it may, scope of interference at the stage of framing of charge is well settled. Before advertent to the rival submissions, this court may briefly notice the scope and ambit of powers of the Trial Judge under Section 227 of the Criminal Procedure Code. Chapter XVIII of the Code lays down the procedure for trial before the Court of Sessions, pursuant to an order of commitment under Section 209 of the Criminal Procedure Code, 1973 (hereinafter referred as Code).

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Section 227 of the Code contemplates the circumstances whereunder there could be a discharge of an accused at a stage anterior in point of time to framing of charge under Section 228.

Thereof Section 227 of the Code provides that upon consideration of the materials on record submitted with the police report and after hearing the accused and the prosecution, the Court is bound to decide whether there is "sufficient ground" to proceed against the accused and as a consequence thereof either to discharge the accused or proceed to frame charge against him. It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the Section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution.

6. Since admittedly, no discharge petition was ever filed by the Petitioner before the learned Trial Court, this leads to the question to be considered by this Court i.e. the merits of the impugned order dated 25.03.2022 at Annexure-1 whereby charges have been framed against the Petitioner.

7. There is no cavil that the charge can be quashed, if on the basis of materials, which the prosecution seeks to rely upon are accepted at its face value, does not implicate the accused for committing the particular offence. In this background the materials needs to be scrutinized.

Analysis of materials on record

C.S.W-1-Informant/Father of the deceased as well as statement of C.S.W.-5 (Brother of the deceased) reflects omnibus allegation against the Petitioner and his family and no particulars such as amount of dowry given, amount of dowry demanded or instances when dowry was demanded are mentioned so as to test the veracity of the same. On the contrary, it seems the entire allegation has been made on suspicion and thus cannot be made the basis for prima facie case unless corroborated.

C.S.W-2-is the sister-in-law of the deceased and also happens to be present in the house on the date of occurrence and the deceased slept with her on the previous night. On the next morning she saw the deceased in an inebriated position. Upon asking deceased vomited and said that she has consumed poison. Thereafter the witness intimated her husband and husband of the deceased i.e. present petitioner took her to hospital. Her statement does not reveal any allegation or cruelty to support charges in question.

C.S.W.-3-who is the neighbour of the petitioner and also visited the Petitioner's for dinner on the previous night of occurrence and witnesses to the quarrel between the deceased and the petitioner. Though he is neighbour but his statement does not reflect any allegation regarding cruelty or demand of dowry meted out to the deceased. On the contrary his statement shows that deceased and

the petitioner fought since the deceased gave Rs.5,000.00 to his father and is silent about the balance amount. Thus there is no ingredient to support charged offences.

Statements of C.S.W.-4, 6, 7, 8, 9, 22, 32 reveal that there used to be quarrel with regard to salary of the petitioner but does not reveal any allegation or cruelty to support charges in question.

Statement of C.S.W.-21 (mother of the deceased) one of the most material witnesses shows that deceased and the petitioner were pulling on well. But there used to be quarrel with regard to salary which was amicably settled with the intervention of the family. She further states that there was a quarrel since, on 04.11.2020, as the deceased withdrew some money from bank account and spent it. Her statement reflects omnibus allegation against the petitioner and his family and no particulars such as amount of dowry given, amount of dowry demanded or instances when dowry was demanded are mentioned so as to rest veracity on the same. On the contrary it seems the entire allegation has been made on suspicion and thus cannot be made the basis for even prima facie case unless corroborated.

Statement of C.S.W.-23, 24, 26 does not support the ingredient of offences charged, as such is of no help to the prosecution.

C.S.W.-34 is the neighbour of the petitioner and she has stated that there was a quarrel on 18.11.2020 between the deceased and the petitioner as the deceased had given away some money to outsider/s without the knowledge of the petitioner and refused to give account for the same. Being annoyed the petitioner said that he will bring it to the notice of the family of the deceased. On next day the deceased found to have consumed poison. Her statement does not throw any light regarding the circumstances of dowry demand or torture. PM Report also does not reflect any external or internal injury on the body of the deceased.

All the allegations brought forward by the informant are omnibus allegations and in the considered view of this Court, are a result of sentimental outburst following the untimely/unnatural demise of the informant's daughter.

8. Section 306 of the IPC penalizes those who abet the act of suicide by another. For a person to be charged under this section, the prosecution must establish that the accused contributed to the act of suicide by the deceased. This involvement must satisfy one of the three conditions outlined in Section 107 of the IPC. These conditions include that the accused instigated or encouraged the individual to commit suicide in the case at hand, conspiring with others to ensure that the act was carried out, or engaging in conduct (or neglecting to act) that directly led to the person taking his/her own life.

For a conviction under Section 306 of the IPC, it is a well-established legal principle that the presence of mens rea the intention to abet the act is essential. Mere harassment, by itself, is not sufficient to find an accused guilty of abetting suicide. The prosecution must demonstratively establish an active or direct action by the

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accused that led the deceased to take his/her own life. The element of mens rea cannot simply be presumed or inferred; it must be evident and explicitly discernible.

In this context reliance is placed on the judgment of the Apex Court in the case of **S.S. Chheena (supra)** wherein the Apex Court observed thus.

“xxx xxx xxx

Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intension of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.

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(Emphasized)

9. In the instant case, thorough analysis of materials on record as above does not show any overt act on the part of the petitioner to satisfy the ingredients of Section 306 IPC and the proximate instance that the petitioner asked for the money encashed and spent by the deceased cannot be said to be sufficient to maintain charges under section 306 IPC.

In this regard it is apt to gainfully refer to the recent decision of Apex Court in the case of **Jayedepsinh Pravinsinh Chavda & Ors. vs State of Gujarat, (2025) 2 SCC 116**. Relevant paragraphs are quoted hereunder for ready reference:

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29. The act of abetment must be explicitly demonstrated through actions or behaviors of the accused that directly contributed to the victim's decision to take their own life. Harassment, in itself, does not suffice unless it is accompanied by deliberate acts of incitement or facilitation. Furthermore, these actions must be proximate to the time of the suicide, showcasing a clear connection between the accused's behavior and the tragic outcome. It is only through the establishment of this direct link that a conviction under Section 306 IPC can be justified. The prosecution bears the burden of proving this active involvement to hold the accused accountable for the alleged abetment of suicide. The same position has been laid down by this court in several judgments, such as:

- i. M. Mohan v. State;
- ii. Amalendu Pal alias Jhantu v. State of West Bengal;
- iii. Kamalakar v. State of Karnataka.

30. Therefore, for a conviction under Section 306 IPC, there must be clear evidence of direct or indirect acts of incitement to commit suicide. The cause of suicide, especially in the context of abetment, involves complex attributes of human behavior and reactions, requiring the Court to rely on cogent and convincing proof

of the accused's role in instigating the act. Mere allegations of harassment are not enough unless the accused's actions were so compelling that the victim perceived no alternative but to take their own life. Such actions must also be proximate to the time of the suicide. The Court examines whether the accused's conduct, including provoking, urging, or tarnishing the victim's self-esteem, created an unbearable situation. If the accused's actions were intended only to harass or express anger, they might not meet the threshold for abetment or investigation. Each case demands a careful evaluation of facts, considering the accused's intent and its impact on the victim.

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10. Perusal of the FIR, the analysis of the finding of the Investigating Officer in the charge sheet vis-à-vis the statements on record prima facie indicate that the deceased was never subjected to physical as well as mental cruelty by her husband and the in-laws on account of dowry.

A thorough scrutiny of the materials on record ex-facie do not establish a prima facie case under section 498A and Section 306 of the IPC and none of the ingredients of Section 498A and 306 of IPC is satisfied to show “sufficient ground” to sustain the charge. In **Prafulla Kumar Samal (supra)**, the Apex Court observed that while considering the question of framing a charge, the Court has the undoubted power to sift and weigh the materials for the limited purpose for finding out whether or not a prima facie case against the accused has been made out. In exercising the power the Court cannot act merely as a post office or a mouthpiece of the prosecution.

In the scenario when there's no material to show sufficient ground to sustain the charge as discussed above, this court is of the considered view that, the trial vis-à-vis charges would be a radar less voyage and continuing the criminal proceedings would be an exercise in futility, resulting in wastage of precious judicial time.

11. On a perspicuous analysis of the materials on record, on the touchstone of the judgment of the Apex Court in the case of **Jayedeeepsinh Pravinsinh Chavda (Supra)**, this Court is persuaded to hold that the Petitioner cannot be charged under Sections 498A & 306 IPC.

12. Accordingly the CRLREV is allowed and the charge framed under Sections 498A and 306 IPC at Annexure-1 is quashed and the Petitioner is discharged.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

CRLREV allowed.

2025 (I) ILR-CUT-1239

SUSANTA KUMAR SAMAL
V.
STATE OF ODISHA

[ABLAPL NO. 2045 OF 2025]

AND

SOUMYA SANKAR CHAKRA @ RAJA V. STATE OF ODISHA
 [ABLAPL NO.1715 OF 2025]

SUDHANSHU SEKHAR NAIK & ORS. V. STATE OF ODISHA
 [ABLAPL NO.1775 OF 2025]

12 MARCH 2025

[V. NARASINGH, J.]

Issue for Consideration

Whether the petitioners are entitled to pre-arrest bail in an economic offence.

Headnotes

CODE OF CRIMINAL PROCEDURE, 1973 – Section 438 – Pre-arrest Bail – Economic offence – The petitioners are seeking pre-arrest bail in connection with a C.T. case for commission of offences punishable U/ss. 406/409/420/467/468/471/120-B of IPC – Whether the petitioners are entitled to pre-arrest bail in an economic offence.

Held: No – On a perspicuous analysis of materials on record and on perusal of the case diary, this Court is not persuaded to hold that the Petitioners have been able to make out an exceptional case for grant of pre-arrest bail.

(Para 33)

Citations References

Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation, **(2013) 7 SCC 439**; P. Chidambaram vs. Directorate of Enforcement, **(2019) 9 SCC 24**; Pravata Kumar Tripathy vs. Union of India (C.B.I.), **2014 SCC Online Ori 407**; Satender Kumar Antil vs. Central Bureau of Investigation and Anr., **2023 SCC OnLine SC 452**; Devinder Kumar Bansal vs. State of Punjab, **2025 SCC OnLine SC 488**; State REP. by the C.B.I. vs. Anil Sharma, **(1997) 7 SCC 187**; State of M.P. vs. Ram Kishna Balothia, **(1995) 3 SCC 221** – referred to.

List of Acts

Criminal Procedure Code, 1973.

Keywords

Pre-arrest bail; Economic offence; Grant of anticipatory bail.

Case Arising From

C.T. case No. 04 (C) of 2025 pending before the learned ADJ-cum-OPID, Balasore.

Appearances for Parties

For Petitioner(s) : Mr. S.S. Rao, Sr. Adv. Mr. A. Mishra.

Mr. A. Mohanty, Sr. Adv., Mr. A. Mohanty

For Opp.Party(s) : Mr. P.S. Nayak, AGA.

Judgment/Order**Judgment*****V. NARASINGH, J.***

1. Since all the ABLAPLs relate to the same FIR, on the consent of the learned Senior Counsels for the Petitioners and learned counsel for the State, they are taken up together for consideration and are disposed of by this common judgment.

2. Heard Mr. S.S. Rao, learned Senior Counsel for the Petitioner in ABLAPL No.2045 of 2025 and Mr. A. Mohanty, learned Senior Counsel for the Petitioners in ABLAPL Nos.1715 and 1775 of 2025 and Mr. P.S. Nayak, learned Additional Government Advocate for the State.

3. The Petitioners are seeking pre-arrest bail in connection with C.T. Case No.04(C) of 2025 pending on the file of learned ADJ-cum-OPID, Balasore, arising out of E.O.W. Bhubaneswar P.S. Case No.3 of 2025 for commission of offences punishable under Sections 406/ 409/ 420/ 467/ 468/ 471/ 120-B of IPC.

4. It is apt to note here that none of the Petitioners have been named as accused in the aforementioned P.S. Case registered by Economic Offence Wing and it is also on record that both the named accused persons Manas Ranjan Barik and Utkal Das have been taken into custody.

5. It is the allegation of the prosecution that because of political patronage without being a member of Gandha Mardhan Loading Agency & Transporting Co-operative Society Ltd., Suakati registered under the Orissa Co-Operative Societies Act, 1962, the Petitioner (Soumya Sankar Chakra @ Raja) in ABLAPL No.1715 of 2025 exercised such clout that at his behest the illegalities were committed and the other Petitioners have also had an active role in siphoning off the funds of the society.

6. It is further submitted, referring to the materials on record, that the main object of the society was to promote economic interest of its members through wagon loading and unloading, transporting and supply of labours and goods etc. in the Gandhamardhan Mines area under the Odisha Mining Corporation, Suakati and other companies in the said area as and when required and for fulfilling such avowed object, members were enrolled in different classes i.e. A, B and C.

7. It is stated that since large scale irregularities were alleged in the FIR, found to be prima facie established, the FIR named accused were taken into custody and custodial interrogation of the Petitioners is imperative to unearth the truth.

8. To fortify their assertion, the prosecution has filed an objection to the prayer for grant of anticipatory bail for the Petitioners in both the cases i.e. ABLAPL Nos.1715 and 1775 of 2025 and a reply to the same has also been submitted by the Petitioners.

9. Mr. Mohanty, learned Senior Counsel for the Petitioners in ABLAPL Nos.1715 and 1775 of 2025 submits that admittedly the Petitioners are neither named accused nor the members of the cooperative society in question and the informant is no way connected with the affairs of the society nor is a resident of the area yet, on the basis of an FIR filed at his behest witch hunt is being done in which the Petitioners have become the scapegoats.

10. Such a submission regarding the status of the Informant is reiterated by the learned Senior Counsel Mr. Rao appearing for the Petitioner in ABLAPL No.2045 of 2025.

11. It is the further submission of the learned Senior Counsel for the Petitioner (Soumya Sankar Chakra @ Raja) in ABLAPL No.1715 of 2025 that he joined the investigation and only because he did not succumb to the pressure and did not make any self-incriminating statement, keeping in view the constitutional embargo under Article 20(3) of the Constitution regarding self-incrimination, that ought not to weigh with this Court in considering his pre-arrest bail application.

12. To substantiate their allegations, learned Additional Government Advocate for the EOW, Mr. P.S. Nayak, inter alia, relied on the statement of one Manoranjan Khuntia, who is a 'A' category member of the Cooperative Society in question. It is stated that Petitioner (Soumya Sankar Chakra @ Raja) in ABLAPL No.1715 of 2025 without even being a member of the society was running the affairs of the society along with his cronies including the Petitioner (Susanta Kumar Samal) in ABLAPL No.2045 of 2025 and a parallel office was running in the house of the Petitioner (Susanta Kumar Samal).

Referring to the materials on record on the basis of the ongoing investigation, it is submitted that the amount of Rs.7,36,74,000/- (Rupees Seven Crores Thirty-Six Lakhs Seventy-Four Thousand) has been withdrawn from the account of co-operative society via self-cheques out of which sum of Rs.2,76,70,000/- (Rupees Two Crores Seventy-Six Lakhs Seventy Thousand), sum of Rs.95,40,000/- (Rupees Ninety-Five Lakhs Forty Thousand) and a sum of Rs.3,64,64,000/- (Rupees Three Crore Sixty-Four Lakhs Sixty-Four Thousand) has been withdrawn by the Petitioner Nos.1, 2 and 3 (Sudhanshu Sekhar Naik, Samir Kumar Jena and Sadasiba Samal) in ABLAPL No.1775 of 2025 respectively, who are stated to be the key associates of the Petitioner (Mr. Soumya Sankar Chakra @ Raja) in ABLAPL No.1715 of 2025.

13. It is the allegation of the prosecution that the said amount in the name of periphery development work was being siphoned off. The photostat copies of the self- cheques of the aforesaid three accused relating to such withdrawal were placed for perusal of the Court.

14. Learned counsel for the State also relied on the reports of the Block Development Officers of Sadar Block, Keonjhar and Banspal and of the Regional Manager, Regional Office, Gandhmardan of OMC, Odisha that no periphery work has been executed by the society in question.

It is revealed from the statement of the Regional Officer, Gandhamardan that the OMC has undertaken CSR work in 14 villages and it is stated that the society in question has not taken up any developmental work inside the mines area as per the records available with the OMC which is a public sector undertaking.

15. The prosecution also relies on the statement of one Premananda Barik recorded under Section 183(5) of the BNSS, 2023. He is the proprietor of a petrol pump namely, Maa Kali Kishan Seva Kendra (KSK), Pandapada. It is borne out from his statement that he had business dealings with one Sankar Roadways which admittedly belongs to the Petitioner (Mr. Soumya Sankar Chakra @ Raja) in ABLAPL No.1715 of 2025.

It comes to light from his statement that for squaring of the bills in respect of Sankar Roadways, the cheques of the co-operative societies in question were submitted and it is stated that the amount of Rs.8 Crore has been paid by the co-operative society in question on account of the bills pertaining to the Sankar Transport. The funds flow statement from Gandhamardhan Loading Agency to Maa Kali KSK was also placed during course of hearing.

16. On perusal of the case Diary, it is revealed that an amount of Rs.1,55,95,625/- (Rupees One Crore Fifty-Five Lakhs Ninety-Five Thousand Six Hundred Twenty-Five) has been transferred from the account of Petitioner No.3 (Sadasiba Samal) in ABLAPL No.1775 of 2025 to the account of the wife of the Petitioner (Mr. Soumya Sankar Chakra @ Raja) in ABLAPL No.1715 of 2025.

17. It is the further case of the prosecution, on scrutiny of the statements of the bank accounts of Gandhamardhan Cooperative Society that an amount of Rs.1,60,47,140/- (Rupees One Crore Sixty Lakhs Forty-Seven Thousand One Hundred Forty) has been transferred to the accounts of Sankar Roadways and that during investigation, it came to the light that there is no voucher, bill or any ledger accounts details qua the payment of such an amount to the Sankar Roadways of which the Petitioner (Mr. Soumya Sankar Chakra @ Raja) in ABLAPL No.1715 of 2025 is the proprietor.

18. It is reiterated that during the course of interrogation the Petitioner (Mr. Soumya Sankar Chakra @ Raja) in BLAPL No.1715 of 2025 did not extend any

meaningful cooperation in the investigation and hence, the objection to his pre-arrest bail.

19. To fortify his submission, learned counsel for the State relied on the following judgments;

- i. **Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation**, (2013) 7 SCC 439
- ii. **P. Chidambaram vs. Directorate of Enforcement**, (2019) 9 SCC 24
- iii. **Pravata Kumar Tripathy vs. Union of India (C.B.I.)**, 2014 SCC Online Ori 407

More particularly reliance was placed on paragraph 72 of the judgment in the case of **P. Chidambaram (Supra)**, which reads as under;

“72. We are conscious of the fact that the legislative intent behind the introduction of Section 438 CrPC is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights-safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.” (Emphasized)

20. Per contra, learned Senior Counsel for the Petitioners Mr. Rao and Mr. Mohanty submit that the case is a fall out of political vendetta and since all the allegations are based more or less on documentary evidence, the custodial interrogation is not necessary and relying on the order dated 21.03.2023 passed in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and Anr., 2023 SCC OnLine SC 452** submit that the Apex Court has clarified that the directions in the said case dated 11.07.2022 in **Satender Kumar Antil vs. Central Bureau of Investigation and Anr., (2020) 10 SCC 51** apply in equal measure to cases of anticipatory bail and the observation which is germane is extracted hereunder;

“.....we would like to clarify that what we have enunciated qua bail would equally apply to anticipatory bail cases. Anticipatory bail after all is one of the species of a bail”.

21. Referring to the same, it is submitted with vehemence that since the case is based on documentary evidence and the Petitioners are not the named accused merely basing on the statement of the co-accused recorded during investigation, Petitioners should not suffer the ignominy of being taken into custody.

22. It is the further submission of the learned Senior Counsel Mr. Mohanty on behalf of the Petitioner in ABLAPL No.1715 of 2025 that in terms of the direction of this Court the Petitioner has joined the investigation and is all along ready and willing to cooperate with the ongoing investigation which is also the stand of the other accused persons canvassed in the connected anticipatory bail applications. Hence, custodial interrogation is not warranted.

23. It is further submitted that all the Petitioners have roots firmly entrenched in the society as such there is no chance of their absconding or interfering with the ongoing investigation and that should weigh with this Court in considering the prayer for pre-arrest bail and in the event the Petitioners are granted pre-arrest bail they can be put to strict terms so as to ensure effective investigation.

24. The parameters for granting an anticipatory bail in an economic offence has been recently propounded by the Apex Court in the case of **Devinder Kumar Bansal vs. State of Punjab, 2025 SCC OnLine SC 488**. The Apex Court has reiterated the basic distinction of a bail and pre-arrest bail. The paragraph 23 and 24 of the said judgment is extracted hereunder;

“23. The presumption of innocence, by itself, cannot be the sole consideration for grant of anticipatory bail. The presumption of innocence is one of the considerations, which the court should keep in mind while considering the plea for anticipatory bail. The salutary rule is to balance the cause of the accused and the cause of public justice. Over solicitous homage to the accused's liberty can, sometimes, defeat the cause of public justice.

24. If liberty is to be denied to an accused to ensure corruption free society, then the courts should not hesitate in denying such liberty. Where overwhelming considerations in the nature aforesaid require denial of anticipatory bail, it has to be denied. It is altogether a different thing to say that once the investigation is over and charge-sheet is filed, the court may consider to grant regular bail to a public servant-accused of indulging in corruption.”

This Court is conscious of the fact that the Apex Court in the case of **Devinder Kumar Bansal (supra)** was dealing with the corruption charges against a public servant however the principles governing the consideration of prayer for anticipatory bail apply in equal measure in accusations of present nature.

25. In the case of **State REP. by the C.B.I. vs. Anil Sharma, (1997) 7 SCC 187**, the Apex Court while balancing the right of an accused vis-à-vis the Investigating Agency has acknowledged the qualitative difference in response to interrogation when an accused is not “ensconced” by the protective umbrella of pre-arrest bail.

Paragraph-6 of the said judgment is extracted hereunder for convenience of reference;

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated, Very often interrogation in such a condition would reduce to a mere ritual. The argument that the el custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that

responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

26. In the case of **Devinder Kumar Bansal (supra)**, the Apex Court referred with approval to the decision of the Hon’ble Supreme Court in the case of **State of M.P. vs. Ram Kishna Balothia, (1995) 3 SCC 221** which held that an anticipatory bail cannot be granted as a matter of right and it is essentially a statutory right and its non-application to certain special category of offences cannot be considered as violative of Article 21 [Paragraph-18 of Judgment of the Apex Court in **Devinder Kumar Bansal (supra)**] and it has also reiterated the observation of 41st Report of the Law Commission that:

“.....power to grant anticipatory bail should be exercised in very exceptional cases.” (Emphasized)

27. The prayer of the Petitioner for grant of anticipatory bail has to be considered on the touch stone of the aforesaid judgment of the Apex Court in the case of **Devinder Kumar Bansal (supra)** and also keeping in view the qualitative difference as noted by the Apex Court in interrogation when an accused is not protected by pre-arrest bail in **Anil Sharma (supra)**.

28. During the course of hearing, it has come to the fore that the Petitioner (Soumya Sankar Chakra @ Raja) in ABLAPL No.1715 of 2025 is cited as an accused in the following cases;

1. Keonjhar Sadar P.S. Case No.189 of 2021
2. Daitari P.S. Case No.14 of 2024
3. Keonjhar Town P.S. Case No.122 of 2005
4. Keonjhar Town P.S. Case No.71 of 2010
5. Keonjhar Town P.S. Case No.192 of 2012
6. Keonjhar Town P.S. Case No.195 of 2012
7. Keonjhar Town P.S. Case No.194 of 2012
8. Keonjhar Town P.S. Case No.193 of 2012
9. Pandapada P.S. Case No.65 of 2014
10. Keonjhar Town P.S. Case No.99 of 2019
11. Keonjhar Town P.S. Case No.308 of 2024
12. Keonjhar Town P.S. Case No.17 of 2025
13. Keonjhar Town P.S. Case No.18 of 2025

28-A. With reference to the cases at Serial No.12, it is stated that the said case is at the instance of the very same informant who is the informant in the case at hand and the Petitioner has been protected by pre-arrest bail. Hence, it is submitted that to feed fat his grudge this false case has been foisted against the Petitioner.

29. It is also stated that the Petitioner No.3 (Sadasiba Samal) in ABLAPL No.1775 of 2025 is implicated in the following three cases;

1. Keonjhar Town P.S. Case No.308 of 2024
2. Keonjhar Town P.S. Case No.17 of 2025
3. Keonjhar Town P.S. Case No.18 of 2025

And, in the cases at Serial No.1, the prosecution has taken recourse to the procedure under Section 41-A of the Cr.P.C. and so far as the cases at Serial Nos.2 and 3 are concerned, the Petitioner is protected by pre-arrest bail by virtue of orders passed by this Court in ABLAPL No.576 and 510 of 2025 respectively.

30. Learned Senior Counsel Mr. Rao appearing for Petitioner (Susanta Kumar Samal) in ABLAPL No.2045 of 2025 submits that he has been cited as an accused in Keonjhar Sadar P.S. Case No.141 of 2002 under Section 341/323/506/34 of IPC and section 25/27 arms act.

31. It is the further submission of learned Senior Counsel Mr. Rao for the Petitioner (Susanta Kumar Samal) in ABLAPL No.2045 of 2025 that the Petitioner is a 'C' category member of the society and he is unnecessarily being victimized.

32. Considering the nature of allegations qua the Petitioner (Soumya Sankar Chakra @ Raja) in ABLAPL No.1715 of 2025 who according to the prosecution is the principal accused and the prima facie link, which the prosecution has been able to establish between the Petitioner in ABLAPL No.1715 of 2025 with Petitioners in ABLAPL No.1775 as well as ABLAPL No.2045 of 2025 which has been referred to herein above, this Court finds force in the submission made by the learned counsel for the State that the custodial interrogation is imperative in the case at hand to unravel the truth and interrogation would become a "mere ritual" in the event they are protected by pre-arrest bail.

33. On a perspicuous analysis of materials on record and on perusal of the case diary, this Court is not persuaded to hold that the Petitioners have been able to make out an exceptional case for grant of pre-arrest bail.

34. All the ABLAPLs being devoid of merit are accordingly rejected.

35. The interim orders stand vacated.

36. It is needless to state that the observations made herein are only for the purpose of consideration of the prayer of the Petitioners for pre-arrest bail and in the event the Petitioners are taken into custody and seek regular bail the same shall be considered on its own merit without being influenced by the judgment of this Court in rejecting the prayer of the Petitioners for anticipatory bail.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

ABLAPLs rejected.

2025 (I) ILR-CUT-1247

**BISHWARANJAN PRADHAN & ANR.
V.
STATE OF ODISHA (CHIEF SECY.-CUM-CHAIRMAN
EXECUTIVE COMMITTEE, OPEPA) & ORS.**

[W.P.(C) NO. 14619 OF 2019]

11 MARCH 2025

[MURAHARI SRI RAMAN, J.]**Issue for Consideration**

Whether the order of freezing the remuneration thereby depriving the petitioners to the benefit of 7th pay commission is sustainable.

Headnotes

EQUAL PAY FOR EQUAL WORK – The special Secretary to Govt. School and Mass Education vide order No. 16057 dated 01.08.2019 directed to freeze the existing remuneration of the petitioners who are working as Senior Technical Consultant of respective District Project Office at the current level with effect from 31.03.2019 – Similarly placed persons under the State Government have received the revised scale of pay as per the 7th pay commission – Whether the order of freezing the remuneration thereby depriving the petitioners to the benefit of 7th pay commission is sustainable.

Held: No – It is highlighted that the impugned Office Order dated 01.08.2019 has no foundational factor to hold water. (Para 8)

Therefore, this Court is of the considered opinion that the reason for freezing the existing remuneration for lack of concurrence of the Finance Department is liable to be obliterated. (Para 8.3)

Citation Reference

Purna Chandra Bag and Others Vrs. State of Odisha and Others, **W.P.(C) Nos. 20940, 21425, 24708, 26700, 26702, 26703, 26704, 26705, 26706, 26708, 26709, 28876 of 2020 & W.P.(C) Nos. 24233, 30728 & 33966 of 2021, vide Judgment dated 02.08.2023**; Chowhan Machinery Mart Vrs. State of Orissa, **2008 SCC OnLine Ori 596 – referred to.**

List of Acts

Constitution of India, 1950; Odisha Revised Scales of Pay Rules, 2008; Odisha General Clauses Act, 1937

Keywords

Equal pay for equal work; freezing of remuneration; Technical Consultant; Odisha Primary Education Program Authority (OPEPA); Sarva Sikhsya Abhiyan (SSA).

Case Arising From

Office Order No.16057—SME-MSSA-MSSA1-0084-2019/SME, dated 01.08.2019 of the Government of Odisha in Department of School and Mass Education.

Appearances for Parties

For Petitioner : Mr. Budhadev Routray, Sr. Adv. & Mr. Avijit Mishra
For Opp.Parties : Mr. Satyabrata Mohanty, AGA

Judgment/Order

Judgment

M.S. RAMAN, J.

Assailing the decision of the Government of Odisha in Department of School and Mass Education as reflected in Office Order No.16057—SME-MSSA-MSSA1-0084-2019/SME, dated 01.08.2019 (Annexure-17), the petitioners—Senior Technical Consultant and Technical Consultant of respective District Project Offices—have approached this Court to invoke extraordinary jurisdiction under the provisions of Articles 226 and 227 of the Constitution of India, with the following prayer(s):

“Under these facts and circumstances it is most humbly prayed therefore that this Hon’ble Court may graciously be pleased to quash Order No. 16057, dated 01.08.2019 at Annexure-17 passed by Special Secretary to Government, School and Mass Education, Odisha wherein it has been directed to freeze the existing remuneration of the members of the petitioner-association at the current level with effect from 31.03.2019,

And further be pleased to direct the opposite parties take necessary steps to revise the remuneration of the petitioners taking into account revised scale of pay granted to Government employees as per 7th Pay Commission, provision under 45(a) of Memorandum of Association (Rules & Regulations), Odisha Primary Education Programme Authority that “scale of pay in respect of posts to be created by the Executive Committee shall correspond either to the Central Government or State Government scale of pay”, principle of equal pay for equal work and the observations made in 36th Executive meeting of OPEPA/OSEPA held on 21.03.2018,

Or in the alternative pass any other order/orders deem fit and proper in this case. And for the said act of kindness, the petitioner as in duty bound shall ever pray.”

Facts:

2. Facts, as outlined by the writ petitioners, reveal that the petitioner No.1 facing process of selection, being selected was appointed in the post “of Technical

Consultant on contractual basis with consolidated pay of Rs.6,000/- in the District Project Office, Sarva Shiksha Abhiyan, Kandhamal *vide* Office Order No. 4454/OPEPA/03 dated 22.11.2003 issued by the opposite party No.5. Similarly, the petitioner No.2 was appointed in the post of Technical Consultant on contractual basis with consolidated pay of Rs.17,089/- in the District Project Office, Sarva Shiksha Abhiyan, Baragarh *vide* Office Order No.6605/Estt/14 dated 08.08.2014 issued by opposite party No.5.

2.1. Odisha Primary Education Program Authority¹ (for brevity, “OPEPA”) came in to existence as a registered society in January, 1996 under the aegis of the School & Mass Education (S&ME) department of the Government of Odisha. OPEPA implements the flagship programme of Sarva Shiksha Abhiyan across the entire State, touching children studying in educational institutes related to Elementary Education. In a nutshell, the Organisation runs under the administrative control of School and Mass Education Department, Government of Odisha.

2.2. The OPEPA has been implementing different programmes like District Primary Education Programme-I (DPEP-I) and DPEP-II, Reconstruction of School Building Programme, Sarva Shiksha Abhiyan (SSA)², Rastriya Madhyamik Shiksha

¹ In Government of Odisha, School and Mass Education Department, Resolution No.11254—SME-FE-OES-0251-2018/SME, dated 24.05.2019, it has been stated as follows:

“After merger of OPEPA and OMSM for better convergence and management of Elementary, Secondary and Higher Secondary Schools of the State, a new organisation namely, Odisha School Education Programme Authority (OSEPA) is created with the merger of the above two organisations.”

² Article 21-A of the Constitution of India and the Right of Children to Free and Compulsory Education Act, 2009 incorporates the words ‘free and compulsory’. ‘Free education’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. ‘Compulsory education’ casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age group. With this, India has moved forward to a rights based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act. Sarva Shiksha Abhiyan (SSA) is implemented as India’s main programme for universalising elementary education. Its overall goals include universal access and retention, bridging of gender and social category gaps in education and enhancement of learning levels of children. SSA provides for a variety of interventions, including inter alia, opening of new schools and alternate schooling facilities, construction of schools and additional classrooms, toilets and drinking water, provisioning for teachers, periodic teacher training and academic resource support, textbooks and support for learning achievement. These provisions need to be aligned with the legally mandated norms and standards and free entitlements mandated by the RTE Act. [See, osepa.odisha.gov.in].

Abhiyan (RMSA), National Programme for Education of Girls at Elementary Level (NPEGEL), Kasturba Gandhi Balika Vidyalaya (KGBV) and Samagra Shiksha since last 22 years.

2.3. After OPEPA was formed, Odisha Primary Education Programme Authority Service Rules and Regulations 1996 (Annexure-B/4 of the counter affidavit) was framed in terms of Clause 5(n) of the Memorandum of Association of Odisha Primary Education Programme Authority read with Rule 36 of the Rules and the Regulations made thereunder.

2.4. The District Primary Education Programme (DPEP)-I which was a centrally sponsored project, started in the year 1995-96 in eight districts in the State of Odisha, came to be ceased in the year 2003-04. However, the District Primary Education Programme (DPEP)-II started in the year 2001-02 in other eight districts and the same continued till 2008-2009. As per sanction order issued by the Government of India *vide* Letter dated 15.11.1996 and Letter 22.11.2001, the grant was subject to the condition that the terms and conditions of services of the employees of the society would be normally according to the terms and conditions applicable to similar categories of employees in the State Government but not exceeding those admissible to the similarly placed in the Central Government.

2.5. The background history would suggest that OPEPA took up a centrally sponsored Project named as Sarva Sikhsya Abhiyan (hereinafter be called “SSA”) in the year 2002-03, which aimed at universalization of Elementary Education (Class-1 to Class-8) and to fulfil the constitutional mandate of providing free and compulsory education to the children in the age group 6-14 years in 30 districts of the State of Odisha. Engagements of employees were made following due procedure and they worked on payment of consolidated salary fixed for different posts. The employees, working in DPEP-I, were absorbed in SSA in the year 2003-04 and later, those working in DPEP-II were absorbed after closure of the same in the year 2008-09. After formation of OPEPA, the employees working under DPEP were brought in and additional employees were recruited by adhering to due procedure. The employees, working under the DPEP projects, have been working in SSA as of date.

2.6. The provision under Regulation 45(a) of Memorandum of Association (Rules & Regulations), OPEPA would transpire that “scale of pay in respect of posts to be created by the Executive Committee shall correspond either to the Central Government or State Government scale of pay”. As the same was not given effect to and the employees were being paid consolidated pay, Sub-Committee was constituted by the OPEPA for revision of remuneration of direct recruits with contractual position under the OPEPA. In the Meeting held on 23.05.2006, decision was taken to revise the remuneration of the employees of the OPEPA streamlined with the provisions of the Odisha Revised Scales of Pay Rules, 1998.

2.7. The recommendations of Sub-Committee dated 23.05.2006 was placed before the 23rd Executive Committee in the Meeting held on 05.12.2006. *Vide* item

No.5, the recommendations for enhancement of remunerations of the employees were approved. In pursuance thereof, Office Order dated 25.01.2007 was issued by the opposite party No.5 where the scale of pay of the employees of the OPEPA was revised as per the Odisha Revised Scales of Pay Rules, 1998.

2.8. In the Meeting held on 05.12.2008, the Executive Committee extended the benefit of the consolidated remuneration of all contractual employees of OPEPA (State Project Office and District Project Office) with effect from 01.04.2008.

2.9. Accordingly a decision was taken in the Meeting of 27th Executive Committee of OPEPA held on 16.08.2011 that the remuneration of contractual employees of the State Project Office as well as the District Project Office under project management was to be enhanced with effect from 01.08.2011. Furthermore, the employees were allowed to avail House Rent Allowance as would be applicable and the existing medical allowance. The contractual employees were also allowed 3% hike over the remuneration on yearly basis from 01.08.2012.

2.10. *Vide* Notification dated 29.07.2013, a Committee was constituted by the Government of Odisha in School and Mass Education Department to consider the grievances of the OPEPA Employees' Service Association regarding issues of the employees of OPEPA working in the State Project Office and the District Project Office in connection with the benefits and other matters relating to their service which was notified in the Odisha Gazette *vide* Notification dated 29.07.2013.

2.11. Governing Body of OPEPA in its Meeting dated 29.10.2013, presided over by the Hon'ble Chief Minister, Odisha and President, Governing Body, OPEPA, along with other matters, recommended as follows:

"Item No. 5(i)—

On the proposal of formulating a career advancement policy for the staffs of OPEPA, the Hon'ble Minister, School & Mass Education Department expressed his satisfaction on the performance of the staffs of OPEPA in implementation of the various schemes of SSA and RTE and requested the House for favourable consideration. It was resolved that the matter may be examined by the Committee constituted earlier by Government under chairmanship of State Project Director, OPEPA and place before Executive Committee for necessary recommendation."

2.12. *Vide* Meeting held on 19.11.2013, the Committee constituted to look into various issues of OPEPA Employees Service Union in connection with the benefits and other matters relating to their service, discussed about regularisation of services of contractual employees of OPEPA. After thorough discussion and deliberation the Committee recommended to fix up the remuneration of different categories of employees of OPEPA at par with the initial pay structure including the D.A. of similar categories of posts in the State Government. Such decision was taken in consonance with the manner provided in Regulation 45(a) of Memorandum of Association (Rules & Regulations), Odisha Primary Education Programme Authority. It recommended for 2% annual enhancement of pay with effect from 01.01.2006 at par with State Government employees. Further it was recommended

that in the event of enhancement of D.A. by the State Government, the same would also be made applicable and the same would be added to the base remuneration of the employees of OPEPA. Besides, House Rent Allowance calculated as per Government prescribed norms, they would be entitled to other allowances including benefits under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. It was recommended to allow incentive @ 3% on the base remuneration to be paid on yearly basis. Employees who completed 6 years of satisfactory service as on 01.01.2014, the renewal of annual contract was stated to be dispensed with and they are allowed to continue till adverse is noticed.

2.13. *Vide* Item No.6:1 of Proceeding of the 30th Meeting of Executive Committee of OPEPA held on 06.03.2014, recommendations of the Committee constituted by the Government to look into the demands of the OPEPA Employees' Service Association were taken up and it was approved as follows:

"The base remuneration of different categories of employees of OPEPA would be fixed at par with the initial pay structure of similar types of posts in the state government and with due recognition to the seniority, an annual incentive @2% on the base remuneration per completed year of service will be allowed counted from 01.01.2006 or from the date of joining whichever is later as per the following statement". That vide proceeding of the committee meeting for assessment of performance & implementation of enhanced salary to contractual employees of OPEPA held on 06.09.2014 it was observed that the in the year 2013-14, Rs.2939.84 lakhs was spent towards salary for both State Project office and district project office. On fixation of revised pay of OPEPA employees, a total of Rs.3001.19 lakhs (approx) will be incurred as expenditure against the approved outlay of Rs.4674.70 lakhs which is within the Project Approval Board (PAB) approval in salary component under project management cost."

2.14. Pursuant to such recommendation of the Governing Body and approval of the Executive Committee of OPEPA, Office Order No.7970, dated 20.09.2014 was issued by the opposite party No.4 wherein it was mentioned that the said revision of pay has been effected in pursuance of decision of the Executive Committee of OPEPA in its Meeting dated 06.03.2014, and the remunerations of contractual employees of the State Project Office and the District Project Offices under project management head have been revised, which was within the ceiling limit of management cost of Annual Working Plan and Budget, 2014-15 approved by PAB, Ministry of Human Resource Development, Government of India, Delhi.

2.15. While the matter stood thus, "Sarva Shiksha Abhiyan" got subsumed in "Samagra Shiksha"³. *Vide* Item No.9.1 of the 35th Meeting of the Executive

³. Visiting webportal of "Samagra Shiksha, Department of School Education and Literacy, Ministry of Education, Government of India— samagra.education.gov.in— the framework and the purport of Samagra Shiksha is couched in the following terms:

"The Union Budget, 2018-19, has proposed to treat school education holistically without segmentation from pre-nursery to Class 12. Samagra Shiksha— an overarching programme for the school education sector extending from pre-school to class 12 has been, therefore, prepared with the broader goal of improving school effectiveness measured in terms of

equal opportunities for schooling and equitable learning outcomes. It subsumes the three erstwhile Schemes of Sarva Shiksha Abhiyan (SSA), Rashtriya Madhyamik Shiksha Abhiyan (RMSA) and Teacher Education (TE).

This sector-wide development programme/scheme would also help harmonise the implementation mechanisms and transaction costs at all levels, particularly in using state, district and sub-district level systems and resources, besides envisaging one comprehensive strategic plan for development of school education at the district level. The shift in the focus is from project objectives to improving systems level performance and schooling outcomes which will be the emphasis of the combined Scheme along-with incentivizing States towards improving quality of education.

The Goal SDG-4.1 states that “By 2030, ensure that all boys and girls complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes. Further the SDG 4.5 states that “By 2030, eliminate gender disparities in education and ensure equal access to all levels of Education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations.

The scheme envisages the ‘school’ as a continuum from pre-school, primary, upper primary, secondary to Senior Secondary levels. The vision of the Scheme is to ensure inclusive and equitable quality education from pre-school to senior secondary stage in accordance with the Sustainable Development Goal (SDG) for Education.

The major objectives of the Scheme are provision of quality education and enhancing learning outcomes of students; Bridging Social and Gender Gaps in School Education; Ensuring equity and inclusion at all levels of school education; Ensuring minimum standards in schooling provisions; Promoting Vocationalisation of education; Support States in implementation of Right of Children to Free and Compulsory Education (RTE) Act, 2009; and Strengthening and up-gradation of SCERTs/State Institutes of Education and DIET as a nodal agencies for teacher training.

The main outcomes of the Scheme are envisaged as Universal Access, Equity and Quality, promoting Vocationalisation of Education and strengthening of Teacher Education Institutions (TEIs).

The Scheme will be implemented as a Centrally Sponsored Scheme by the Department through a single State Implementation Society (SIS) at the State/UT level. At the National level, there would be a Governing Council headed by Minister of Education and a Project Approval Board (PAB) headed by Secretary, Department of School Education and Literacy. The Governing Council will be empowered to modify financial and programmatic norms and approve the detailed guidelines for implementation within the overall Framework of the scheme. Such modifications will include innovations and interventions to improve the quality of school education. The Department will be assisted by a Technical Support Group (TSG) at Educational Consultants of India Limited (EdCIL) to provide technical support in functional areas pertaining to access, equity and quality education by merging the TSGs of the Schemes of SSA, RMSA and TE. States would be expected to bring a single Plan for the entire school education sector.

The fund sharing pattern for the scheme between Centre and States is at present in the ratio of 90:10 for the 8 North-Eastern States viz. Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura and 3 Himalayan States viz. Jammu & Kashmir, Himachal Pradesh and Uttarakhand and 60:40 for all other States and Union Territories with

Committee of the OPEPA held on 02.03.2017, a change of nomenclature of the Odisha Primary Education Programme Authority (OPEPA) was effected and in its place, said Authority is renamed as the Odisha School Education Programme Authority (for brevity, “OSEPA”). While the Sarva Shiksha Abhiyan was implementing the project relating to students of Class-I to Class-VIII, but the Samagra Shiksha aims at implementing the project from Pre-Primary to +2 students in the State of Odisha.

2.16. The Executive Committee of OPEPA had its 36th Meeting on 21.03.2018, where certain proposals were placed which is discussed *infra*. The Executive Committee decided to examine the matter in the School and Mass Education Department in consultation with the Finance Department. *Vide* Item No.11.3, the Executive Committee made the following approval:

“Renewal of TOR of employees.

It has been approved in the 35th Meeting of EC, OPEPA that the contractual employees those who have completed 06 years of satisfactory service as on 01.01.2014, the renewal of contract may be dispensed with and they may be allowed to continue till

Legislature. It is 100% centrally sponsored for Union Territories without Legislature. This is in accordance with the recommendations of the Sub-Group of Chief Ministers on Rationalization of Centrally Sponsored Schemes received in October, 2015.

The major interventions, across all levels of school education, proposed under the scheme are: (i) Universal Access including Infrastructure Development and Retention; (ii) Gender and Equity; (iii) Inclusive Education; (iv) Quality; (v) Financial support for Teacher Salary; (vi) Digital Initiatives; (vii) RTE Entitlements including uniforms, textbooks etc.; (viii) Pre-school Education; (ix) Vocational Education; (x) Sports and Physical Education; (xi) Strengthening of Teacher Education and Training; (xii) Monitoring; (xiii) Programme Management; and (xiv) National Component. It is proposed that preference in the interventions would be given to Educationally Backward Blocks (EBBs), LWEs affected districts, Special Focus Districts (SFDs), Border areas and the 117 Aspirational districts.

The main emphasis of the Scheme is on improving quality of school education by focussing on the two T's— Teacher and Technology. The strategy for all interventions under the Scheme would be to enhance the Learning Outcomes at all levels of schooling. The scheme proposes to give flexibility to the States and UTs to plan and prioritize their interventions within the scheme norms and the overall resource envelope available to them. Funds are proposed to be allocated based on an objective criteria based on enrolment of students, committed liabilities, learning outcomes and various performance indicators.

The Scheme will help improve the transition rates across the various levels of school education and aid in promoting universal access to children to complete school education. The integration of Teacher Education would facilitate effective convergence and linkages between different support structures in school education through interventions such as a unified training calendar, innovations in pedagogy, mentoring and monitoring, etc. This single scheme will enable the SCERT to become the nodal agency for conduct and monitoring of all in-service training programmes to make it need-focused and dynamic. It would also enable reaping the benefits of technology and widening the access of good quality education across all States and UTs and across all sections of the Society.”

adverse is noticed. Further, as per provision of Rule 4(d) of OPEPA Service Rules and Regulations, 1996, “the appointment of officers/staff either on deputation or re-employment or on contract shall be initially for a period of 02 years extendable for further period depending upon their performance and continuity of the programme, by the Executive Committee.

On the basis of this a Committee constituted by Government of Odisha vide Government Notification No. 17364 dated 29.07.2013 and as per the kind approval of the 4th Governing Body under the Chairmanship of Hon’ble Chief Minister, Odisha recommended as stated above. Hence, it is proposed to renew the contract those who have not completed 06 years of service as on 01.01.2014 and their renewal should be done as per previous practice. This has also been communicated to all esteemed members of EC as well as Administrative Department, Finance Department, Government of India and Chief Secretary, Chairman, EC, Odisha. This has also been confirmed by all concerns.

But now it is felt necessary that, all employees are also to be included in annual TOR for better HR management.

The matter was discussed and appraised to the Committee that no compliance has been made and no executive instruction has been issued in this regard. The Committee unanimously approved to reintroduce the TOR for all employees for better HR management as per earlier practice.”

2.17. However, the opposite party No.4 issued an Office Order No. 16057, dated 01.08.2019, wherein it has been directed to freeze the existing remuneration of the petitioners and other employees of OPEPA at the current level with effect from 31.03.2019. Said Order dated 01.08.2019 reads thus:\

“The Odisha Primary Education Programme Authority (OPEPA) was constituted in the year 1996 under Societies Act, 1860. The Authority has been established to function as a social mission for bringing about a change in the basic education system. The current remuneration structure of persons engaged in the Society was finalised by the 30th Executive Committee (EC) constituted at the level of OPEPA and passed in the EC. However, Finance Department concurrence was not taken although the State bears 40% as per the Scheme structure. Practically, the current contribution of the Centre would amount to much lower than 60%. However, the sharing pattern of the centre and the State since FY 2001-02 has been reduced from 85:15 to 60:40.

At present the employees of OPEPA are drawing their remuneration as per ORSP Rules, 2008 vide their Office Order No.7970 dated 20.09.2019 without the approval of the Government and concurrence of Finance Department.

Further, it is to mention that the employees of OPEPA are Schematic employees but they are drawing gross remuneration at a higher rate due to addition of certain perks which are not extended to any State Government employee. The dynamic D.A. structure twice a year is not availed by any schematic employee of the State Government. Due to gradual decrease in Central funding, the financial burden has also been increasing for the State Government.

After careful consideration, it has been decided by the Government to freeze the existing remuneration at the current level with effect from 31.03.2019.

The administrative department will take necessary steps to review the remuneration structure vis-à-vis the Finance Department guidelines. This Order will come into force with immediate effect.

This has been concurred in by the Finance Department in OSWAS file No. SME-MSSA-MSSA1-0084-2018. ”

2.18. The instant writ petition is directed against said Order dated 01.08.2019.

Hearing:

3. Pleadings, being completed and exchanged between the learned counsel for respective parties, on their consent, this matter is taken up for final hearing at the stage of admission.

3.1. Accordingly, heard Sri Budhadev Routrary, learned Senior Advocate appearing along with Mr. Avijit Mishra, learned Advocate appearing for the Petitioner and Sri Satyabrata Mohanty, learned Additional Government Advocate appearing for opposite parties.

3.2. On conclusion of hearing, the matter stood reserved for preparation and pronouncement of judgment.

Rival contentions and submissions:

4. Reiterating the facts as narrated in the writ petition, Sri Budhadev Routray, learned Senior Advocate appearing for the petitioner submitted that on the basis of grievance petition submitted by the contractual employees of OPEPA to the State Project Director, OPEPA, the Sub-Committee constituted by OPEPA for revision of remuneration of directly recruited contractual staff under OPEPA held Meeting on 23.05.2006, wherein the following was decided:

“The Sub-Committee perused the Service Rules & Regulations 1996 of OPEPA and proceedings of the 15th Executive Committee meeting and found that Posts like FO Level-II, Media Consultant, Asst. Director (Girls Education), System Administrator, Network Administrator, Internal Auditor, Sr. Asst. Librarian, Zonal Coordinator and Programme Associate (under ‘NPEGEL’) were not created at the time of finalization of Service Rules & Regulations, 1996 of OPEPA. Considering the workload & business of OPEPA, the Executive Committee considered creation of above posts and finalized consolidated pay against each post. Since such type of posts are not made available in Orissa Govt. Establishment, the committee taking into consideration of consolidated pay given by Executive Committee, fitted those posts in the identical pay scales available in Orissa Revised Scales of Pay Rules, 1998 as given below:

Sl. No.	Name of the posts created by EC	Consolidated pay allowed by EC (In Rs.)	Fitted in Revised Scale of Pay Rules, 1998
1	FO Level-II	10500/-	8000-275-13500
2	Media Consultant	7590/-	5500-175-9000
3	Asst. Director (Girls Education)	10000/-	6500-200-10500
4	System Administrator	6000/-	5000-150-8000
5	Network Administrator	6000/-	5000-150-8000
6	Internal Auditor	8000/-	5500-175-9000

7	Sr. Asst.	4700/-	4750-125-7500
8	Librarian	6000/-	5000-150-8000
9	Zonal Coordinator (NPEGEL)	12000/-	8000-275-13500
10	Prog. Associate (NPEGEL)	9000/-	6500-200-10500

Rule 9(a) in Chapter-III of Orissa Primary Education Programme Authority (OPEPA) Service Rules & Regulations 1996 provides that the directly engaged staff appointed on fixed sum shall draw the fixed amount after they join their post and shall continue to draw the same until the amount is revised by the Executive Committee. No dearness allowance shall be paid in these cases. The 16th Executive Committee have decided for payment of consolidated remuneration to the contractual staff of OPEPA engaged at State Project Office and District Project Offices of SSA/DPEP districts.

After detailed discussion and thorough examination of pay/remuneration structure of State Project Office, SSA/DPEP, West Bengal, Tamil Nadu State Mission of Education for All, Uttar Pradesh Rajya Pariyojana Karjyalaya, Maharashtra Prathamik Shikshan Parishad, the Committee recommends that:

1) The post of System Analyst (SA) shall be re-designated as Asst. Director(MIS) equivalent to other posts of Asst. Directors in OPEPA in view of the importance of Management Information System and present work load in OPEPA.

2) Consolidated pay of all officers of OPEPA engaged on contract basis under Group-B, C & D will be fixed @150% of the basic pay of the pay scale applicable to State Govt. employees of equivalent post/cadre in the existing pay scales (Orissa Revised Scales of Pay Rules 1998) as in Annexure-II.

3) The directly engaged Officers in Group B,C & D will get HRA as per the Finance Department Office Memorandum in force.

4) No Medical Allowance shall be given to the contractual staff.

5) Annual increase @ 2% of consolidated pay will be given to the directly recruited Officers in Group B,C & D subject to review of performance.

6) Consolidated remuneration of the existing directly recruited Officers in Group-B,C & D shall be fixed giving lump sum of Rs.300/-, Rs.250/- & Rs.200/- over and above of the consolidated pay respectively to the Group B,-C & D categories of officers:

The revision of pay/remuneration of Officers of OPEPA in Group B,C & D categories directly recruited on contract basis shall be given effect from 1.4.2006.

The Executive Committee may consider the recommendation of Sub-Committee regarding revision of pay/remuneration and other allowances of the Officers of Group B, C & D categories in the State Project Office, District Project Offices of DPEP/SSA districts and Zonal Office (NPEGEL). The financial implication on revision of the consolidated pay/remuneration has been worked out at Annexure-III which is within the 6% of the management cost of the approved Work Plan & Budget.”

4.1. In the 23rd Executive Committee, the representation of contractual employees of OPEPA was considered and vide Office Order No.543/Estt/07, dated 25.01.2007 revision of consolidated remuneration structure has been laid down as follows:

“1. To have one category of Group ‘B’ Officers and six categories of Group ‘C’ Officers and one category under Group ‘D’ Officers for State Project Office. Similarly five categories of Officers under Group ‘C’ and one category for Group ‘D’ Officers for

District Project Offices under DPEP/SSA. For Zonal office at Rayagada it has been decided to have two categories of Officers one each of Group 'B' & 'C'.

2. To grant House Rent Allowances of 10% of the consolidated remuneration for the State Project Office Staff, Staff of District Offices, Puri, Cuttack & Sambalpur. For all other staff of District Project Offices and Zonal Office under NPEGEL at Rayagada 7.5% of the basic consolidated remuneration.

3. To maintain a priority among the staff, Officers who have joined in 2003 will get extra remuneration on the basis of their seniority over those who have joined in 2004 & 2005.

4. To grant an annual increase of 2% of the consolidated remuneration to the disengaged staff subject to review of their performance.

5. The revision of remuneration structure of all officer/staff directly engaged will be given effect from 01.04.2006.

The details of revised remuneration structure are given at Annexure 'A'.

The remuneration structure of different Group 'B', 'C' and 'D' Officers of State Project Office will be prepared by the Establishment Section and then it will be counter signed by Finance Officer, OPEPA (Sri A.K. Dhal) to avoid any wrong calculation. Similarly, revised remuneration structure of District Project Offices will be prepared by the District Project Office and then submit to the State Project Office for countersignature by Finance Officer. For Zonal Office under NPEGEL at Rayagada, Zonal Coordinator will prepare the revised remuneration structure of the Zonal Office and then submit to the State Project Office for countersignature by Finance Officer. After receipt of the countersigned revised remuneration calculation sheet, the District Project Office and Zonal Office under NPEGEL at Rayagada will draw the remuneration of the contractual staff.

Calculation of revised consolidated remuneration shall be prepared in the prescribed format as at Annexure-B."

4.2. In the Meeting of 4th Governing Body of OPEPA held on 29.10.2013, being presided over by the Hon'ble the Chief Minister of the Odisha and President of Governing Body, OPEPA, the following decision was taken:

“(i) On the proposal of formulating a career advancement policy for the staff of OPEPA, the Hon'ble Minister, School & Mass Education Department expressed his satisfaction on the performance of the staff of OPEPA in implementation of the various schemes of SSA and RTE and requested the House for a favourable consideration. It was resolved that this matter may be examined by the Committee constituted earlier by the Government under the Chairmanship of State Project Director, OPEPA and place before the Executive Committee for necessary recommendation.

(ii) Dr. Pranati Panda, Professor of NUEPA suggested that the job and responsibility of the educational administrators should be clearly defined."

4.3. It is pointed out by learned Senior Counsel that in the 4th Governing Body Meeting of OPEPA as many as 24 Members were present and participated. One of the Members as shows in Annexure-A of the said proceedings reflects as follows:

Sl. No.	Name	Designation	Member
***	***	***	***

4	Sri Upendra Nath Behera, IAS	Additional Chief Secretary to Govt., Finance Department, Govt. of Odisha	Member
***	***	***	***

4.4. He went on to submit that the remuneration which the petitioners are getting today was recommended by the 4th Governing Body Meeting of OPEPA, which was presided over by the Chief Minister, Odisha on 29.10.2013 and again the same was further recommended by the Special Committee *vide* Meeting dated 19.11.2013 and finally the same was approved by 30th Executive Committee Meeting of OPEPA on 06.03.2014. The 30th Executive Committee “was presided over by the Chief Secretary-cum-Chairman OPEPA and the decision to extend career advancement was taken keeping in terms of Regulation 45(a) of Memorandum of Association (Rules and Regulations), Odisha Primary Education Programme Authority.

4.5. It has been urged that at present the petitioners are getting much less remuneration than that of the State Government employees working in the similar positions. As the impugned Office Order (Annexure-17) has been passed by an incompetent authority and without taking into account the provisions contained in the Memorandum of Association, the reasons mentioned in the said order cannot be countenanced.

4.6. It is averred that since responsible officer of the Finance Department represented in the Meeting, the impugned Office Order dated 01.08.2019 *vide* Annexure-17 showing that the employees of the OPEPA were drawing remuneration as per the Odisha Revised Scales of Pay Rules, 2008 without approval of the Government and concurrence of the Finance Department is unwholesome and a myth.

4.7. Advancing further argument, learned Senior Advocate Sri Budhadev Routray referring to Annexure-12, i.e., the proceeding of the Committee Meeting held on 19.11.2013 submitted that conscious decision was taken after discussion and deliberation to fix up the remuneration of different categories of the employees of the OPEPA at par with the initial pay structure including the D.A. that is extended to similar nature of posts in the State Government. The relevant portions of said proceeding, as referred to by Sri Budhadev Routray, learned Senior Advocate, reflects as follows:

“***

2. Implementation of Career Advancement Policy and enhancement of salary at par with State Govt. employees.

There is a provision under 45(a) of Memorandum of Association (Rules & Regulation), Odisha Primary Education Programme Authority that “scale of pay in respect of posts to be created by the Executive Committee shall correspond either to the Central Government or State Government Scale of Pay”. Accordingly, under the Odisha Primary Education Programme Authority Service Rules & Regulations, 1996, the staffing pattern for the State Project Office as well as the District Project Offices has been prescribed with the scale of pay which was equivalent to similar types of staff in the State Govt. From time to time as per the decision of the Executive Committee, the

scale of pay of OPEPA has been enhanced to have some type of parity with the scale of pay of the State Govt. employees. It was discussed and appreciated that the employees are recruited by following the due recruitment procedure and highly qualified persons have been engaged in the project. Further, the successful implementation of SSA and the different requirements of Right to Education Act is attributable to the sincere, efficient & dedicated discharge of duties by the project staff both at the State level as well as at the field level. So, payment of remuneration less than what has been paid to similar types of posts in the State Government will be injustice to the employees of OPEPA. Further, there is no promotion, no career advancement policy, no periodical Dearness Allowance available to them as are enjoyed by the State Government employees. The Committee after thorough discussion and deliberation recommends to fix up the remuneration of different categories of employees of OPEPA at par with the initial pay structure including the DA of similar types of posts in the State Government as per statement (Annexure-B).

2.1. There are many staff in the project who have put in years of service. With due recognition to their seniority, it is also recommended to allow an annual increment at the rate of 2% per completed year of service. Since the State Government pay structure as per the Scale of Pay 2008, effective from 01.01.2006 is recommended to the OPEPA employees, the seniority for the purpose of 2% annual enhancement will be applicable from 01.01.2006.

2.2. To have parity with the salary structure of State Government employees, it is also recommended that whenever there is any enhancement of DA by the State Government that will also be allowed to the OPEPA employees. This enhancement will be added to the base remuneration of OPEPA employees. The HRA will be calculated as per the Govt. prescribed rate applicable from place to place. In addition to the above, the other allowances availed by OPEPA employees & EPF as per EPF & MP Act will also be provided.

2.3. Besides, it was also recommended to allow annual incentive @ 3% on base remuneration to be paid on yearly basis.

2.4. It was also discussed that under the Project Management Head of the SSA Budget, sufficient fund is available to meet the additional requirement towards enhancement on the existing remuneration. A comparative statement of last two year budget provision & expenditure incurred under salary head of project management is annexed as Annexure-C.

2.5. It is also recommended that in respect of employees, who have completed 6 years of satisfactory service as on 01-01-2014, the renewal of annual contract may be dispensed with and they may be allowed to continue till adverse is noticed.

2.6. The individual pay fixation will be made at SPO level which will be countersigned by Additional Director (General) and FA & CAO, OPEPA. Further, the committee recommended that in case of any anomalies in pay fixation in future, a fitment committee may be constituted at the level of SPD, OPEPA."

4.8. In 30th Executive Committee Meeting of OPEPA held on 06.03.2014 (Annexure-13) after deliberation, it was decided to implement Career Advancement of OPEPA employees with effect from 01.03.2014. In said meeting, the base remuneration of different categories of the OPEPA was fixed at par with initial pay structure of similar types of posts in the State Government. In the Committee Meeting held on 06.09.2014 it was unanimously agreed to implement the decisions

of 30th Executive Committee meeting held on 06.03.2014. The remuneration of contractual employees of the State Project Office and the District Project Office under the Project Management Head has been revised under the ceiling limit of management cost of AWP & Budget 2014-15 duly approved by PAB, MHRD, Government of India, New Delhi, vide Office Order No.7970/Estt./14, dated 20.09.2014 issued by the State Project Director, OPEPA.

4.9. In 36th Meeting of the Executive Committee of OPEPA held on 21.03.2018, the following was discussed:

“***

9. Enhancement of salary/remuneration structure of employees working under RTE-SSA & KGBV.

(A) Modification of Salary Structure of employees of OPEPA engaged under Project Management Head of RTE-SSA:

The employees engaged under OPEPA Project Management Heads at State and District level are availing Base Pay + GP + DA + Other allowances as available to their counterpart at Government level as per the decision of 30th Meeting of EC, OPEPA held on 06.03.2014 w.e.f. 01.04.2014. They are also drawing the enhanced DA as enjoyed by Government employees from time to time. In the meanwhile, Government of Odisha has allowed salary as per recommendation of 7th pay commission. Hence, for employees engaged under Project Management Head at State and District level, a conscious decision may be taken to avail the remuneration on the basis of parameters fixed by the Government of Odisha. Necessary budgetary provision has already been made by the PAB, Government of India under SSA during 2017-18 following due procedure.

The EC may kindly consider the proposal of enhancing the salary of employees working under Project Management at State and District level after which the same will be placed before PAB, Government of India for necessary approval in Annual Work Plan and Budget, 2018-19.

This was discussed and committee decided to examine the matter in Govt. in S & ME Deptt. In consultation with Finance Department.

(B) Enhancement of salary/remuneration staffs engaged under different Programme Heads.

Different Memorandums have been received from the Employees Union regarding enhancement of salary etc. from the Block level employees, employees of RP(CWSN), Part Time Instructor, KGBV & Residential Hostel employees and Multilingual Instructors. The details of demands, present remuneration structure have been enclosed as at Annexure-10.

Hence, for aforementioned employees a conscious decision may be taken by EC as per the budgetary provision made in AWP & B and approval of PAB subject to actuals.

This was discussed and following decisions were taken.

The matter relating to existing remuneration of employees working under SSA at State, District and Block Level was discussed and the committee suggested to put up the matter before Govt. in S & ME to examine in consultation with Finance Department relating to existing remuneration structure of SPO, DPO and Block Level employees and the basis on which SPO and DPO employees are now getting their remuneration at

par with their counter parts of State Govt. as per the recommendations of 6th Pay Commission.

The committee also suggested to conduct the Human Resources audit to examine the essential and non-essential components, performers and non-performers of the project in order to minimise the man power. The committee also suggested to avoid automatic assumption of approval of Executive Committee on various issues relating to financial in nature without concurrence of F.D. Since invariably there is 40% share of Govt. of Odisha in SSA Project and Govt. have to shoulder the entire liability after closure of the project."

4.10. Learned Senior Advocate would strenuously argue that the Finance Department having been consulted at each stage of decision making process, the Office Order issued by the Special Secretary to Government in Annexure-17 stating that the OPEPA employees have been drawing remuneration "without approval of the Government and concurrence of Finance Department" vide Office Order No. 7970/Estt./14, dated 20.09.2014 is far from truth.

4.11. Referring to Memorandum of OPEPA, learned Senior Advocate submitted that the Executive Committee is well defined and being delegated and vested with powers to take decision(s), the State Government cannot sit over the decision of the Executive Committee and review the benefits already extended to the employees of the OPEPA by issuing of Office Order dated 01.08.2019.

5. *Per contra*, valiant attempt was made by Sri Satyabrata Mohanty, learned Additional Government Advocate appearing for the opposite parties to justify the action of the Government in School and Mass Education Department in issuing Office Order dated 01.08.2019 under Annexure-17 to freeze the remuneration with effect from 31.03.2019 (retrospectively), has taken this Court to Memorandum of Association (Annexure-A/4 enclosed to the counter affidavit) whereby Clause 7 thereof which in specific terms empowers the State Government and the Central Government to appoint one or more persons to review the work and progress of the OPEPA and to hold enquiries into the affairs thereof. Making further reference to said document, he has relied on Clause 21 thereof to contend that the Central Government and the State Government were required to be Members of the Executive Committee.

5.1. Sri Satyabrata Mohanty, learned Additional Government Advocate laid stress on paragraph 3 of the counter affidavit, which is extracted hereunder:

"That, it is humbly submitted that the prayer of the petitioners in the writ application is not sustainable in the eye of law. The decision vide its Order No.16057, dated 01.08.2019 even though communicated by the Special Secretary to Government, School and Mass Education Department, but this is the decision of the Government taken with the concurrence of the Finance Department. It may not be out of place to submit that the decision dated 01.08.2019 is basically an outcome of the defects pointed out by the Government of Odisha, Finance Department. The petitioners have failed to implead the Finance Department as a party to this writ application even though they assail the Office Order dated 01.08.2019 and described in the body of the writ application that such a decision has been taken with the concurrence of the Finance Department and on

the basis of the objection raised by the Finance Department. Accordingly, this is a case of non-joinder of necessary party for which this writ application is liable to be dismissed.”

5.2. Laying emphasis on the stand taken by the Opposite Parties, learned Additional Government Advocate submitted that since the Finance Department and the Central Government are not made parties in the writ petition, the same deserves to be dismissed.

5.3. Continuing his argument he proceeded to submit on merit that since the Odisha Revised Scale of Pay Rules, 2008 is framed in exercise of powers conferred under proviso under Article 309 of the Constitution of India, the same is not applicable to the employees working under different schematic programmes. He then submitted that the contract of engagement of the petitioners provided for payment of remuneration and they are not employees under the Government rather they were working under projects, which was jointly funded by the Central Government and the State Government.

5.4. In such view of the matter, it is vehemently contested by the opposite parties that the claim of the petitioners for availing benefits of the Odisha Revised Scale of Pay Rules is thoroughly misconceived and the writ petition is liable to be dismissed.

Analysis and discussion:

6. This Court first takes up the objection raised by Sri Satyabrata Mohanty, learned Additional Government Advocate with respect to non-joinder of parties.

6.1. Glance at the prayers made by the writ petitioner in the writ petition, it transpires that the petitioners have claimed relief against the State Government, but not against the Central Government.

6.2. Furthermore, the petitioners have questioned the propriety of Office Order dated 01.08.2019 issued by the Special Secretary to the Government of Odisha in Department of School and Mass Education, *vide* Annexure-17. The contentions and averments along with arguments of the petitioners would lead this Court to construe that such decision taken by the State Government in School and Mass Education Department would nullify the effect of decisions taken in the different Executive Committee Meetings wherein different departments took part including the School and Mass Education Department and the Finance Department.

6.3. This Court is called upon to examine the sustainability of Office Order dated 01.08.2019 issued by the Special Secretary to Government of Odisha in Department of School and Mass Education.

6.4. Under such situation, the contention of the learned Additional Government Advocate that the writ petition is liable to be dismissed *in limine* for non-joinder of parties is repelled.

7. On scrutiny of minutes of different meetings as referred to and relied on by Sri Budhadev Routray, learned Senior Advocate appearing for the petitioners, it could not be disputed by the learned Additional Government Advocate appearing for the opposite parties that representatives of the Finance Department and the School and Mass Education Department were present. It is found that conscious decision were taken at each level in the presence of representative of the Finance Department besides other Departments such as, Higher Education Department, Panchayati Raj Department, Women & Child Development Department, School and Mass Education Department, Labour & Employment Department, Elementary Education, Secondary Education, National Council of Educational Research & Training, National University of Education Planning & Administration, SC & ST Welfare Department, Government of India, Ministry of Human Resources Department.

7.1. As is revealed from Annexure-A to the proceeding, in the Meeting of the 4th Governing Body of OPEPA held on 29.10.2013, it was decided that the remuneration of employees of the OPEPA *inter alia* would be fixed “at par with the initial pay structure including the D.A of similar types of posts in the State Government”. It was also decided for enhancement of remuneration and to extend the benefit of career advancement to the employees of OPEPA.

7.2. At this juncture, it is relevant to take note of following relevant clauses/provisions of “Odisha Primary Education Programme Authority—Memorandum of Association” as made available at Annexure-A/4 of the counter affidavit:

*“Odisha Primary Education Programme Authority
Memorandum of Association*

4. *Objects:*

The Orissa Primary Education Programme Authority shall act as an autonomous and independent body for implementation of the Orissa Primary Education Programme as outlined in the project document published by the Government of Orissa and its revised versions that may be prepared on the basis of joint review from time to time.

5. *Functions:*

In pursuance of the above objects, the function of the authority to be undertaken directly by Authority office through its staff or sponsored/supported by it through other institutions, agencies or individuals, shall be as follows:

(e) to bring about effective decentralization in basic education by involvement of the people through a process of training and awareness building and creation of appropriate structures formal or otherwise.

(m) to create academic, technical, administrative and managerial and other posts in the Authority and to make payments for the same in accordance with the rules and regulations of the Authority.

(n) to make rules and regulations for conduct of the affairs of the Authority and add or amend, vary or rescind them from time to time.

(p) to incur expenditure after drawing of a budget and with due regard for economy and probity.”

6. Property and Assets

The income and property of the Authority howsoever, derived shall be applied towards promotion of the objects thereof as set forth in this Memorandum of Association, subject nevertheless in respect of the expenditure of grants made by the Government of Orissa or Government of India, to such limitations as these Government may from time to time, impose. No portion of the income and property of the Authority shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise, howsoever by way of profit, to the persons who at any time have been members of the Authority or to any of them or to any person claiming through them provided that nothing herein contained shall prevent the payment in good faith of remuneration to any member thereof or otherwise persons in return for any service rendered to the Authority for travelling allowance, halting or other similar charges.

7. Government Powers:

State Government and the Central Government shall jointly appoint one or more persons to review the work and progress of the Authority and to hold enquiries into the affairs thereof and to report thereon in such a manner as the Government may stipulate and upon receipt of any such report, the Government may jointly take such action and issue such directions as they may consider necessary in respect of any of the matters dealt within the report and the Authority shall be bound to comply with such directions. In addition, the Central Government or State Government may at any time issue directives or matters of policy to the Authority and the latter shall be bound to promptly comply with such directives. Where there is divergence of views between the State Government and Central Government, in views of the Central Government would prevail.

“Odisha Primary Education Programme Authority Rules and Regulations

4. Definitions:

(v) ‘Executive Committee’ shall mean the body which is constituted as such under Rule 21 as the Executive Committee of the Authority.”

34. Powers and Function of Executive Committee:

It shall be responsibility of the Executive Committee to endeavour to achieve the objects of the Authority and to discharge all its functions. The Executive Committee shall exercise all administrative, financial and academic authority in this behalf, including powers to create posts of all description and make appointments thereon in accordance with the regulations.

35. The Executive Committee:

The Executive Committee shall have under its control the management of all affairs and funds of the Authority.

36. The Executive Committee shall have the powers and responsibilities in respect of the following:

- (i) To frame regulations with the approval of the State Government.
- (ii) To frame bye-laws for the conduct of activities of the Authority in functioning as per its stated objectives.

44. The Executive Committee may delegate, to the Chairman, State Project Director or any of its members and/or to a Committee/Group or any other Officer of the Authority

such administrative, financial and academic powers and impose such duties as it deems proper and also prescribe limitations within which the powers and duties are to be exercised or discharged.

Regulations

45. *Subject to any specific directions or the Authority and keeping in view the overall advice of the Central Government and the State Government the Executive Committee shall have the powers to frame and amend regulations, not inconsistent with these rules for administration and management of the affairs of the authority and without prejudice to the generality of this provision, such regulations may provide for the following matter:*

- (i) Service matters pertaining to officers and staff including creation of posts, qualifications, selection procedure, service conditions, pay and emoluments, disciplinary controls as well as classification, control and Appeal Rules.*
- (ii) Important financial aspects including formulation of budget, purchase procedures, delegation of financial powers, investment of funds, maintenance of accounts and audit, T.A. Rules etc. and*
- (iii) Such other matters as may be necessary for the furtherance of the objects and the proper administration of the affairs of the Authority.*

Provided that for the purpose of this Rule, following Guidelines would be kept in view while creating the posts and formulating the Service and Financial Regulations:

- (a) Scales of pay in respect of the posts to be created by the Executive Committee shall correspond either to the Central Government or State Government scales of pay.*

Bye-Laws

52. *Funds of the Authority:*

The funds of the Authority shall consist of the following:

- (i) Grants-in-aid made by the Central Government and the State Government for furtherance of the Objects of the Authority;*
- (ii) Contribution from other sources and*
- (iii) Income from assets of the Authority*
- (iv) Receipts of the Authority from other sources and*
- (v) Grants donations or assistance of any kind from foreign Governments and other external agencies, with prior approval of the Central Government."*

7.3. Apposite it is to have glance at Odisha Primary Education Programme Authority— Service Rules and Regulations, 1996, as found place at Annexure-B/4 of the counter affidavit:

"Odisha Primary Education Programme Authority Service Rules and Regulations

2. *Scope:*

These Regulations shall apply to the officers and staff of the Orissa Primary Education Programme Authority.

4. *Category of Staff and Conditions of Selection:*

- (a) The employees shall be classified into Group A, B, C and D on the following basis:*

Group A—All posts in the pay scale the maximum of which is not less than Rs.4000/-

Group B—All post in the pay scale the maximum of which is less than Rs.4000/- but not less than Rs.3500/-

Group C—All posts in the pay scales the maximum of which is over Rs.1025/- and less than Rs.3500/-

Group D—All posts in the pay scales the maximum of which is Rs.1025/- or less

Provided that in respect of retired officers appointed on contract basis with lump sum and on re-employment terms their classification will be as per the scale of pay from which they retired. All orderlies, peons, sweepers, shall be classified as Group-D irrespective of the fixed amount they get as remuneration and stenographers, data entry operator, office assistance and drivers appointed with lump sum amount shall be classified as Group-C irrespective of the amount they have draw as monthly remuneration when the appointment is not against a time scale.

(b) Nature of Appointment:

All the appointments shall be temporary in nature and terminable either on close of the project work or close of the period for which their appointment is made whichever is earlier. Provided that the appointing authority has extended the period of appointment of an officer from time to time suspect to the total period being co-terminus with the date of completion of the project as a whole or completion of a component of the project for which the appointment is made whichever is earlier subject to efficiency and good conduct assessed annually.

(c) Engagement of staff:

Engagement of staff by the Authority may be of following categories:

(ii) Engagement on contract:

(b) Engagement of directly recruited person on contract basis.

(e) The scale of pay prescribed for the posts to be filled up on deputation, on reemployment terms and on contract basis either directly recruited or retired persons on fixed lump sum amount to be fixed are given in Appendix-A. notwithstanding prescription of these time scales the Authority reserves the right to appointing persons against these scale on lump sum amount.

9. Pay fixation:

(a) the directly engaged staff appointed on fixed sum shall draw the fixed amount after they join their post and shall continue to draw the same until the amount is revised by the Executive Committee. No dearness allowance shall be paid in these cases."

7.4. Raising the issue whether the decision taken in the 30th Executive Committee Meeting of OPEPA held on 06.03.2014 with respect to service conditions as well as the consequential action with regard to the career advancement of those employees of OPEPA could be set at naught by way of passing the impugned Office Order dated 01.08.2019, Sri Budhadev Routray, learned Senior Advocate made suave submission that Memorandum of Association (vide Annexure-A/4 to the counter affidavit) of the OPEPA, subsequently renamed as OSEPA, clearly envisages that the OPEPA/OSEPA shall act as autonomous and independent entity for implementation of the Odisha School Education Programmes. Clause 5(n) of the Memorandum of Association lays down that the function of the Authority *inter alia* is to frame Rules and Regulations for conduct of the affairs of the OPEPA. Said provision empowers the OPEPA to add or amend, vary or rescind

them from time to time. The “Odisha Primary Education Programme Authority—Rules and Regulations” as enclosed to the counter affidavit delineates “Powers and Functions of the Executive Committee” at Rule 34, wherein it has been specified that “it shall be the responsibility of the Executive Committee to endeavour to achieve the object of the Authority and to discharge all its functions. The Executive Committee shall exercise all administrative, financial and academic authority in this behalf, including powers to create posts of all description and make appointments thereon in accordance with the regulations”. Rule 44 of said “Rules and Regulations” envisages that the Executive Committee has the power to delegate to the Chairman, State Project Director or any of its members and/or to a Committee/Group, or any other Officer of the OPEPA such administrative, financial and academic powers and impose such duties as it deems proper and also to prescribe limitations within which the powers and duties are to be exercised or discharged. Regulation 45 of said “Rules and Regulations” confers powers in respect of certain aspects *inter alia* Scales of Pay in respect of the posts to be created by the Executive Committee that correspond to the Central Government or the State Government Scales of Pay.

7.5. From the preamble of the Memorandum of the Association and the Rules and Regulations as referred above makes it unambiguous that the OPEPA is an autonomous and independent body without having any control of the State Authorities, rather the Executive Committee which consists of 17 numbers of senior officers of the State Government. The OPEPA has framed Rules and Regulations by way of the Memorandum of Association and by dint of Rule 21 thereof, the Executive Committee was constituted. Such Committee is conferred and invested with all the powers to take decision including administrative and financial matters. It is also discernible from the above that the provision provided under Rule 34 that the conditions of the service of the employees of OPEPA are also within the domain of the Executive Committee. Under said Rule 34, the powers and the functions of the Executive Committee has been provided by laying down that it shall be the responsibility of the Executive Committee to make endeavour to achieve the objects of the Authority and to discharge all its functions. Rule 35 provides that the Executive Committee shall have under its control the management of all the affairs and funds of the OPEPA. Under Regulation 45 of the Regulation power has been vested with the Executive Committee and accordingly, the Executive Committee has the powers to frame and amend regulations. Said regulation *inter alia* empowers that “service matters pertaining to officers and staff including creation of posts, qualifications, selection procedure, service conditions, pay and emoluments, disciplinary control as well as Classification, Control & Appeal Rules”.

7.6. Conjoint reading of different provisions unequivocally speaks that the Executive Committee, the apex body, has every power not only to make any Rules and Regulations but also to discharge the administrative and financial powers on behalf of the OPEPA.

7.7. In the Meeting of the 4th Governing Body of OPEPA held on 29.10.2013—presided over by the Hon’ble Chief Minister and in presence of senior officers of different departments, as can be seen from minutes of proceedings— while taking decision for implementation of Career Advance Policy and enhancement of salary at par with the State Government employee by referring to Regulation 45 of the Memorandum of Association (Rules and Regulations of OPEPA) it was held that scale of pay in respect of the post to be created by the Executive Committee shall corresponding to either to the State Government or the Central Government scale of pay. After due deliberation it was decided to have parity with the salary structure of the State Government employees. It was also recommended that whenever there happened to be any enhancement of D.A. by the State Government that would also be extended to the OPEPA employees. This enhancement to be added to the base remuneration of the OPEPA Employees. Such recommendation was made on the basis of the Report submitted by a Committee constituted in terms of Notification dated 29.07.2013. The Executive Committee has accepted such recommendation in the proceeding of the 30th meeting of the OPEPA held on 06.03.2014, which was implemented in terms of such decision by extending benefits to the employees of OPEPA, as has been admitted by the opposite parties in their counter affidavit.

7.8. In such background it is also borne on the records that the Joint Secretary to Government in School and Mass Education Department was also one of the members in the Meeting held on 19.11.2013. Hence, the impugned order to freeze the remuneration of the petitioners (who are the employees of erstwhile OPEPA renamed OSEPA) at current level with (retrospective) effect from 31.03.2019 cannot be sustained and is, hence, liable to be quashed. Unilateral decision of the Government without taking the Executive Committee into confidence would prejudice larger interest of employees of the OPEPA/OSEPA.

7.9. It is apparent from careful scrutiny of the counter affidavit that the opposite party No.4 in its reply does not deny the fact of decision being taken in the Meeting of Executive Committee held on 06.03.2014 regarding career advancement of the OPEPA employee. Rather, it has been clearly admitted that the decision for the Executive Committee in the Resolution passed in the 30th Executive Committee Meeting dated 06.03.2014 has been implemented. But at the same time in the counter affidavit it could not have been taken as a stand that such decision of the Executive Committee is not consistent with the Rules.

7.10. In this context, it may be worthwhile to refer to a co-ordinate Bench decision of this Court rendered in the case of *Purna Chandra Bag and Others Vrs. State of Odisha and Others*, W.P.(C) Nos.20940, 21425, 24708, 26700, 26702, 26703, 26704, 26705, 26706, 26708, 26709, 28876 of 2020 and W.P.(C) Nos.24233, 30728 & 33966 of 2021, vide Judgment dated 02.08.2023, relevant portion of which is quoted hereunder:

“8. Having heard learned counsel for the parties and after going through the materials available on record, it is found that the Executive Committee in its 26th meeting held on

16.02.2010 though approved for creation of the posts of Accountant-cum-Data Entry Operator to be filled up at the block level, but the said post was designated as Accountant-cum-Support Staff by the opposite party No.2 while issuing the communication dated 07.02.2011 under Annexure-1. Basing on the said communication though it is not disputed that all the petitioners were engaged as Accountant-cum-Support Staff at the block level pursuant to the advertisement issued by the concerned Collector-cum-Chairman, Sarva Siksha Abhiyan in different districts, but taking into account the qualification prescribed for Accountant at the block level and that of the Accountant engaged in the State Project Office and District Project Office, this Court is of the view that the qualification prescribed for engagement of the Accountants at the block level as well as in the district level and State level are similar. It is also found from the record that as per Regulation 45(a) of the 1996 regulation, it has been clearly provided that the Scale of Pay in respect of the post to be created by the Executive Committee shall correspond either to the Central Government or State Government scale of pay. It is also found from the record that the Executive Committee in its 30th meeting held on 06.03.2014 vide Item No.6.4 also approved to extend the benefit enjoyed by the different employees as per OPEPA Employees Service Rules and Regulations 1996 to the block level Accountant engaged at BRCs level.

8.1. Therefore, in view of the provisions contained under Regulation 45(a) of the Rules & Regulation, 1996 and the decision taken by the Executive Committee in the proceeding of the 30th meeting held on 06.03.2014, the rejection of the claim of the petitioners to get the benefit of pay parity with that of the Accountants working in the State level and District level as per the considered view of this Court is not legal and justified. Therefore, this Court is inclined to quash the said rejection made by opposite party No.3 vide Order dated 10.07.2020, which is impugned in WP(C) No.20940 of 2020 and quash the same.”

7.11. It is manifest from the counter affidavit that the Special Secretary to the Government of Odisha has made attempts to justify his action in directing to freeze the remuneration of the employees of the OPEPA. While justifying such action he has referred to Regulation 45. By way of Amendment on 31.7.2019 it has been provided that “such other matters as may be necessary for the furtherance of the objective and proper administration of the affairs of the authority certain guidelines will kept in view while creating the post and formulating the service and financial regulation”. All decision relating to creation and up-gradation of post and fixation of pay and involvement having financial implication would have to be placed before the School and Mass Education Department for approval of Government. Such amendment of Regulation 45 has absolutely no application to the fact situation of the case for the reason that:

- i. Such a provision has been made by way of amendment on 31.07.2019, which is prospective in nature inasmuch as no power has been cited by the opposite parties to demonstrate that the amendment could be given retrospective effect. The rights of the employees that existed prior to amendment could not be taken away or imperilled.
- ii. The decision of the Executive Committee for enhancement of salary and extension of other benefits in the Meeting held on 06.03.2014 with reference to the powers conferred under the Memorandum of Association, Regulation and Rules, as were prevalent at that relevant point of time, could not be dispensed with by assuming retrospective operation of the amendment.

iii. By virtue of amendment and introduction of clause (iii) to Regulation 45, it can only be said that such provision can be made applicable in the context of creation of new posts and formulating the service and financial regulation. In such eventuality, the approval of School and Mass Education Department of the Government may be necessary. Nonetheless, in the case at hand, question of creation of the post or the question of formulating the service and financial regulation did not arise; rather the decision which was taken in the year 2014 by the competent authority, *i.e.* the Executive Committee, being empowered in that regard. Such decision has also been implemented by the OPEPA by extending the benefit to all eligible employees including the petitioners. The impugned order dated 01.08.2019 (Annexure-17), therefore, could not have been passed by lightly brushing aside such important decision affecting the rights of the OPEPA employees having impact on civil consequences.

iv. With regard to application of amendment with retrospective effect, it may not require any authority to be referred to; nevertheless, it would suffice to quote from *Indian Latex Fibre Corporation Vrs. Commissioner of Sales Tax, 2007 SCC OnLine Ori 399 (Division Bench of this Court)*, as is trite:

“It is well known that normally a statute operates prospectively. The Legislature in its plenary power can also legislate retrospectively, but in such cases the statute must say so or it must appear by necessary implication. (See Keshavan Madhava Menon Vrs. State of Bombay reported in AIR 1951 SC 128 at page 130). This principle has been subsequently reiterated by the honourable Supreme Court repeatedly.”

v. In such view of the matter, the specious plea of the Government of Odisha in School and Mass Education that “the employees of OPEPA are drawing their remuneration as per Odisha Revised Scales of Pay Rules, 2008 *vide* their Office Order No.7970 dated 20.09.2014 without the approval of the Government and concurrence of Finance Department” cannot withstand judicial scrutiny inasmuch as the Government Officers have participated and concurred with the decision taken in the Meetings of the Executive Committee of the OPEPA.

vi. Having participated in the Meetings, the Officers of the Government Departments endorsed the decision taken therein and implemented the same since 2014, at this stage the Government of Odisha in School and Mass Education cannot turn around to resile from such a decision without adhering to due process of law. Doing so would not be in the larger interest of the employees.

vii. In this context it may be apposite to extract a passage from *Chowhan Machinery Mart Vrs. State of Orissa, 2008 SCC OnLine Ori 596*:

“The honourable Supreme Court in Dabur India Ltd. Vrs. State of Uttar Pradesh, AIR 1990 SC 1814, observed that Government, Central or State, cannot be permitted to play dirty games with the citizens of this country to coerce them in making payments which the citizens were not legally obliged to make. If any money is due to the Government, the Government should take appropriate steps, but it should not take extra-legal steps or adopt the course of manoeuvring. Because of the above discontentment expressed by the Bar it has become necessary to provide guidelines for just exercise of the power of Revenue authorities. To prevent the abuse of power and to see that it does not become a new despotism, courts are gradually evolving the principles to be observed while exercising such power. New problems call for new solutions.”

viii. The Officers, who are responsible to take decisions at the Government level must see that the adequate measures and safeguards have been taken into consideration to

obliterated already implemented decisions. The manner in which they were extended to the employees, without following the legally established course the benefits so extended to the employees could not be dispensed with.

ix. In case any deviation is intended, there must be plausible explanation and such intention must be reflected by taking conscious decision with the participation of such other Officers who were present in the Meetings where decision to extend the benefits to the OPEPA employees was taken.

x. In this context it deserves to have reference to Section 22 of the Odisha General Clauses Act, 1937, provision of which is reproduced hereunder:

“Power to make to include power to add to, amend, vary or rescind, orders, rules or by-laws.—

Where, by an Odisha Act, a power to make or issue notifications, orders, schemes, rules, by-laws or forms, is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions, (if any) to and to, amend, vary or rescind any notifications, orders, schemes, rules, by-laws or forms so made or issued.”

xi. The reason for deviating from the decision taken way back in 2014 and subsequent thereto by virtue of Office Order dated 01.08.2019 (Annexure-17) depicting unilateral decision at the behest of the School and Mass Education Department “to freeze the existing remuneration at the current level, i.e., 31.03.2019” is bound to materially prejudice the employees’ rights. No provision could be shown by the learned Additional Government Advocate demonstrating conferment of such power under any statute or the Memorandum of Association which comprehended Rules and Regulations to obliterate the benefit already extended to the employees of OPEPA.

7.12. Since the OPEPA is an “Autonomous Body” and has been conferred with independent power, there cannot be any interference to such power and function of the Executive Committee of the OPEPA, subject to the manner suggested in the Odisha General Clauses Act. Hence, the action as spelt out in the Office Order dated 01.08.2019 issued by the Special Secretary is not in consonance with law.

7.13. As is made abundantly clear from the School and Mass Education Notification No. 17364—XI-SME-SSA-30/2013-S&ME, dated 29.07.2013 (Annexure-10) the decision with regard to enhancement of pay was taken in the duly constituted Executive Committee and the decision has been implemented based on the recommendation of High-Power Committee constituted in terms of said Notification dated 29.07.2013. Therefore, no infirmity in such decision being shown nor does the impugned order depict exigency to vary with such decision taken by the Executive Committee, this Court is inclined to set aside the impugned Office Order dated 01.08.2019.

8. By referring to outcome of the various Meetings of the OPEPA as has already been discussed in foregoing paragraphs, it is highlighted that the impugned Office Order dated 01.08.2019 has no foundational factor to hold water. It is forcefully submitted that the reason ascribed therein that the OPEPA employees draw higher remuneration/pay than that is extended to the State Government employees is not based on facts and figures. Such a reason is contrary to decisions

taken in the Meetings of the Executive Committee where other departmental authorities took part including the Officers of the School and Mass Education Department and the Finance Department.

8.1. Conjoint reading of different Rules, Regulations and Service Rules as culled out for discussion on merit of this case, it is but unambiguous that under Rule 44 of the Memorandum of Association (Rules and Regulations) the Executive Committee could delegate to the Chairman, State Project Director or any of its members and/or to a Committee/Group, or any other Officer of the OPEPA/ OSEPA administrative, financial and academic powers and under Regulation 45 thereof the Executive Committee have powers to frame and amend Regulations *inter alia* with respect to financial powers. In Rule 21 of the said Memorandum of Association the constituent members have been enumerated. The opposite parties have not disputed nor denied the constitution of the Executive Committee where the Officers of the School and Mass Education and the Finance Department participated in the decision making process. Thus, there was no requirement for taking further concurrence of the Finance Department.

8.2. Query of this Court in this regard could not be answered by the learned Additional Government Advocate and no provision is cited before this Court to suggest that after the Executive Committee took a decision in presence of Officers of different Departments of the Government including the Finance Department touching the financial implication, there is requirement of concurrence of the Department of Finance.

8.3. Therefore, this Court is of the considered opinion that the reason for freezing the existing remuneration for lack of concurrence of the Finance Department is liable to be obliterated.

8.4. It may be significant to have regard to Letter bearing No. F.13-5/2001 DPEP-3, dated 22.11.2001 issued by the Ministry of Human Resources Development, wherein it has been laid down as follows:

“No. F. 13-5/2001 DPEP-3
Government of India
Ministry of Human Resources Development
(Department of Elementary Education & Literacy)
EE-I Bureau

New Delhi, the November 22. 2001

To
The Accounts Officer
Pay & Accounts Office
Ministry of Human Resource Development
Departraent of Elementary Education and Literacy New Delhi.

Subject: District Primary Education Programme—Release of 1st instalment of grant to Orissa Primary Education Programme Authority, Bhubaneswar (Orissa) for

implementation of District Primary Education Programme for Expansion of district (phase-II) during the year 2001-2002.

Sir,

I am directed to say that the Annual Work Plan and Budget for 2001-2002 in respect of Orissa Primary Education Programme Authority, Bhubaneswar has been approved for a sum of Rs.6593.13 lakhs for implementation of District Primary Education Programme for Expansion Districts (phase-II). The central share (85%) of Rs. 6593.13 lakhs works out to Rs. 5600.00 lakhs.

2. I am accordingly directed to convey the sanction of the President to the release of an amount of Rs.15,00,00,000/- (Rupees fifteen crore only) as first instalment of grant to State Project Director, Orissa Primary Education Programme Authority, Bhubaneswar-751001 for implementation of District Primary Education Programme in expansion districts (phase-II) during the year 2001-2002.

3. The sanction is subject to the conditions laid down in para-8 of the minutes of the EFC meeting circulated vide this Ministry communication number F4-3/99-DPEP-4 dated 16.08.2001.

4. The expenditure shall be incurred according to the parameters and norms as laid down in DPEP guidelines.

5. The amount sanctioned will be drawn by the drawing and disbursing officer (Grants) Ministry of Human Resource Development, Department of Elementary Education and Literacy, Government of India, New Delhi on a grant-in-aid bill for disbursement to the guarantee, through a crossed bank draft (Account Payee) payable to the State Project Director, Orissa Primary Education Programme Authority, Bhubaneswar 751001 during the current financial year.

6. The grant shall be subject to the following conditions:

(i) It shall be drawn during the current financial year before 31st March, 2002 and shall be utilised within a reasonable period from the date of its drawal.

(ii) It shall be utilised only for undertaking activities proposed in the Work Plan for the year 2001-2002 and approved by the Government of India on the basis of norms of expenditure.

(iii) The assets, if any to be acquired wholly or substantially out of the grant should not without the prior sanction of the Government of India, be disposed of encumbered or utilised for purposes other than those for which the grant has been sanctioned.

(iv) Orissa Primary Education Programme Authority, Bhubaneswar shall maintain a separate and proper account of the expenditure incurred out of the grant and the accounts so maintained shall be open to audit by the Comptroller and Auditor-General of India or by any authority deputed by him for the purpose, as per rules.

(v) The Society shall furnish to this department item-wise statement of expenditure on a quarterly basis and other reports in approved formats. The Society will submit annual detailed progress report of the project within one month of the close of the financial year. An annual audited statement of accounts along with a certificate of chartered accountant and authorised signatories of the society and approved by the society in original will be submitted to the Ministry within 3 months from the close of the financial year. The balance amount of grant for 2001-2002 shall be released only on receipt of unaudited statement of accounts showing 75% or more expenditure out of the earlier instalment of grant.

(vi) A register of assets acquired wholly or substantially out of the grant shall be maintained in prescribed form and certified copy of the register in respect of the assets acquired should be sent to this Ministry not later than one month from the close of the financial year. Such copies should continue to be furnished even after the government's grant to the society has ceased. The statement should relate not only to the assets acquired during the year to which it relates but to all previous assets too created wholly or substantially out of the government's grant up to the end of the period to which the return relates. For purposes of determining whether an asset has been created substantially out of the government grant it is not necessary that the amount utilised out of the government grant should exceed 50%.

(vii) The grant is subject to the condition that the terms and conditions of services of the employees of the Society, be normally according to terms and conditions applicable to similar categories of employees in the State Government and not exceeding those admissible to similar categories of Central Government employees.

(viii) The accounts and other records of the Orissa Primary Education Programme Authority, Bhubaneswar shall be open to inspection by an officer of the Ministry of Human Resource Development or any other person deputed by the Ministry for this purpose.

(ix) The Orissa Primary Education Programme Authority, Bhubaneswar shall follow strictly all instructions issued by the Government of India from time to time on reservations of posts of Scheduled casts, Scheduled Tribes. The staff appointed at state and district level be on deputation or on contract basis only for a limited period.

(x) The Orissa Primary Education Programme Authority, Bhubaneswar shall fully implement the official language policy of the Union Government that is it shall fully comply with official language Act- 1963 and Official language (use for the official purposed of the Union), Rules, 1976 etc.

(xi) The guidelines given by the GOI regarding monitoring, management and financial and other procedures to be followed in the execution of the project will be followed.

7. The expenditure will be debitable to demand no-46/ Department of Elementary Education and Literacy- Major head 2202; general education 0.1- Elementary education 800- other expenditure, 19- District Primary Education Programme 19, 00.31- Grants-in-aid-2001-2002(plan).

8. The pattern of assistance has been approved by the Ministry of Finance and this sanction is being issued in conformity with the Rules and Regulations approved by the Ministry of Finance. The grantee institution is located in the Orissa circle of accounts.

9. This sanction issues in exercise of the delegated powers in consultation with integrated finance divisions vide their DY No. 8918/2001-IFD dated 23.10.2001 and the funds have been certified by IF I Section vide their DY No. 5533-0/01-IIF dated the 20.11.2001.

Yours faithfully,
(I.S.Kalijai)
Desk Officer."

8.5. Aforesaid Guidelines have further been clarified vide Letter dated 26.06.2003, which reads as follows:

"F.2-42/2003-EEIII
Government of India

*Ministry of Human Resource Development
Department of Elementary Education & Literacy*

New Delhi, June 26, 2003.

Subject: Clarification on sustaining of DPEP interventions in SSA after closure of DPEP.

A question has been raised on the sustaining of DPEP interventions under SSA. Following, guidelines, as approved by the Expenditure Finance Committee of Government of India, are issued for the purposes of planning and appraisal:

(i) The liability of DPEP relating to salary of teachers and BRC/CRC personnel would have to be taken over by the State Government. So, no salaries can be provided under SSA for teachers and BRC/CRC personnel appointed under DPEP.

(ii) For arriving at the requirement of BRC/CRC personnel under SSA, the BRC/CRC resource persons already provided under DPEP should be deducted from the entitlement of the District as per SSA norms (20 or 10 depending on number of schools). For example, if DPEP had 12 BRC and CRC personnel in the Block, these 12 would have to be sustained by the State Government and SSA would provide for only additional 8 persons, if the entitlement of the block was 20 to begin with.

(iii) Programme related expenditures like School Grant, Teacher Grant, Civil Works, New Teachers, R&E Grant, Text Books, Innovative, IED, Maintenance Grant, etc. can be funded under SSA.

(iv) Salary of permanent management staff under DPEP would have to be borne by State. However, contractual appointments and deputationists may be borne by the SSA management structure through fresh contract. At the time of appraisal, the full physical and financial liabilities of the States under DPEP to be borne by the State should be brought out and concurrence of the State obtained on bearing this liability.

Yours faithfully,

Sd/- (O.P. Chaturvedi)

*Under Secretary to the Govt. of India
Tel: 23387538"*

8.6. As is discerned from aforesaid Letters of the Government India, after closure of the District Primary Education Programme (DPEP), the State Government is required to bear the expenditure towards the management under the Samagra Shiksha structure. Nothing is placed on record by the opposite parties that prior to taking decision *vide* Office Order dated 01.08.2019 (Annexure-17) steps were taken to nullify or vary with the decisions of Executive Committee taken earlier as discussed hereinabove. The learned Additional Government Advocate could not proffer explanation as to the requirement of concurrence of the Finance Department after decision on financial matters taken in the Executive Committee Meetings in presence of Officers of the Finance Department and the School and Mass Education Department. Rather this Court on minute scrutiny of Rules and Regulations as forming part of the Memorandum of Association and the Service Rules and Regulations observes that financial autonomy was delegated to the Executive Committee. In absence of any step taken by the Government of Odisha in School and Mass Education to review the decisions taken in the Executive Committee of the

OPEPA/OSEPA, unilateral decision of the Government *vide* Officer Order dated 01.08.2019 to freeze the “existing remuneration” after years of implementation of decisions taken in the Executive Committee with respect to pay and career advancement is unwholesome and untenable.

Conclusion:

9. The reasons for freezing the remuneration of the employees of OPEPA/OSEPA as ascribed to in the Office Order dated 01.08.2019 of the Government of Odisha in School and Mass Education, impugned in the writ petition at Annexure-17, are:

- i. The employees of OPEPA are drawing their remuneration as per Odisha Revised Scales of Pay Rules, 2008 *vide* Office Order No.7970, date 20.09.2014 without the approval of the Government and concurrence of Finance Department;
- ii. The employees of OPEPA are schematic employees but they are drawing gross remuneration at a higher rate due to addition of certain perks which are extended to any State Government employee;
- iii. The dynamic D.A. structure twice a year is not availed by any schematic employee of the State Government. Due to gradual decrease in Central funding, the financial burden has also been increasing for the State Government.

9.1. Aforesaid reasons, as has already been discussed above, cannot be countenanced inasmuch as after conscious decision being taken in different Meetings and having implemented the decisions since long, in the year 2019 unilateral decision by the School and Mass Education could not have been taken to nullify decisions taken in Meetings held in the duly constituted Executive Committee in the presence of Officers of different departments including the School and Mass Education Department and the Finance Department.

10. In the wake of discussions made *supra* and for the reasons cited hereinabove taking note of decisions taken in various Meetings held by the Executive Committee constituted in terms of the Rules and Regulations forming part of the Memorandum of Association and the Service Rules and Regulations, this Court sets aside the Office Order dated 01.08.2019 (Annexure-17) issued by the Special Secretary to the Government of Odisha in Department of School and Mass Education.

11. Accordingly, the writ petition stands disposed of, but in the circumstances there shall be no order as to costs.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Writ Petition disposed of.

**RABINDRA NATH BARIK & ORS.
V.
STATE OF ODISHA (PRINCIPAL SECY., HOME DEPTT.,
ODISHA SECRETARIAT) & ORS.**

[W.P.(C) NO. 2846 OF 2023]

13 MARCH 2025

[MURAHARI SRI RAMAN, J.]

Issue for Consideration

Whether application of Odisha Reservation of Vacancies in Posts and Services (for Scheduled Caste and Scheduled Tribes) Act, 1975 (ORV Act) is mandatory at the stage of consideration of regularization/ absorption in service.

Headnotes

SERVICE JURISPRUDENCE – Regularization – Application of ORV Act, 1975 at the stage of regularization – It is admitted that the petitioners were engaged as peons/watchmen under the Opposite Party No.2/ Odisha State Police Housing Welfare Corporation Ltd. on daily wage basis and subsequently were given *ad hoc* engagement since 1990/1994/1996 – The authority regularized the service of petitioners *vide* office order dated 19.06.2009 – The Opposite Party No.2/Chairman-cum-Managing Director of Odisha State Police Housing and Welfare Corporation passed an order dated 12.05.2010 withdrawing the regularization – The authority at a belated stage made objection that as the provisions of the ORV Act 1975 being not followed at the time of engagement of the petitioners as *ad hoc* employees, office orders of regularization were liable to be withdrawn – Whether such withdrawn of regularization of the service of the petitioners is just and proper.

Held: No – At the stage of consideration of regularization/ absorption in service, the application of the ORV Act is not a *sine qua non* factor – Needless to repeat that at the time of engagement the authorities ought to have kept in view such statutory requirement, if any – For the flaw in adhering to procedural infirmity could not adversely affect the petitioners' right to be considered for regularization in services after having rendered unblemished service for long period. (Para 9.3)

Citations Reference

Vinod Kumar and others Vrs. Union of India and others, (2024) 1 S.C.R. 1230=(2024) 9 SCC 327; Ravi Verma and others Vrs. Union of India and others, 2018 SCC OnLine SC 3860; Raman Kumar and others Vrs. Union of

India and others, **2023 SCC OnLine SC 1018**; Mohinder Singh Gill and another Vrs. The Chief Election Commissioner, New Delhi, **AIR 1978 SC 851=(1978) 1 SCC 405**; Harbanslal Sahnia Vrs. Indian Oil Corporation Ltd., **(2003) 2 SCC 107**; Karunanidhi Vrs. Union of India, **W.P. No. 12887 of 2016, dated 22.04.2022**; Dr. Prasana Kumar Mishra Vrs. State of Odisha, **W.P. (C) No.11148 of 2005, 2016 (I) ILR-CUT 373**; Narendra Kumar Tiwari Vrs. State of Jharkhand, **(2018) 8 SCC 238**; Sunil Barik Vrs. State of Odisha, **2021 (II) OLR 469**; Suvendu Mohanty Vrs. State of Odisha, **2015 SCC OnLine Ori 267**; Amarendra Kumar Mohapatra Vrs. State of Odisha, **(2014) 4 SCC 583 = AIR 2014 SC 1716**; Subrata Narayan Das Vrs. State of Odisha, **W.P.(C) No.18659 of 2016, dated 12.07.2022**; Union of India Vrs. Central Administrative Tribunal, **(2019) 4 SCC 290**; Vibhuti Shankar Pandey Vrs. State of Madhya Pradesh, **2023 LiveLaw (SC) 91 = (2023) 3 SCC 639**; Ranjeet Kumar Das Vrs. State of Odisha, **2018 (I) ILR-CUT 695**; Patitapaban Dutta Dash Vrs. State of Odisha, **W.P.(C) No. 19951 of 2020, dated 09.09.2021**; Secretary, State of Karnataka and Others Vrs. Umadevi (3), **(2006) 4 SCC 1**; Niranjan Nayak Vrs. State of Odisha & Others, **2023 (I) OLR 407**; Jaggo Vrs. Union of India, **2024 SCC OnLine SC 3826**; Shripal Vrs. Nagar Nigam, **2025 SCC OnLine SC 221**; Director General of Training and Coordination Vrs. Biswamitra Parida, **W.A. No.822 of 2020, vide Order dated 10.02.2021**; State of Odisha Vrs. Biswamitra Parida, **Special Leave to Appeal (C) No(s).6851 of 2021**; State of Odisha Vrs. Laxman Kumar Prusty, **Special Leave to Appeal (C) No. 95 of 2019**; Rajashree Rout Vrs. State of Odisha, **129 (2020) CLT 507**; Brajendra Kumar Jena Vrs. State of Odisha, **W.P.(C) No.38099 of 2021, dated 21.10.2024**; Gujarat Agricultural University Vrs. Rathod Labhu Bechar, **(2001) 3 SCC 574 – referred to.**

List of Acts

Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975; Constitution of India, 1950.

Keywords

Regularization of service; Absorption in service; Application of ORV Act; *Ad hoc* employee.

Case Arising From

Office Order No.E-38/06/3489/ OPHWC, dated 12.05.2010 and Office Order No.E-31/ 06/3492/OPHWC, dated 12.05.2010 passed by the opposite party No.2-Chairman-cum-Managing Director of Odisha State Police Housing and Welfare Corporation Ltd.

Appearances for Parties

For Petitioners : Mr. Subir Palit, Senior Adv. & Ms. Ananya Pradhan

For Respondents : Ms. Saswata Pattnaik, AGA (O.P. 1, 3 & 4)
M/s. Girija Prasanna Dutta,
Kaibalya Manichandan Bhuyan (O.P. 2)

Judgment/Order

Judgment

MURAHARI SRI RAMAN, J.

Challenging the Office Order No.E-38/06/3489/ OPHWC, dated 12.05.2010 and Office Order No.E-31/ 06/3492/OPHWC, dated 12.05.2010 passed by the opposite party No.2-Chairman-cum-Managing Director of Odisha State Police Housing and Welfare Corporation Ltd., by virtue of which Office Order Nos.5451/OPHWC, dated 19.06.2009 and 5449/OPHWC, dated 19.06.2009, 5460/OPHWC, dated 19.06.2009 and 5464/OPHWC, dated 19.06.2009 whereby posts of watchman and peon against which the petitioners have been working were regularised, were withdrawn, this writ petition has been filed before this Court to invoke the provisions of Articles 226 and 227 of the Constitution of India, with the following prayer(s):

“It is, therefore, most humbly prayed that this Hon’ble Court may be graciously pleased to issue a Writ or Writs in the nature of a Writ of Mandamus, thereby directing the Opposite Parties not to revoke petitioners regularization orders dated 19.06.2009 under Annexure-4 series;

And may graciously be pleased to quash the Office Orders dated 12.05.2010 & 19.06.2009 as at Annexure-5 Series;

And consequently declare that the Petitioners are Regular Employees pursuant to order dated 19.06.2009 as at Annexure-4 Series;

And for which act of kindness the petitioners shall, as in duty bound, ever pray.”

Facts:

2. Facts, as adumbrated in the writ petition, reveal that the petitioners are the employees under the Odisha State Police Housing and Welfare Corporation Limited, Opposite Party No.2 (hereinafter referred to as the “Corporation”). The petitioners were initially engaged as daily wage earners since the year 1987/1989/1994/ 1996 as per exigency and as required by the Corporation by filing applications and appearing in interview. Subsequently, they were appointed on *ad hoc* basis since 1990/1994/1996.

2.1. The petitioners have been discharging their duties quite honestly, sincerely and to the best satisfaction of all concerned since the date of their engagements and also they have got rewards from the authorities for their good performance. However, the petitioner No.7, discharging his duty as watchman in the Corporation, got retired from service on 30.11.2019.

2.2. A chart indicating the Date of Birth / Educational Qualifications / Date of Initial Engagement/Date of *Ad hoc* Appointment and Date of Regularization of the present petitioners is stated herein below:

Name	Date of Birth	Qualification	Date of initial Engagement	Date of Ad hoc Appointment	Date of Regularization	Period of service on the date of passing order of regularisation (19.06.2009)	Period of Service as on date
Rabin-dra Nath Barik (OBC)	10.8.66	7 th	19.8.87	1.9.94	19.6.09	22 years	35 years
Trilo-chan Madhual (UR)	20.5.64	8 th	9.9.88	29.8.90	Do	21 years	34 years
Pramod Kumar Jena (UR)	22.6.66	7 th	5.12.88	4.10.90	Do	21 years	34 years
Prasant Kumar Behera (OBC)	2.6.72	9 th	13.7.92	1.7.96	Do	17 years	30 years
Kartik Ch. Swain (UR)	10.6.70	9 th	1.7.96	29.6.96	Do	13 years	26 years
Maheswar Behera (OBC)	3.5.68	8 th	26.9.88	1.9.94	Do	21 years	34 years
Bhim Bahadur Ale	26.11.59	7 th	1.6.89	21.3.90	Do	20 years	33 years

2.3. The petitioner No.2 got the reward from his authorities *vide* Orders dated 26.08.1994, 27.09.1996, 05.04.2000, 12.05.2000 and 01.02.2003 for sincere performance and devotion in discharging his duties. The petitioner No.4 was rewarded *vide* Order dated 23.02.2007 for sincerity and hard work. The petitioner No.6 was also rewarded *vide* Orders dated 19.03.1990, 21.05.2004 and 03.05.2005 for his sincerity in duty and hard work.

2.4. A Selection Committee was formed to consider suitability of *ad hoc* Watchman and *ad hoc* Peons/Orderly Peons for their coming over to the regular establishment. By proceeding dated 11.06.2009 of the said Selection Committee, the names of the petitioners had been approved for regularization. The Selection Committee had, accordingly, prepared a Gradation List as per the length of service rendered by the petitioners, keeping in view the availability of vacant sanctioned posts.

2.5. While dealing with it, the Selection Committee had observed that against 17 sanctioned posts, 8 posts of peon had already been regularized in between 1990 to 1994 and 8 peons had already rendered their services for a quite long period on *ad hoc* basis. In case of present petitioner No.7, the Selection Committee considered him suitable to hold the post of Watchman on regular basis. The proceedings of the Meeting of the Selection Committee held on 11.06.2009 read as thus:

“As per orders of the CMD in File No.E-38/06 & File No.E-31/06 the Selection Committee was formed with the Chief Engineer (Civil) as Chairman and the C.S. & Jt. General Manager (F) & the Dy. General Manager (Admn.) as Members to consider suitability of ad hoc Watchmen and ad hoc Peons/ Orderly Peons for their coming over to the regular establishment.

The Selection Committee Meeting met on 11.06.2009 in the Office Chamber of the Chief Engineer, Civil and called for relevant files / records and their observation is made hereunder:

Watchman:

There is only one sanctioned post of Watchman which has been created on 12.01.1981 for the Corporate Office. But there are 17 Watchmen working under the Corporation on adhoc basis since 1990/96/99. Prior to it, they were engaged as Daily Wage Earners since 1994. The CMD is competent to create and make appointment to the post carrying Rs.5500/- (pre-revised) per month. The adhoc Watchmen are at present getting only Rs.2550/- in the scale of Pay Rs.2550-3200 with DA, HRA etc. without increment on 44 days basis. Since there is only one sanctioned post, the rule of reservation will not apply to this case. From the gradation list, it is found that Sri Bhim Bahadur Ale is the senior most among all adhoc Watchmen and there is no adverse remark in performance of his duties. Therefore, the Committee considered Sri Bhim Bahadur Ale suitable to hold the post of Watchman on regular basis. The financial implication on this score will be very nominal.

Peons/Orderly Peons:

There are 17 sanctioned posts of Peons against which 8 (eight) Peons have been regularly appointed. As against remaining 9 (nine) posts, 8 (eight) Peons have been working on ad hoc basis since 1990/1994/1996. One post is kept in abeyance in view of WPC No.8595/05 files by Smt. Annapurna Swain, Peon (ad hoc). It is found from the gradation list of peons that the 8 (eight) Peons from Sl.No.9 to 16 were earlier engaged as Daily Wage Earners since 1987/1988/1994/1996. Subsequently they have been appointed on ad hoc basis since 1990/1994/1996. The CMD is competent to create and make appointment to the posts carrying Rs.5500/- per month.

The rule of reservation is applicable to this case. According to 80-point Model Roster, 11-UR, 3-ST and 3-SC Peons are required against 17 sanctioned posts. But within the

gradation list 14-UR, 1-ST and 1-SC Peons (both regular & adhoc) are available leaving one post vacant. Out of which 6-UR, 1-ST and 1-SC Peons have been earlier regularly appointed and 8-UR Peons are now working on ad hoc basis.

*Since there is no adverse remark against any of the adhoc Peons, the Committee now considered all the 8 Peons suitable for regularization of their ad hoc service subject to condition that the 4(four) reserved posts (2-ST, 2-SC) can be accommodated against the vacancy that will occur in future by way of retirement/resignation/creation or otherwise. **The financial implication on this score will be very nominal.***”

2.6. On recommendation of the Selection Committee and considering the long period of service rendered by the petitioners, the concerned authority, i.e., opposite party No.2 regularized the services of the petitioner Nos.1 to 6 in the posts of Peon / Orderly Peon with the scale of pay of Rs.2550-55-2660-60-3200/- with D.A. and other allowances and present petitioner No.7 in the post of Watchman with scale of pay of Rs.2550-55-2660-60-3200/- with D.A. and other allowances with effect from 19.06.2009 *vide* Office Order(s) dated 19.06.2009.

2.7. The authorities referred the names for regularisation in service as per seniority in the gradation list against eight vacant sanctioned posts of Peons and one vacant sanctioned post of Watchman to the Board of Directors and Government for approval.

2.8. It is at this stage pointed out that since the roster procedure by according reservation was not followed, clarification was sought for. The Selection Committee considered the case of the petitioners and observed that 8 peons including the present petitioners are working in the Corporation on *ad hoc* basis for quite a long time; amongst them two belong to OBC category. It is also reflected that the petitioners have long standing experience and outstanding service records. Thus, they have been considered for regularization. The Selection Committee also found that the Scheduled Caste and Scheduled Tribe candidates can be accommodated against the vacancies which would occur in future by way of retirement/resignations/creation of posts or otherwise. No experienced *ad hoc* Scheduled Caste and Scheduled Tribe candidate is available.

2.9. The petitioners had approached this Court in W.P.(C) No.7983 of 2010 and this Court *vide* Order dated 14.05.2010 while issuing notice in the said writ petition had been pleased to grant interim protection to the petitioner with the following effect:

*“*** If the petitioners are continuing in the regular post they shall continue in the same post until further order.”*

2.10. By the date of interim protection, the petitioners had already completed substantial length of service. Nonetheless, the opposite party No.2 *vide* Office Order No.3489/OPHWC, dated 12.05.2010 and Office Order No.3492/OPHWC, dated 12.05.2010 have withdrawn the orders of regularization of the services of the petitioners which were granted *vide* Office Order No.5451 dated 19.06.2009, Office

Order No.5449 dated 19.06.2009, Office Order No.5460/OPHWC, dated 19.06.2009 and Office Order No.5464/OPHWC, dated 19.06.2009.

2.11. The said Office Orders dated 12.05.2010 have been passed behind the back of the petitioners without any notice to them. Though no orders were communicated to the petitioners, they could come to know of such fact from the counter affidavit filed by the opposite party Nos.1 and 2 in W.P.(C) No.7983 of 2010. The Corporation in its counter affidavit had relied upon Office Order No.5464 dated 19.06.2009, wherein earlier Order No.5449 of even date was made subject to approval of the Board of Directors in its meeting. The Corporation in its counter affidavit filed in W.P.(C) No.7983 of 2010 had admitted that the regularization of the services of the petitioners as per orders dated 19.06.2009 was done by a Selection Committee which recommended regularization against existing sanctioned vacant post. Contrary to such recommendation, the Corporation also contended that the said orders dated 19.06.2009 were made subject to the approval of the Board of Director in the next meeting. The Corporation also relied upon orders dated 12.05.2010, by which regularization of the services of the petitioners were revoked/withdrawn.

2.12. The petitioners had also filed a composite rejoinder affidavit in the said writ petition, *inter alia*, asserting that orders dated 12.05.2010 causing revocation/withdrawal of the regularisation of their services and, the Letter dated 19.06.2009 by which their regularization was made subject to approval of the Board of Director was never served upon them and such orders could come to their knowledge only after the counter affidavit was filed. The petitioners also filed a petition seeking amendment of the writ petition to incorporate specific challenge to such orders. This Court *vide* Order dated 19.01.2023 while disposing of W.P.(C) No.7983 of 2010, passed the following order:

“1. Heard Mr. Palit, learned Senior Advocate for the Petitioners and Mr. Mishra, learned Senior Advocate for the Opposite Party No.2.

2. The Petitioner Nos.1 to 6, who are working as Peons and Petitioner No.7, who is working as Watchman under Opposite Party No.2-Corporation, approached this Court seeking a direction not to revoke their regularization order at Annexure-4 series.

3. The said orders are quoted hereunder for convenience of ready reference.

“The Orissa State Police Housing & Welfare Corporation Ltd., Janapath, Bhoinagar,
Bhubaneswar-22

Office Order No.5449/OPHWC Date: 19.06.2009

The ad hoc services of the following Peons/Orderly Peons are regularized against the available sanctioned posts in orders of their seniority in the gradation list in the scale of pay Rs.2550-55-2660-60-3200 with D.A. and other allowances as admissible from time to time w.e.f. the date of issue of this order. They will be on probation for one year from the date of their regularization:

1.	Sri Trilochan Madhual	Orderly Peon
2.	Sri Pramod Kumar Jena	-do-

3.	Sri Rabindra Nath Barik	-do-
4.	Sri Mahabir Das	-do-
5.	Sri Krupasindhu Pihan	-do-
6.	Sri Maheswar Behera	-do-
7.	Sri Kartika Ch. Swain	-do-
8.	Sri Prasanta Kumar Behera	-do-

Sd/-

Chairman-cum-Managing Director

***"

*"The Orissa State Police Housing & Welfare Corporation Ltd., Janapath, Bhoinagar,
Bhubaneswar-22*

Office Order

No.E-38/06/5451/OPHWC, Bhubaneswar

Date: 19.06.2009

The ad hoc services of Sri Bhim Bahadur Ale watchman is regularized against one sanctioned post of Watchman in the scale of pay Rs.2550-55-2660-60-3200 with D.A and other allowances as admissible from to time with effect from the date of issue of this order.

Sd/-

Chairman-cum-Managing Director

***"

4. In consideration thereof by order dated 14.05.2010 while issuing notice, this Court directed as under:

"If the Petitioners are continuing in the regular post, they shall continue in the same post until further order."

5. It is stated at the Bar that the Petitioners are continuing in terms of the order passed by this Court, save and except Petitioner No.7 who has retired on 30.11.2019.

6. A counter affidavit has been filed by the Corporation controverting the allegations and a rejoinder in reply is on record.

7. By way of amendment, the Petitioners seek to assail the order dated 12.05.2010 though the same is annexed to the counter affidavit as Annexure-C/2 and the said counter affidavit is filed in Court on 15.05.2017.

8. An objection has been filed to the said interlocutory application for amendment, inter alia, on the ground that the same will change the nature and character of the lis. Hence, the same is liable to be rejected.

9. This Court is of the prima facie view that, in view of the averments in the interlocutory application and keeping in view that the Petitioners are litigating since 2010 and on a conspectus of materials on record leave should be granted, as prayed for, to file a fresh writ petition and accordingly it is so granted. It shall be open to the Petitioners to file such writ petition within a period of six weeks.

10. For a period of eight weeks from today, no coercive action shall be taken against the Petitioners keeping in view that this Court by order dated 14.05.2010 had passed an interim order, which is still in vogue.

11. It is made clear that this Court has not expressed any opinion regarding the merit of the matter.

12. It is brought to the notice of this Court that during pendency of the writ petition, Petitioner No.7 has retired on 30.11.2019. It shall be open to the said Petitioner to pursue his remedy in the proposed fresh writ petition, which shall be considered on its own merit.

13. The writ petition is accordingly disposed of.

14. Urgent certified copy of this order be issued as per rules.”

2.13. Hence, the present writ petition.

Hearing:

3. On being noticed, the opposite parties have filed counter affidavit. Pleadings, being completed and exchanged amongst the counsel for respective parties, on consent of counsel for the parties, this matter is taken up for final hearing.

3.1. Accordingly, heard Sri Subir Palit, learned senior counsel along with Ms. Ananya Pradhan, learned counsel appearing for the petitioners and Ms. Saswata Pattnaik, learned Additional Government Advocate appearing for the State and Sri Girija Prasanna Dutta, learned Advocate along with Sri Kaibalya Manichandan Bhuyan, learned counsel appearing for opposite party No.2 and the matter stood reserved for preparation and pronouncement of Judgment.

Rival contentions and submissions:

4. Sri Subir Palit, learned senior counsel appearing for the petitioners submitted that the objection raised at a belated stage by the opposite parties that the provisions of the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 (for short, “ORV Act”), being not followed at the time of engagement of the petitioners as *ad hoc* employees, Office Orders according their regularisation in service were liable to be withdrawn has no foundation to be sustained.

4.1. A conjoint reading of Sections 3, 5, 9 and 10 of the ORV Act, 1975 would lead to irresistible construction that the applicability of said Act shall normally be initiated from the very initial stage of recruitment. For the defect in following procedure by the authorities the employees who have served the Corporation for a considerable period of their lives should not be subjected to civil and evil consequences.

4.2. In the case at hand, the petitioners being *ad hoc* appointees, their appointments have matured into regular appointment in due course of time and long continuation in service by virtue of principles of equity, justice and good conscience. The initial *ad hoc* appointment of the petitioners was not subjected to the provisions of ORV Act, 1975 notwithstanding the fact of applicability or non-applicability of provisions of said statute was within the knowledge of the appointing authority. As a consequence, such a plea of non-application of ORV Act, 1975 at the time of consideration of the prayer for regularization is not at all

justiciable in law since the petitioners cannot suffer for the lapses, if any, of the authorities.

4.3. It is urged that the State-Authority/Corporation, being model employer, cannot be allowed to shun its responsibilities towards the petitioners, who have been exploited for a considerable length of time by extracting their services and the service records of the petitioners have been adjudged unblemished by the Selection Committee. Having rendered services for over two decades at the time of consideration for regularization in service and three decades as of date, on specious plea that the provisions of the ORV Act, 1975, was not followed by the authorities concerned, the petitioners' orders of regularization could not have been withdrawn.

4.4. Sri Subir Palit, learned Senior Advocate assisted by Ms. Ananya Pradhan, learned Advocate vehemently contended that in view of provisions contained in Section 3 of the ORV Act, 1975, the case of the petitioners fall within the ken of exclusion clause thereunder.

4.5. It is submitted that concept of regularization derives its roots from the principles of equity, justice and fairness. The essence of employment and the rights conferred thereof on the petitioners cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over a period of time. Hence, rendering service continuously for considerable period (approximately three decades by now) has transcended the *ad hoc* employment for consideration to be brought over to regular establishment. Continuous service of the petitioners against vacant sanctioned posts as *ad hoc* appointees and their selection through a process of selection constitute a substantive departure from the temporary and *ad hoc* nature of their initial appointment. Hence, their service conditions warrant reclassification from temporary *ad hoc* to regular.

4.6. Sri Subir Palit, learned Senior Advocate has made suave submission that since similarly circumstanced employees had already been considered and regularized in the service, the petitioners should not have been treated differently. The act of regularizing the services of some employees and not regularizing the services of some others is indisputably discriminatory and falls foul of Article 14 of the Constitution. Such an act of discrimination lacks a justifiable nexus with the object sought to be achieved by the scheme of regularization. Therefore, the action of the opposite parties is tainted with not only arbitrariness but also the same is unconstitutional.

4.7. Cogent reason being not assigned, as is contended by Sri Subir Palit, learned Senior Advocate, the impugned Orders withdrawing the regularization of petitioners is arbitrary exercise of power. Such an action behind the back of the petitioners without even serving the office order thereon is liable to be deprecated. It came to the knowledge of the petitioners through the counter affidavit filed by the opposite party-Corporation in W.P.(C) No.7983 of 2010.

4.8. In this context, it is submitted that an order passed by an authority without stating the reason for its action is direct violation of the principles of natural justice. Any subsequent explanation cannot sanctify the order. An order bereft of reasons fails to meet the basic ingredients of principles of natural justice and is, therefore, inherently flawed, rendering it indefensible.

4.9. In support of the above submission, Mr. Subir Palit, learned senior counsel appearing for the petitioners has relied on the following decisions:

(i) *Vinod Kumar and others Vrs. Union of India and others*, reported in (2024) 1 S.C.R. 1230=(2024) 9 SCC 327.

(ii) *Ravi Verma and others Vrs. Union of India and others*, reported in 2018 SCC OnLine SC 3860.

(iii) *Raman Kumar and others Vrs. Union of India and others*, reported in 2023 SCC OnLine SC 1018.

(iv) *Mohinder Singh Gill and another Vrs. The Chief Election Commissioner, New Delhi*, reported in AIR 1978 SC 851= (1978) 1 SCC 405.

(v) *Harbanslal Sahnia Vrs. Indian Oil Corporation Ltd.*, reported in (2003) 2 SCC 107.

4.10. Sri Subir Palit has referred to paragraphs 5, 6, 7 and 8 of *Vinod Kumar and others Vrs. Union of India and others (supra)*, wherein the Hon'ble Supreme Court has been pleased to observe as follows:

“5. Having heard the arguments of both the sides, this Court believes that the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time. The continuous service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of regular recruitment, constitute a substantive departure from the temporary and scheme-specific nature of their initial engagement. Moreover, the appellants' promotion process was conducted and overseen by a Departmental Promotional Committee and their sustained service for more than 25 years without any indication of the temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified, merits a reconsideration of their employment status.

6. The application of the judgment in *State of Karnataka Vrs. Umadevi (3)*, (2006) 4 SCC 1 by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in *State of Karnataka Vrs. Umadevi (3)*, (2006) 4 SCC 1.

7. The judgment in *State of Karnataka Vrs. Umadevi (3)*, (2006) 4 SCC 1 also distinguished between “irregular” and “illegal” appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of

written examinations or interviews as in the present case. Para 53 of *State of Karnataka Vrs. Umadevi* (3), (2006) 4 SCC 1 is reproduced hereunder:

‘53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *State of Mysore Vrs. S.V. Narayanappa*, 1966 SCC OnLine SC 23, *R.N. Nanjundappa Vrs. T. Thimmiah*, (1972) 1 SCC 409 and *B.N. Nagarajan Vrs. State of Karnataka*, (1979) 4 SCC 507 and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.’

8. In light of the reasons recorded above, this Court finds merit in the appellants’ arguments and holds that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The failure to recognise the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations.”

4.11. To countenance his submission on discriminatory treatment in regularisation of service, he referred to paragraphs 4, 8, 9, 12 and 13 of *Ravi Verma and others Vrs. Union of India and others* (supra), wherein the observations of Hon’ble Supreme Court runs as follows:

“4. The appellants were appointed as casual employees in the Income Tax Department in the year 1993-1994 since then they were working continuously. On 30th January 2004 with respect to other similarly situated employees, temporary status was granted. The respondent No. 4 on 30th December 2004 recommended the case of the appellants for temporary status/regularization. Again it was recommended for regularization on 14.06.2005. In the meantime, the decision in the *State of Karnataka Vrs. Uma Devi*, (2006) 4 SCC 1 was pronounced by this Court, the same provided that the employees who had rendered services continuously for ten years without the cover of the court’s order be regularized as the one-time measure.

8. Again on 07.11.2007/19.11.2007 information was forwarded along with a recommendation for the regularization of services of the appellant and again on 01.01.2008 and 31.01.2008 also, recommendations were made. However services were not regularized, through Chief Commissioner, Income Tax, U.P. West, Ghaziabad regularized similarly placed 88 casual employees on 30.01.2009. The Chief Commissioner, Income Tax Orissa, Bhubneshwar also regularized similarly situated eight employees on 12.03.2009; orders of regularization have been placed on record

respectively as Annexures P1 and P2. However, similar treatment was not accorded to the appellants.

9. On 01.06.2009 appellants 1, 2 and 3 were sanctioned minimum of regular pay scale of Group D employees with Dearness Allowance in accordance with DoPT Circular dated 31.05.2004 and in terms of the orders of CCIT dated 07.11.2007 and 06.12.2007 on conferral temporary of status on the employees. On 22.09.2009, Chief Commissioner, Income Tax, Kolkata also regularized 111 similarly situated casual employees and 17 employees on 15.10.1990 and Chief Commissioner, Income Tax, Lucknow regularized 59 similarly situated casual employees on 22.01.2010. There was further regularization of 35 employees of the office of Chief Commissioner, Income Tax, Patna on 20.08.2010. However, the claim of the appellants was rejected by respondent no. 3 though they had served continuously for more than ten years and fulfill the requisite criteria for the purpose of regularization in terms of the circulars of DoPT and the decision rendered by this Court in *Uma Devi (supra)*. The appellants have also given the vacancy position.

12. Having heard learned counsel for the parties at length, we are of the considered opinion that appointments were only irregular one, this Court observed in para 53 *Uma Devi (supra)* thus:

‘53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa (supra)*, *R.N. Nanjundappa (supra)*, and *B.N. Nagarajan (supra)*, and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments, and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.’

13. In view of the aforesaid decision, the circulars and regularization of the similarly situated employees at other places and various recommendation that were made the services of the appellants ought to have been regularized in the year 2006; discriminatory treatment has been meted out to them. As per the decision of *Uma Devi (supra)*, they were entitled to regularization of services; they did not serve under the cover of court's order. Illegality has been committed by not directing regularization of services.”

4.12. Reference has also been made to paragraphs 4 and 8 of *Raman Kumar and others Vrs. Union of India and others (supra)*, wherein the following are the observations:

“4. The matter arises out of regularization of the employees. The Chief Commissioner of Income Tax in his report dated 14.02.2013 found that, in the exercise conducted in pursuance of the judgment of this Court in the case of Secretary, State of Karnataka Vrs. Umadevi, (2006) 4 SCC 1, though 65 employees were found to be entitled for regularization, only 35 employees were regularized. This was done since only 35 vacancies were available.

8. Indisputably, the appellants herein have completed service of more than ten years. Even this Court in the case of Ravi Verma Vrs. Union of India (Civil Appeal No(s).2795-2796 of 2018) decided on 13.03.2018 found that the act of regularizing the services of some employees and not regularizing the services of the others is discriminatory and violative of Article 14 of the Constitution of India.”

4.13. Relying on *Mohinder Singh Gill and another Vrs. The Chief Election Commissioner (supra)*, it was contended that no reason can be taken into consideration which is sought to be supplemented in the counter affidavit to justified orders of withdrawal of regularisation in service. the Hon’ble Supreme Court in paragraph 8 of said decision observed as follows:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Commr. of Police, Bombay Vrs. Gordhandas Bhanji, 1951 SCC 1088 = AIR 1952 SC 16:

*‘Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.’ ***”*

4.14. In the case of *Harbanslal Sahnia Vrs. Indian Oil Corporation Ltd. (supra)*, the Hon’ble Supreme Court observed as follows:

“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies:

(i) where the writ petition seeks enforcement of any of the fundamental rights;

(ii) where there is failure of principles of natural justice; or

(iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. Vrs. Registrar of Trade Marks, (1998) 8 SCC 1). The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners’ dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that

the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.”

5. *Per contra*, Sri Girija Prasanna Dutta, learned counsel appearing for opposite party No.2 in continuation of arguments advanced by him on earlier occasions, furnished written note of submission dated 05.10.2024 which reflected as follows:

“3. That it is submitted by this opposite party petitioners were engaged as Peon/Watchman under this opposite party and subsequently they were appointed on ad hoc basis and thereafter they raised grievance to regularize them. Accordingly considering their long association with the Corporation and the requirement of their services, the present opposite party being a model employer decided to examine their case for absorption against existing vacancies as per law.

4. That for the purpose of examining the cases of the petitioners, a Selection Committee was formed and the said Committee having found all the petitioners are suitable, recommended for their regularization subject to adjustment of four reserved posts against future vacancies.

5. That keeping in view the recommendation of the Selection Committee, this opposite party regularized the services of the petitioners on 19.06.2009 but the same was made subject to approval of Board of Directors in their next meeting which was communicated to all the petitioners.

6. That while regularizing the services of the petitioners, the then CMD ordered that post facto approval of the Corporation Board be taken. On 08.09.2009 the matter was placed before the Board. The Board wanted further information on the following:

a. Whether Govt. approval has been taken in view of ban on recruitment to Base Level Posts?

b. Whether provisions of Odisha Reservation of Vacancy Act, 1975 has been followed. In this regard, Govt. of Odisha Home Department has also asked for a report vide letter No.41259/M&D dated 09.09.2009

7. That therefore the Board of Director in its meeting dated 18.02.2010 decided as follows:

While regularizing the services of CMD ordered that post facto approval of the Corporation Board be taken. On 08.09.2009 the matter was placed before the Board. The Board wanted further information on the following:

8. Whether Govt. approval has been taken in view of ban on recruitment to Base Level Posts?

9. Whether provisions of Odisha Reservation of Vacancy Act, 1975 has been followed. In this regard, Govt. of Odisha Home Department has also asked for a report vide letter No.41259/M&D dated 09.09.2009.

10. That as per the provision of the ORV Act, the eight posts should come under the following categories:

	Men	Women
General	2	1
SC	1	1
ST	1	—
SEBC	1	1

8. That the Board of Directors therefore did not accord approval in absence of prior approval from Govt. of Odisha and therefore the matter was referred to O.P. No.1/State Govt. for due examination and imparting necessary instructions but the O.P. No.1/Govt. of Odisha instructed the Corporation to withdraw of orders of regularization in respect of the petitioners and accordingly as per the instruction of the opposite party No.1 this opposite party withdrawn the regularization orders on 12.05.2010.

9. That it is also submitted by this O.P that out of 12 numbers of Peons as per the restructuring which was made in the year 2016, there already exists 05 numbers of regular Peons who were appointed way back in the year 1990 and one watchman has been regularized in 151 Board Meeting held on 15.05.2023.

Thus, at present there are 07 numbers of posts of Sanctioned Peon posts and the remaining 06 numbers of posts of Watchman are available but as the present petitioners who are ad-hoc peons are continuing in the post of Peons by virtue of the direction of this Hon'ble Court, so there is no sanctioned vacancy for peon posts.

Similarly, as regards to the post of watchman, though there are 06 nos. of sanctioned vacant post out of which there was one regular watchman but as in the meantime the regular watchman was superannuated, so the corporation in its 151st Meeting held on 15.05.2023 after applying ORV Act has already regularize the services of the peons.

10. That it is submitted this deponent that since at present there are 07 nos. of posts of Sanctioned Peon posts are available (by virtue of the direction of this Hon'ble Court the petitioner No.1 to 6 are continuing in the said post). So after application of ORV Act, the following posts are available for regularization:

Total Vacant Post (as per the direction of this Hon'ble Court the present petitioner No.1 to 6 are continuing and 05 numbers of regular peons are already existing) so there are altogether 12 posts.

As per ORV Act the following numbers of post are reserved.

S.T. = $12 \times 22.5\% = 2.7 \approx 3$ posts

S.C = $12 \times 16.25\% = 1.95 \approx 2$ post

SEBC = $12 \times 11.25\% = 1.35 \approx 1$ post

Since 05 nos. of peons are already working under regular basis under 04 unreserved categories and one SC category, so there was 02 nos. of posts of peon are available under General category and one post of Peon under S.C. category are available.

Since, the present petitioners No.1 to 6 are functioning as Peons under the un-reserved category as per the direction of this Hon'ble Court, so, there is no vacancy available with the Corporation for regularisation."

5.1. Sri Girija Prasanna Dutta, learned advocate for the opposite party No.3 sought to justify the orders of withdrawal of office orders regularising the services of the petitioners.

Legal position:

6. Before proceeding with the matter, it is felt apposite to discuss the legal position with respect to regularisation of service of employees as set out by different Courts.

6.1. To begin with it is apt to refer to the anxious consideration shown by the Madras High Court in *N. Karunanidhi Vrs. Union of India*, W.P. No. 12887 of 2016,

vide Judgment dated 22.04.2022 made with respect to exploitation of service. The following benevolent observation has been made by said Court in favour of employees, whose services have been utilized by the Government for a long time:

*“18. If the Courts cannot give direction for their regularisation of service, in the constrained legal scenario what other remedies that are available to these unfortunate employees, who have been engaged in service for public purpose, without having any definite future to hold on? **These petitioners cannot be kept on the tenterhooks of their employment for years together, by brushing aside and discarding their concerned yearning for a definite future, with unresponsive indifference.***

*19. **A welfare State grounded on constitutional values, cannot come up with apathetic and callous stand that despite continued employment of these petitioners for years together, no semblance of right is available to them.** Such stand by the State is opposed to constitutional values as enshrined in Article 21 of the Constitution of India. The Courts of course have held that equal opportunity must be provided in public employment and entry through back door should be discountenanced. When Article 21, being violated by the State, action towards its servants, the consideration of the Government must primarily be focussed on alleviating legitimate grievances of its employees. Even assuming that the recruitment of these writ petitioners had not been fully in consonance with the procedure for appointment in Government services, the fact remained that these persons have been consciously appointed by the Government for implementing public projects and the work has been extracted from them continuously for several years. It is therefore, not open to the Government after a period of time to turn around and contend that these writ petitioners have no right at all to seek any kind of guarantee for their future.*

*20. **In the opinion of this Court, continued employment for several years, even on a projects meant to serve the State as a whole, certain rights would definitely accrue to them, atleast to the extent of making a claim for formulation of a scheme/towards their absorption.** This Court is quite conscious of the fact that the Government has been benevolent and had come up with several schemes in the past and directed regularisation of services of thousands of employees over a period of time. Such benevolence ought to permeate to the lowest levels to take within its sweep the desperate cry of the petitioners as well. As in the sublime words of the father of nation, Mahatma Gandhi, ‘A nation’s greatness is measured by how it treats its weakest members’. Merely because these writ petitioners have been employed in the projects, the policy makers may not shut their mind and close their eyes to their precarious plight having to serve public purpose but left in the lurch and unprotected, at the end of the day.”*

6.2. Learned Single Judge of this Court in *Dr. Prasana Kumar Mishra Vrs. State of Odisha*, W.P.(C) No.11148 of 2005 [reported at 2016 (I) ILR-CUT 373], made the following observation:

*“7. In *Binan Kumar Mohanty Vrs. Water and Land Management Institute (WALMI)*, 2015 (I) OLR 347 referring to *Kapila Hingorani Vrs. State of Bihar*, (2003) 6 SCC 1 the apex Court held that the Government companies/public sector undertakings being ‘States’ would be constitutionally liable to respect life and liberty of all persons in terms of Article 21 of the Constitution of India. Therefore, if the petitioner has rendered service for around 20 years, keeping in view the ratio decided in *Kopila Hingorani (supra)*, this Court issues direction to the opposite parties to mitigate the hardship of the employees. Financial stringency is no ground for not issuing requisite directions*

when there is violation of fundamental rights of the petitioner. Allowing a person to continue for a quite long period of 20 years of service and exploiting him on the pretext of financial crunch in violation of Article 21 of the Constitution of India is sheer arbitrariness of the authority which is highly condemnable.

8. In *Narendra Kumar Ratha and Others Vrs. State of Odisha and Others*, 2015 (I) OLR 197, this Court has taken into consideration the object of Article 16 of the Constitution of India to create a constitutional right to equality of opportunity and employment in public offices. The word 'employment or appointment' cover not merely the initial appointment, but also other attributes like salary, increments, revision of pay, promotion, gratuity, leave pension and age of superannuation etc. Appointment to any post under the State can only be made in accordance with the provisions and procedure envisaged under the law and guidelines governing the field.

9. In *Prabodh Verma and Others Vrs. State of U.P. and Others*, (1984) 4 SCC 251, the apex Court held that Article 16 is an instance of the application of the general rule of equality laid down in Article 14, with special reference to the opportunity for appointment and employment under the Government.

10. Similar view has also been taken by the apex Court in *Km. Neelima Mishra Vrs. Harinder Kaur Paintal and Others*, (1990) 2 SCC 746 = AIR 1990 SC 1402 and *E.P. Royappa Vrs. State of Tamil Nadu and Another*, (1974) 4 SCC 3. Clause (1) of Article 16 guarantees equality of opportunity for all citizens in the matters of employment or appointment to any office under the State. The very concept of equality implies recourse to valid classification for preference in favour of the disadvantaged classes of citizens to improve their conditions so as to enable them to raise themselves to positions of equality with the more fortunate classes of citizens. This view has also been taken note of by the apex Court in the case of *Indra Sawhney Vrs. Union of India*, 1992 Supp. (3) SCC 217 = AIR 1993 SC 477."

6.3. The case of *Prasana Kumar Mishra (supra)* was carried in appeal before the Division Bench, giving arise to W.A. No.4 of 2016, which was dismissed *vide Order dated 11.12.2019*. Said matter, being carried further to the Hon'ble Supreme Court of India, *vide Order dated 07.08.2020*, the S.L.P.(C) No.4945 of 2020, filed at the behest of Biju Patnaik University of Technology, stood dismissed.

6.4. Showing anxiety so far as regularization of services, in a catena of decisions the Hon'ble Supreme Court of India has succinctly and illuminatingly dealing with the concept of regularization, in the case of *Narendra Kumar Tiwari Vrs. State of Jharkhand*, (2018) 8 SCC 238, has said as follows:

*"The purpose and intent of the decision in Umadevi (3) was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3), (2006) 4 SCC 1 is a clear indication that it believes that it was all right to continue with irregular appointments and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. **This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head.** This is precisely what Umadevi and Kesari sought to avoid."*

6.5. In *Sunil Barik Vrs. State of Odisha, 2021 (II) OLR 469*, it has been discussed as follows:

“12. As it appears from the record itself, the case of the petitioner is squarely covered by the exception carved out in paragraph 53 of the judgment rendered in Umadevi (3) mentioned supra. Meaning thereby, against an existing sanctioned vacancy in the post of Barber, the petitioner having been engaged by following due procedure of selection in the post of Home Guard and continued for a quite long period, which is not disputed by the opposite parties-State as per the pleadings available in the counter affidavit and, as such, the petitioner is still continuing, the same cannot be treated as an ‘illegal engagement’, rather it may be nomenclatured as an ‘irregular engagement’.

13. In State of Jammu and Kashmir Vrs. District Bar Association, Bandipora, MANU/SC/1566/2016 = (2017) 3 SCC 410, wherein a distinction has been made with regard to ‘irregular’ and ‘illegal’ engagement, referring to the exception carved out in Umadevi (3) mentioned supra, in paragraph 12 of the said judgment it has been stated as follows:

‘12. The third aspect of Umadevi (3) which bears notice is the distinction between an ‘irregular’ and ‘illegal’ appointment. While answering the question of whether an appointment is irregular or illegal, the Court would have to enquire as to whether the appointment process adopted was tainted by the vice of non-adherence to an essential prerequisite or is liable to be faulted on account of the lack of a fair process of recruitment. There may be varied circumstances in which an ad hoc or temporary appointment may be made. The power of the employer to make a temporary appointment, if the exigencies of the situation so demand, cannot be disputed. The exercise of power however stands vitiated if it is found that the exercise undertaken

(a) was not in exigencies of administration; or

(b) where the procedure adopted was violative of Articles 14 and 16 of the Constitution; and/or

(c) where the recruitment process was overridden by the vice of nepotism, bias or mala fides.”

6.6. In *Suvendu Mohanty Vrs. State of Odisha, 2015 SCC OnLine Ori 267*, it has been observed as follows:

*“9. With regard to the regularization of the services of the petitioners, a mention has been made in Annexure-4 that the petitioners being irregular recruits, their regularization is not permissible under the State Government Rules. But this condition made in the restructuring order in Annexure-4 so far as it relates to the petitioners cannot be applicable in view of the fact that the petitioners have been appointed against regular vacancies available in the regular scale of pay admissible to the post. But in view of their continued service for more than 10 years, their cases are covered by the ratio of the judgment of the apex Court in *Secretary, State of Karnataka Vrs. Umadevi, (2006) 4 SCC 1 = AIR 2006 SC 1806*, wherein the apex Court has held that the appointments made against temporary or ad-hoc basis are not to be regularized. In paragraph 53 of the said judgment, it is provided that irregular appointment of duly qualified persons against sanctioned posts, who have worked for 10 years or more can be considered on merits and steps to be taken as one time measure to regularize them. In Paragraph 53 of the said judgment, the apex Court has held as follows:*

*‘53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa, R.N. Nanjundappa and**

B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.'

10. The object behind the exception carved out in this case was to permit regularization of such appointments, which are irregular but not illegal, and to ensure security of employment of those persons who served the State Government and their instrumentalities for more than ten years. Similar question came up for consideration before the apex Court in Civil Appeal No. 2835 of 2015 (arising out of SLP (Civil) No. 20169 of 2013 disposed of on 13.3.2015 [Amarkant Rai Vrs. State of Bihar, (2015) 8 SCC 265]. In paragraphs 12 and 13, the apex Court has held as follows:

'12. Elaborating upon the principles laid down in Umadevi's case (supra) and explaining the difference between irregular and illegal appointments in State of Karnataka Vrs. M.L. Kesari, (2010) 9 SCC 247, this Court held as under:

'7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Umadevi (3), if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

*(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. **But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.**'*

13. Applying the ratio of Umadevi's case, this Court in Nihal Singh Vrs. State of Punjab, (2013) 14 SCC 65 directed the absorption of the Special Police Officers in the services of the State of Punjab holding as under:

'35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor with reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the

creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits on a par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is— the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks. '***'

6.7. Reference can also be had to *Amarendra Kumar Mohapatra Vrs. State of Odisha*, (2014) 4 SCC 583 = AIR 2014 SC 1716; *Subrata Narayan Das Vrs. State of Odisha*, W.P.(C) No.18659 of 2016, vide Judgment dated 12.07.2022.

6.8. In the case of *Union of India Vrs. Central Administrative Tribunal*, (2019) 4 SCC 290 the following is the observation:

“25. The Court noted in the above judgment that if a strict and literal interpretation was given to the decision in *Umadevi*, no employee from the State of Jharkhand appointed on an irregular basis could ever be regularized as the State was formed on 15 November 2000 and the cut-off date had been fixed as 10 April 2006. The intent of the Court was to grant similarly-placed employees who had put the requisite years of service as mandated by *Umadevi*, the benefit of regularization. The Court thus held that the *Jharkhand Sarkar ke Adhinasth Aniyamit Rup se Niyukt Ewam Karyarat Karmiyo ki Sewa Niyamitikaran Niyamawali, 2015* ('the Regularisation Rules') must be interpreted in a pragmatic manner and employees of the State who had completed 10 years of service on the date of promulgation of the rules, ought to be regularized. In doing so, the Court ensured that employees in the State of Jharkhand who had completed the same years of service as employees from other States, are granted parity in terms of regularization. The spirit of non-discrimination and equity runs through the decisions in *Umadevi* [(2006) 4 SCC 1], *ML Kesari* [(2010) 9 SCC 247] and *Narendra Kumar Tiwari* [(2018) 8 SCC 238].

26. In this background, the issue which now arises before this Court is in regard to the effective direction which would govern the present case. The High Court has directed the Union of India to absorb the casual workmen, if it is not possible at the Institute in question, then in any other establishment. The latter part of the direction, as we have already noted, cannot be sustained. Equally, in our opinion, the authorities cannot be heard to throw their hands in despair by submitting that there are no vacancies and that it had already regularized such of the persons in the seniority list, who reported for work. The Tribunal has entered a finding of fact that this defence is clearly not borne out of the record. Accordingly, we are of the view that having decided to implement the

decision of the Tribunal, which was affirmed by the High Court, the Union of India must follow a rational principle and abide strictly by the seniority list in proceeding to regularize the workmen concerned. Accordingly, we direct that the case for regularization shall be considered strictly in accordance with the seniority list in pursuance of the directions which were issued by the Tribunal and confirmed by the High Court and such of the persons, who are available for regularization on the basis of vacancies existing at present, shall be considered in accordance with law. The Tribunal has denied back-wages but has ordered a notional fixation of pay and allowances. While affirming that direction, we also direct that persons who have crossed the age of superannuation will be entitled to the computation and payment of their retiral dues on that basis. This exercise shall be carried out within a period of three months from the receipt of a copy of the judgment. If it becomes necessary to grant age relaxation to the concerned workmen, the Appellants shall do so.”

6.9. In *Vibhuti Shankar Pandey Vrs. State of Madhya Pradesh*, 2023 LiveLaw (SC) 91 = (2023) 3 SCC 639, it has been stated as follows:

“*** The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in *Secretary, State of Karnataka and Others Vrs. Umadevi and Others*, (2006) 4 SCC 1, as **initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working.** ***”

6.10. It may be apt to refer to *Ranjeet Kumar Das Vrs. State of Odisha*, 2018 (I) ILR-CUT 695, wherein relevant portion of the Judgment runs as follows:

“7. Before delving into the niceties of the order passed by the tribunal, this Court deems it proper to examine the claims of the petitioner on the basis of the factual matrix available on record itself. On the basis of the pleadings available before this Court, no doubt the petitioner had approached the tribunal seeking regularization of his services. **Regularization in service law connotes official formalisation of an appointment, which was made on temporary or ad hoc or stop gap or casual basis or the like, in deviation from the normal rules of applicable norms of appointment. Such formalisation makes the appointment regular.** The ordinary meaning of regularisation is “to make regular” according to *The Shorter Oxford English Dictionary*, 3rd Edition, and according to *Black’s Law Dictionary*, 6th Edition, the word “regular” means:

‘Conformable to law. Steady or uniform in course, practice, or occurrence; not subject to unexplained or irrational variation. Usual, customary, normal or general. *Gerald Vrs. American Cas. Co of Reading, Pa.*, D.C.N.C., 249 F. Supp. 355, 357. Made according to rule, duly authorised, formed after uniform type; built or arranged according to established plan, law, or principle. Antonym of “casual” or “occasional,” *Palle Vrs. Industrial Commission*, 79 Utah 47, 7 P. 2d. 248, 290.’

8. The above being the meaning of “regular”, as per the common parlance given in dictionary, in *B.N. Nagarajan, Vrs. State of Karnataka*, AIR 1979 SC 1676 = (1979) 4 SCC 507, the apex Court held that the effect of such regularization would depend on the object or purpose for which the regularization is made or the stage at which it is made. Once regularized, the procedural infirmities which attended the appointment are cured. Regularization, however, does not necessarily connote permanence.

9. The word ‘regular’ or ‘regularisation’ do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are

terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. Relying on the Judgments of the apex Court in *B.N. Nagarajan Vrs. State of Karnataka*, AIR 1979 SC 1676 = (1979) 4 SCC 507, the Constitution Bench of the apex Court in *State of Karnataka Vrs. Umadevi (3)*, (2006) 4 SCC 1 has also taken the same view, which has also been followed by the apex Court in *Hindustan Petroleum Corpn. Ltd. Vrs. Ashok Ranghba Ambre*, (2008) 2 SCC 717 and also in *Hindustan Aeronautics Ltd. Vrs. Dan Bahadur Singh*, (2007) 6 SCC 207.

10. Temporary or ad hoc or stop gap or casual basis or the like appointments are made for various reasons. An emergent situation might make it necessary to make such appointments. Since the adoption of the normal method of regular recruitment might involve considerable delay regulating in failure to tackle the emergency. **Sometimes such appointments were to be made because although extra hands are required to meet the workload, there are no sanctioned posts against which any regular recruitment could be made. In fact in the case of ad hoc or casual appointees, the appointments, are in the majority of cases, not against sanctioned posts and the appointments are made because of the necessity of workload and the constraints of sanctioning such post (mainly on financial consideration) on permanent basis.** Needless to say that filling up vacancies against sanctioned posts by regularisation is against the constitutional provisions of equality of opportunity in the matter of public employment violating Articles 14 and 16 of the Constitution by not making the offer of employment to the world at large and allowing all eligible candidates equality of opportunity to be considered on merits. If that be so, considering the emergent necessity of filling up of vacancies and allowing the petitioner to continue for a quite long period, even if with one day break in service, cannot be stated to be a reasonable one, rather, this is an unfair and unreasonable action of the authority concerned.

12. In view of above constitutional philosophy, whether Courts can remain as mute spectator, is a matter to be considered to achieve the constitutional goal in proper perspective. But all these questions had come up for consideration and decided by the Constitution Bench of the apex Court in *Umadevi (3)* mentioned supra. The factual matrix of the case in *Umadevi (3)* arose for consideration from a judgment of Karnataka High Court. In some of the cases, the Karnataka High Court rejected the claims of persons, who had been temporarily engaged as daily wagers but were continued for more than 10 years in the Commercial Taxes Department of the State of Karnataka for regularization as permanent employees and their entitlement to all the benefits of regular employees. Another set of civil appeals arose from the order passed by the same High Court on a writ petition challenging the order of the government directing cancellation of appointments of all casual workers/daily rated workers and seeking a further direction for the regularization of all such daily wage earners engaged by the State or local bodies. These claims were rejected by the Division Bench of the Karnataka High Court on appeal from the judgment of the learned Single Judge. The reason for the matter being considered by the Constitution Bench arose because of two earlier orders of reference made by a Bench of two-Judge and subsequently by a Bench of three-Judge- *Secretary, State of Karnataka Vrs. Umadevi (1)* (2004) 7 SCC 132, and *Secretary, State of Karnataka Vrs. Umadevi (2)* (2006) 4 SCC 44, respectively, as they noticed the conflicting opinions expressed by the earlier 3 Bench judgments in relation to regularization.”

6.11. In *Patitapaban Dutta Dash Vrs. State of Odisha*, W.P.(C) No. 19951 of 2020, *vide Judgment dated 09.09.2021*, a Single Bench of this Court has made the following observation:

*“8. It is worthwhile to mention here that the Court comes into picture only to ensure observance of fundamental rights, and to ensure the rule of law and to see that the executive acts fairly and gives a fair ideal to its employees consistent with requirements of Articles 14 and 16 of the Constitution, and that the authority should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. For this very reason, it is held that a person should not be kept in contractual, temporary or ad hoc status for a long period. Where a contractual, temporary or ad hoc appointment is continued for long, the Court presumes that there is need of a regular post and accordingly directs for regularization. **While issuing direction for regularization, the Court must first ascertain the relevant fact, and must be cognizant of the several situations and eventualities that may arise on account of such direction. If for any reason, a contractual, ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization, provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.** Even though a casual labourer is continued for a fairly long spell, say two or three years, a presumption may arise that there is regular need for his service. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularization. While doing so, the authorities ought to adopt a positive approach coupled with empathy for the person.”*

6.12. Aforesaid Judgment rendered by the Single Judge of this Court in *Patitapaban Dutta Dash (supra)* got the seal of approval of this Court being carried in appeal bearing W.A. No. 777 of 2021 before the Division Bench, which came to be disposed of *vide Judgment dated 12.04.2023* [see, (2023) (I) ILR-CUT 906]. While directing the State of Odisha to implement the direction of the Single Judge “in letter and spirit”, this Court in the ultimate held as follows:

“44. Going by the above legal position, in the present cases, at the highest, the respondents could be considered to be ‘irregularly’ appointed and therefore would, even on the touchstone of Umadevi (supra), be eligible for regularization. The law in M.L. Kesari (supra), has been reiterated in Amarkant Rai Vrs. State of Bihar, (2015) 8 SCC 265, Sheo Narain Nagar Vrs. State of U.P., (2018) 13 SCC 432 = AIR 2018 SC 233 and Rajnish Kumar Mishra Vrs. State of U.P., (2019) 17 SCC 648.”

6.13. Noticing the Judgment of the Hon’ble Supreme Court in the case of *Secretary, State of Karnataka and Others Vrs. Umadevi* (3), (2006) 4 SCC 1, in *Niranjan Nayak Vrs. State of Odisha & Others*, 2023 (I) OLR 407 the observation of this Court runs as follows:

*“12. Similarly, in the case of Amarendra Kumar Mahapatra and Others Vrs. State of Odisha and Others, (2014) 4 SCC 583 = AIR 2014 SC 1716, the Supreme Court was of the opinion that **the appellants were entitled to regularization in service having regard to the fact that they have rendered long years of service on ad hoc basis.***

13. In the case at hand, it can be ascertained that the petitioner was appointed against a substantive vacant post and he had been discharging his duties in the said post since

1993. The appointment was made on an ad hoc basis and was extended from time to time. Since the petitioner was appointed against substantive vacancy and the post was sanctioned by higher authorities, the petitioner should have been extended the benefit of regularisation like other similarly situated persons.”

6.14. This Court wishes to take notice of recent view of Hon’ble Supreme Court of India expressed in the case of *Jaggo Vrs. Union of India*, 2024 SCC OnLine SC 3826, wherein it has been observed as follows:

“20. It is well established that the decision in *Uma Devi (supra)* does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly “irregular,” and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in *Vinod Kumar Vrs. Union of India*, (2024) 1 SCR 1230, it was held that **procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed “temporary” but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgment have been reproduced below:**

‘6. The application of the judgment in *Uma Devi (supra)* by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of *Uma Devi (supra)*.

7. The judgment in the case *Uma Devi (supra)* also distinguished between “irregular” and “illegal” appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. *”**

21. The High Court placed undue emphasis on the initial label of the appellants’ engagements and the outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment: continuous, long-term service, indispensable duties, and absence of any mala fide or illegalities in their appointments. In that light, refusing regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.

22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers’ rights and job

security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

23. The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's *Multinational Enterprises Declaration* [International Labour Organization—Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy] encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. **It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment.**

24. The landmark judgment of the United State in the case of *Vizcaino Vrs. Microsoft Corporation*, 97 F.3d 1187 (9th Cir. 1996) serves as a pertinent example from the private sector, illustrating the consequences of misclassifying employees to circumvent providing benefits. In this case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of Appeals for the Ninth Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The Court noted that large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine employment status and the corresponding rights and benefits. **It highlights the judiciary's role in rectifying such misclassifications and ensuring that workers receive fair treatment.**

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

Misuse of "Temporary" Labels:

Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.

Arbitrary Termination:

Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.

Lack of Career Progression:

Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.

Using Outsourcing as a Shield:

Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.

Denial of Basic Rights and Benefits:

Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.

26. **While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees.** This judgment aimed to distinguish between “illegal” and “irregular” appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

27. In light of these considerations, in our opinion, it is imperative for Government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. **By ensuring fair employment practices, Government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody.** This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.”

6.15. In the case of *Shripal Vrs. Nagar Nigam*, 2025 SCC OnLine SC 221 referring to observations rendered in *Jaggo (supra)*, the Hon’ble Supreme Court of India has clarified that:

“16. *The High Court did acknowledge the Employer’s inability to justify these abrupt terminations. Consequently, it ordered re-engagement on daily wages with some measure of parity in minimum pay. Regrettably, this only perpetuated precariousness: the Appellant Workmen were left in a marginally improved yet still uncertain status.*

While the High Court recognized the importance of their work and hinted at eventual regularization, it failed to afford them continuity of service or meaningful back wages commensurate with the degree of statutory violation evident on record.

17. In light of these considerations, the Employer's discontinuation of the Appellant Workmen stands in violation of the most basic labour law principles. Once it is established that their services were terminated without adhering to Sections 6E and 6N of the U.P. Industrial Disputes Act, 1947, and that they were engaged in essential, perennial duties, these workers cannot be relegated to perpetual uncertainty. While concerns of municipal budget and compliance with recruitment rules merit consideration, such concerns do not absolve the Employer of statutory obligations or negate equitable entitlements. **Indeed, bureaucratic limitations cannot trump the legitimate rights of workmen who have served continuously in de facto regular roles for an extended period.**

18. The impugned order of the High Court, to the extent they confine the Appellant Workmen to future daily-wage engagement without continuity or meaningful back wages, is hereby set aside with the following directions:

I. The discontinuation of the Appellant Workmen's services, effected without compliance with Section 6E and Section 6N of the U.P. Industrial Disputes Act, 1947, is declared illegal. All orders or communications terminating their services are quashed. In consequence, the Appellant Workmen shall be treated as continuing in service from the date of their termination, for all purposes, including seniority and continuity in service.

II. The Respondent Employer shall reinstate the Appellant Workmen in their respective posts (or posts akin to the duties they previously performed) within four weeks from the date of this judgment. Their entire period of absence (from the date of termination until actual reinstatement) shall be counted for continuity of service and all consequential benefits, such as seniority and eligibility for promotions, if any.

III. Considering the length of service, the Appellant Workmen shall be entitled to 50% of the back wages from the date of their discontinuation until their actual reinstatement. The Respondent Employer shall clear the aforesaid dues within three months from the date of their reinstatement.

IV. The Respondent Employer is directed to initiate a fair and transparent process for regularizing the Appellant Workmen within six months from the date of reinstatement, duly considering the fact that they have performed perennial municipal duties akin to permanent posts. In assessing regularization, the Employer shall not impose educational or procedural criteria retroactively if such requirements were never applied to the Appellant Workmen or to similarly situated regular employees in the past. To the extent that sanctioned vacancies for such duties exist or are required, the Respondent Employer shall expedite all necessary administrative processes to ensure these longtime employees are not indefinitely retained on daily wages contrary to statutory and equitable norms."

Analysis and discussions:

7. From the rival contentions/submissions and scanning through the documents forming part of pleading it remains undisputed:

i. The petitioners have been engaged as Peon and Watchman under the Odisha State Police Housing and Welfare Corporation Ltd.

ii. They were initially engaged as Daily Wages Earners since 1987/1989/1994/1996 as per the exigency. However, as required by the Corporation by filing applications and appearing in the interview, they were appointed on *ad hoc* basis since 1990/1994/ 1996.

iii. Their long association with the Corporation led the Corporation, a model employer, to take decision to examine their case for absorption against existing vacancies.

iv. By virtue of Office Order No.E-38/06— 3489/OPHWC, dated 13.05.2010 of the Odisha State Police Housing and Welfare Corporation Ltd., the Office Order No.5451/OPHWC, dated 19.06.2009 and No.5460/OPHWC, dated 19.06.2009 in which the services of one Watchman was regularised has been withdrawn.

v. This Court while entertaining the present writ petition, *vide* Order dated 01.02.2023 has directed for keeping the said Office Order in abeyance 13.05.2010 and in pursuance thereof the petitioners have been continuing.

8. This Court is called upon to decide whether such a withdrawal of Office Orders regularising the services of the petitioners is just and proper?

9. What is perceived from the written note of submission filed by the opposite party No.2 and the arguments advanced by Sri Girija Prasanna Dutta, learned Advocate, it is manifest that on application of the Odisha Reservation of Vacancies in Posts and Services (For Scheduled Castes and Scheduled Tribes) Act, 1975, no vacancy is available to absorb the petitioners. Therefore, the emphasis by the opposite parties is on the application of the ORV Act to obviate the decision of the Selection Committee in its Meeting dated 11.06.2009 as reflected in Office Orders dated 19.06.2009 of the Corporation.

9.1. Such a stance of the Corporation appears to run counter to purport of exclusion clause envisaged under Section 3 of the ORV Act.

9.2. As is admitted, the petitioners were engaged as peons/watchman under the opposite party No.2-Odisha State Police Housing Welfare Corporation Ltd. on Daily Wage basis and subsequently were given *ad hoc* engagement. Thus, the decision of the opposite parties is flawed inasmuch as the same contradicts exclusion of application of ORV Act in terms of Section 3 *ibid*.

9.3. At the stage of consideration of regularisation/ absorption in service, the application of the ORV Act is not a *sine qua non* factor. Needless to repeat that at the time of engagement the authorities ought to have kept in view such statutory requirement, if any. For the flaw in adhering to procedural infirmity could not adversely affect the petitioners' right to be considered for regularisation in services after having rendered unblemished service for long period.

9.4. In this connection the observation of a Division Bench of this Court in the case of *Director General of Training and Coordination Vrs. Biswamitra Parida, W.A. No.822 of 2020, vide Order dated 10.02.2021* may fruitfully be referred to:

“By way of this Writ Appeal the appellants-State functionaries have challenged the Order dated 03.09.2020 passed by the learned Single Judge in W.P(C) No.22112 of 2020.

The brief fact of the case is that the respondents were engaged as Junior Data Entry Operators on contractual basis under the appellants-institution-Gopabandhu Academy of Administration in the year 2011. Since there was necessity of a regular Data Entry Operators in the Academy, the appellant No.1 was making correspondences frequently for sanction of the post of Data Entry Operators, but till date no action has been taken by the Administrative Department in the matter of sanction of post of Data Entry Operators. On the other hand, the respondents were engaged against the post of Data Entry Operators on contractual basis vide GAA office orders dated 29.01.2011 and 07.02.2011. The grievance of the respondents is that they have rendered more than 10 years of service till now under the appellant’s institution for which they seek for regularization of their service on the basis of ratio of the judgment in Secretary State of Karnataka and others Vrs. Umadevi (3) and others (2006) 4 SCC 1 and in State of Karnataka & others Vrs. M. L. Kesari & others involving SLP(C) No.15774 of 2006 2 and also the resolution of the G.A Department dated 17.09.2013.

Hence, this Court observes that the Resolution dated 17.09.2013 of the General Administration Department was passed pursuant to the direction issued by the Hon’ble Apex Court for regularization of the DLR, daily wages employees who has completed six years service. Here, the respondents were engaged as Data Entry Operators in the year 2011 pursuant to a selection list after creation of posts. In view of the Resolution dated 17.09.2013, since the respondents have already completed the required years of continuous service/engagement and posts were created pursuant to the direction of the learned Court, the appellants-opposite parties should not have engaged the respondents on contractual basis. Therefore, the appellants opposite parties should regularize the service of the respondents in accordance with the Resolution dated 17.09.2013 of the General Administration Department. .

Considering the above facts, it is not disputed that similar questions on principles of ORV Act which were not followed earlier, series of writ petitions were disposed of which were confirmed by the Apex Court in SLP No.18642 of 2018 dated 06.08.2018 in the case of State of Odisha & Anr. Versus Jatin Kumar Das which arises out of Original Application No.2172(C) of 2015 and batch of cases. In the said Original Application, the learned Tribunal has already dealt with the said issue having not followed the Rules of the ORV Act at paragraph-8 of the judgment dated 17.05.2017 and 75 Original Applications were disposed of by the Tribunal wherein the following specific finding was given:

‘the ORV Posts and Services Act 1975 has no application to the posts to be filled up through contract in terms of Section 3(d) of the said Act. The respondents failed to produce any paper indicating the amendment of Section 3(d) of ORV Act, 1975 so also they could not able to produce the documents that there was any other statutory and mandatory provision overriding Section 3(d) referred to above for application of the reservation principle while issuing contractual engagement/appointment in favour of the applicants during the year 2005.’

However, pursuant to the direction of this Court to take instruction, learned Additional Government Advocate submitted that the Resolution dated 17.09.2013 passed by the General Administration Department for regularization of the DLR, daily wages employees shall be applicable in the case of present respondents.

In view of the above facts, all the writ petitions were disposed of confirming the order of Tribunal and the said orders of the writ petitions were confirmed by the apex Court in Special Leave Petition on the same issue. Rightly the learned Single Judge has directed the appellants-State authorities to regularize services of the Respondents petitioner in terms of the above facts and circumstances narrated in the above paragraphs. Therefore, we are not inclined to interfere with the impugned order dated 03.09.2020 passed by the learned Single Judge in W.P.(C) No.22112 of 2020. Accordingly, the Writ Appeal is dismissed.

However, the appellants are directed to consider the case of the respondents and to regularize their service and grant consequential service benefits as due and admissible to them within a period of two months from the date of communication of a copy of this order keeping in view the Resolution dated 17.09.2013 the Finance Department."

9.5. Said decision of this Court was carried to the Hon'ble Supreme Court of India in *Petition(s) for Special Leave to Appeal (C) No(s).6851 of 2021 (State of Odisha Vrs. Biswamitra Parida)*, which came to be disposed of on 30.06.2021 with the following Order:

"1. We are not inclined to entertain the Special Leave Petitions under Article 136 of the Constitution.

2. The Special Leave Petitions are accordingly dismissed.

3. Pending application, if any, stands disposed of."

9.6. The observation of the Hon'ble Supreme Court of India in the case of *State of Odisha Vrs. Laxman Kumar Prusty, Petition for Special Leave to Appeal (C) No. 95 of 2019 (Arising out of impugned final judgment and order dated 23.03.2018 in WP(C) No.22547 of 2017 passed by the High Court of Orissa at Cuttack)* is noteworthy:

*"Having heard learned counsel appearing for the petitioner and in the peculiar facts and circumstances of the case and considering the fact that the respondents herein/original applicants were continued since 2008 against the regular posts and completed six years of contractual service, they were entitled to the benefit of Resolution dated 17.09.2013. **The submission made on behalf of the respondents that at the relevant time when they were appointed, the reservation was not followed and, therefore, they are not entitled to regularisation is concerned, the petitioner/State cannot be permitted to take such a stand after continuing them on contractual basis for approximately six years.** No interference of this Court is called for. The Special Leave Petition stands dismissed.*

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

9.7. In *Rajashree Rout Vrs. State of Odisha, 129 (2020) CLT 507*, it is the observation of this Court that,

"13. On critical analysis of the relevant provisions of the ORV Act, 1975 and the resolutions governing the field, it would be clearly evident that so far as engagement of ICDS supervisor under Keonjhar district is concerned, neither the ORV Act, 1975 nor any such reservation is applicable. But, in the proceedings of the selection committee meeting held on 26.11.2011 in Mini Conference Hall, Collectorate, Keonjhar for filling up the vacant post of lady supervisor on contractual basis under DSWO, Section,

Collectorate, Keonjhar, under the heading of zone of consideration, a decision was taken that ORV Act, 1975 will be applicable to the contractual engagement. Such decision of the selection committee is de hors the rules governing the field, and also the resolutions passed by the Government from time to time, as mentioned above.

14. Much reliance has been placed on the judgment of this Court in Parthapratima Panda Vrs. State of Odisha, 2019 (II) OLR 786 by Mr. S. Palit, learned Addl. Government Advocate. But the said case is totally different from the present one both factually and legally, reason being in the said case the resolution was issued by the Government of Odisha in General Administration Department on 20.09.2005 with regard to reservation vacancies in favour of physically handicapped persons, sportsmen and ex-servicemen in initial recruitment in State Civil Services and posts, to the effect that the State Government has reserved 3% of the vacancies for physically handicapped, 1% for sportsmen, 3% for ex-servicemen in case of initial recruitment in State Civil Services. Therefore, examining the applicability of the provisions of ORV Act, 1975, since the appointments in that case were contractual in nature for a period of 11 months and were purely temporary and also co-terminus with the scheme, as per the advertisement issued, and Section 3(d) of the ORV Act specifically excludes its application to the appointments to be made under contractual basis, it was held that the provisions of ORV Act is not applicable, until amendment of Section 3(d). Thereby, the reliance placed on the said judgment by the learned Addl. Government Advocate has no application to his contention; rather it supports the case of the petitioners.”

9.8. The following observation of this Court in *Brajendra Kumar Jena Vrs. State of Odisha, W.P.(C) No.38099 of 2021, vide Judgment dated 21.10.2024* may have to be referred to:

“9.4. For another reason the ORV Act, 1975 has no application to the present context; for that the State Government has introduced amendment to Section 3¹ thereof by virtue

¹ Section 3 of the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975, after insertion of sub-section (2) would read thus:

“3. Applicability.—

(1) This Act shall apply to all appointments to the Posts and Services under the State except—

(a) Class-I posts which are above the lowest rung thereof and meant for conducting or guiding or directing Scientific and Technical research;

(b) Class-I Posts which are above the lowest rung thereof and classified as scientific posts;

(c) tenure posts;

(d) those filled up on the basis of any contract;

(e) ex-cadre posts;

(f) those which are filled up by transfer within the cadre or on deputation;

(g) the appointment of such staff the duration of whose appointment does not extend, beyond the term of office of the person making the appointment and the work

of the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Ordinance, 2023 [published in Odisha Gazette, Extraordinary No.1996, dated 19.08.2023], which has been given effect to "at once". Later said Ordinance has been promulgated as the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Act, 2023 [published in Odisha Gazette, Extraordinary No.2543, dated 07.11.2023], which came into force with effect from 19.08.2023². Sub-section (2) of Section 3 as inserted by virtue

charged staff which are required for emergencies like flood relief work, accident restoration and relief etc.;

- (h) temporary appointments of less than forty-five days duration;*
- (h-l) those which are required to be filled up by appointment of persons under the rehabilitation assistance given to the members of the family of the deceased or permanent disabled employees who suffer from the disability while in service;*
- (i) those in respect of which recruitment is made in accordance with any provision contained in the Constitution.*
- (j) Schematic posts.*
- (2) Notwithstanding anything contained in sub-section (1), reservation shall apply to appointment made or to be made to all tenure posts or contractual posts or schematic posts which are to be regularized against the sanctioned posts."*

² The Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Act, 2023 (Odisha Act 10 of 2023) stands as follows:
[Be it enacted by the Legislature of the State of Odisha in the Seventy- fourth Year of the Republic of India, as follows:

1. Short title and commencement. —

- (1) This Act may be called the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Act, 2023.*
- (2) It shall be deemed to have come into force on the 19th day of August, 2023.*

2. Amendment of Section 3. —

In the Odisha Reservation of Vacancies In Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 [Odisha Act No. 38 of 1975], Section 3 shall be re-numbered as sub-section (1) thereof and in sub-section (1) as so re-numbered, —

- (i) after clause (i), the following clause shall be inserted, namely:*

"(j) Schematic Posts."

- (ii) after sub-section (1) so re-numbered, the following sub-section shall be inserted, namely:*

"(2) Notwithstanding anything contained in sub-section (1), reservation shall apply to appointment made or to be made to all tenure posts or contractual posts or Schematic posts which are to be regularised against the sanctioned posts."

3. Repeal and Savings. —

- (1) The Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Schedule Tribes) Amendment Ordinance, 2023 [Odisha Ordinance No.3 of 2023] is hereby repealed.*

of said amendment does not admit of any ambiguity. Cursory glance at said amendment, which specifies the effective date as 19.08.2023 (prospective amendment), suggests that prior thereto the provisions introduced by way of amendment to the ORV Act, 1975, had no application to contractual engagements for consideration of regularisation against the sanctioned posts.

9.5. It may be stated that recourse to a subsequent legislation is permissible if there exists any ambiguity in the earlier legislation for the purpose of ascertaining as to whether by a subsequent legislation proper interpretation has been fixed which is to be put upon the earlier Act. [Mahim Patram Private Ltd. Vrs. Union of India, 2007 (3) SCC 668]. Glaringly, in the present context, the case of the petitioner emanated prior to the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Amendment Act, 2023 came into force. Before said amendment Act, 2023 came into effect, the petitioner had already been eligible for consideration of regularization in service.

9.6. In such view of the matter, the impugned Order of the Director of Health Services, Odisha cannot be sustained inasmuch as non-adherence to the provisions of the ORV Act, 1975 has been taken as a factor to dispel the claim of the petitioner for regularization in service.”

Conclusion:

10. Given the delineated scope of consideration for regularization/absorption in service *vis-à-vis* proposition of law as expounded by different Courts, it is apparent that the Office Orders dated 12.05.2010 revoking regularization of the petitioners in service *vide* Office Orders dated 19.06.2009 cannot be held to be tenable in the eye of law.

10.1. As has already been taken note of that while the turn for the authorities to consider the regularisation in service of the petitioners fell, at that stage it is unwholesome for the opposite parties to say that at the time of initial engagement application of the ORV Act was not examined and followed by the appointing authority. In the case at hand the Selection Committee was satisfied with the unblemished service career of the petitioners and recommended their names, pursuant to which the Office Orders dated 19.06.2009 were issued. Furthermore, the discussion *supra* leads to irresistible conclusion that the application of ORV Act is excluded in the facts-situation of the instant case.

10.2. The petitioners have rendered continuous and uninterrupted service for long years (even before interim protection has been granted by this Court) ranging from 27 to 36 years by now. Therefore, Office Order No.E-31/06/3492/OPHWC, dated 12.05.2010 cannot withstand scrutiny in law.

(2) *Notwithstanding the repeal under sub-section (1), anything done or any action taken under the said Ordinance so repealed shall be deemed to have been done or taken under this Act.]*

10.3. This Court cannot be oblivious of view expressed by the Hon'ble Supreme Court of India in the case of *Gujarat Agricultural University Vrs. Rathod Labhu Bechar*, (2001) 3 SCC 574:

“17. From the aforesaid, it emerges that the learned Single Judge had concurred with the finding of the Tribunal that the contesting workmen have been working in the appellant University regularly for a long number of years. The existence of permanent nature of work was inferred on this account and also due to the vastness of the appellant's establishment. The regularisation is claimed only in respect of Class IV employees. The main objection which was raised earlier and is raised before us, is that a person could only be regularised on any vacant post and if there be one he should be qualified for the same as per qualifications, if any, prescribed. In fact, the Tribunal has held that on the date of the award, most of the workmen had completed 10 years of their service. It is also well settled, if work is taken by the employer continuously from the daily-wage workers for a long number of years without considering their regularisation for its financial gain as against employees' legitimate claim, has been held by this Court repeatedly as an unfair labour practice. In fact, taking work from a daily-wage worker or an ad hoc appointee is always viewed to be only for a short period or as a stopgap arrangement, but we find that a new culture is growing to continue with it for a long time, either for financial gain or for controlling its workers more effectively with a sword of Damocles hanging over their heads or to continue with favoured ones in the cases of ad hoc employees withstalling competent and legitimate claimants. Thus we have no hesitation to denounce this practice. If the work is of such a nature, which has to be taken continuously and in any case when this pattern becomes apparent, whey they continue to work for year after year, the only option to the employer is to regularise them. Financial viability, no doubt, is one of the considerations but then such enterprise or institution should not spread its arms longer than its means. The consequent corollary is, where work taken is not for a short period or limited for a season or where work is not of a part-time nature and if pattern shows that work is to be taken continuously year after year, there is no justification to keep such persons hanging as daily-rate workers. In such a situation a legal obligation is cast on an employer; if there be vacant post, to fill it up with such workers in accordance with rules, if any, and where necessary by relaxing the qualifications, where long experience could be equitable with such qualifications. If no posts exist then duty is cast to assess the quantum of such work and create such equivalent posts for their absorption.

19. What emerges is, all the respondent workmen are eligible for absorption on the facts of this case subject to any eligible qualification under the rule if any. Though no recruitment rules were filed in the proceedings either before the Tribunal or in the High Court but while proposing the scheme a copy of the recruitment rules for various cadres have been placed before us on behalf of the appellant University. This gives in column 1 the serial number, in column 2 the name of the post, in column 3 the pay scale, in column 4 the age-limit and in column 5 the qualification. Serial Number 10 deals with peon and Class IV servants, Serial Number 13 deals with operator-cum-mechanic, Serial Number 14 deals with chowkidar, Serial Number 25 deals with plumber and Serial Number 33 deals with carpenter. This shows that recruitment rules did have these posts in their ambit about which we are concerned, yet no posts were created. **This proposed creation of post is churned out only after this long battle by the workmen as against the appellant. It was not expected from the institutions like the**

present appellant, especially when it is fully funded by the State Government that this process of absorption should have taken such a long time and to have yielded to it only after this long battle. This legal position is well known not only to the appellant but the State who is funding it, then why to do it only after court's intervention. It is true, creation of post does involve financial implication. Hence financial health of a particular institution plays an important role which courts also keep in mind. The court does exercise its restraint where facts are such where extent of creation of post create financial disability. But at this juncture we would like to express our note of caution, that this does not give largess to an institution to engage larger number of daily-wage workers for a long number of years without absorbing them or creating posts, which constitutes an unfair labour practice. If finances are short, engagement of such daily-wage workers could only be for a short limited period and if continuous work is required it could only do so by creating permanent posts. If finances are not available, take such work which is within the financial means. Why take advantage out of it at the cost of workers?"

11. The factual background as borne on record tested with the legal position enunciated by Courts without any ambiguity in mind leads to conclude that the Office Order No.E-38/06/3489/OPHWC, dated 12.05.2010 and Office Order No.E-31/06/3492/OPHWC, dated 12.05.2010 indicating withdrawal of Office Orders granting regularisation of the petitioners in service are in conflict with the principles enunciated in the decisions referred to, relied on and discussed *supra*.

12. Under such premises, the Office Order No.E-38/06/3489/OPHWC, dated 12.05.2010 and Office Order No.E-31/06/3492/OPHWC, dated 12.05.2010 passed by the opposite party No.2-Chairman-cum-Managing Director of Odisha State Police Housing and Welfare Corporation Ltd. are liable to be set aside and this Court does so.

12.1. As a consequence thereof, Orders of the said Corporation regularising the *ad hoc* services of the petitioners are required to be given effect to. Accordingly, this Court directs the opposite parties to do the needful within a period of three months from date.

12.2. In the result, this writ petition stands disposed of, but in the circumstances, there shall be no order as to costs.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Writ Petition disposed of.

**M.D., ODISHA STATE CO-OPERATIVE
BANK LTD., BHUBANESWAR
V.
PRAFULLA CHANDRA PATNAIK & ORS.**

[W.P.(C) NO. 350 OF 2017]

24 DECEMBER 2024

[SANJAY KUMAR MISHRA, J.]

Issue for Consideration

Whether due to delay in payment of gratuity, interest is to be paid as per the provision of the Payment of Gratuity Act or under the Interest Act.

Headnotes

(A) PAYMENT OF GRATUITY ACT, 1972 – Section 7(3) (A) – Delay in payment of gratuity – Quantum of interest with regard to such delay – Whether it should be as per the provision provided under the Payment of Gratuity Act or under the Interest Act.

Held: It should be under the Payment of Gratuity Act and it shall be disbursed with interest @ 10% which is the statutory rate fixed under the Payment of Gratuity Act, 1972. (Para 17)

(B) JUDICIAL PRECEDENT – Per incuriam – Meaning of – Law is well settled that any judgment or order passed contrary to the statute is a nullity. That apart, law is also well settled that any judgment passed without taking note of the earlier judgment of the same Court so also Supreme Court is per incuriam. (Para 23)

Citations References

Paradip Port Trust Vs. Gagan Bihari Prusty & Ors., **W.P.(C) No.23834 of 2013, order dated 01.05.2019**; Gagan Bihari Prusty Vs. Paradip Port Trust & Ors., **W.A. No.322 of 2019, order dated 18.11.2021**; Mohan Dakua & ors. Vs. Steel Authority of India Ltd & Ors., **2015 (II) ILR-CUT 178 : 2015 (I) OLR 386 : 120 (2015) CLT 1096**; General Manager (P & EEL), Mahanadi Coalfields Ltd. Vs. Asim Kumar Chatterjee, **122 (2016) CLT 260: 2016 LabIC 2302 : 2016 (149) FLR 497: 2016 (II) CLR 212**; Manager Director, Odisha Small Industries Corporation Ltd. Vs. Abhay Kumar Samantray, **2022 (III) ILR-CUT 639**; H. Gangahanume Gowda Vs. Kanataka Agro Industries Corpn. Ltd., **(2003) 3 SCC 40: AIR 2003 SC 1526**; Director (Thrisul Project) DRDO, Andhra Pradesh Vs. P.B. Varalakshmi and Others, **(2015) 15 SCC 398**; State of U.P. & ors. Vs. Synthetic & Chemicals Ltd. & ors., **(1991) 4 SCC 139**; V. Kishan Rao Vs. Nikhil Super Speciality Hospital & anr., **(2010) 5 SCC 513**; Siddharam Satlingappa Mhetre Vs. State of Maharashtra & ors.,

(2011) 1 SCC 694; Madhya Pradesh Rural Road Development Authority Vs. L.G. Chaudhary Engineers & Contractors, **(2012) 3 SCC 495**; Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa, **(2015) 2 SCC 189**; Director of Settlements, A.P. Vs. M.R. Apparao, **(2002) 4 SCC 638 – referred to.**

List of Acts

Payment of Gratuity Act, 1972; Interest Act, 1978.

Keywords

Payment of Gratuity; Delay; Payment of interest; Percentage; Per incuriam.

Case Arising From

Order dated 11.11.2016 passed by the Appellate Authority under Payment of Gratuity Act-cum-Joint Labour Commissioner in P.G. Appeal Case No. 03(JLC) of 2016.

Appearances for Parties

For Petitioner : Mr. K.P. Nanda

For Opp. Parties : Mr. R.N. Prusty

Judgment/Order

Judgment

S.K. MISHRA, J.

1. This writ petition has been preferred by the Petitioner-Bank challenging the order dated 11.11.2016 passed by the Appellate Authority under P.G. Act-cum-Joint Labour Commissioner (O.P. No.3) in P.G. Appeal Case No.3 (JLC)/2016, vide which the Opposite Party No.3 confirmed the order dated 06.12.2014 and 13.03.2015 passed in P.G. Case No.22 of 2012 by the Controlling Authority under the Payment of Gratuity Act, 1972, shortly, “P.G. Act”.

2. The contesting private Opposite Party No.1, who was the applicant in P.G. Case No.22 of 2012, has filed a Counter Affidavit opposing to the said prayer made in the writ petition.

3. Though the confirming order passed by the Appellate Authority has been challenged on various grounds, during hearing, relying on the order dated 01.05.2019 passed by the coordinate Bench in W.P.(C) No.23834 of 2013 (**Paradip Port Trust Vs. Gagan Bihari Prusty & ors.**) so also confirming the order dated 18.11.2021 passed by the division Bench in W.A. No.322 of 2019 (**Gagan Bihari Prusty Vs. Paradip Port Trust & ors.**), learned Counsel for the Petitioner submitted that the Petitioner-Bank would like to challenge the impugned order passed by the Appellate Authority confining it to the rate of interest of 10% awarded by the Controlling Authority, which was also erroneously confirmed by the Appellate Authority.

4. The said submission of the learned Counsel for the Petitioner was also duly recorded vide order dated 21.11.2024. Paragraph Nos.3 & 4 of the said order dated 21.11.2024, being relevant, are reproduced below:-

“3. During hearing, learned Counsel for the Petitioner submits, though the Petitioner Bank has challenged the order dated 11.11.2016 passed by the Appellate Authority under the P.G. Act & Joint Labour Commissioner, Bhubaneswar so also order dated 06.12.2014 passed by the Controlling Authority under the P.G. Act-Cum- Assistant Labour Commissioner, Cuttack but he would like to confine the prayer made in the Writ Petition with regard to 10% interest awarded by the Controlling Authority, which was also incorrectly confirmed by the Appellate Authority.

*4. Learned Counsel for the Petitioner files photocopy of the order dated 01.05.2019 passed by the coordinate Bench in W.P.(C) No.23834 of 2013 (**Paradip Port Trust Vs. Gagan Bihari Prusty and others**) and the confirming order passed by the first Division Bench dated 18.11.2021 in W.A. No.322 of 2019 (**Gagan Bihari Prusty Vs. Paradip Port Trust and others**). The said orders be kept on record”.*

5. In response to the said submission made by the learned Counsel for the Petitioner, since the Counsel for the Opposite Party No.1 cited recent judgments of this Court, as has been detailed in the said order dated 21.11.2024, learned Counsel for the Petitioner prayed for an adjournment to examine the said judgments delivered by this Court to have his further say in the said regard. However, on the adjourned date i.e. on 12.12.2024, learned Counsel for the Petitioner, instead of arguing further with regard to the judgments cited by the Counsel for the Opposite Party No.1, produced the photocopy of order dated 21.03.2022 passed by the Supreme Court in SLP(C) No.4468 of 2022 and made a submission to dispose of the writ petition directing the Controlling Authority (O.P.No.2) to release the principal amount deposited by the Petitioner-Bank in favour of the present Opposite Party No.1, giving liberty to the parties to move before this Court to pass appropriate order regarding release of interest after disposal of SLP(C) No.4468 of 2022.

6. Paragraph No.3 of the order dated 12.12.2024, being relevant, is reproduced below:-

*“3. Learned Counsel for the Petitioner files photocopy of order dated 21.03.2022 passed by the Supreme Court in SLP(C). 4468 of 2022 so also order dated 24.09.2022 passed by the coordinate Bench in W.P.(C) No. 18632 of 2022 in (**M.D., Odisha State Co- operative Bank Ltd, BBSR Vs. Appellate Authority under Payment of Gratuity Act, BBSR & ors.**) and submits, the writ petition be disposed of directing the Controlling Authority (O.P. No.2) under Payment of Gratuity Act to release the principal amount deposited by the Bank before it. So far as interest is concerned, since the issue regarding rate of interest is sub-judice before the Supreme Court in SLP(C).4468 of 2022 in another case, which is arising out of order dated 18.11.2021 passed in W.A. No.322 of 2019, liberty be given to the parties to move before this Court to pass appropriate order regarding release of the interest, as will be decided by the Supreme Court in SLP(C) No.4468 of 2022”.*

7. In response to such submission made by the learned Counsel for the Petitioner-Bank, learned Counsel for the Opposite Party No.1 submitted that the coordinate Bench in W.P.(C) No.23834 of 2013 passed an incorrect order that the

concerned employee is entitled to interest at the rate of 6% applying the provisions of Interest Act, even though there is a specific provision under sub section (3A) of section 7 of the P.G. Act to pay interest and the Central Government, exercising its power conferred under sub section (3A) of section 7 of the P.G. Act, has notified on 01.10.1987 to pay interest @ 10%, which is still in vogue.

8. Learned Counsel for the Opposite Party No.1 further submitted that the said erroneous order was also incorrectly confirmed by the division Bench vide order dated 18.11.2021 in W.A. No.322 of 2019. Hence, the Supreme Court, taking note of the notification made by the Ministry of Law dated 01.10.1987, has rightly issued notice to the employer in the said SLP(C) No.4468 of 2022.

9. Learned Counsel for the Opposite Party No.1 further submitted that since the statute under the P.G. Act provides payment of interest and the judgment passed by this Court so also the Supreme Court on the said issue is very clear, it would not be appropriate and justified to keep the said point open with regard to rate of interest payable to the Opposite Party No.1 till disposal of the said SLP.

10. So far as the order dated 01.05.2019 passed by the coordinate Bench in W.P.(C) No.23834 of 2013, the concluding para of the said order, being relevant, is extracted below:-

*“Considering the contention raised by learned counsel for the parties, it appears that the factual matrix of the case which has been discussed above, are not disputed and, as such, the delay neither attributable to the petitioner-employer nor to the employee. But, question is if the benefit of Payment of Gratuity Act is made applicable to the employee by virtue of the order passed by this Court while resolving dispute with regard to applicability of Payment of Gratuity Act and accordingly the same implemented by paying the amount by the employer, namely, the petitioner herein, with regard to delayed payment so far as interest is concerned, the employer is obliged under law to pay the same. **Therefore, if the employer is obliged under law to pay the interest for delayed payment, the question of rate of interest would be calculated for payment of such interest amount. Therefore, applying the provisions of Interest Act, this Court is of the considered view, instead of 10% interest on the delayed payment on gratuity amount, the petitioner is directed to pay the interest at the rate of 6% to its employees.** Accordingly, the order so passed by the controlling authority confirmed by the appellate authority dismissing the appeal is modified to the extent the opposite party- employee is entitled to get the interest at the rate of 6% on the gratuity amount already received. It is also clarified that the gratuity amount of some employee are not paid by the employer for other reasons, the same can also be released after adjusting the amount due to the petitioner along with the interest as stated above in accordance with law”.*

(Emphasis Supplied)

11. The said order passed by the coordinate Bench, being challenged by the employee concerned in W.A. No.322 of 2019, the division Bench also incorrectly confirmed the said order passed by the coordinate Bench vide order dated 18.11.2021. The said order, being relevant, is extracted below:-

“1. The short point that arises for consideration in the present appeal is whether the learned Single Judge was justified in directing interest on the delayed payment of gratuity at 6% per annum instead of 10% per annum as claimed by the Petitioner?”

2. It is seen that there is no provision as such in the Payment of Gratuity Act prescribing any mandatory minimum rate of interest on delayed payment. In that view of the matter, the learned Single Judge has, after examining the provisions of the Interest Act, directed that instead of 10% interest on delayed payment of gratuity amount as claimed by the Petitioner, it would be appropriate in the interest of justice, if interest for the delayed period is at the rate of 6% per annum.

3. No error has been committed by the learned Single Judge that warrants interference by this Court.

4. Accordingly, the appeal is dismissed.” **(Emphasis Supplied)**

12. The said order passed by the division Bench, being challenged by the employee concerned in SLP(C) No.4468 of 2022, the Supreme Court was inclined to issue notice to the employer vide order dated 21.03.2022. Paragraph 1 of the said order, being relevant, is extracted below:-

“1. Ms Madhusmita Bora, counsel appearing on behalf of the petitioner submits that:

(i) Following the amendment to Section 7 of the Payment of Gratuity Act 1972 by the insertion of sub-section 3(a), simple interest became liable to be paid for the delay in disbursing gratuity:

(ii) A notification has been issued by the Union Ministry of Labour on 1 October 1987 (Annexure P-1) by which the rate of interest has been prescribed at 10% per annum; and

(iii) Hence, the Single Judge erred in reducing the interest payable to the petitioner on the delayed payment of gratuity from 10% to 6% per annum”.

(Emphasis Supplied)

13. Admittedly, in view of the provision enshrined under subsection 3(A) of section 7 of the P.G. Act, 1972, followed by notification made by the Central Government dated 01.10.1987, the rate of interest payable to an employee, in the case of default in payment of gratuity, is to be 10% from the date the gratuity becomes payable till the date of actual payment.

14. Much prior to the said judgment of this Court, the coordinate Bench in **Mohan Dakua & ors. Vs. Steel Authority of India Ltd & ors.**, reported in 2015 (II) ILR-CUT 178 : 2015 (I) OLR 386 : 120 (2015) CLT 1096 held as follows:-

“5. Reading of Sub-section (3) of Section 7 gives a clear indication for release of the gratuity within a period of thirty days from the date it becomes payable to the person to whom the gratuity is payable. Similarly in Sub-section (3-A) of Section 7, there is a statutory mandate that in case the gratuity is not released within the time framed, the employer is required to pay the simple interest at such rate not exceeding the rate notified in the notification by the Central Government from time to time for repayment of long term deposit as the Government may be certified by such notification.

6. From the pleadings of the parties, it appears that there is no latches on the part of the petitioners in the matter of release of the gratuity. I find force in the submissions of the petitioners which is not only supported by the statutory provisions as at Sub-section (3), (3-A) of Section 7 but also covered by a decision decided by Hon'ble Apex Court

in case of H. Gangahanume Gowda Versus Karnataka Agro Industries Corporation Ltd. By deciding similar matter, the Hon'ble Apex Court was pleased to grant interest for the delayed period @ 10% as available in para-9 and 10 of the said decision. The petitioner's case is squarely covered under the above decision of the Hon'ble Apex Court.

7. Further, the petitioners have also referred to the statutory provisions as recorded to hereinabove and they are entitled to interest for delayed payment of Gratuity under the statute also.

8. Under the circumstances, I allow the writ petition directing the opposite party (S.A.I.L.) to calculate the interest @ 10% to be paid to each of petitioners independently. Calculation as directed be made within a period of four weeks from the date of communication of the order and payment as calculated be released in favour of each of the petitioner within a period of two weeks thereafter". **(Emphasis Supplied)**

15. The coordinate Bench, on who's order the learned Counsel for the Petitioner intended to rely to oppose the grant of 10% interest on the gratuity amount, in the **General Manager (P & EEL), Mahanadi Coalfields Ltd. Vs. Asim Kumar Chatterjee** reported in 122 (2016) CLT 260: 2016 LabIC 2302 : 2016 (149) FLR 497: 2016 (II) CLR 212 upheld the orders passed by the Controlling Authority as well as confirmed order passed by the Appellate Authority for payment of gratuity along with 10% interest per annum. Paragraph Nos.1 and 8 to 13 of the said judgment, being relevant, are extracted below:-

"1. The General Manager (P/EEL), Mohanadi Coal Fields Limited, Burla, Sambalpur, being the petitioner, has filed this petition seeking to quash the order dated 23.04.2015 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 and Regional Labour Commission (Central), Rourkela in Application No. 36(2)/2014-RKL-R vide Annexure-8 by which direction has been given to the petitioner to pay the gratuity amount of Rs. 10,00,000/- along with interest @ 10% per annum calculated at Rs. 3,22,192/- within a period of 30 days from the date of receipt of the order.

8. In *Mohan Dakua (Supra)* referred to by the learned counsel for opposite party No. 1, this Court has held that payment of gratuity is to be released within a period of 30 days from the date it becomes payable and as such, for the delay in payment of gratuity since no latches having been found on the part of the employer and the employer having not obtained prior permission from the controlling authority for such delayed payment, it is liable to pay interest @ 10%.

9. In *H. Gangahanume Gowda (supra)*, the apex Court has held that in view of the clear mandate under the provisions of Section 7 to employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity and there is also provision to recover the amount of gratuity with compounded interest in case the amount of gratuity payable was not paid by the employer in terms of Section-8 of the Act, since the employer did not satisfy the mandatory requirements of the proviso to Section 7(3- A), no discretion was left to deny interest to the employee on belated payment of gratuity and directed to pay interest @10%.

10. Similarly in *Kerala State Cashew (supra)* the apex Court has held that in case the employer has obtained permission in writing from the Controlling Authority for delayed payment in that case no interest shall be payable to the employee. In the present case such permission having not been obtained, the employer is liable to pay interest on the gratuity amount.

11. In *Y.K. Singla (supra)* the apex Court has held that Sub-section (3-A) of section 7 of the Act, 1972 is a most relevant provision for determination of interest to the employee and perusal of Sub-section (3-A) of section 7 of the Act, 1972 leaves no room for any doubt that in case gratuity is not released to an employee within 30 days from the date it becomes payable under Sub-section (3) of Section 7, the employee would be entitled to simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long term loans, as the Government may, by notification specify.

12. In *D.D. Tewari (D) Thr. LRs. (supra)* the apex Court has held that if pensionary benefits on gratuity amount is erroneously withheld by the employer, the employee is entitled to interest from the date of entitlement till the date of actual payment. Similar view has also been taken in *Rajnagar Textile Mills(supra)*.

13. For the forgoing reasons and keeping in view the judgments cited above, it is no more *res integra* that the opposite party No. 1 is entitled to get interest on the gratuity amount payable to him and therefore, the impugned order passed in Annexure-8 dated 23.04.2015 by opposite party No. 2 is wholly and fully justified". (**Emphasis Supplied**)

16. In a recent judgment in **Manager Director, Odisha Small Industries Corporation Ltd. Vs. Abhay Kumar Samantray** reported in 2022 (III) ILR-CUT 639, this Court held as follows:-

"20. So far as awarding 10% simple interest on the determined amount, it may not be out of place to mention that the Central Government, in exercise of the powers conferred by Sub-Section (3-A) of Section 7 of the P.G. Act, 1972, vide Notification dated 01.10.1987, notified as follows:

"TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (II) OF THE GAZETTE OF INDIA-EXTRAORINARY) PUBLISHED ON 01.10.1987

New Delhi, the 1st October, 87

NOTIFICATION

S.O. 874(E), In exercise of the powers conferred by sub-section (3A) of section 7 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central hereby specifies ten percent per annum as the rate of simple interest payable for the time being by the employer to his employee in cases where the gratuity is not paid within the specified period.

2. This notification shall come into force on the date of its publication in the Official Gazette."

(No. S-70012/6/87.SS-II)

(A.K. Bhattarai)

Under Secretary"

21. Admittedly, the said Notification dated 01.10.1987 is still in force not being superseded by any fresh Notification varying the rate of interest as was notified by the Government of India on 01.10.1987.

22. Hence, this Court is of the view that the Controlling Authority under P.G. Act-Cum Divisional Labour Commissioner, Cuttack, was justified to take into consideration the total period of service of the Opposite Party from the date of his initial engagement (14.11.1991) till the date of his superannuation (31.03.2018), so also award 10% simple interest on the awarded amount for the delayed period, so also ordering to pay further simple interest @ 10% per annum till the payment is made, if the Petitioner Corporation fails to deposit the said ordered amount within 30 days from the date of pronouncement of the judgment".

17. The Supreme Court in **H. Gangahanume Gowda Vs. Kanataka Agro Industries Corpn. Ltd** reported in (2003) 3 SCC 40: AIR 2003 SC 1526, held as follows:-

“7. It is evident from Section 7(2) that as soon as gratuity becomes payable, the employer, whether any application has been made or not, is obliged to determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity. Under Section 7(3), the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable. Under sub-section (3-A) of Section 7, if the amount of gratuity is not paid by the employer within the period specified in sub-section (3), he shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long- term deposits; provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. From the provisions made in Section 7, a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be. However, under the proviso to Section 7(3-A), no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. Under Section 8, provision is made for recovery of gratuity payable under the Act, if not paid by the employer within the prescribed time. The Collector shall recover the amount of gratuity with compound interest thereon as arrears of land revenue and pay the same to the person entitled. A penal provision is also made in Section 9 for non- payment of gratuity. Payment of gratuity with or without interest, as the case may be, does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in State of Kerala v. M. Padmanabhan Nair. Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3-A) was added to Section 7 by an amendment, which came into force with effect from 1-10-1987. In the case of Charan Singh v. Birla Textiles this aspect was noticed in the following words.

“4. There was no provision in the Act for payment of interest when the same was quantified by the controlling authority and before the Collector was approached for its realization. In fact, it is on the acceptance of the position that there was a lacuna in the law that Act 22 of 1987 brought about the incorporation of sub-section (3-A) in Section 7. That provision has prospective application”.

9. It is clear from what is extracted above from the order of the learned Single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled to payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to Section 7(3-A) of the Act. It was not the case of the respondent that the delay in the payment of gratuity was due to the fault of the employee and that it had obtained

permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case the amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did not satisfy the mandatory requirements of the proviso to Section 7(3-A), no discretion was left to deny the interest to the appellant on belated payment of gratuity. Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled to interest, declined to interfere with the order of the learned Single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned Single Judge could not be said to be arbitrary. In the first place in the light of what is stated above, the learned Single Judge could not refuse the grant of interest exercising discretion as against the mandatory provisions contained in Section 7 of the Act. The Division Bench, in our opinion, committed an error in assuming that the learned Single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised was not arbitrary”.

10. In the light of the facts stated and for the reasons aforementioned, the impugned order cannot be sustained. Consequently, it is set aside. **The respondent is directed to pay interest @ 10% on the amount of gratuity to which the appellant is entitled from the date it became payable till the date of payment of the gratuity amount. The appeal is allowed accordingly with cost quantified at Rs. 10,000/-.** (Emphasis Supplied)

18. The Supreme Court also in **Director (Thrisul Project) DRDO, Andhra Pradesh Vs. P.B. Varalakshmi and Others** reported in (2015) 15 SCC 398 held as follows:-

“2. The learned Additional Solicitor General submits that in terms of the Rules the amount can be disbursed only to the nominee, who is the widow. Now that the inter se dispute between the wife and the daughter has been settled, we dispose of this appeal with the direction to the appellant to disburse the eligible benefits to the widow nominee who shall distribute the benefits in terms of the compromise between her and her daughter. **The dues shall be disbursed with interest @ 10% which is the statutory rate fixed under the Payment of Gratuity Act, 1972**”. (Emphasis Supplied)

The Supreme Court in **State of U.P. & ors. Vs. Synthetic & Chemicals Ltd. & ors.**, reported in (1991)4 SCC 139 held as follows:-

“46. But the problem has arisen due to the conclusion in the case of Synthetic and Chemicals (supra). The question was if the State legislature could levy vend fee or excise duty on industrial alcohol. The Bench answered the question in the negative as industrial alcohol being unfit for human consumption the State legislation was incompetent to levy any duty of excise either under Entry 51 or Entry 8 of List II of the VIIth Schedule. While doing so the Bench recorded the conclusion extracted earlier. It was not preceded by any discussion. No reason or rationale could be found in the order. **This gives rise to an important question if the conclusion is law declared Under Article 141 of the Constitution or it is per incurium and is liable to be ignored:**

'Incuria' literally means 'carelessness'. In practice per incurium appears to mean per ignoratium.' English Courts have developed this principle in relaxation of the Rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (1944 IKB 718 Young v. Bristol Aeroplane Ltd. Same has been accepted, approved and adopted by this Court while

interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In *Jaisri Sahu v. Rajdewan Dubey*, MANU/SC/0371/1961 : 1961:INSC:198 : [1962] 2 SCR 558 this Court while pointing out the procedure to be followed when conflicting decisions are placed before a Bench extracted a passage from Halsbury Laws of England incorporating one of the exceptions when the decision of an Appellate Court is not binding.

47. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English Courts and jurists have carved out an exception to the Rule of precedents. It has been explained as Rule of subsilention. A decision passed sub-silention, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind' (Salmond 12th Edition). In *Lancaster Motor Company (London) Ltd. v. Bremith Ltd.*, [1941] IKB 675 the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the Rule and without any citation of the authority'. It was approved by this Court in *Municipal Corporation of Delhi v. Gurnam Kaur*, MANU/SC/0323/1988 : 1988:INSC:267 : [1989] 1 SCC 101. The Bench held that, 'precedents sub-silention and without argument are of no moment'. The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. **Uniformity and consistency are core of judicial discipline.** But that which escapes in the judgment without any occasion is not ratio decedendi. In *Shama Rao v. State of Pondicherry*, AIR 1967 SC 1680 it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law". (Emphasis Supplied)

The Supreme Court in **V. Kishan Rao Vs. Nikhil Super Speciality Hospital & anr.**, reported in (2010)5 SCC 513 held as follows:-

"54. When a judgment is rendered by ignoring the provisions of the governing statute and earlier larger Bench decision on the point such decisions are rendered per incuriam. This concept of per incuriam has been explained in many decisions of this Court. *Sabyasachi Mukharji, J.* (as his Lordship then was) speaking for the majority in *A.R. Antulay v. R.S. Nayak* [(1988) 2 SCC 602 : 1988 SCC (Cri) 372] explained the concept in the following words : (SCC p. 652, para 42)

"42. ... 'Per incuriam' are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."

Subsequently also in the Constitution Bench judgment of this Court in *Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court* [(1990) 3 SCC 682 : 1991 SCC (L&S) 71] , similar views were expressed in para 40 at p. 705 of the report".

(Emphasis Supplied)

The Supreme Court in **Siddharam Satlingappa Mhetre Vs. State of Maharashtra & ors.** reported in (2011) 1 SCC 694 held as follows:-

“139. Now we deem it imperative to examine the issue of *per incuriam* raised by the learned Counsel for the parties. In *Young v. Bristol Aeroplane Company Limited* (1994) All ER 293 the House of Lords observed that 'Incuria' literally means 'carelessness'. In practice *per incuriam* appears to mean *per ignoratum*. English courts have developed this principle in relaxation of the rule of *stare decisis*. The 'quotable in law' is avoided and ignored if it is rendered, 'in *ignoratum* of a statute or other binding authority. The same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law.

...In *Halsbury's Laws of England* (4th Edn.) Vol. 26: Judgment and Orders: Judicial Decisions as Authorities (pp. 297-98, para 578) *per incuriam* has been elucidated as under:

A decision is given *per incuriam* when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow (*Young v. Bristol Aeroplane Co. Ltd.* 1944 KB 718 : (1944) 2 All ER 293 .

In *Huddersfield Police Authority v. Watson* 1947 KB 842: (1947) 2 All ER 193.; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force.

140. Lord Godard, C.J. in *Huddersfield Police Authority v. Watson* (1947) 2 All ER 193 observed that where a case or statute had not been brought to the court's attention and the court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in *per incuriam*.

141. This Court in *Government of A.P. and Anr. v. B. Satyanarayana Rao (dead) by LRs. and Ors.* MANU/SC/0275/2000 : (2000) 4 SCC 262 observed as under: **The rule of *per incuriam* can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue”.** (Emphasis Supplied)

The Supreme Court in **Madhya Pradesh Rural Road Development Authority Vs. L.G. Chaudhary Engineers & Contractors**, reported in (2012) 3 SCC 495 held as follows:-

“26. It is clear, therefore, that in view of the aforesaid finding of a coordinate Bench of this Court on the distinct features of an Arbitral Tribunal under the said M.P. Act in *Anshuman Shukla case* [(2008) 7 SCC 487] the provisions of the M.P. Act are saved under Section 2(4) of the AC Act, 1996. **This Court while rendering the decision in *Va Tech* [(2011) 13 SCC 261] has not either noticed the previous decision of the coordinate Bench of this Court in *Anshuman Shukla* [(2008) 7 SCC 487] or the provisions of Section 2(4) of the AC Act, 1996. Therefore, we are constrained to hold that the decision of this Court in *Va Tech* [(2011) 13 SCC 261] was rendered *per incuriam*.**

27. This was the only point argued before us by the learned counsel for the appellant.

28. The principle of *per incuriam* has been very succinctly formulated by the Court of Appeal in *Young v. Bristol Aeroplane Co. Ltd.* [1944 KB 718 (CA)] Lord Greene,

Master of Rolls formulated the principles on the basis of which a decision can be said to have been rendered “per incuriam”. The principles are: (KB p. 729)

“... Where the court has construed a statute or a rule having the force of a statute its decision stands on the same footing as any other decision on a question of law, **but where the court is satisfied that an earlier decision was given in ignorance of the terms of a statute or a rule having the force of a statute the position is very different. It cannot, in our opinion, be right to say that in such a case the court is entitled to disregard the statutory provision and is bound to follow a decision of its own given when that provision was not present to its mind. Cases of this description are examples of decisions given per incuriam.**”

29. The decision in *Young* was subsequently approved by the House of Lords in *Young v. Bristol Aeroplane Co. Ltd.* Lord Viscount Simon in the House of Lords expressed His Lordship's agreement with the views expressed by Lord Greene, the Master of Rolls in the Court of Appeal on the principle of per incuriam (see the speech of Lord Viscount Simon in *Bristol Aeroplane Co. Ltd.* case)

30. Those principles have been followed by the Constitution Bench of this Court in *Bengal Immunity Co. Ltd. v. State of Bihar* (see the discussion in SCR at pp. 622 and 623 of the Report).

31. The same principle has been reiterated by Lord Evershed, Master of Rolls, in *Morelle Ltd. v. Wakeling*. The principle has been stated as follows:

“... As a general rule the only cases in which decisions should be held to have been given per incuriam are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned; so that in such cases some part of the decision or some step in the reasoning on which it is based is found, on that account, to be demonstrably wrong.”

32. In *State of U.P. v. Synthetics and Chemicals Ltd.* [(1991) 4 SCC 139] this Court held (SCC p. 162, para 40) that the doctrine of “per incuriam” in practice means “per ignoratum” and noted that the English courts have developed this principle in relaxation of the rule of stare decisis and referred to the decision in *Bristol Aeroplane Co. Ltd.* [1946 AC 163 (HL)] The learned Judges also made it clear that the same principle has been approved and adopted by this Court while interpreting Article 141 of the Constitution (see *Synthetics and Chemicals Ltd.* case [(1991) 4 SCC 139] , SCC para 41).

33. In *MCD v. Gurnam Kaur* [(1989) 1 SCC 101] a three-Judge Bench of this Court explained this principle of per incuriam very elaborately in SCC para 11 at p. 110 of the Report and in explaining the principle of per incuriam the learned Judges held:

“11. ...A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute.”

34. In para 12 the learned Judges observed as follows: (*Gurnam Kaur* case [(1989) 1 SCC 101] , SCC p. 111)

“12. ...One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority.” (Emphasis Supplied)

The Supreme Court in ***Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa***, reported in (2015) 2 SCC 189 held as follows:-

“13. Before I consider the correctness of the aforementioned decisions, it would be necessary to elaborate upon the concept of "per incuriam". The latin expression *per incuriam* literally means 'through inadvertence'. **A decision can be said to be given per incuriam when the Court of record has acted in ignorance of any previous decision of its own, or a subordinate court has acted in ignorance of a decision of the Court of record.** As regards the judgments of this Court rendered *per incuriam*, it cannot be said that this Court has "declared the law" on a given subject matter, if the relevant law was not duly considered by this Court in its decision. In this regard, I refer to the case of *State of U.P. v. Synthetics and Chemicals Ltd.* MANU/SC/0616/1991 : (1991) 4 SCC 139, wherein Justice R.M. Sahai, in his concurring opinion stated as follows:

40. 'Incuria' literally means 'carelessness'. In practice *per incuriam* appears to mean *per ignoratum*. English courts have developed this principle in relaxation of the rule of *stare decisis*. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratum of a statute or other binding authority'....

14. Therefore, I am of the considered view that a prior decision of this Court on identical facts and law binds the Court on the same points of law in a later case. **In exceptional circumstances, where owing to obvious inadvertence or oversight, a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, the principle of *per incuriam* may apply.** The said principle was also noticed in the case of *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.* (Emphasis Supplied)

19. Admittedly, there is a specific provision under the P.G. Act, 1972, so far as payment of interest is concerned. That apart, the coordinate Bench, while passing the order dated 01.05.2019 in W.P.(C) No.23834 of 2013, did not take note of the earlier judgment of this Court in ***Mohan Dakua*** (supra) so also its own judgment in the ***General Manager (P & EEL), Mahanadi Coalfield Ltd.*** (Supra) and the judgments of the Supreme Court in ***H. Gangahanume Gowda*** (supra) and ***Director (Thrisul Project)*** (supra). All the aforementioned judgments are prior to the order dated 01.05.2019 passed by the coordinate Bench in W.P.(C) No.23834 of 2013.

20. Admittedly, the coordinate Bench has passed the order in ***Paradip Port Trust*** (supra) in ignorance of a previous decision of its own in ***General Manager (P & EEL), Mahanadi Coalfield Ltd.*** (Supra) so also in ***Mohan Dakua*** (supra) passed by another coordinate Bench of this Court. Perhaps such an incorrect order was passed by the coordinate Bench as because the parties to the said lis failed to bring to the notice of the learned coordinate Bench regarding the legal provisions under the P.G. Act, 1972, notification made by the Central Government in terms of Section 7 (3-A) of the P.G. Act, 1972 so also earlier judgments of this Court and Supreme Court on the said issue regarding rate of interest. For the self-same reason, the division Bench also incorrectly confirmed the said erroneous order passed in W.P.(C) No.23834 of 2013, in W.A. No.322 of 2019.

21. Admittedly while issuing notice in SLP(C) No.4468 of 2022, the Supreme Court, taking note of the said provisions under sub-section 3-A of section 7 of the P.G. Act, 1972 so also notification made by the Central Government in the said regard, consciously has issued notice to the employer.

22. This Court is of the view that unless and until leave is granted by the Supreme Court, mere issuance of notice in a SLP cannot be held that the issue regarding rate of interest under the P.G. Act is sub-judice before the Supreme Court, more particularly, when such an issue has already been dealt with and decided by the Supreme Court in **H. Gangahanume Gowda** (supra) and **Director (Thrisul Project)** (supra) much prior to issuing notice to the employer in SLP(C) No.4468 of 2022.

23. Law is well settled that any judgment or order passed contrary to the statute is a nullity. That apart, law is also well settled that any judgment passed without taking note of the earlier judgment of the same Court so also Supreme Court is per incurium.

24. In **Director of Settlements, A.P. Vs. M.R. Apparao**, (2002) 4 SCC 638, the Supreme Court held as follows:-

*“7. So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has “declared law” it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An “obiter dictum” as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (see Ballabhadas Mathurdas Lakhani v. Municipal Committee, Malkapur [(1970) 2 SCC 267 : AIR 1970 SC 1002] and AIR 1973 SC 794 [(sic)]). **When the Supreme Court decides a principle it would be the duty of the High Court or a subordinate court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity.** (See Narinder Singh v. Surjit Singh [(1984) 2 SCC 402] and Kausalya Devi Bogra v. Land Acquisition Officer [(1984) 2 SCC 324] .) We have to answer the first question bearing in mind the aforesaid guiding principles. We may refer to some of the decisions cited by Mr Rao in elaborating his arguments contending that the judgment of this Court dated 6-2-1986 [State of A.P. v. Rajah of Venkatagiri, (2002) 4 SCC 660] cannot be held to be a law*

declared by the Court within the ambit of Article 141 of the Constitution. Mr Rao relied upon the judgment of this Court in the case of M.S.M. Sharma v. Sri Krishna Sinha [AIR 1959 SC 395 : 1959 Supp (1) SCR 806] wherein the power and privilege of the State Legislature and the fundamental right of freedom of speech and expression including the freedom of the press was the subject - matter of consideration. In the aforesaid judgment it has been observed by the Court that the decision in Gunupati Keshavram Reddy v. Nafisul Hasan [(1952) 1 SCC 343 : AIR 1954 SC 536 : 1954 Cri LJ 1704] relied upon by the counsel for the petitioner which entirely proceeded on a concession of the counsel cannot be regarded as a considered opinion on the subject. There is no dispute with the aforesaid proposition of law". **(Emphasis Supplied)**

25. This Court is also of the view that order dated 01.05.2019 passed in W.P.(C) No. 23834 of 2013, so also the confirmed order passed by the division Bench in W.A. No. 322 of 2019, are hit by the principle of per incuriam as the Bench has passed such an order contrary to the statute so also without taking note of its own judgment in **Mahanadi Coal fields Ltd.** (*supra*) so also the earlier judgment passed by this Court in **Mohan Daku** (*Supra*) and judgment passed by the Supreme Court in **H. Gangahanume Gowda** (*Supra*) so also in **Director (Trisul Project) DRDO** (*Supra*) pertaining to the said issue regarding interest payable to an employee under the P.G. Act, 1972.

26. Following the aforesaid principles, this Court is constrained to hold that the order passed by the coordinate Bench so also the confirming order passed by the division Bench, having been rendered per incuriam, cannot be accepted as a precedent to decide the controversy regarding the rate of interest in this case and wait till disposal of SLP(C) No.4468 of 2022. Hence, this Court is of the view that the oral prayer made by the learned Counsel for the Petitioner to dispose of the Writ Petition directing the Controlling Authority to release the principal amount giving liberty to the parties to move before this Court for release of interest after disposal of SLP(C) No. 4468 of 2022 needs no consideration.

27. Accordingly, the writ petition stands dismissed. No order as to cost.

28. In view of the dismissal of the Writ Petition, the Assistant Labour Commissioner, Cuttack, who is the Controlling Authority under the P.G. Act, 1972, before whom the Petitioner- Bank has deposited the entire awarded amount in terms of the order passed in P.G. Case No. 22 of 2012, shall do well to disburse the said amount with accrued interest, if any, in favour of the Opposite Party No.1 within a period of two weeks' from the date of production of the certified copy of this judgment.

Headnotes prepared by:

Sri. Jnanendra Ku. Swain (Judicial Indexer)

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Writ petition dismissed.

2025 (I) ILR-CUT-1329

**M/s. CHHABRA COAL
BENEFICIARIES & ENERGY (P) LTD.
V.
M/s. REXON STRIPS LTD. & ANR.**

[W.P.(C) NO. 42509 OF 2023]

17 DECEMBER 2024

[SANJAY KUMAR MISHRA, J.]**Issues for Consideration**

1. Whether Section 5 of the Limitation Act shall apply while challenging the arbitral award U/s. 34 of the Arbitration & Conciliation Act, 1996.
2. Whether Section 14 of the Limitation Act shall apply for excluding the period of limitation challenging the arbitral award under Section 34 of the Arbitration & Conciliation Act, 1996.
3. Whether mentioning wrong/ incorrect or non-mentioning of the provision of law invalidates an order if the Court or statutory authority had the requisite jurisdiction.

Headnotes

(A) ARBITRATION & CONCILIATION ACT, 1996 – Section 34 – Challenge of Arbitral Award – Delay in challenging the award – Limitation – Whether Section 5 of the Limitation Act shall apply while challenging the arbitral award U/s. 34 of the Arbitration & Conciliation Act, 1996.

Held: No – Section 5 of the Limitation Act to condone the delay beyond the statutory period prescribed under section 34(3) of the Act, 1996 is not applicable. (Para 14)

(B) ARBITRATION & CONCILIATION ACT, 1996 – Section 34 – Challenge of Arbitral Award – Delay in challenging the award – Limitation – Whether Section 14 of the Limitation Act shall apply for excluding the period of limitation while challenging the arbitral award under Section 34 of the Arbitration & Conciliation Act, 1996.

Held: Yes – Section 14 of the Limitation Act is applicable to a proceeding under section 34 of the 1996 Act, which mandates for exclusion of certain period while computing the period of limitation, not for extension of period of limitation. (Para 17)

(C) ARBITRATION & CONCILIATION ACT, 1996 – Section 34 – Challenge of Arbitral Award – Whether the impugned award deserve interference on the ground of mentioning wrong/ incorrect or non-mentioning of the provision of law.

Held: No – It is a well settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/ or statutory authority had the requisite jurisdiction therefor.

(Para 15)

(D) LIMITATION ACT, 1963 – Section 14 – ‘Court’ – Meaning – Whether it speaks of ‘Civil Court’.

Held, No – It is not necessary that the court spoken of in Section 14 should be a ‘civil court’ – Any authority or tribunal, having the trappings of a Court, would be a ‘court’ within the meaning of the said Section.

(Para 15)

Citations Reference

Mahindra and Mahindra Financial Services Limited Vs. Maheshbhai Tinabhai Rathod and others, **(2022) 4 SCC 162**; Oriental Insurance Co. Ltd. Vs. Tejparas Associates & Exports (P) Ltd., **(2019) 9 SCC 435**; Sree Hari Chemicals Export Ltd. Vs. Union of India and another, **(2006) 1 SCC 396**; P.K. Palanisamy Vs. N. Arumugham and another, **(2009) 9 SCC 173**; P. Sarathy Vs. State Bank of India, **(2000) 5 SCC 355**; Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and others, **(2008) 7 SCC 169**; State of Goa Vs. Western Builders, **(2006) 6 SCC 239**; Baid Power Services Private Limited Vs. The Bihar Medical Services and Infrastructure Corporation Limited, **MANU/WB/1857/2024 : 2024 LiveLaw (Cal) 208** – referred to.

List of Acts

Arbitration and Conciliation Act, 1996; Limitation Act, 1963.

Keywords

Arbitral award; Limitation; Exclusion of limitation; Extension of limitation; Compulsory period of limitation; Wrong mention of the provision of law; Non-mention or incorrect mention of the provision of law; Civil Court.

Case Arising From

Order dated 30.10.2023 passed by the District Judge, Sundargarh in Arbitration Case No. 03 of 2022.

Appearances for Parties

For Petitioner : Mr. J.S. Chhabra

For Opp. Parties : Mr. P.P. Mohanty (O.P.No.1)

Judgment/Order

Judgment

S.K. MISHRA, J.

This Writ Petition has been preferred for quashing of the order dated 30.10.2023 passed by the District Judge, Sundargarh in Arbitration Case No.03 of 2022, vide which the Court below condoned the delay in filing an application by the Opposite Party No.1 under Section 34 of the Arbitration and Conciliation Act, 1996, shortly, hereinafter, ‘the Act,1996’.

2. The factual matrix of the case, as detailed in the Writ Petition, is that the Petitioner, which is an industrial unit, registered under the Micro Small Medium Enterprises Development Act, in short, ‘MSMED Act’, supplied iron ore to the Opposite Party No.1. On 30.03.2016, the Petitioner-Company filed a claim/reference for passing of award under section 18(1) of the MSMED Act before the Micro and Small Enterprises Facilitation Council, Cuttack, in short, ‘MSEFC’, for recovery of an amount of Rs.3,68,342/- so also interest for delayed payment under sections 15, 16 & 17 of the MSMED Act amounting to Rs.4,94,305/- (in total Rs.8,62,647/-). After hearing both the parties, the MSEFC passed an award on 26.02.2019 directing the Opposite Party No.1 to pay the principal amount along with the interest within 30 days.

However, the Opposite Party No.1 failed to pay the awarded sum. Instead of preferring an application under section 34 the Act, 1996, it approached this Court in W.P.(C) No.10261 of 2019, which was dismissed as withdrawn by the Opposite Party No.1 on 08.03.2022. Pursuant to the same, the Opposite Party No.1 preferred an application before the District Judge, Sundargarh under section 34 of the Act, 1996 challenging the said award passed by the MSEFC, Cuttack dated 26.02.2019 along with an I.A. under section 5 of the Limitation Act, 1963, in short, ‘the Act, 1963’, for condonation of delay, which was allowed by the District Judge, Sundargarh vide the impugned order dated 30.10.2023.

3. The said order has been challenged on the ground that though the impugned award was passed by the MSEFC, Cuttack on 26.02.2019, which was received by the Opposite Party No.1 on 24.05.2019, the Appeal was preferred on 31.03.2022 i.e. after about two years and ten months. As per sub-section (3) of section 34 of the Act, 1996, no application for setting aside the award be made after three months have elapsed from the date on which the party making the application has received the arbitral award. However, if the applicant satisfies the Court that he was prevented by sufficient cause for not making the application within three months of

the receipt of the award, the application could be entertained only for a period of 30 days beyond the period of three months and not beyond that. Thus, the Act, 1996, being a special law embodying its own provision for limitation, shall prevail over the general law of Limitation Act, 1963.

A ground has also been urged in the Writ Petition that the period of contest in the Writ Petition preferred by the Opposite Party vide W.P.(C) No.10261 of 2019, challenging the impugned award dated 26.02.2019, cannot be excluded under section 5 and/or section 14 of the Act, 1963. Thus, the Court below condoned the delay in preferring appeal under section 34 of the Act, 1996 in violation of the established precedents.

4. Being noticed, a Counter Affidavit has been filed by the Opposite Party No.1 taking a stand therein that it is a registered company which is engaged in the process of manufacturing sponge iron using iron ore as its raw material. In course of business, the Opposite Party No.1 purchased some quantity of coal from the Petitioner. Though the Opposite Party No.1 duly paid the consideration amount, still the Petitioner issued a legal notice to the Opposite Party No.1 demanding certain amount. Despite reply given by the Opposite Party No.1, the Petitioner filed MSEFC Case No.13 of 2016 before the Opposite Party No.2. During course of hearing, the Petitioner conceded the objection of the Opposite Party No.1 and submitted a memo stating therein that the value of material of the alleged truck amounting to Rs.42,120/- so also Rs.10,920/- towards transportation charges may be deducted from the claim amount. The MSEFC, vide order dated 19.01.2019, directed both the parties to settle the matter amicably on or before 26.02.2019, pursuant to which, the Opposite Party No.1 agreed to pay a sum of Rs.1,00,000/- towards full and final settlement of the dispute. However, on 26.02.2019, the MSEFC passed an award directing the Opposite Party No.1 to pay a sum of Rs.8,62,647/-(Rs.3,68,342/- towards principal and Rs.4,94,305/- towards interest) so also compound interest, with monthly rests, payable @ 3 times of the bank rate, as notified by Reserve Bank of India, within a period of 30 days. The said award was communicated to the Opposite Party No.1 on 14.05.2019 by the Office of Director of Industries, Orissa, Cuttack and was received by it on 24.05.2019.

It is the case of the Opposite Party No.1 that on 24.05.2019, the Counsel for the Petitioner wrote a letter to the Opposite Party No.1 directing to pay the amount. In reply to the said letter, the Opposite Party No.1 also wrote a letter on 24.06.2019 informing the Petitioner about challenging the award dated 26.02.2019 of MSEFC before this Court in W.P.(C) No.10261 of 2019 enclosing thereto a demand draft of Rs.8,62,647/-.

While the matter stood thus, on 02.01.2020, the Petitioner filed an execution case, which was registered as Execution Case No.04 of 2020 before the District Judge, Sundargarh and notice for appearance on 19.03.2020 was issued to the Opposite Party No.1. Thereafter, on 14.09.2020, the Opposite Party No.1 filed an amendment application in W.P.(C) No.10261 of 2019. However, on 08.03.2022, this

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Court dismissed the Writ Petition as withdrawn, granting liberty to the Opposite Party No.1 (Petitioner in W.P.(C) No.10261 of 2019) to file an Appeal under section 34 of the Act, 1996.

Pursuant to the order dated 08.03.2022 of this Court, the Opposite Party No.1 filed Arbitration Case No.03 of 2022 under section 34 of the Act, 1996 along with an application for condonation of delay. After hearing both the parties, the delay was condoned by the District Judge, Sundargarh on 30.10.2023.

It is the stand of the Opposite Party No.1 that since it filed W.P.(C) No.10261 of 2019 before this Court within a period of 18 days from the date of receipt of the award/order of MSEFC so also filed application under section 34 of the Act, 1996 before the District Judge, Sundargarh within a period of 24 days from the date of order dated 08.03.2022 passed by this Court in W.P.(C) No.10261 of 2019, in fact, there is no delay in filing the application under section 34 of the Act, 1996 before the District Judge, Sundargarh.

5. In response to the Counter filed by the Opposite Party No.1, the Petitioner has filed a Rejoinder denying the stand of the Opposite Party No.1 as to the legality of the impugned order dated 30.10.2023 passed by the District Judge, Sundargarh condoning the delay in filing the application under section 34 of the Act, 1996 stating therein that the Petitioner has already cited the judgment of the Supreme Court reported in (2022) 4 SCC 162, (***Mahindra and Mahindra Financial Services Limited Vs. Maheshbhai Tinabhai Rathod and others***) as to inapplicability of section 5 of the Act, 1963 to condone the delay beyond three months as prescribed under section 34(3) of the Act, 1996, so also condonation of delay beyond 120 days in terms of the Proviso to section 34(3) of the Act, 1996. Admittedly, the application under section 34 of the Act, 1996 was filed on 31.03.2022 i.e. after 2 years and 10 months of the receipt of the award on 24.05.2019 (wrongly typed as 24.09.2019). Hence, the Court below was not justified to condone the delay.

6. Learned Counsel for the Petitioner submitted that section 14 of the Limitation Act, 1963 would have been made applicable to the present case, had the Opposite Party No.1 presented an application under section 34 of the Act, 1996 within the period of limitation before a wrong Court. But in the present case, the Opposite Party No.1, instead of preferring an application under section 34 of the Act, 1996, preferred a Writ Petition before this Court. Hence, section 14 of the Limitation Act, 1963 is not applicable to the present case to condone/exclude the period of delay on the ground of pendency of the Writ Petition.

Learned Counsel for the Petitioner, drawing attention of this Court to the Petition filed by the Opposite Party No.1 dated 31.03.2022, so also the impugned order dated 30.10.2023 passed in Arbitration Case No.03 of 2022, submitted that the Opposite Party No.1 moved such application invoking section 5 of the Act, 1963 and the Court below, exercising its power under section 5 of the Act, 1963, allowed the said petition of the Opposite Party No.1 and condoned the delay in preferring the

application under section 34 of the Act, 1996 despite citing the judgment of the Supreme Court.

Mr. Chhabra, learned Counsel for the Petitioner further submitted that law is well settled that section 5 of the Act, 1963 is not applicable to the proceeding under the Act, 1996. Hence, the impugned order dated 30.10.2023 passed in Arbitration Case No.03 of 2022, being contrary to the statute so also settled position of law, deserves interference and the Arbitration Case No.03 of 2022, being filed beyond the statutory period of limitation, deserves to be dismissed.

7. Learned Counsel for the Petitioner, to substantiate his submission, relied upon the judgments of the Supreme Court in ***Mahindra & Mahindra Financial Services Ltd. (supra)*** and ***Oriental Insurance Co. Ltd. Vs. Tejparas Associates & Exports (P) Ltd.***, reported in (2019) 9 SCC 435.

8. Per contra, learned Counsel for the Opposite Party No.1, reiterating the facts detailed in the Counter, submitted that the Opposite Party No.1 intimated the Petitioner regarding his filing of W.P.(C) No.10261 of 2019 and further enclosed a demand draft of Rs.8,62,647/- towards principal and interest, without prejudice to the rights and contentions made in the Writ Petition. Learned Counsel for the Opposite Party No.1 further submitted that though there is a delay of 2 years and 10 months i.e. from the date of receipt of award on 24.05.2019 till the date of filing of arbitration case on 31.03.2022 under section 34 of the Act, 1996, the Opposite Party No.1 filed an application in terms of section 14 of the Act, 1963 for excluding the period for which the Writ Petition was pending before the Court, liberty being granted by this Court to move an application under section 34 of the Act, 1996. In fact, there was no delay beyond the statutory period, after exclusion of the period, for which the Writ Petition was pending before this Court. The petition was rightly allowed by the learned District Judge. In the cause title of the petition, the learned Counsel for the Opposite Party No.1, by mistake, mentioned the legal provision as section 5, instead of section 14 of the Act, 1963, though in the body of the said petition it has been rightly mentioned about invocation of section 14 of the Act, 1963.

9. Learned Counsel for the Opposite Party No.1 further submitted that MSEFC passed the award on 26.02.2019, which was communicated to the Opposite Party No.1 on 14.05.2019 by the Office of the Director of Industries. But the same was received by the Opposite Party No.1 on 24.05.2019. On 10.06.2019 the Opposite Party No.1 filed W.P.(C) No.10261 of 2019 before this Court which was dismissed on 08.03.2022 granting liberty to the Opposite Party No.1 to file an application under section 34 of the Act, 1996 in presence of the learned Counsel for the Petitioner, who was Opposite Party No.2 in the said Writ Petition. The Opposite Party No.1 obtained the certified copy of the said order on 11.03.2022 and in terms of the said order, the arbitration case was filed by the Opposite Party No.1 before the District Judge, Sundargarh, within 24 days from the date of the said order.

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10. Learned Counsel for the Opposite Party No.1, drawing attention of this Court to paragraph Nos.4 & 5 of the application dated 31.03.2022, as at Annexure-1, submitted that though in the cause title of the I.A., by mistake, it was indicated that such application for condonation of delay in filing the petition is under section 5 of the Act, 1963, but in the body of the said application it was rightly indicated about liberty granted by this Court to move an application under Section 34 of the Act, 1996 so also to condone the delay, if any, by excluding the period in terms of section 14 of the Act, 1963, for which the Writ Petition was pending before this Court. No written objection was filed by the Petitioner opposing to such application excepting filing the judgments of the Supreme Court. The Court below, while passing the impugned order, took note of such submission made by the learned Counsel for the Petitioner (Opposite Party No.2 before the Court below) so also judgments cited by it and passed a reasoned order, clearly indicating therein that since the Writ Petition was preferred before this Court well within the period of limitation, prescribed under Section 34 of the Act, 1996 in fact there is no delay. The said application preferred by the present Opposite Party for condonation of delay was rightly allowed by the Court below giving a detailed reason for allowing such application and the Writ Petition, being devoid of any merit, deserves to be dismissed.

Learned Counsel for the Opposite Party No.1, relying on the judgments of the Supreme Court in ***Sree Hari Chemicals Export Ltd. Vs. Union of India and another***, reported in (2006) 1 SCC 396 so also in ***P.K. Palanisamy Vs. N. Arumugham and another***, reported in (2009) 9 SCC 173 further submitted that law is well settled that wrong mentioning of legal provision would not be a ground to refuse relief to a party, if he is otherwise entitled thereto. Relying on the judgment of the Supreme Court in ***P. Sarathy Vs. State Bank of India***, reported in (2000) 5 SCC 355, learned Counsel for the Opposite Party No.1 further submitted that, section 14 of the Limitation Act is applicable to an application submitted under section 34 of the Act, 1996 for exclusion of certain period, if such application, at the first instance, is filed within the limitation period prescribed under section 34(3) of the Act, 1996. The plea of the Petitioner Company to set aside the impugned order passed by the Court below on technical ground as to wrong mentioning of legal provision in the cause title of the Petition is ill-motivated to harass the Opposite Party No.1.

Mr. Mohanty, drawing attention of this Court to the judgment of the Supreme Court in ***Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and others*** reported in (2008) 7 SCC 169, which is a three Judge Bench judgment, further submitted that the Opposite Party No.1 preferred the Writ Petition wrongly before this Court bona fide and with due diligence against the award passed by the MSEFC. The same was also duly intimated to the Petitioner while making payment in terms of the said award under protest. Though the Court below has not specifically mentioned about applying the provisions under section 14 of the Limitation Act to exclude the said period during which the Writ Petition was pending before this Court, but it is well implied from the said order that the Court

below was conscious to take note of various dates, as pleaded in the said Petition, while allowing the application of the Opposite Party No.1 to condone the so called delay.

11. To substantiate his submissions, learned Counsel for the Opposite Party No.1 relied on the judgments of the Supreme Court in ***Shree Hari Chemicals*** (*supra*) so also in ***Oriental Insurance Co. Ltd.*** (*supra*) and ***State of Goa Vs. Western Builders***, reported in (2006) 6 SCC 239.

12. In view of the said submissions made so also judgments cited by the learned Counsel for the parties, the following points emerge, to be answered in the present Writ Petition:

i) Whether the impugned order dated 30.10.2023 passed in Arbitration Case No.03 of 2022 deserves interference on the ground of wrong/ incorrect mentioning of the provisions of law i.e. section 5, instead of section 14 of the Limitation Act, 1963, so also incorrectly mentioning so in the impugned order passed by the Court below?

ii) Whether, because of filing of Writ Petition before this Court, instead of filing of section 34 application before a wrong Court, will preclude the Opposite Party No.1 to seek for exclusion of the said period, for which the Writ Petition was pending before this Court, in terms of the Section 14 of the Limitation Act?

Since both the points are interrelated, for the sake of brevity and clarity, the same are dealt with and answered together.

13. Admittedly the Opposite Party No.1, after receiving the award dated 26.02.2019 passed by the MSEFC on 24.05.2019, preferred W.P.(C) No.10261 of 2019 on 10.06.2019 i.e. after 18 days from the date of receipt of the award/order of the MSEFC. The said Writ Petition was pending till dismissal of the same on 08.03.2022 giving liberty to the Petitioner to prefer an application under section 34 of the Act, 1996. The said order passed by this Court in W.P.(C) No.10261 of 2019 is reproduced below for ready reference.

“ORDER

08.03.2022

1. Learned counsel appearing for the petitioner has filed a memo for withdrawal of this writ petition with liberty to the petitioner to file appeal under Section 34 of the Arbitration & Conciliation Act, 1996. Consequently, the writ petition stands dismissed as withdrawn but, however with liberty as prayed for”. (Emphasis Supplied)

After passing of the said order by this Court giving liberty to the Opposite Party No.1, admittedly the section 34 application under the Act, 1996 was presented before the District Judge, Sundargarh after 24 days from the date of the said order along with an application to condone the delay in view of the liberty granted by this Court. However, while filing such application for exclusion/condonation of delay, a wrong mention was made in the cause title that such application is being moved in terms of section 5 of the Limitation Act, though in para 5 of the said petition there is

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a reference to section 14 of the Limitation Act. Paragraph Nos.1 to 6 of the said petition, being relevant, are extracted below for ready reference.

“1. That by means of the accompanied petition, the Petitioner inter- alia challenges the Impugned order/award dated 26.02.2019 passed by MSEFC, Opposite Party No.1 in MSEFC Case No.13 of 2016, which was communicated by the Office of Director of Industries, Odisha on 14.05.2019 and the Petitioner had received the same award/order on 24.05.2019.

2. That on 10.06.2019, the Petitioner being aggrieved by the order/award dated 26.02.2019 passed by MSEFC, Opposite Party No.1 in MSEFC Case No.13 of 2016 had filed a writ application in the Hon'ble High Court of Orissa, which was registered as W.P. (C) No.10261 of 2019.

3. That on 27.06.2019, the Hon'ble High Court of Orissa was pleased to issue notice to the Opposite Parties and the notices were issued to the Opposite Parties fixing the appearance on 06.08.2019. After receipt of notice from Hon'ble High Court of Orissa, the Opposite parties had entered his appearance.

4. That while the matter stood thus, on 08.03.2022, the Hon'ble High Court of Orissa was pleased to pass the following order in W.P.(C) No.10261 of 2019:

"Learned counsel appearing for the Petitioner has filed a memo for withdrawal of this writ petition with liberty to the petitioner to file appeal under Section 34 of the Arbitration & Conciliation Act, 1996. Consequently, the writ petition stands dismissed as withdrawn but however with liberty's as prayed for."

It may be noted that on 11.03.2022, the Petitioner has received the certified copy of the aforesaid order.

5. That in the aforesaid facts and circumstances, the Petitioner has filed the present petition in this Hon'ble Court with a prayer to condone the delay taking into consideration of provisions of Section 14 of the Limitation Act, 1963, as well as the other provisions of the Limitation Act, 1963.

6. That delay in filing the present petition in this Hon'ble Court is not deliberate nor intentional on part of the Petitioner”. ***(Emphasis Supplied)***

Admittedly, the present Petitioner (Opposite Party in Arbitration Case No.03 of 2022) did not file any written objection in response to the said application. Simply it chose to file two judgments of the Supreme Court to oppose the said prayer for condonation of delay on the ground that delay beyond the statutory period cannot be condoned in a proceeding initiated under section 34 of the Act, 1996. At this juncture, it would be apt to deal with the judgments cited by the learned Counsel for the Petitioner to substantiate his submission.

14. In ***Mahindra & Mahindra Financial Services Ltd.*** (supra), the issue before the Supreme Court was whether section 34 application was well within the period of limitation, as prescribed under the Act, 1996. If not, whether the delay is condonable by exercise of power under section 5 of the Limitation Act? Whether the learned Division Bench of High Court of judicature at Bombay was justified to condone the

delay by applying section 5 of the Limitation Act to a proceeding under section 34(3) of the Act, 1996?

While dealing with the said points, the Supreme Court, referring to its various judgments, held that section 5 of the Limitation Act to condone the delay beyond the statutory period prescribed under section 34(3) of the Act, 1996 is not applicable. While deciding so the Supreme Court took note of the fact that the envelopes containing the arbitral award forwarded by the learned Arbitrator to the Petitioners were returned by the Postal Authority to the Arbitrator with a remark that the Petitioners refused to accept service of the same, which were opened in the Court and it was noted that the learned Arbitrator had forwarded signed copy of the award to the Petitioners. In the said case, the Petitioners also admitted the fact that they refused to accept service of the envelopes containing copies of arbitral award. Hence, it was held by the Supreme Court that the learned Division Bench was not justified to condone the delay in a casual manner beyond the statutory period because of the admitted facts on record that the Petitioners refused to receive the award sent by the learned Arbitrator and the limitation has to be counted from the date of the said refusal to receive the award.

So far as ***Oriental Insurance Company Ltd.*** (supra), the Supreme Court, though held that section 5 of the Limitation Act has no application to a petition challenging the arbitral award under section 34 of the Act, 1996, but held that section 14 of the Limitation Act is applicable to an application submitted under section 34 of the Act, 1996 seeking for exclusion of certain period, if the application under section 34 of the Act, 1996 is at the first instance filed within the limitation period prescribed under section 34(3) of the Act, 1996 before a wrong Court.

15. So far as judgment cited by the Opposite Party No.1 in ***Shree Hari Chemicals Export Ltd.*** (supra), it was held that a wrong mentioning of a section/legal provision would not be a ground to refuse the relief to a party, if he is otherwise entitled thereto. A similar view was also taken by the Supreme Court in ***P.K. Palaniswamy*** (supra). Paragraph Nos.26 & 27 of the said judgment, being relevant, are reproduced below:

“26. A contention has been raised that the applications filed by the appellant herein having regard to the decisions of the Madras High Court could not have been entertained which were filed under Section 148 of the Code.

27. Section 148 of the Code is a general provision and Section 149 thereof is special. The first application should have been filed in terms of Section 149 of the Code. Once the court granted time for payment of deficit court fee within the period specified therefor, it would have been possible to extend the same by the court in exercise of its power under Section 148 of the Code. Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity. It is a well-settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor”. (Emphasis Supplied)

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So far as judgment of the Supreme Court in **P. Sarathy** (supra), it was held that section 14 of the Limitation Act does not speak of a “civil court”, but speaks only of a “court”. It is not necessary that the court spoken of in Section 14 should be a “civil court”. Any authority or tribunal, having the trappings of a Court, would be a “court” within the meaning of the said Section. Paragraph Nos.12, 13 & 15 of the said judgment, being relevant, are reproduced below.

“12. It will be noticed that Section 14 of the Limitation Act does not speak of a civil court” but speaks only of a “court”. It is not necessary that the court spoken of in Section 14 should be a “civil court”. Any authority or tribunal having the trappings of a court would be a “court” within the meaning of this section.

13. In *Thakur Jugal Kishore Sinha v. Sitamarhi Central Coop. Bank Ltd.*³ this Court, while considering the question under the Contempt of Courts Act, held that the Registrar under the Bihar and Orissa Cooperative Societies Act was a court. It was held that the Registrar had not merely the trappings of a court but in many respects he was given the same powers as was given to an ordinary civil court by the Code of Civil Procedure including the powers to summon and examine witnesses on oath, the power to order inspection of documents and to hear the parties. The Court referred to the earlier decisions in *Bharat Bank Ltd. v. Employees*; *Maqbool Hussain v. State of Bombay* and *Brajnandan Sinha v. Jyoti Narain*. **The Court approved the rule laid down in these cases that in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has FINALITY and AUTHORITATIVENESS which are the essential tests of a judicial pronouncement.**

15. Applying the above principles in the instant case, we are of the opinion that the Deputy Commissioner of Labour (Appeals), which was an authority constituted under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 to hear and decide appeals, was a “court” within the meaning of Section 14 of the Limitation Act and the proceedings pending before him were civil proceedings. **It is not disputed that the appellants could file an appeal before the Local Board of the Bank, which was purely a departmental appeal. In this view of the matter, the entire period of time from the date of institution of the departmental appeal as also the period from the date of institution of the appeal under Section 41(2) before the Deputy Commissioner of Labour (Appeals) till it was dismissed will, therefore, have to be excluded for computing the period of limitation for filing the suit in question. If the entire period is excluded, the suit, it is not disputed, would be within time”.** (Emphasis Supplied)

So far as applicability of section 14 of the Limitation Act to a proceeding/application under section 34 (3) of the Act, 1996, the Supreme Court in **Consolidated Engineering Enterprises** (supra), held as follows:

“53. Sub-section (3) of Section 34 of the AC Act prescribes the period of limitation for filing an application for setting aside an award as three months from the date on which the applicant has received the arbitral award. The proviso thereto vests in the court discretion to extend the period of limitation by a further period not exceeding thirty days if the court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words “but not thereafter” in

the proviso makes it clear that even if a sufficient cause is made out for a longer extension, the extension cannot be beyond thirty days. The purpose of proviso to Section 34(3) of the AC Act is similar to that of Section 5 of the Limitation Act which also relates to extension of the period of limitation prescribed for any application or appeal. It vests a discretion in a court to extend the prescribed period of limitation if the applicant satisfies the court that he had sufficient cause for not making the application within the prescribed period. Section 5 of the Limitation Act does not place any outer limit in regard to the period of extension, whereas the proviso to sub-section (3) of Section 34 of the AC Act places a limit on the period of extension of the period of limitation. Thus the proviso to Section 34(3) of the AC Act is also a provision relating to extension of period of limitation, but differs from Section 5 of the Limitation Act, in regard to period of extension, and has the effect of excluding Section 5 alone of the Limitation Act.

54. On the other hand, Section 14 contained in Part III of the Limitation Act does not relate to extension of the period of limitation, but relates to exclusion of certain period while computing the period of limitation. Neither sub-section (3) of Section 34 of the AC Act nor any other provision of the AC Act exclude the applicability of Section 14 of the Limitation Act to applications under Section 34(1) of the AC Act. Nor will the proviso to Section 34(3) exclude the application of Section 14, as Section 14 is not a provision for extension of period of limitation, but for exclusion of certain period while computing the period of limitation. Having regard to Section 29(2) of the Limitation Act, Section 14 of that Act will be applicable to an application under Section 34(1) of the AC Act. Even when there is cause to apply Section 14, the limitation period continues to be three months and not more, but in computing the limitation period of three months for the application under Section 34(1) of the AC Act, the time during which the applicant was prosecuting such application before the wrong court is excluded, provided the proceeding in the wrong court was prosecuted bona fide, with due diligence. Western Builders therefore lays down the correct legal position."

(Emphasis Supplied)

In *Baid Power Services Private Limited Vs. The Bihar Medical Services and Infrastructure Corporation Limited* reported in MANU/WB/1857/2024 : 2024 LiveLaw (Cal) 208, the Calcutta High Court, relying on the judgment of the Supreme Court in ***Consolidated Engineering Enterprises*** (supra), held that the Petitioner's approach at the first instance before the Writ Court, instead of moving a challenge under section 34 of the Act, 1996, comes squarely within the benefit accorded under section 14 of the Limitation Act. Paragraph Nos.27 to 33 & 41 of the said judgment, being relevant, are extracted below.

"27. In Himmatlal Harilal Mehta's case, the Supreme Court observed that if the remedy provided by an Act is of an onerous and burdensome character, a writ petition may be maintained under Article 226 of the Constitution.

28. The rigour of Section 19 of the MSME Act, mandating a prior deposit of 75 per cent of the awarded amount, in the teeth of the petitioner's contention that the award was a nullity, might very well have been construed as onerous by the petitioner. We cannot lose sight of the fact that the writ petition of the petitioner was entertained in the first place by this Court and in fact, the benefit of Section 14 was extended to the petitioner by the learned Single Judge at the first instance. It was only upon the appeal against the same being allowed that the petitioner conclusively came to know that the automatic

extension of benefit under Section 14 of the Limitation Act by the writ court was bad in law, having been set aside by the Division Bench.

29. *The very fact that the writ petition was entertained and the parties had to wait till the final disposal of the appeal to learn that the benefit of Section 14 of the Limitation Act could not be automatically extended by the writ court shows that sufficient bona fides could be attributed to the petitioner in preferring the writ petition.*

30. *Before the learned Single Judge dismissed the writ petition, the writ petition was entertained and thus the petitioner could not have anticipated that the same was not maintainable.*

31. *In fact, there are a plethora of judgments of the Supreme Court which lay down that in case of gross jurisdictional error, the writ jurisdiction cannot be completely shut out despite availability of an alternative remedy. The writ petitioner pleaded in its application (CAN 1 of 2022) filed in connection with the writ petition that the award itself was a nullity since the dispute did not come within the purview of the MSME Act as well as the respondent was registered as an MSME Unit only subsequent to the contract being entered into between the parties. Such perceived jurisdictional error, as pleaded by the petitioner, would be sufficient justification for the petitioner to approach the writ court.*

32. *Hence, the bona fides of the petitioner could not have been doubted at any stage, as it was sufficiently arguable as to whether a writ petition under Article 226 of the Constitution could be maintained.*

33. *In Consolidated Engineering Enterprises (supra) and Kalpraj Dharamshi (supra), the benefit of Section 14 was extended to challenges under Section 34 of the 1996 Act.*

41. *In view of the above, this Court is of the opinion that the petitioner's approach at the first instance before the writ court instead of moving a challenge under Section 34 of the 1996 Act comes squarely within the benefit afforded by Section 14 of the Limitation Act, 1963, since it proceeded before the writ court bona fide, which is borne out by the facts and circumstances of the present case. The petitioner is accordingly entitled to exclusion of the time spent in pursuing its remedy before the writ court".*
(Emphasis supplied)

16. From the admitted facts on record, it is amply clear that the Award being passed in MSEFC Case No.13 of 2016 by the MSEF Council, the Opposite Party No.1 incorrectly approached this Court in a Writ Petition. This Court also entertained such application and vide order dated 27.06.2019 had been pleased to issue notice to the present Petitioner (Opposite Party No.2 in the said Writ Petition) fixing the date of appearance to 06.08.2019. The said Writ Petition was pending till 08.03.2022, on which date it was dismissed as withdrawn, with liberty to file an application under section 34 of the Act, 1996. After receiving the certified copy of the order on 11.03.2022, the Opposite Party No.1 preferred the application under section 34 of the Act, 1996 on 31.03.2022 before the District Judge, Sundargarh, which was registered as Arbitration Case No.03 of 2022, along with an application for condonation of delay. Though in the petition for condonation of delay it should have been worded for exclusion of the period for which the Writ Petition was pending before this Court, while calculating the period of limitation in terms of

section 34 (3) of the Act, 1996, in the cause title of the petition, instead of making a mention regarding section 14 of the Limitation Act, 1963, incorrectly it was mentioned that such application is under section 5 of the Limitation Act, 1963. However, in the body of the petition, in Para-5, there is a mention regarding invocation of section 14 of the Limitation Act.

17. Admittedly, section 14 of the Limitation Act is applicable to a proceeding under section 34 of the Act, 1996, which mandates for exclusion of certain period while computing the period of limitation, not for extension of period of limitation. However, because of wrong wordings in the application for condonation of delay so also indication of the legal provision incorrectly in the said application and in the impugned order, the Petitioner, taking advantage of such mistake committed by the learned Counsel for the Opposite Party No.1 so also the Court below, has preferred the present Writ Petition challenging the order passed by the Court below on the ground of applicability of section 5 of the Limitation Act. Law is well settled that mentioning of a legal provision incorrectly or non-mentioning of a legal provision does not invalidate an order if the Court or the statutory authority had a requisite jurisdiction thereof. The Court below, in the impugned order, though incorrectly mentioned that application under section 5 of the Limitation Act is allowed, but clearly indicated that there is no delay in presenting the application under section 34 of the Act, 1996. The operative portion of the impugned order, being relevant, is reproduced below.

“ARBITRATION CASE NO.03 OF 2022

30.10.2023

XXXXX

XXXXXX

XXXXXX

XXXXXX

Heard both the sides at length. It is admitted that the award was passed by the MSEFC on 26.02.2019 and thereafter the petitioner being aggrieved with the said order preferred appeal before the Hon'ble Court on 10.06.2019 i.e. well within a period of 120 days. However, the Hon'ble Court passed order on 08.03.2022 directing the petitioner to file an application under section 34 of the Arbitration and Conciliation Act 1996 before the proper forum to quash the award and soon thereafter, on 31.03.2022 the petitioner filed this case before this Court. Therefore, in the fact situation, when there is no delay arises by the petitioner as he has filed a Writ Petition before the Hon'ble Court well within 120 days of the award passed by the MSEFC and soon after the direction of the Hon'ble Court, he filed this case. Hence, the petitioner has not filed his application before this Court after 120 days and the case is filed well within the period of limitation at the first instance. Accordingly, the petition under section 5 of the Limitation Act is allowed and the delay is condoned. The case is accordingly admitted. Call for the LCR and since the OP has already appeared put up on 29.11.2023 awaiting LCR. B.C. to comply”. **(Emphasis Supplied)**

Apart from the same, this Court, after noticing the present Petitioner in W.P.(C) No.10261 of 2019 and in presence of its Counsel, granted liberty to the present Opposite Party to prefer an application under section 34 of the Act, 1996. The Opposite Party No.2 in W.P.(C) No.10261 of 2019 (the present Writ Petitioner),

M/s. CHHABRA COAL BENEFICIARIES V. M/s. REXON STRIPS LTD. [S.K. MISHRA, J]

neither opposed to such leave granted by the coordinate Bench nor challenged the said order, which has attained finality.

18. Hence, this Court is of the view that liberty being granted by this Court, the Opposite Party No.1 rightly approached the concerned Court under section 34 of the Act challenging the award passed by the MSEFC along with an application to condone the delay by excluding the period for which the matter was sub-judice before this Court. The Court below also, exercising its power, as contemplated under section 14 of the Limitation Act, came to a conclusion that there is no delay in preferring the said application under section 34 of the Act, 1996 and the so called delay was condoned referring to the judgment of the Supreme Court in ***Oriental Insurance Company Ltd.*** (supra), though in the concluding para of the impugned order, the legal provision to allow such application to condone the delay has been incorrectly indicated.

19. In view of the detailed discussion and observations made above, so also settled position of law, this Court is of further view that there is no illegality or infirmity in the impugned order passed by the Court below as liberty was granted by this Court vide order dated 08.03.2022 passed in W.P.(C) No.10261 of 2019 to prefer an application under section 34 of the Act, 1996 and such application was also filed within a period of 24 days from the date of the said order dated 08.03.2022. In view of the admitted facts on record, the said Writ Petition was also filed within a period of 18 days from the date of receipt of the Award passed by the MSEFC.

20. In view of the settled position of law, as detailed above, this Court is of the view that the impugned order dated 30.10.2023 passed in Arbitration Case No.03 of 2022 should not be interfered with on the ground of wrong/ incorrect mentioning of the provisions of law. Point No.1 is accordingly answered against the Petitioner.

So far as point No.2, the same is also answered against the Petitioner, as the period for which the Writ Petition was pending before this Court had to be excluded from the period i.e. from the date of award of MSEFC till the date of dismissal of the said Writ Petition in terms of section 14 of the Limitation Act.

21. Accordingly, the Writ Petition stands dismissed. No order as to cost.

Headnotes prepared by:

Shri Jnanendra Ku. Swain(Judicial Indexer)
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Writ Petition dismissed.

2025 (I) ILR-CUT-1344

**TARUN KUMAR GADABAD
V.
SUBHALAXMI LENKA & ANR.**

[RPFAM NO. 85 OF 2014]

05 MARCH 2025

[G. SATAPATHY, J.]**Issue for Consideration**

Whether the maintenance should be given retrospectively with effect from filing of application or prospectively from the date of the award.

Headnotes

CODE OF CRIMINAL PROCEDURE, 1973 – Section 125 – Maintenance – Effective date for payment of maintenance – The petitioner/husband challenged the order of the Family Court, Khurda wherein direction was made to pay maintenance to wife and son with effect from the date of filing – Whether the maintenance should be given retrospectively with effect from filing of application or prospectively from the date of the award.

Held: – The maintenance to the wife and son in this case should be payable w.e.f. the date of application filed by them U/s. 125 of Cr.P.C. (Para 6)

Citations References

Rina Kumari @ Rina Devi @ Reena vrs. Dinesh Kumar Mahto @ Dinesh Kumar Mahato and another; **2025 SCC Online SC 72**; Rajnesh Vrs. Neha and another, **(2021) 2 SCC 324** – referred to.

List of Acts

Criminal Procedure Code, 1973.

Keywords

Maintenance; Date of filing of application; Retrospectively; Prospectively

Case Arising From

Judgment dated 14.07.2014 passed by the learned Judge, Family Court, Khurda in Criminal Petition No. 219 of 2012.

Appearances for Parties

For Petitioners : Ms. S. Mohanty

For Opp. Parties : Mr. S. Ghosh (O.P. No. 1)

Judgment/Order**Judgment****G. SATAPATHY, J.**

1. This present revision by the petitioner-husband is directed against the impugned judgment dated 14.07.2014 passed by learned Judge, Family Court, Khurda passed in Criminal Petition No.219/2012 directing the petitioner-husband to pay a sum of Rs.5,000/- per month to OP No.1-wife and Rs.3,000/- per month to OP No.2-son towards their maintenance w.e.f. the date of filing of the application under Section 125 CrPC.

2. In the course of hearing, Ms. Sumitra Mohanty, learned counsel for the petitioner submits that although the petitioner-husband is ready and willing to take back the OP-wife, but the OP-wife is reluctant to come to join the company of the husband and in fact, there is no allegation of cruelty against the petitioner-husband, but the learned trial Court, without taking note of the fact that the wife has refused to stay with the husband without any sufficient cause, has passed the impugned order directing the husband to pay the maintenance and, therefore, such order being untenable in the eye of law is required to be set aside. Further, Ms. Sumitra Mohanty submits that although the petitioner is required to pay the maintenance prospectively, but the learned trial Court has erroneously awarded and passed order directing the petitioner-husband to pay the maintenance w.e.f the date of filing of the application. On the aforesaid submission, Ms. Sumitra Mohanty, prays to set aside the impugned order.

2.1 On the other hand, Mr. Sukumar Ghosh, learned counsel for the OP, however, submits that although the application for divorce filed by the petitioner-husband was not allowed by the learned trial Court and the same was confirmed by this Court as well as the Apex Court, but the petitioner-husband has preferred this revision only to harass the OP and all the contentions of the petitioner-husband has been taken care of in the proceeding before the learned trial Court for grant of divorce as well as the same was rightly appreciated and confirmed by this Court as well as by the Apex Court and in the circumstances, the present revision merits no consideration and is accordingly liable to be dismissed. Mr. Ghosh, accordingly prays to dismiss the revision.

3. After having considered the rival submissions upon perusal of the record, since there is no dispute about the relationship between the parties and the fact that the divorce application of the petitioner-husband has been refused by the learned trial Court which finding was confirmed by this Court in MATA No.79 of 2012 which was further confirmed in Special Leave to Appeal (C) No.8270 of 2020 by the Apex Court and, therefore, this Court does not find any difficulty to hold that the

petitioner and OP No-1 are husband and wife and there is dissension between the parties, but fact remains that once a relationship of marriage is found to be admitted and not dissolved by any competent Court of law, the husband being an abled body person and working in a Government employment is statutorily required to maintain his wife and children, even there is a dissension between the parties.

4. However, since learned counsel for the petitioner has advanced that the petitioner-husband is ready and willing to take back the wife and child, but the wife is reluctant to come and thereby the husband is not entitled to maintain the wife, this Court considers it useful to refer to the very recent decision of the Apex Court in ***Rina Kumari @ Rina Devi @ Reena vrs. Dinesh Kumar Mahto @ Dinesh Kumar Mahato and another***; 2025 SCC Online SC 72, wherein the Apex Court in paragraph-29 of the impugned judgment has held as under;

*“29. Thus, the preponderance of judicial thought weighs in favour of upholding the wife's right to maintenance under Section 125 CrPC and **the mere passing of a decree for restitution of conjugal rights at the husband's behest and noncompliance therewith by the wife would not, by itself, be sufficient to attract the disqualification under Section 125(4) CrPC.** It would depend on the facts of the individual case and it would have to be decided, on the strength of the material and evidence available, whether the wife still had valid and sufficient reason to refuse to live with her husband, despite such a decree. There can be no hard and fast rule in this regard and it must invariably depend on the distinctive facts and circumstances obtaining in each particular case. **In any event, a decree for restitution of conjugal rights secured by a husband coupled with non-compliance therewith by the wife would not be determinative straightaway either of her right to maintenance or the applicability of the disqualification under 125(4) CrPC.**”*

5. It is, therefore, very clear that when the wife has reason to stay separately, she can maintain an application for maintenance, even though a decree of restitution of conjugal right has been passed by a competent Court, but in this case, admittedly there is no proceeding between the parties for restitution of conjugal right and on the other hand, the learned trial Court after referring to the evidence on record has rightly considered that since the wife is unable to maintain herself, she is entitled to maintenance. Further, adverting to the issue of maintenance to the children, this Court also considers it apt to refer to the most celebrated decision in ***Rajnesh Vrs. Neha and another***; (2021) 2 SCC 324, wherein the Apex Court while laying down guidelines for litigating spouses to get maintenance has made certain observation in paragraph-91 & 92 for the requirement of maintenance of the children born out of the wedlock of the parties. The relevant paragraphs-91 & 92 of the said decision are extracted as under:

“91. The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount

to be awarded for extracurricular/ coaching classes, and not an overly extravagant amount which may be claimed.

92. Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties.”

6. In view of the aforesaid facts and after going through the evidence on record and making a careful discussion in the matter, this Court does not find any error apparent on the impugned judgment and thereby, the same needs to be affirmed by this Court. However, this Court while considering the plea of the husband that he is required to pay the maintenance amount prospectively with the date of filing of this revision application, this Court find it relevant to refer to the decision in **Rajnesh (supra)**, wherein the Apex Court in the discussion and directions at Part-B (IV) has held as under:-

“Even though a judicial discretion is conferred upon the Court to grant maintenance either from the date of application or from the date of the order in S.125(2) Cr.PC., it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 Cr.P.C. In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application”.

Applying the aforesaid principle, the maintenance to the wife and son in this case should be payable w.e.f. the date of application filed by them U/S. 125 of CrPC.

7. In the result, the revision by the petitioner husband being unmerited stands dismissed on contest, but in the circumstance, there is no order as to costs.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

RPFAM dismissed.

2025 (I) ILR-CUT-1348

**MAMATA NAYAK & ANR.
V.
SUNITA DHAL & ORS.**

[MACA NO. 932 OF 2023]

10 MARCH 2025

[G. SATAPATHY, J.]

Issues for Consideration

1. Whether penal interest @ 9% per annum on the compensation amount imposed by the Motor Accident Claims Tribunal-cum-Additional District Judge is sustainable.
2. Whether major married sister and major earning brother are entitled to compensation under the heading of “loss of dependency”.

Headnotes

(A) MOTOR VEHICLES ACT, 1988 – Section 171 – The learned Tribunal ordered for penal interest @ 9% per annum, if the award is not paid within two months of receipt of copy of the order – Whether penal interest @ 9% per annum on the compensation amount imposed by the Motor Accident Claims Tribunal-cum-Additional District Judge is sustainable.

Held: No – Section 171 of the Act contemplates about interest but not penal interest – The imposition of penal interest @ 9% per annum on the compensation amount being not sustainable is hereby set aside. (Para 15)

(B) COMPENSATION – Apportionment of compensation – In the present case R3 to R6 are legal heirs of the (deceased), husband of Appellant No. 1 – A dispute arose between the widow and her child on one side and widow mother, major and minor sister and brother on the other side asserting their right to compensation – The mother, brother and sisters of the deceased are also claiming share in the compensation in equal portion with that of widow and infant son of the deceased, who also lay their claim on the compensation along with widow mother of the deceased – Whether the major married sister and major earning brother are entitled to compensation under the heading of “loss of dependency”.

Held: No – R5 and R6 are not entitled to compensation under the heading of “loss of dependency”, but they may have the right to a share on the non-contractual heads of loss of estates as well as filial consortium towards loss of love and affection of their deceased brother. (Para 13)

Citations Reference

Sarla Verma Vrs. Delhi Transport Corporation, **(2009) 6 SCC 121**; National Insurance Company Ltd. Vrs. Birender and Others, **AIR 2020 SC 434**; New India Assurance Company Ltd. Vrs. Anand Pal and Others; **2024 (1) T.A.C. 3 (S.C)**; National Insurance Company Ltd. Vrs. Pranay Sethi and Others, **(2017) 16 SCC 680 – referred to.**

List of Acts

Motor Vehicles Act, 1988.

Keywords

Loss of dependency; Penal interest; Quantum of compensation; Apportionment of compensation; Filial consortium.

Case Arising From

Judgment dated 31.07.2023 passed by learned 3rd Motor Accident Claims Tribunal-cum-Additional District Judge, Bhanjanagar, Ganjam in MAC Case No. 21 of 2020.

Appearances for Parties

For Appellants : Mr. K. Panigrahi

For Respondents : Mrs. N. Mohanty (R-2), Mr. S.K. Dash (R Nos.3-6)

Judgment/Order**Judgment****G. SATAPATHY, J.**

1. This appeal U/S. 173 of the Motors Vehicle Act, 1988 (In short “the Act”) by the Appellants is directed against the impugned judgment dated 31.07.2023 passed by learned 3rd Motor Accident Claims Tribunal-cum-Additional District Judge, Bhanjanagar, Ganjam (In short the “Tribunal”) in MAC Case No. 21 of 2020 directing the Respondent No.2(R2) to pay a sum of Rs. 18,87,244/- (Rs. Eighteen Lakhs Eighty Seven Thousand Two Hundred Forty Four) only together with the interest @ 6 % per annum w.e.f 18.02.2020 to the Appellants-Petitioners and Respondent Nos.3 to 6(R3 to 6) proportionately in an application U/S. 166 of the Act.

2. The facts in precise are that on 29.01.2020 at about 3PM, the husband of Appellant No.1(A1) namely Sunila Nayak while being travelling as a passenger in a Bus bearing Registration No. OR-05AB-3530 from Rayagada to Berhampur died in the accident, which occurred when the Bus lost control and felled to a depth of 30 feet from the road near village Palukhola, Taptapani Ghat due to rash and negligent driving of the driver. On this incident, a police case was registered in Pattapur PS Case No. 15 of 2020 and charge sheet was submitted against the driver of the offending Bus for offence U/Ss. 279/304-A of the IPC. Accordingly, the present

Appellants filed an application U/S. 166 of the Act before the learned tribunal in MAC Case No. 21 of 2020 and simultaneously the R3 to 6 filed another application in MAC No.38 of 2020 before the 8th MACT, Ganjam at Aska for compensation due to death of the deceased in the motor vehicular accident. However, MAC No. 38 of 2020 was withdrawn and the Applicants therein were arrayed as OP Nos. 3 to 6 in MAC Case No. 21 of 2020. According to the claimants, the deceased was aged about 28 years at the time of death and he was working as a driver in a school bus and earning @ 21,000/- per month. Accordingly, the claimants in MAC Case No. 21 of 2020 claimed a sum of Rs. 20,00,000/-, whereas the claimants in MAC No. 38 of 2020, who are R3 to 6 in this appeal claimed Rs. 10,00,000/- as compensation for the loss of the deceased by impleading the owner and insurer of the offending vehicle.

3. In response to the notice of the claim, the owner of the offending vehicle did not contest the claim and was accordingly, set ex-parte on 29.09.2022, but the insurer of the offending vehicle who is the R2 in this appeal filed its written statement denying the claim of the claimants with regard to age, income and profession of the deceased. Additionally, the insurer-R2 also took a plea that it is not liable to indemnify the owner of the offending vehicle, since the driver was not having any valid and effective driving license at the time of accident. Be it noted, OP Nos. 3 to 6, while being arrayed in the claim in MAC No. 21 of 2020 as Opposite Parties came with a plea in their written statement that the claimant-wife and son being paid with a *ex gratia* compensation from Chief Minister's Relief Fund did not pay a single pie to them and they further claimed for payment of compensation to them in equal proportion, since they are not only the natural legal heirs of the deceased, but also dependents on him.

4. After having considered the rival pleadings, the learned Tribunal struck with three issues relating to cause of death of the deceased & accident occurring due to rash and negligent driving of the offending bus; entitlement of the claimants and R3 to 6; and liability of OP Nos. 1 and 2 to pay the compensation. The learned Tribunal accordingly, allowed the parties to lead evidence and in support of their claim, the claimants examined Petitioner No.1 as PW1 and relied upon document in Police Papers in Pattapur PS Case No. 15 of 2020 under Ext. 1 to 6, original DL particular and ID issued to the deceased under Exts 8 & 9 as against sole oral evidence of OP No.4 as OPW1 and copy of the claim application in MAC Case No. 38 of 2020 by OP Nos.3 to 6, however, no evidence has been tendered by the insurer.

5. After analyzing the evidence on record upon hearing the parties, the learned Tribunal passed the impugned judgment directing R2 to pay the compensation of amount of Rs.18,87,244/- to the Appellants and R3 to 6 proportionately, but the Appellants being aggrieved with the quantum of compensation and apportionment of the claim have preferred this appeal.

6. In assailing the impugned judgment, Mr. Kalpataru Panigrahi, learned counsel for the Appellants has submitted that impugned judgment suffers from illegality on the question of quantum of compensation and apportionment of the claim amount amongst the parties inasmuch as the learned Tribunal has taken the income of the deceased notionally on the basis of minimum wage, but the principle remains that while assessing the income of the deceased in absence of any concrete evidence, the learned Tribunal has to assess the income of the deceased on the basis of real wages that were being paid to the deceased on the basis of speculation and, therefore, the learned Tribunal ought to have taken the income of the deceased at least @ Rs. 15,000/- per month, instead of Rs. 10,000/- per month which was taken by the Tribunal, which further fallen in error in adding 25% of the income of the deceased as future prospects, despite having come to a finding that the deceased was a self employed and 40% of his income should be added as future prospects. It is accordingly, urged by Mr. Panigrahi that the compensation be quantified by taking into account the income of the deceased @ Rs. 21,000/- per month by adding 40% of the income of the deceased @ Rs. 15,000/- per month towards future prospect. Mr. Panigrahi has further argued that out of R3 to 6, only R3 being the mother of the deceased is entitled to compensation, but R4 to 6 being major sister, minor sister and major employed brother being not dependents on the deceased are not entitled to any compensation. Mr. Panigrahi has accordingly, prayed to pass appropriate order to direct R2 to pay the enhanced compensation by modifying the apportionment of the compensation amongst the Appellants and R3 only after excluding R4 to 6 as not entitled to compensation.

6.1. In reply, Mr. Soubhagya Kumar Dash, learned counsel for the R3 to 6 has submitted that the learned Tribunal has not committed any illegality either in determining the compensation or apportioning it amongst the Appellants and R3 to 6 inasmuch as the act itself provides for compensation to the legal representative of the deceased and it does not restrict the right to claim compensation solely to the dependents. He has further alternatively submitted that even if the claimants are not financially dependents on the deceased, they retain the right to seek compensation for the loss of estate and other conventional heads and, therefore, the plea as advanced by the Appellants being untenable in the eye of law may kindly be rejected.

6.2. On the other hand, Mrs. Nibedita Mohanty, learned counsel for R2-insurer has in fact not replied to the dispute of apportionment, but she has strongly contended that the learned Tribunal has not committed any illegality in determining the compensation, however, she assails the finding of the learned Tribunal for ordering penal interest @ 9% per annum, if the award is not paid within two months of the receipt of copy of the order. It is accordingly, submitted by Mrs. Mohanty that in absence of any evidence of income of the deceased, the Tribunal has rightly quantified the compensation by taking the income of the deceased on the basis of minimum wages and, therefore, such finding needs no interference, but she prays to

set aside the direction for payment of penal interest. Mrs. Mohanty has accordingly, prayed to dismiss the appeal.

7. After having considered the rival submission upon perusal of evidence on record, since the present appeal U/S.173 of the Act essentially an appeal in the nature of an appeal U/S. 96 of the Code of Criminal Procedure, 1908 (In short "the CPC") in essence, this Court is under legal obligation to consider all the issues both on facts and law as raised by the parties and decide the appeal accordingly by re-appreciating the evidence on record vis-a-vis the pleadings of the parties. On a studied and comparative scrutiny of rival submissions, two questions arise before the Court for adjudication; viz firstly, the quantum of compensation and secondly; the apportionment of compensation between the Appellants and R3 to 6. Be it noted, the learned Tribunal while adjudicating the claim of the claimants has answered all the three issues in favour of the claimants and R3 to 6, but these findings have neither been challenged by the insurer nor by the owner. Further, the police paper under Exts. 1 to 7 if read together with the oral evidence, it gives rise to a conclusion by preponderance of probability that the deceased died in the accident due to rash and negligent driving of the driver of the offending vehicle and, therefore, the learned Tribunal on appreciation of evidence has rightly held that the deceased died in a motor vehicular accident due to rash and negligent driving of the driver of the offending Bus, however, the maintainability of the claim has not been challenged by any of the parties and thus, the issue of maintainability of the claim having been given a quietus by the parties, the findings thereon by the learned Tribunal has attained finality and needs no interfere by this Court in this appeal.

8. Once the claim is found maintainable, the next question comes for adjudication is the quantum of compensation. In quantifying the compensation, the Tribunal is primarily required to ascertain the loss of dependency which can be calculated by the formula laid down by the Apex Court in **Sarla Verma Vrs. Delhi Transport Corporation;(2009) 6 SCC 121** which prescribes a three steps formula in which the first step is for determination of the income of the deceased per annum. It is prescribed therein that the income of the deceased per annum should be determined by making deduction of the amount which the deceased could have spent on himself by way of personal and living expenses and the net amount could be considered as the contribution of the deceased to the depending family. Accordingly, a formula has been provided in **Sarla Verma(supra)** for determining the deduction towards the personal living expenses of the deceased person and it has been prescribed therein that there should be a deduction of 1/3rd from the actual income of the deceased, where the number of dependent family members is two to three, 1/4th where the number of dependent family members is four to six and 1/5th where the number of dependent family members exceed six, but it is further clarified therein that when the deceased died as a bachelor, normally 50% of deduction is the rule towards the personal & living expenses of the deceased.

9. Before applying the rule as prescribed in *Sarla Verma(supra)* for determining the deduction towards personal living expenses of the deceased, it appears that although there are six claimants to be dependent on the deceased, but it is claimed on behalf of widow wife and son of the deceased as claimants that except the mother of the deceased, none other such as the brother and sisters are entitled to compensation as dependents of the deceased. This conundrum persuades this Court to see the pleadings and evidence of the claimants. The specific plea of R3 to 6 in their claim for compensation is that after the death of his father, the deceased being the elder son, Karta and only earning member of the family and they being the widow mother, major unmarried sister, minor sister and younger brother were fully dependent upon the earning of the deceased along with the Appellants and now they are beggar in the street. The issue in this question spelt out a dispute between the widow and her child on one side and widow mother, major and minor sisters and brother on the other side asserting their right to compensation, but the mother, brother and sisters of the deceased are also claiming share in the compensation in equal proportion with that of widow and infant son of the deceased who also lay their claim on the compensation along with widow mother of the deceased, but to the exclusion of sisters and brother.

10. In support of their claim, R3 to 6 relies upon the decision in *National Insurance Company Ltd. Vrs. Birender and others; AIR 2020 SC 434*, wherein after surveying its earlier decision and the distinction between right to apply for compensation and entitlement to compensation as well as on adverting to the provision of Sec. 165 of the Act, the Apex Court by interpreting Section 2(11) of the Code of Civil Procedure, 1908 (In short “CPC”) has held thus in paragraph-15:-

“15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/ and Rs.1,50,000/ per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.”

11. True it is that in the present case, R3 to 6 being the legal representative of the deceased have a right to apply for compensation, but fact remains that whether they can be considered as a dependent on the deceased to have a share in the amount of compensation under the heading of “loss of dependency” which can be answered by placing reliance on the decision in *New India Assurance Company Ltd. Vrs. Anand Pal and others; 2024 (1) T.A.C. 3 (S.C.)*, wherein in a similar situation with regard to entitlement of brothers and sisters as dependents upon the deceased, the

Apex Court after referring to paragraph 31 of the **Sarla Verma (supra)** has held in paragraph 4 and 5 of the judgment as under:-

*“4. In support of his contention, Mr. Kumar relies on **Sarla Verma (Smt.) & Ors. Vrs. Delhi Transport Corporation & Another; (2009) 6 SCC 121**, wherein this Court held as under:*

*“31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, **subject to evidence to the contrary**, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. **In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.***

5. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents as because they will either be independent and earning, or married, or be dependent on the father.”

12. After a cumulative reading of principle laid down by the Apex Court in the decisions referred to above, this Court now adverts to see the impugned judgment with regard to the entitlement of R3 to 6 as dependents. The learned Tribunal on the last part of paragraph-9 of the impugned judgment by considering the evidence has held that R4 to 6 are all entitled to get compensation, but since R5 (Ranima Nayak) being married and leading conjugal life with her husband; and R6 being a major employed, equity must not prevail so far as quantum of compensation is concerned. While observing so, the learned Tribunal has taken into consideration the evidence of OPW1. For clarity, the relevant part of consideration of the evidence of OPW1 in judgment by the Tribunal is extracted as under:-

“She (OPW1) further stated in her cross-examination that Ranima (Respondent No.5) is now married and is having a child. She is now staying with her husband in his house and she got married after the death of Sunil. Cross-examination of DW.1 (OPW1) further reveals that her younger brother Samil (Respondent No.6) is now working in a shop after the death of Sunil and is now managing the expenditure of their family. From the available documents and from the oral evidence of Respondent No.4, it is now clear that at the time of death of Sunil Nayak, Respondent No.3 Kuni Nayak who is the widow mother of the deceased was staying with Sunil Nayak and Sunil Nayak was taking care of her. Similarly, Respondent No.4 Minati Nayak who is the elder sister of the deceased was also sharing the same household since she is not married is also the rightful claimant on the compensation. Respondent No.5 Ranima Nayak was minor at the time of accident and in the meantime she has already got married and is living with her husband in his house. Similarly, Respondent No.6 was a minor and was unemployed at the time of death of his elder brother Sunil Nayak. But, after the death of Sunil Nayak he (R6) is managing the affairs of his family.”

13. On a careful scrutiny and conspectus of the aforesaid facts and evidence which has not been disputed by any of the parties, it appears that R3 is the widow

mother and R4 is the major unmarried sister of the deceased, but since there being some evidence that R4 was depending on the income of the deceased, although she being major unmarried daughter is entitled to compensation under the heading of “loss of dependency” in addition to the widow mother since the law laid down by the Apex Court in **Sarla Verma (supra)** which was reiterated in **Anand Pal (supra)** focuses on the evidence to decide the issue of dependency of brothers and sisters and there being evidence in this case to indicate about major married sister Minati Nayak depending on the income of the deceased brother is entitled to compensation under the heading of “loss of dependency”, but apportionment of the compensation amount would be considered at appropriate stage by taking into account their life expectancy and requirements in addition to the fact that their requirement can also be managed by R6 being a major earning son of the family right now, however, R5 and 6 are not entitled to compensation under the heading of “loss of dependency”, but they may have the right to a share on the non-conventional heads of loss of estates as well filial consortium towards loss of love and affection of their deceased brother.

14. In examining the findings of the learned Tribunal with regard to income of the deceased in the light of the contention canvassed by the learned counsel for the Appellants, there appears no dispute that the learned Tribunal has assessed the income of the deceased by wholly relying upon the minimum rates of wages per day in terms of the notification of labour department and accordingly, the learned Tribunal has calculated the monthly income of the deceased @ Rs. 10,096/- per month, but the copy of the claim application of the Appellants and that of R3 to 6 as supplied by the learned counsel for the parties reveal that the Appellants have showed the monthly income of the deceased @ Rs. 21,000/- per month in their claim application, whereas R3 to 6 have described the monthly income of the deceased @ Rs. 15,000/- per month + Rs. 100/- DA per day. However, no evidence has been produced by either of the parties to show the monthly income of the deceased for a particular amount. In absence of any evidence with regard to the profession/avocation of the deceased, the learned Tribunal has rightly taken the deceased as skilled labour by speculation while applying the minimum rates of wage per day fixed for skilled labour and, therefore, such finding being on sound application of mind and law needs no interference. This Court, therefore, takes the monthly income of the deceased @ Rs. 10,096/- per month, but the learned Tribunal has fallen in error while adding 25% of such income towards future prospects even after holding that since the deceased was self employed, 40% of his income should be added towards future prospects by relying upon the decision of Apex Court in **National Insurance Company Ltd. Vrs. Pranay Sethi and others ; (2017) 16 SCC 680** since the deceased was aged about 31 years at the time of death. Accordingly, the deceased’s annual income would be Rs. 10,096/- X 12= Rs. 1,21,152/-, but since the deceased was aged about 31 years, his net monthly income by adding 40% towards future prospects would be Rs. 1,21,152/+40% of 1,21,152/= Rs.1,69,613/-.

15. Applying the principle of *Sarla Verma(supra)*, since the deceased was considered to have four dependents, $1/4^{\text{th}}$ of the aforesaid income is to be deducted from it to determine the “loss of dependency”. Accordingly, the “loss of dependency” per year is calculated @ Rs. 1,69,613- Rs.42,403($1/4^{\text{th}}$ of Rs.1,69,613)=Rs.1,27,210/-. Hence, the correct figure under the heading of “loss of dependency” would come to Rs. 1,27,210/- X 16 (multiplier)= Rs. 20,35,360/-. In addition, the claimants are also entitled to receive Rs. 84,000/- towards non conventional heads of loss of consortium, estate and funeral expenses by adding 10% increase on the amount of Rs. 70,000/- for every three years for two times for death having occurred in the year 2020 in terms of the law laid down by the Apex Court in *Pranay Sethi (supra)*. Accordingly, the modified compensation amount is calculated at Rs.20,35,360/+Rs. 84,000/=Rs. 21,19,360/-(Rupees Twenty One Lakhs Nineteen Thousand Three Hundred Sixty) only. In addition, an interest @ 6% per annum is applicable to this case, but the imposition of penal interest @ 9% per annum on the compensation amount being not sustainable is hereby set aside since Sec. 171 of the Act only contemplates about interest, but not penal interest.

16. As a consequence of the discussion made hereinabove, the compensation amount is recalculated at Rs. 21,19,360/- together with interest @ 6 % per annum, but the apportionment of the award is to be made accordingly by taking into consideration the fact discussed in paragraph No.13. Thus, in case of payment of modified awarded amount as calculated above, 25% of it in the name of widow of the deceased for five years; 30% of it in the name of minor son of deceased till he attains majority; 10% of it in the name of mother and 5% of it in the name of unmarried sister (Minati Nayak) of the deceased for five years be deposited in any Nationalized Bank without any facility of premature withdrawal, unless being permitted by the learned Tribunal and 20% of the awarded amount be disbursed to the widow and son of the deceased in cash and out of rest 10% of the awarded amount, 5% be disbursed to the mother in cash and rest 5% would be disbursed to the two sisters and brother of the deceased proportionately. It is further made clear that the Court fee in the appeal be realized from the Appellants on awarded amount.

17. In the result, the appeal stands allowed on contest, but in the circumstance, there is no order as to costs. Ergo, the recalculated award and its disbursement to the parties are accordingly modified to the extent indicated above.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

MACA allowed.

2025 (I) ILR-CUT-1357

**CHAND MOHAMMAD
V.
STATE OF ODISHA**

[CRLA NO. 734 OF 2024]

AND

MOHAMMAD AKIL V. STATE OF ODISHA

[JCRLA NO. 93 OF 2024]

21 MARCH 2025

[G. SATAPATHY, J.]

Issue for Consideration

Whether in absence of compliance of mandatory provision U/s. 52-A of the Narcotic Drugs and Psychotropic Substances, Act, 1985 an inference can be drawn that prosecution has not been able to prove its case against the appellant.

Headnotes

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 – Section 52-A – Non-compliance of mandatory provision – The appellants have been convicted for commission of offence punishable U/ss. 20(b)(ii)(C) of NDPS Act – The primary evidence for proving possession of the narcotic substance would always be the seized substance itself – There is no evidence to certify the correctness of any list of samples so drawn – The evidence on record does not disclose about the production of recovered and seized articles before the Court concerned, much less the remaining samples ever produced before the Court – Recovery of the contraband ganja from the exclusive possession of the appellants not proved – Whether in absence of compliance of mandatory provision U/s. 52-A of the NDPS Act an inference can be drawn that prosecution has not been able to prove its case against the appellant.

Held: Yes – From a cumulative analysis of evidence on record and discussion made hereinabove, this Court is of the considered opinion that neither the provision of Sec. 52-A of the NDPS Act has been complied with nor the recovery of the Contraband Ganja from the exclusive possession of the appellants has been proved through any independent witness nor the safe custody of the Contraband articles has been established, which assumes great significance on the face of admitted evidence of keeping the custody of the samples with PW2-the raiding officer overnight without any explanation and it only leads to an inference that prosecution has not been

able to prove its case against the appellants beyond all reasonable doubt by leading clear, cogent and unimpeachable evidence. (Para 11)

Citations Reference

Bharat Aambale vrs. State of Chhatisgarh, **2025 SSC Online SC 110 – referred to.**

List of Acts

Narcotic Drugs and Psychotropic Substances Act, 1985.

Keywords

Narcotic drugs and psychotropic substances; Non-compliance of mandatory provision; Contraband articles; Exclusive possession; Representative sample.

Case Arising From

Judgment dated 19.04.2024 passed by the 1st Additional Sessions Judge-Cum-Special Judge (NDPS), Berhampur in 2(a)CC Case No.110 of 2022 (N) arising out of Excise EI & EB (SD), Berhampur, Ganjam PR No.827 of 2022-23.

Appearances for Parties

For Appellants : Mr. S.K. Dash (in CRLA 734 of 2024)
Mr. K. Nayak, Amicus Curiae (in JCRLA 93 of 2024)

For Respondent : Mr. A.K. Apat, Addl. PP

Judgment/Order

Judgment

G. SATAPATHY, J.

1. Since these two appeals arise out of one conviction in the same case record, both the appeals are heard together and disposed of by way of this common judgment.

2. The appellants Chand Mohammad in CRLA No.734 of 2024 and Mohammad Akil in JCRLA No.93 of 2024 assail their conviction and sentence as recorded by the learned 1st Additional Sessions Judge-Cum-Special Judge (NDPS), Berhampur, Ganjam by the impugned judgment dated 19.04.2024 passed in 2(a)CC Case No.110 of 2022 (N).

By the aforesaid impugned judgment, the appellants have been convicted for commission of offence punishable U/Ss.20(b)(ii)(C) of NDPS Act and sentenced to undergo Rigorous Imprisonment (RI) for ten(10) years with payment of fine of

Rs.1,00,000/- (Rupees One Lakh), in default whereof, to undergo RI for a further period of one(1) year with the benefit of set off of the pre-trial detention against the substantive sentence.

3. The prosecution case in brief is on 22.11.2022, PW2-the Inspector of Excise, EI & EB UnitII (SD), Berhampur and staff while performing patrolling duty in Aska road, Berhampur noticed one while Tata Sumo Gold bearing Regd. No.MP-04TB-1610 at Ankushpur going speedily. Accordingly, PW2 and staff detained the Tata Sumo vehicle, recovered Contraband Ganja in two separate jerry bags along with the appellant Chand Mohammad who was driving the vehicle and the appellant Mohammad Akil as the helper and PW2, thereafter, by procuring local witness PW3 weighed and seized the Contraband Ganja by collecting samples from it. PW2 also sealed the Contraband Ganja by her personal brass seal and handed it over to PW1the Excise Constable and arrested the accused persons after observing all formalities, so also seized the Tata Sumo Gold vehicle and other documents and forwarded the appellants to the Court along with the seized articles which on weighment had come to 80Kgs. Further, PW2 successfully prayed to the Court for drawing of samples, and accordingly, the learned SDJM, Berhampur drew the samples by the order of the learned Special Judge and the samples were sent to Assistant Chemical Examiner, Divisional Excise Chemical Testing Laboratory (SD) (DECTL), Berhampur.

3.1. On this incident, an advance Prosecution Report (PR) was drawn which subsequently on investigation culminated in submission of final PR No.827 of 2022-23 by PW2, which ultimately resulted in trial in the present case after the appellants pleaded not guilty to the charge for commission of offence U/Ss.20(b)(ii)(C) of NDPS Act.

3.2. In support of its case, the prosecution examined altogether 3 (three) witnesses vide PWs.1 to 3; proved 23 (Twenty-three) documents under Exts.P1 to P-23 and identified 3 (three) material objects under MOI-III as against no evidence whatsoever by the defense. The plea of the appellants in the course of trial was denial simplicitor and false implication.

3.3. After analyzing the evidence on record upon hearing the learned counsel for the parties, the learned trial Court convicted the appellants for commission of offence punishable Under Section 20(b)(ii)(C) of the NDPS Act and sentenced each of them to the punishment indicated in the first paragraph. Being aggrieved with the judgment of conviction and sentence, the appellants have preferred two separate appeals.

4. In the course of hearing of these two appeals, Mr. Soubhagya Kumar Dash, learned counsel for the appellant-Chand Mohammad in CRLA No.734 of 2024 submits that not only the prosecution evidence is shaky, but also it has failed to prove the charge against any of the appellants and the prosecution evidence on record never establishes any of the mandatory compliance as required under NDPS Act. Mr. Dash further submits that the prosecution has failed to comply the provisions of Sections 42 and 52-A of NDPS Act, which is clearly appearing from the evidence and, therefore, the conviction of the appellants being unsustainable is required to be quashed/set-aside. In echoing the aforesaid submission, Mr. Karunakar Nayak, learned counsel appearing as Amicus Curiae for the appellant Mohammad Akil in JCRLA No.93 of 2024 submits that the independent seizure witness has not at all supported the prosecution case and the evidence of other official witnesses does not inspire confidence and, thereby, the appellant should have been acquitted. It is, accordingly, prayed for the appellants to acquit them of the charge by allowing the appeals.

4.1. On the other hand, Mr. A.K. Apat, learned Additional Public Prosecutor, however, submits that the evidence on record clearly establishes the recovery of Contraband Ganja from the conscious possession of the appellants and, thereby, the appellants have been rightly convicted for the offence. It is, further, submitted by the learned Additional Public Prosecutor that since the recovery of the Contraband Ganja having been established against the appellants, the onus of proving their innocence squarely rest on them in view of the provision of Section 54 of the NDPS Act which has not at all been discharged by the appellants and, therefore, the conviction of the appellants cannot be faulted with. Accordingly, learned Additional Public Prosecutor prays to dismiss the appeal.

5. After having considered the rival submissions upon perusal of record, since the appellants assail the impugned judgment of conviction by praying to acquit them of the charge for the offence U/Ss. 20(b)(ii)(C) of NDPS Act, this Court has a duty to re-appreciate the evidence on record to find out the legal sustainability of the impugned judgment. On advertent to the evidence on record, it appears that PW3 being the independent witness to seizure has not at all supported the prosecution case and his cross-examination by the prosecution yield no result, but the cross-examination of PW3 favours the defense inasmuch as PW3 has admitted in his cross-examination that he signed on blank printed papers and nothing was seized in his presence from the conscious possession of the appellants on the date of occurrence and he signed the papers at the behest of Excise Officials.

6. There is no quarrel over the position of law that the evidence of official witness deserves equal importance provided it is worthy of acceptance and in this case, after the independent witness of PW3, the prosecution case entirely built upon the evidence of official witnesses of PWs.1 and 2, who are none other than the raiding officials and one of them i.e. PW2 has conducted the investigation. On coming to the evidence of PW2, it transpires that the Contraband Ganja was transported in a Tata Sumo Gold vehicle bearing Regd. No.MP-04-TB-1610 and the appellants are found as occupants of said vehicle, but the admitted evidence of the prosecution case is that the Excise Officials while performing patrolling duty had detected the Contraband Ganja which is a chance recovery, but it appears that the learned trial Court has based conviction on the basis of evidence of witnesses with regard to possession of the Contraband articles by the appellants. However, the seized Contraband articles have never been produced before the Court. In order to overcome the prove of recovery of Contraband Ganja, the prosecution has taken the recourse of Section 52-A of the NDPS Act by bringing evidence on record by way of exhibiting the letter of SDJM, Berhampur along with destruction certificate under Exts.P-21 and P-22. The fact remains that Section 52-A of the NDPS Act provides the procedure for disposal of seized Narcotic Drugs and Psychotropic Substance and Section 52-A (4) of the NDPS Act lays down that every Court trying an offence under the Act shall treat the inventory, the photographs (Narcotic Drugs and Psychotropic Substance, Control Substance or conveyance) and any list of samples drawn under Sub-Section (2) and certified by the Magistrate as primary evidence in respect of such offence. Section 52-A(2) of NDPS Act lays down *interalia* for any Magistrate to certify the correctness of the inventory so prepared; or certifying the photographs of such Drugs or substances taken in his presence as true; or certifying the correctness of any list of samples so drawn in his presence. It is, accordingly, stated in Section 52-A(2) of NDPS Act that *where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under Sec.53, the officer referred to in Sub-section (1) shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in Sub-section (1) may consider relevant to the identity of the narcotic drugs, psychotropic substances, controlled substances or conveyances in any*

proceedings under this Act and make an application, to any Magistrate for the purpose of:-

“(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of [such drugs, substances or conveyances] and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.”

Further, Section 52-A(3) of NDPS Act also makes it very clear that where an application is made under Sub-section (2), the Magistrate shall as soon as may be allow the application.

7. Appreciating the evidence on record with regard to recovery and production of Contraband Ganja before the Special Court and drawing samples of it on the backdrop of the aforesaid provision of Section 52-A of the NDPS Act to receive the same as a primary evidence in the trial, this Court considers it apt to extract the relevant evidence of PW2 which has been stated in paragraphs-6 and 7 of the deposition, which reads thus:-

“6. As per direction of the Special Judge, the article was produced before the SDJM, Berhampur. “The SDJM verified the seal of jerry bag and broke upon the seal and drew 2 sample packets of 50 grams from 2 nos. of jerry basta marked A & B.”

7. As per direction of Court, I drew two packets each containing 50 grams of ganja and samples marked as „A1 to B1” and the duplicate packets marked as „A2 to B2”. The sample packets along with the forwarding letter were sent to DECTL, Berhampur for chemical examination through Constable Basant Ku. Barik (PW1).”

The aforesaid evidence as narrated above does not disclose the manner in which the samples were collected nor it reveal that the learned SDJM had certified the correctness of the inventory so prepared nor it discloses taking of the photographs of such Contraband in presence of the learned SDJM and certifying the photographs as true. There is also no evidence to certify the correctness of any list of samples so drawn. The evidence on record, however, does not disclose about the production of recovered and seized Contraband articles before the Court concerned, much less the remaining samples after sending the representative samples to DECTL, Berhampur was ever produced before the Court.

8. The primary evidence for proving possession of the Narcotic Substance would always be the seized substance itself. In absence of certification as required under 52-A of the NDPS Act to get over the production of original seized Contraband articles, the prosecution is not helpless to prove the recovery and seizure of Contraband articles which can be done either by producing the seized Contraband articles or examining the witness to the recovery, but in this case the independent witness to the search, seizure and recovery has become hostile to the prosecution

case and even his examination by prosecution with the leave of the Court yield no result to prove the search, seizure and recovery. In this case, the prosecution has not led any evidence to prove the destruction of seized Contraband articles by establishing the compliance of provision of Sec. 52-A of the NDPS Act except by exhibiting two documents under Exts. P-21 and P-22 which are in fact a letter issued by learned SDJM, Berhampur indicating furnishing of original certificate under Sec. 52-A of NDPS Act to the Special Judge, Berhampur and the certificate purportedly issued under Sub-Section 3 of Sec. 52-A of the NDPS Act, but Ext. P22 refers to a enclose inventory, digital photographs and video taken by Smt. R.Santoshi Reddy, however, neither any inventory nor digital photographs nor video has been produced before the Court in addition the said R.Santoshi Reddy has not been examined by the prosecution to establish this fact. In the situation, mere exhibiting the certificate without anything more such as, the inventory so prepared of seized materials which should contain description, quantity, mode of packing (including mode of conveyance), marks, numbers such other identifying particulars; the photographs taken in presence of Magistrate with his certificate and the samples so drawn with certification of Magistrate, is not sufficient proof of compliance of Sec. 52-A of the NDPS Act and in absence of evidence justifying compliance of Sec. 52-A of the NDPS Act, the destruction or disposal of the seized Contraband articles cannot be accepted, which assumes great significance casting serious doubt in the genuineness of the prosecution case, especially when neither the seized Contraband Ganja nor the remaining samples after dispatch of the samples to Chemical Laboratory are produced before the Court, inasmuch as no explanation has been offered by the prosecution in this regard. It is once again reiterated that mere drawing of samples in presence of Magistrate without anything more as required is not sufficient and substantial compliance of Sec. 52-A of the NDPS Act.

9. In *Bharat Aambale vrs. State of Chhatisgarh; 2025 SSC Online SC 110*, the Apex Court with regard to compliance of Sec. 52-A of the NDPS Act in Paragraph-35 has held thus:-

*“What this provision entails is that, where the seized substance after being forwarded to the Officer empowered is inventoried, photograph and thereafter samples are drawn therefrom as per the procedure prescribed under the said provisions and the Rules/Standing Order(s), and the same is also duly certified by a Magistrate, then such certified inventory, photographs and samples has to mandatorily be treated as primary evidence. The use of the word “shall” indicates that it would mandatory for the Court to treat the same as primary evidence if the twin conditions are fulfilled being (i) that the inventory, photographs and samples drawn are certified by the Magistrate **AND** (ii) that the Court is satisfied that the entire process was drawn in consonance and substantial compliance with the procedure prescribed under the provision and its Rules/Standing Order(s)”.*

It is, however, true that the Apex Court in the aforesaid decision has further observed that even where the bulk quantity of the seized materials is not produced

before the Court or happens to be destroyed or disposed of in contravention of Sec. 52-A of the NDPS Act, the same would be immaterial and have no bearing on the evidentiary value of any inventory, photographs or samples of such substance that is duly certified by a Magistrate and prepared in terms of the said provision. It is more than clear in this case that the prosecution has brought no evidence to show any inventory or photographs taken by it, so also no Magistrate has certified any photographs or inventory so prepared or list of samples so drawn which are mandates of compliance of Sec. 52-A of the NDPS Act. Law is very clear that before any proposed disposal/destruction of the seized Narcotic Drugs, the mandate of Sec. 52-A of the NDPS Act requires to be duly complied with starting with an application to that effect and a Court should be satisfied with such compliance while deciding the case, the onus is entirely on the prosecution in a given case to satisfy the Court where such issue arises for consideration. In this case, the same has not been done and there is absolutely no compliance of Sec. 52-A of the NDPS Act which renders the prosecution case vitiated.

10. In addition, it is found from the evidence of PW2 that drawing and sending of samples on the same day to DECTL, Berhampur i.e. on 22.11.2022, but the cross-examination of PW1 at paragraph-15 discloses that he had kept the sample packets in the custody of the IO overnight before producing it to the office of DECTL, Berhampur for chemical examination. This only adds to the suspicion inasmuch as when the samples were drawn and handed over to PW1 for its deposit at DECTL, Berhampur, it was never meant to be kept under the custody of the IO. Additionally, the CE Report under Ext.P20 discloses about receipt of samples on 23.11.2022 and, therefore, this Court is of the considered view that the custody of the samples was not properly explained to rule out any suspicion and tampering inasmuch as to how the samples were sealed has not been revealed in evidence of PW2 because it is not stated by him whether the samples were sealed or not. Moreover, it is testified by PW1 that after weighing of Ganja, the informant kept the Ganja in the bags and resealed by affixing paper slip with the brass seal of Gitanjali Sahu (PW2) having signatures of the accused persons, witnesses and informant and such brass seal was given in his zima after due execution of zimanama, but such brass seal was never produced before the Court which only adds to the cause of suspicion. Law is very clearly well settled that when punishment prescribed for offences is higher, the proof must be stricter and the prosecution has to produce evidence to eliminate all suspicion. Further, the Chemical Examination report under Ext.P-20 does not disclose as to whose seal was affixed and how it is verified which further contributes to the discrepancies and, therefore, the safe custody of the samples or seized Ganja was not established in consonance with Section 55 of NDPS Act which provides for the safe custody of the Contraband articles. Since the prosecution has not established any semblance of compliance of Sec. 52-A of the NDPS Act and no Contraband articles has been produced in the Court during trial, the contention as raised by the learned Addl. PP to place the burden on the appellants-accused to rebut the

presumption of conscious possession of Contraband articles in terms of Sec. 54 of the Evidence Act merits no consideration.

11. From a cumulative analysis of evidence on record and discussion made hereinabove, this Court is of the considered opinion that neither the provision of Sec. 52-A of the NDPS Act has been complied with nor the recovery of the Contraband Ganja from the exclusive possession of the appellants has been proved through any independent witness nor the safe custody of the Contraband articles has been established, which assumes great significance on the face of admitted evidence of keeping the custody of the samples with PW2-the raiding officer overnight without any explanation and it only leads to an inference that prosecution has not been able to prove its case against the appellants beyond all reasonable doubt by leading clear, cogent and unimpeachable evidence. The only consequence therefore remains is that the guilt of the appellants has not been established for the offence U/Ss. 20(b)(ii)(C) of NDPS Act in the standard of proof beyond all reasonable doubt.

12. In the result, CRLA No.734 of 2024 and JCRLA No.93 of 2024 stand allowed on contest, but in the circumstance, but there is no order as to costs. Consequently, the impugned judgment of conviction and order of sentence passed by the learned 1st Additional Sessions Judge-Cum-Special Judge (NDPS), Berhampur, Ganjam in 2(a)CC Case No.110 of 2022 (N) are hereby set-aside.

Since the appellants are in custody, they be set at liberty forthwith, if their detention is otherwise not required in any other case. Further, the warrant of release on appeal in Form No.(M)78 of GR & CO, (Criminal) Vol-II be immediately sent to the Officer-in-Charge of the concerned jail through e-mail or any other faster communication mode in view of the Rule 155 of the GR & CO, (Criminal) Vol-I.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

CRLA No.734 & JCRLA No.93
of 2024 allowed.

**M/s. RASHMI CEMENT LIMITED & ANR.
V.
STATE OF ODISHA (VIGILANCE)**

[CRLMC NO. 4732 OF 2023]

13 FEBRUARY 2025

[SIBO SANKAR MISHRA, J.]

Issues for Consideration

1. Whether the learned Trial Court requires to record reason while issuing summons.
2. Whether High Court should exercise jurisdiction U/s. 482 of Cr.P.C. to embark upon an inquiry to ascertain whether the evidence in question is reliable or not or whether a reasonable appreciation of its accusation has been made or not.

Headnotes

(A) CODE OF CRIMINAL PROCEDURE, 1973 – Section 190 (1)(a), 190 (1) (b), 204 – The learned Trial Court issued summons against the petitioner taking cognizance of offence U/ss. 13(2)/13(1)(d) of the Prevention of Corruption Act read with Section 21(1)/23 of Mines and Minerals (Development and Regulation) Act and Sections 120-B/ 409/420 of I.P.C. – The petitioner contended that the order of taking cognizance is liable to be set aside as no reason has been stated – Whether the learned Trial Court requires to record reason while issuing summons.

Held: No – At the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and the Magistrate is only to be satisfied that there are sufficient grounds for proceeding against the accused – It is fairly well settled that when issuing summons, the Magistrate need not explicitly state the reasons for his satisfaction that there are sufficient grounds for proceeding against the accused. (Para 21)

(B) CODE OF CRIMINAL PROCEDURE, 1973 – Section 482 – Inherent jurisdiction – The petitioner filed an application U/s. 482 of Cr.P.C. seeking quashing of V.G.R. Case as the order of cognizance has been passed without assigning any reason – Whether High Court should exercise jurisdiction U/s. 482 of Cr.P.C. to embark upon an

inquiry whether the evidence in question is reliable or not or whether a reasonable appreciation of its accusation has been made or not.

Held: No – That is the function of the trial Judge – Due process of law cannot be curtailed in between, at the same time, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly or it would allow an accused to short-circuit the prosecution intermittently by invoking the inherent jurisdiction. (Para 30)

Citations References

Devendra v. State of Uttar Pradesh, (2009) 7 SCC 495; Sunil Bharti Mittal v. Central Bureau of Investigation, (2015) 4 SCC 609; Bhagwant Singh v. Commissioner of Police, 1985 (2) SCC 537; State of Punjab v. Bhag Singh, (2004) 1 SCC 547; Hardeep Singh v. State of Punjab, (2014) 3 SCC 92; Dy. Chief Controller of Imports & Exports v. Roshan Lal Agarwal, (2003) 4 SCC 139; Chief Enforcement Officer vrs. Videocon International Ltd., (2008) 2 SCC 492; Kanti Bhadra Shah v. State of West Bengal, (2000) 1 SCC 722; Nagawwa v. Veeranna Shivalingappa Konjalgi and Ors., (1976) 3 SCC 736; U.P. Pollution Control Board v. Bhupendra Kumar Modi, (2009) 2 SCC 147; Bhushan Kumar v. State (NCT of Delhi), (2012) 5 SCC 424; Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420; R.P. Kapur v. State of Punjab, AIR 1960 SC 866; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335; Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686; State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194; State of Kerala v. O.C. Kuttan, (1999) 2 SCC 651; State of U.P. v. O.P. Sharma, (1996) 7 SCC 705; Rashmi Kumar v. Mahesh Kumar Bhada, (1997) 2 SCC 397; Satvinder Kaur v. State (Govt. of NCT of Delhi), (1999) 8 SCC 728; Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259 – referred to.

List of Acts

Criminal Procedure Code, 1973.

Keywords

Cognizance; Summons; Complaint; *Ex debito justitiae*; Inherent jurisdiction; Enquiry.

Case Arising From

Order of cognizance dated 08.02.2019 passed in V.G.R. Case No. 5 of 2014 corresponding to Balasore Vigilance P.S. Case No. 09 of 2014.

Appearances for Parties

For Petitioners : Mr. Subir Palit, Sr. Adv.
Mr. Alok Ranjan Mohanty
Mr. Santunu Ghosh.

For Opp. Party : Mr. Niranjana Moaharana, ASC (Vigilance Department)

Judgment/Order

Judgment

S. S. MISHRA, J.

This petitioners under Section 482 of the Code of Criminal Procedure, 1973 has been preferred seeking quashing of V.G.R. Case No.05 of 2014 corresponding to Balasore Vigilance P.S. Case No.09 of 2014 pending in the Court of the learned Special Judge, Vigilance, Keonjhar, the order of cognizance dated 08.02.2019 therein and the consequential proceedings arising therefrom.

2. The allegation against the petitioners in the F.I.R. is that the petitioner No.1-Company is engaged in the business of manufacture of sponge iron, cement and other allied steel products in West Bengal. The petitioner No.1, Company therefore has been procuring minerals regularly from the State of Odisha for its manufacturing activities. In this regard, the present petitioners are required to obtain licenses from the competent authority of the area under whose jurisdiction, the materials are sought to be purchased, i.e. the Deputy Director of Mines, Joda Circle, Keonjhar, Odisha (for short “DDM, Joda”). On the basis of the said licenses, the Petitioner No.1, the Company has been procuring, storing and transporting minerals from various lessees and registered traders within the Joda Circle.

3. During the course of verification of the petitioners Company’s license by the State Level Enforcement Squad (SLES) during the period 18.06.2012–17.07.2012, it was found that a license granted for procurement and transport of iron ore for self- consumption was diverted an export. Furthermore, it was also revealed that an excess quantity of iron ore was procured than what was legally sanctioned. In light of the same, a show cause notice was issued by the Deputy Director of Mines on 29.08.2012, and the licenses dated 18.02.2012 and 29.05.2012 were suspended till further orders. A response was filed by the petitioners Company. They also approached this Court by filing W.P.(C) No. 17942 of 2012, which was disposed of by this Court vide order dated 26.09.2012 directing the DDM, Joda Circle to consider the reply and dispose of the matter within two weeks. Vide office order dated 13.03.2013, the DDM, Joda disposed of the matter by a speaking order.

4. The Petitioners Company again approached this Court by filing second Writ Petition being W.P.(C) No.6836 of 2013 seeking quashing of the order dated 13.03.2013. Vide order dated 18.07.2013, the same was quashed. The matter went up to the Hon’ble Supreme Court as the State preferred a Special Leave Petition being SLP(C) No.813 of 2014, but the same was withdrawn at the time of hearing

with leave to approach this Court. Soon thereafter, the F.I.R. dated 19.02.2014 was registered against the present petitioners and one other co-accused (who has since deceased) which culminated in the present VGR Case No.05 of 2014 corresponding to Balasore Vigilance P.S. Case No.09 of 2014. Charge-sheet was filed on 15.12.2018 and the order taking cognizance of the offences under Sections 13(2)/13(1)(d) of the P.C. Act read with Section 21(1)/23 of MMDR Act and Sections 120-B/409/420 of I.P.C. and issuance of summons was passed by the learned trial Court on 08.02.2019.

5. Aggrieved by the same, the present petition has been preferred. As the facts leading to the instant petition have been laid down, this Court shall endeavour to summarize the contentions of the parties and the broad grounds that have been raised to seek the exercise of this Court's plenary jurisdiction available under Section 482 of Cr.P.C.

6. Heard Mr. Subir Palit, learned Senior Counsel for the petitioners and Mr. Niranjana Moharana, learned Additional Standing Counsel for the Vigilance Department.

7. Mr. Palit, learned Senior Counsel for the petitioners placed reliance on following decisions of the Hon'ble Apex Court to contend that the impugned order of cognizance reflects total non-application of mind by the trial Court. Reliance in this regard has been placed on a series of decisions of the Hon'ble Supreme Court in the case of **Devendra v. State of Uttar Pradesh**, reported in (2009) 7 SCC 495; **Sunil Bharti Mittal v. Central Bureau of Investigation**, reported in (2015) 4 SCC 609; **Bhagwant Singh v. Commissioner of Police**, reported in 1985 (2) SCC 537 and **State of Punjab v. Bhag Singh**, reported in (2004) 1 SCC 547.

8. It is submitted by Mr. Palit, learned Senior Counsel for the petitioners that while passing the order taking cognizance, the Court has to apply its judicial mind. The order is liable to be set aside if no reason is given therein by coming to the conclusion that prima facie case against the accused is made out though the order need not contain detailed reasons. The discretion must be judicially exercised. A person ought not to be dragged into Court merely because charge-sheet has been filed. If a prima facie case has been made out, the Magistrate ought to issue process after recording reasons. There has to be application of mind as to whether the allegation in the complaint when considered along with statements recorded or enquiry conducted thereon would constitute violation of law so as to call a person to appear before the Criminal Court. It is not mechanical process or matter of course.

9. *Per contra*, Mr. Moharana, learned Additional Standing Counsel for the Vigilance Department submitted that there is no illegality in the order passed by the learned trial Court. It is submitted that taking cognizance is still an intermediate stage. The charge-sheet of the investigating agency in the present case discloses involvement of the accused. He has relied upon the judgments of the Hon'ble Supreme Court in the case of **Hardeep Singh v. State of Punjab** reported in (2014)

3 SCC 92 and in the case of **Dy. Chief Controller of Imports & Exports v. Roshan Lal Agarwal**, reported in **(2003) 4 SCC 139**.

10. It is contended that time and again it has been held by the Hon'ble Apex Court that a summoning order under Section 204 of Cr.P.C. requires no explicit reasoning to be stated because it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the police report and the materials filed therewith.

11. Having heard the parties and perused the materials available on record. This Court has to determine as to whether the learned trial Court's order taking cognizance appears to be unreasoned and passed with non-application of mind, which warrants interference by this Court.

12. In **Chief Enforcement Officer vrs. Videocon International Ltd.** reported in **(2008) 2 SCC 492**, the expression "cognizance" was explained by this Court as "it merely means 'become aware of' and when used with reference to a Court or a Judge, it connotes 'to take notice judicially'. It indicates the point when a Court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone." It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of offences and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry or cognizance. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.

13. A "summons" furthermore, is a process issued by a court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. A person who is summoned is legally bound to appear before the court on the given date and time. Willful disobedience of a summons order is liable to be punished under Section 174 of I.P.C apart from being a ground for contempt of court.

14. In this context, it is relevant to extract Sections 190 and 204 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") which read as under:-

"190. Cognizance of offences by Magistrates.—(1) Subject to the provisions of this Chapter, any Magistrate of the First Class, and any Magistrate of the Second Class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the Second Class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

204. Issue of process.—(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

(a) a summons case, he shall issue his summons for the attendance of the accused, or

(b) a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of Section 87.”

15. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued.

16. In *Kanti Bhadra Shah v. State of West Bengal* reported in (2000) 1 SCC 722, the following passage held by the Hon’ble Supreme Court will be apposite in this context:-

“12. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for

culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial."

17. In **Nagawwa v. Veeranna Shivalingappa Konjalgi and Ors.** reported in **(1976) 3 SCC 736**, the Hon'ble Apex Court held that it is not the province of the Magistrate to enter into a detailed discussion on the merits or demerits of the case. It was further held that in deciding whether a process should be issued, the Magistrate can take into consideration the probabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. It was further held that:

"5. ... Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in. the complaint, if proved, would ultimately end in conviction of the accused..."

18. Furthermore, in **Dy. Chief Controller of Imports & Exports v. Roshanlal Agarwal** reported in **(2003) 4 SCC 139**, the Hon'ble Supreme Court, in paragraph-9, has held as under: -

"9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not, whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in U.P. Pollution Control Board v. Mohan Meakins Ltd. [(2000) 3 SCC 745] and after noticing the law laid down in Kanti Bhadra Shah v. State of W.B. [(2000) 1 SCC 722: 2000 SCC (Cri) 303] it was held as follows: (U.P. Pollution case [(2000) 3 SCC 745], SCC p. 749, para 6)

'6. The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order."

19. In **U.P. Pollution Control Board v. Bhupendra Kumar Modi** reported in **(2009) 2 SCC 147**, the Hon'ble Supreme Court, held as under:

"It is settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused."

20. This being the settled legal position, the order passed by the Magistrate could not be faulted with only on the ground that the summoning order was not a reasoned one.

21. It is, therefore, very well settled that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and the Magistrate is only to be satisfied that there are sufficient grounds for proceeding against the accused. It is fairly well settled that when issuing summons, the Magistrate need not explicitly state the reasons for his satisfaction that there are sufficient grounds for proceeding against the accused. Reliance in this regard can be placed on the Hon'ble Supreme Court's judgment in the case of **Bhushan Kumar v. State (NCT of Delhi)** reported in (2012) 5 SCC 424, wherein it was held as under :

"11. In Chief Enforcement Officer v. Videocon International Ltd. [Chief Enforcement Officer v. Videocon International Ltd., (2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471] (SCC p. 499, para 19) the expression "cognizance" was explained by this Court as "it merely means 'become aware of' and when used with reference to a court or a Judge, it connotes 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.

12. A summon is a process issued by a Court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in Court. A person who is summoned is legally bound to appear before the Court on the given date and time. Willful disobedience is liable to be punished under Section 174 IPC. It is a ground for contempt of court.

13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a pre-requisite for deciding the validity of the summons issued."

22. The above observations are in the context of taking cognizance of a complaint. As per definition under Section 2(d) of Cr.P.C., the complaint does not include a police report.

23. Mr. Palit, learned Senior Counsel for the petitioners-accused relied upon various judgments to contend that while taking cognizance, the Court has to record

the reasons that prima facie case is made out and that there are sufficient grounds for proceeding against the accused for that offence. It was contended that while taking cognizance, the Court has to record reasons that prima facie case is made out and that there are sufficient grounds for proceeding against the accused for that offence. However, what needs to be understood is that as per the definition under Section 2(d) Cr.P.C., “complaint” does not include a police report. In fact, it was also observed in **Mehmood Ul Rehman v. Khazir Mohammad Tunda** reported in **(2015) 12 SCC 420** that “under Section 190(1)(b) Cr.P.C., the Magistrate has the advantage of a police report; but under Section 190(1)(a) Cr.P.C., he has only a complaint before him. Hence, the Code specifies that “a complaint of facts which constitutes an offence”. Section 190(1)(a) Cr.P.C. provides for cognizance of complaint. Section 190(1)(b) Cr.P.C. deals with taking cognizance of any offence on the basis of police report under Section 173(2) Cr.P.C. “Complaint” is defined in Section 2(d) CrPC which reads as under:

“2. Definitions.—(a)-

(c)

(d) “complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.”

24. The procedure for taking cognizance upon complaint has been provided under Chapter-XV, complaints to Magistrates under Sections 200 to 203 of Cr.P.C. A complaint filed before the Magistrate may be dismissed under Section 203 Cr.P.C., if the Magistrate is of the opinion that there is no sufficient ground for proceeding and in every such case, he shall briefly record his reasons for so doing. If a complaint is not dismissed under Section 203 Cr.P.C., the Magistrate issues process under Section 204 of Cr.P.C. Section 204 of Cr.P.C. is in a separate chapter i.e. Chapter XVI - Commencement of Proceedings before Magistrates. A combined reading of Sections 203 and 204 of Cr.P.C. shows that for dismissal of a complaint, reasons should be recorded. The procedure for trial of warrant cases is provided in Chapter XIX — **Trial of Warrant Cases by the Magistrates**. Chapter XIX deals with two types of cases (A) Cases instituted on a police report and (B) Cases instituted otherwise than on police report. In the present case, cognizance has been taken on the basis of police report.

25. In Paragraph-21 of **Mehmood Ul Rehman** (supra), the Hon’ble Supreme Court has made a fine distinction between taking cognizance based upon charge-sheet filed by the police under Section 190(1)(b) of Cr.P.C. and a private complaint under Section 190(1)(a) of Cr.P.C. and held thus:

“21. Under Section 190(1)(b) of CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(c) of CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(a) of CrPC, he has only a complaint before him. The Code hence specifies that ... “a complaint of facts which constitute such offence”. Therefore, if the complaint, on the face of it, does not disclose

the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) of CrPC. The complaint is simply to be rejected..”

26. In summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 of Cr.P.C. is not the same as at the time of framing the charge. For issuance of summons under Section 204 of Cr.P.C., the expression used is “*there is sufficient ground for proceeding...*”; whereas for framing the charges, the expression used in Sections 240 and 246 of I.P.C. is “*there is ground for presuming that the accused has committed an offence...*”. At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 of Cr.P.C., detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police have filed charge-sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204 of Cr.P.C.

27. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. The Investigating Officer/SHO collects the necessary evidence during the investigation and thereafter files charge-sheet under Section 173 of Cr.P.C. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The Court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b) of Cr.P.C, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record any reasons for issuing the process, rather, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is subject to satisfaction of the Magistrate that there is sufficient ground for proceeding against the accused on the consideration of the police report and other documents and satisfying himself. This being a case based upon the police report, the Magistrate is not required to record any reason at the stage of issuing the summons to the accused,

28. In the present case, therefore, upon perusal of order of cognizance dated 08.02.2019 in V.G.R. Case No.5 of 2014 corresponding to Balasore Vigilance P.S. Case No. 9 of 2014 pending before the Court of the learned Special Judge, Vigilance, Keonjhar, it is amply clear that the learned Magistrate has perused the F.I.R., charge-sheet, statement of witnesses and order of sanction against the co-accused of the present petitioners, apart from other documents produced by the Investigating Officer to arrive at the conclusion that a prima facie case is made out

and therefore, cognizance has been taken and summons were issued. This Court finds no infirmity or illegality with the same in light of the discussion made above.

29. Inherent jurisdiction under Section 482 of Cr.P.C though wide 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. It is to be exercised *ex debito justitiae* - to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and prevent abuse of process of law. In **R.P. Kapur v. State of Punjab**, reported in **AIR 1960 SC 866**, the Hon'ble Supreme Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:-

- (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
- (ii) where the allegations in the First Information Report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

30. It is eminently clear that when exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of its accusation would not be sustained. That is the function of the trial Judge. Due process of law can't be curtailed in between, at the same time, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly or it would allow an accused to short-circuit the prosecution intermittently by invoking the inherent jurisdiction.

31. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by the Apex Court in **State of Haryana v. Bhajan Lal**, reported in **1992 Supp (1) SCC 335**. A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of the rare cases. The illustrative categories indicated by the Hon'ble Supreme Court are as follows:

- “(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 F.I.R. 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.”

32. As discussed above, the powers of the High Court under Section 482 of the Code are very wide. If the power is very plenitude, great caution, is required to be exercised. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, which needs to be established by the prosecution in due course of trial. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. But it shall suffice to say here that it would not be proper for this Court to analyse the case of the complainant at this stage, rather it would be erroneous to assess the material and conclude that the complaint/prosecution cannot be proceeded with. At this stage, it is not necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. On consideration of the allegations in the light of the material form part of the charge sheet if the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is motivated by mala fide design, frivolous or vexatious, in that event there would be no justification for interference by the High Court. In this regard this Court relies upon the Hon'ble Supreme Court's judgments in **Dhanalakshmi v. R. Prasanna Kumar**, reported in **1990 Supp SCC 686**, **State of Bihar v. P.P. Sharma**, reported in **1992 Supp (1) SCC 222**, **Rupan Deol Bajaj v. Kanwar Pal Singh Gill** reported in **(1995) 6 SCC 194**, **State of Kerala v. O.C. Kuttan**, reported in **(1999) 2 SCC 651**, **State of U.P. v. O.P. Sharma**, reported in **(1996) 7 SCC 705**, **Rashmi Kumar v. Mahesh Kumar Bhada**, reported in **(1997) 2 SCC 397**, **Satvinder Kaur v. State (Govt. of**

NCT of Delhi, reported in (1999) 8 SCC 728 and **Rajesh Bajaj v. State NCT of Delhi** reported in (1999) 3 SCC 259.

33. Mr. Palit, learned Senior Counsel also sought to rely on the Deputy Director of Mines's statement under Section 161 of Cr.P.C. to highlight that the explanation of irregularities being mere 'clerical issues' has been accepted by the Competent Authority before and therefore cannot be re-agitated at this point. Learned Senior Counsel further submitted that the export was done on a valid license, may be the license was not possessed by Company A but by Company B. Therefore, in the absence of any loss to the State Exchequer, no *mens rea* could be found from the transaction. It is seen from the record that when M/s Rashmi Cement had obtained a license for procurement for self-consumption vide letter No.15463, it did not possess a valid export license. The dispatched quantity of 3955.00 MT of iron fines during June 2009 and 3661.790 MT during August 2009 to Gangavaram Port was shown in the monthly return against the license No. 15463 which purportedly belonged to M/s Rashmi Metaliks, their sister concern. As such, there appears to be a prima facie flouting of license conditions.

34. This Court at this stage is consciously refraining from dealing with the contention raised by Mr. Palit, learned Senior Counsel in detail, which may prejudice the case of the petitioners before the learned trial Court, however, suffice it to say that prima facie case is established to sustain the cognizance order. In any case, the present petitioners are free to raise all their contentions before the learned trial Court in due course and thrash out the factual issues arising herein. However, at this stage, where summons have been issued and cognizance has just been taken, it is not the appropriate stage for this Court to exercise its extraordinary powers.

35. In view of the discussion made in the preceding paragraphs and keeping the settled principles of law in mind, this Court finds no infirmity, illegality or impropriety in the impugned order of the learned Magistrate, which would justify interference in the present Petition at this stage. Hence, I am not inclined to entertain this petition.

36. Accordingly, the CRLMC is dismissed. However, dismissal of the present petition shall not preclude the petitioners to resort to any other remedy available under law including filing of discharge petition before the court below. If any such application is moved by the petitioners, the same shall be considered by the learned Court below on its own merit without being influenced by the observation made by this Court in this judgment.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:
CRLMC dismissed.

2025 (I) ILR-CUT-1379

**DUKSHYADIPATI MISAL
V.
BHABANI CHANDRA PANIGRAHI**

[S.A. NO. 392 OF 2000]

03 APRIL 2025

[A.C. BEHERA, J.]**Issue for Consideration**

Whether the burden lies on the defendant to get the signature on promissory note examined through a handwriting expert to confirm it's genuineness.

Headnotes

PROMISSORY NOTE – Onus for examination of the genuineness of the signature – The appellant was the defendant before the Trial Court – The plaintiff filed suit for realization of money with interest thereon from the appellant/defendant – The plaintiff paid ₹33,000/- to the defendant on 03.04.1991 through execution of a promissory note on stamp papers executed by the defendant in favour of the plaintiff in presence of the witnesses with condition of repayment of the said loan amount with interest thereon within six months since 03.04.1991 – The defendant did not repay the said loan amount for which plaintiff filed the suit – The defendant's took a plea that he had not executed any promissory note – The so called promissory note dated 03.04.1991 is a false/ forged and fabricated one – The Trial Court held that defendant has violated the condition of such promissory note for which the plaintiff is entitled to recover the said amount with interest from the defendant – The Appellate Court dismissed the appeal filed by defendant concurring/ accepting the finding and observation made by the Trial Court – Whether the burden lies on the defendant to get the signature on the promissory note examined through a handwriting expert to confirm it's genuineness.

Held: Yes – It was the duty of the defendant to get the signature vide Ext.3/a on Ext.3 examined through handwriting expert in order to establish that, Ext.3/a on Ext.3 is not his signature, but, the defendant has not done his such duty, then, at this juncture, it cannot be held that, the due execution of the promissory note vide Ext.3 by the defendant in favour of the plaintiff has not been proved, when the plaintiff has proved the due execution of the same by him (defendant) in his favour through the un-assailed testimonies of P.Ws.1 to 3.

(Para 18)

Citations References

Natabar Behera vrs. Batakrushna Das, **1999 (II) OLR-319**; Lagadapati Dhanalakshmi and others vrs. Lagadapati Anjaeyulu, **IV (2009) Civil Law Times-523 (Andhra Pradesh) – referred to.**

Keywords

Burden of proof; Promissory Note; Genuineness of signature; Examination; Handwriting expert.

Case Arising From

Judgment and decree dated 23.08.2000 and 07.09.2000 respectively passed by the First Appellate Court in M.A. No. 04 of 1994.

Appearances for Parties

For Appellant : Mr. Budhiram Das, appearing on behalf of Mr. N.C. Pati
For Respondent : Mr. S.K. Pattanaik

Judgment/Order**Judgment**

A.C. BEHERA, J.

This 2nd appeal has been preferred against the confirming judgment.

2. The appellant in this 2nd appeal was the defendant before the trial court in the suit vide M.S. No.21 of 1993 and the appellant before the 1st appellate court in the 1st appeal vide M.A. No.04 of 1994.

The respondent in this 2nd appeal was the plaintiff before the trial court in the suit vide M.S. No.21 of 1993 and the respondent before the 1st appellate court in the 1st appeal vide M.A. No.04 of 1994.

3. The suit of the plaintiff (respondent in this 2nd appeal) vide M.S. No.21 of 1993 was a suit for realization of money, i.e., Rs.36,630/(rupees thirty-six thousand six hundred thirty) with interest thereon from the defendant(appellant in this 2nd appeal).

4. As per the averments made in the plaint, the plaintiff was working in the cloth-store of his father situated in the college road of Parlakhemundi town. The defendant had business transactions with their shop. For which, the plaintiff and the defendant had relationship with each other. On 03.04.1991, the defendant requested plaintiff to provide Rs.33,000/-(rupees thirty-three thousand) as hand loan for the improvement of his business along with some domestic purposes in order to repay the same within six months. As the plaintiff and the defendant had their relationship with each other through business transactions, for which, the plaintiff, accepted the aforesaid proposal of the defendant and he (plaintiff) paid Rs.33,000/-(rupees thirty-three thousand) to the defendant on dated 03.04.1991 through execution of a promissory note on the stamp papers by the defendant in favour of the plaintiff in said hand loan amount with interest thereon within six months since 03.04.1991.

Thereafter, the defendant did not repay the said loan amount in spite of repeated demands of the plaintiff. For which, without getting any way, the plaintiff issued a legal notice on dated 02.11.1991 to the defendant through his Advocate requesting him (defendant) to repay the loan amount with interest and the defendant received the said notice on dated 11.11.1991 and gave reply to the plaintiff on dated 16.01.1992 denying the taking up of money from him (plaintiff) as hand loan on dated 03.04.1991 and also denied the execution of any promissory note for the same on that day. So, he (plaintiff) approached the civil court by filing the suit vide M.S. No.21 of 1993 against the defendant praying for realization of the principal amount, i.e., Rs.33,000/- (rupees thirty-three thousand) with accrued interest thereon along with future interest on the same.

5. Having been noticed from the trial court in the suit vide M.S. No.21 of 1993, the defendant contested the same by filing his written statement denying the averments made by the plaintiff in his plaint and also denied to have known the plaintiff earlier and so also denied about his any business transaction with the plaintiff. The specific plea of the defendant was that, he has not taken any money as hand loan from the plaintiff by executing the so-called promissory note on dated 03.04.1991 in presence of any witness to meet his any requirements and his further case was that, the so-called promissory note dated 03.04.1991 is a false/forged and fabricated one and he has not signed on any promissory note on dated 03.04.1991. The plaintiff has managed to forge his signature on the so-called promissory note dated 03.04.1991 for the purpose of this suit. For which, the plaintiff is not entitled to get any money from him (defendant). Therefore, the suit of the plaintiff is liable to be dismissed against him (defendant).

6. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether four numbers of issues were framed by the trial court in the suit vide M.S. No.21 of 1993 and the said issues are:-

ISSUES

1. Whether the defendant incurred loan of Rs.33,000/- from the plaintiff by executing a promissory note?
2. Whether the suit pronote dated 03.04.1991 is true, valid and genuine? 3. Is the suit barred by limitation?
3. Whether the plaintiff is a money lender and the suit is hit under the provisions of Orissa Money Lenders Act?
4. Whether the plaintiff is entitled to the suit claim?

7. In order to substantiate the aforesaid relief sought for by the plaintiff against the defendant in the suit vide M.S. No.21 of 1993, he (plaintiff) examined three witnesses from his side including him as P.W.1 and relied upon the documents vide Exts.1 to 3 including the so-called promissory note dated 03.04.1991 as Ext.3 and copy of the Advocate's notice as Ext.1.

On the contrary, in order to nullify/defeat the suit of the plaintiff, the defendant examined himself as D.W.1 without proving any document from his side.

8. After conclusion of hearing and on perusal of the materials, documents and evidence available in the record, the trial court answered all the issues in favour of the plaintiff and against the defendant and basing upon the findings and observations made by the trial court in all the issues in favour of the plaintiff and against the defendant, the trial court decreed the suit of the plaintiff vide M.S. No.21 of 1993 on contest against the defendant, as per its judgment and decree dated 31.03.1994 and 08.04.1994 respectively directing the defendant to pay a sum of Rs.36,630/-(rupees thirty-three thousand) to the plaintiff along with interest @ 12% per annum thereon from the date of filing of the suit till the date of realization assigning the reasons that, it is established through oral and documentary evidence of the parties that, on 03.04.1991, the defendant had received Rs.33,000/-(rupees thirty-three thousand) from the plaintiff as hand loan by executing the promissory note vide Ext.3 in presence of the witnesses in order to repay the said loan amount to the plaintiff within a period of six months with interest thereon from the date of execution of such promissory note and the plaintiff is not a money lender by the profession. Due to friendship of the plaintiff with the defendant, as per the request of the defendant, he(plaintiff) had provided the said amount as hand loan to the defendant, for which, the defendant was liable to repay such loan amount with interest to the plaintiff within a period of six months from the date of execution of the promissory note vide Ext.3, but, he(defendant) has violated the condition of such promissory note vide Ext.3, for which, the plaintiff is entitled to recover the said amount with interest from the defendant.

9. On being dissatisfied with the aforesaid judgment and decree passed by the trial court in M.S. No.21 of 1993 in favour of the plaintiff and against the defendant, he(defendant) challenged the same by preferring the 1st appeal vide M.A. No.04 of 1994 being the appellant against the plaintiff arraying the plaintiff as respondent.

10. After hearing from both the sides, the 1st appellate court dismissed that 1st appeal vide M.A. No.04 1994 of the defendant as per its judgment and decree dated 23.08.2000 and 07.09.2000 respectively on contest concurring / accepting the findings and observations made by the trial court in its judgment and decree against the defendant and in favour of the plaintiff.

11. On being aggrieved with the aforesaid judgment and decree dated 23.08.2000 and 07.09.2000 respectively passed by the 1st appellate court in M.A. No.04 of 1994 against the defendant, he(defendant) challenged the same by preferring this 2nd appeal vide S.A. No.392 of 2000 being the appellant against the plaintiff arraying him(plaintiff) as respondent.

12. This 2nd appeal was admitted on formulation of the following substantial questions of law, i.e., :-

“(i) Whether the burden lies on the defendant to get the signature on Ext.3 examined through a handwriting expert and if such wrong placing of burden vitiates the entire decisions of the learned trial court below?

(ii) Whether due execution of the Ext.3(promissory note) has been proved by the plaintiff?"

13. I have already heard from the learned counsels of both the sides.

14. As, the above both formulated substantial questions of law are interlinked, i.e., whether it was the duty of the trial court under law for sending the so-called promissory note dated 03.04.1991(Ext.3) to the handwriting expert for examination of the genuineness of the signature on the said Ext.3, i.e., whether the defendant had signed on the same or not, then, at this juncture, both the substantial questions of law are taken up together analogously for their discussions hereunder :-

15. It is the concurrent finding on facts by both the courts, i.e., trial court as well as 1st appellate court after appreciating the pleadings as well as oral and documentary evidence of the parties that, the plaintiff has duly proved the execution of the promissory note vide Ext.3 by the defendant in favour of the plaintiff on dated 03.04.1991 (Ext.3) in presence of the witnesses thereof, i.e., P.Ws.2 and 3 for receiving Rs.33,000/-(rupees thirty-three thousand) from the plaintiff as hand loan and by executing that, Ext.3 in favour of the plaintiff, he(defendant) had received Rs.33,000/-(rupees thirty-three thousand) as hand loan from the plaintiff in order to repay the same with interest thereon within a period of six months from 03.04.1991, but, he(defendant) failed to comply the conditions of such promissory note vide Ext.3 for repayment of the loan amount with interest thereon to the plaintiff in due time in spite of the demands of the plaintiff, for which, both the courts below decreed the suit of the plaintiff entitling the plaintiff to get the decretal loan amount with interest thereon from the defendant directing the defendant to repay the same.

16. When, it is the concurrent findings on facts by the trial court and 1st appellate court after appreciating the pleadings as well as oral and documentary evidence of the parties that, the un-assailed / unshaken testimonies of the plaintiff (P.W.1) and his witnesses, i.e., P.Ws.2 and 3 are going to establish that, defendant had received Rs.33,000/-(rupees thirty-three thousand) from the plaintiff on dated 03.04.1991 as hand loan by executing the promissory note vide Ext.3 in presence of the witnesses, i.e., P.Ws.2 and 3 putting his signature on the Ext.3 vide Ext.3/a in order to repay the said loan amount within a period of six months with interest thereon, then, at this juncture, the onus, which was on the plaintiff as per law for proving the proper execution of the promissory note dated 03.04.1991 vide Ext.3 by the defendant in his favour was shifted to the defendant for proving the allegations alleged by him(defendant) that, the so-called promissory note dated 03.04.1991 vide Ext.3 and his so-called signature on the Ext.3, i.e., Ext.3/a are forge by taking proper steps for sending Ext.3 to an expert, but, the defendant has not taken any step for the same before the trial court for examination of Ext.3 and Ext.3/a by an expert.

For which, the onus, which was laid on the defendant as per law has not been discharged properly, though the plaintiff has discharged his onus by proving through un-assailed testimonies of P.Ws.1 to 3 that, the promissory note vide Ext.3

was executed by the defendant in his favour on dated 03.04.1991 putting the signature of the defendant on the same vide Ext.3/a.

17. The conclusions drawn above finds support from the ratio of the following decisions :-

(i) In a case between *Natabar Behera vrs. Batakrushna Das* : reported in **1999(II) OLR-319** that, Question, whether document is fabricated or forged is on the person, who alleges this fact. Defendant who challenged the document to be a fabricated one, he(defendant) should have sent it for opinion of the expert.

(ii) In a case between *Lagadapati Dhanalakshmi and others vrs. Lagadapati Anjaeyulu* : reported in **IV(2009) Civil Law Times-523(Andhra Pradesh)** (Para-20) that, Evidence of an expert is only on opinion evidence. Court would not act on said evidence, when other reliable evidence in proof of document available.

18. Here, in this suit/appeal at hand, when as per the discussions and observations made above, it was the duty of the defendant to get the signature vide Ext.3/a on Ext.3 examined through handwriting expert in order to establish that, Ext.3/a on Ext.3 is not his signature, but, the defendant has not done his such duty, then, at this juncture, it cannot be held that, the due execution of the promissory note vide Ext.3 by the defendant in favour of the plaintiff has not been proved, when the plaintiff has proved the due execution of the same by him(defendant) in his favour through the un-assailed testimonies of P.Ws.1 to 3.

19. For which, in other words, on being fully agreed with the concurrent findings and observations of the trial court and 1st appellate court, it is held that, the plaintiff has duly proved the execution of the promissory note vide Ext.3 by the defendant in his favour and by executing such Ext.3, the defendant had received of Rs.33,000/-(rupees thirty-three thousand) from him(plaintiff) on dated 03.04.1991 as hand loan in order to repay the same with interest thereon within six months, but, he(defendant) has not repaid the same.

Therefore, the judgments and decrees passed by the trial court and 1st appellate court cannot be held erroneous.

So, the question of interfering with the same through this 2nd appeal filed by the defendant does not arise.

20. As such, there is no merit in this 2nd appeal filed by appellant(defendant). The same must fail.

21. In result, appeal filed by the appellant (defendant) is dismissed on contest, but, without cost.

The judgment and decree passed by the trial court as well as 1st appellate court in M.S. No.21 of 1993 and M.A. No.04 of 1994 respectively are confirmed.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:

Appeal dismissed.

2025 (I) ILR-CUT-1385

**TUSAGRA PRUSETH & ANR.
V.
CHUDAMANI PRUSETH & ORS.**

[C.R.P. NO. 15 OF 2024]

26 MARCH 2025

[ANANDA CHANDRA BEHERA, J.]

Issue for Consideration

Whether withdrawal of a suit for partition by the same plaintiff for the same properties will debar/ preclude the plaintiff from filing a fresh suit.

Headnotes

PROPERTY LAW – Withdrawal of suit – Maintainability of second suit – The learned Trial Court has rejected the petition of the defendants for disposing of the suit of plaintiff on a preliminary issue on the ground of its non-maintainability for the withdrawal of earlier suit for partition of the plaintiff for the same properties assigning the reason that the question of maintainability of the suit shall be decided after final hearing of the suit – **Whether withdrawal of a suit for partition by the same plaintiff for the same properties will debar/ preclude the plaintiff from filing a fresh suit.**

Held: No – Withdrawal of the previous suit for partition vide C.S. No.4 of 2018 by the plaintiff shall not be a bar for the maintainability of the 2nd Suit for partition vide C.S. No.166 of 2022, as the cause of action in the suit for partition is recurring one, because, the right to partition is a right occurring from time to time and there is a continuing cause of action till the continuance of the jointness of the properties, then, at this juncture, the impugned order dated 01.03.2024 passed by the learned Trial Court in C.S. No.166 of 2022 rejecting the petition of the petitioners (defendants) cannot be held as erroneous. (Para 8)

Citations References

Sathyanath & Another Vs. Sarojamani, **(2022) 7 SCC 644**; Sitaram & Others Vs. Antaryami Mohapatra, **96 (2003) CLT 762**; Shiv Shakti Coop. Housing Society, Nagpur Vrs. M/s. Swaraj Developers & Others, **AIR (SC) 2003 Page-2434**; Sitaram @ Mahendra Ghosh Vrs. Sri Antaryami Mohapatra & 18 Others, **2003 (2) OLR 409**; Radhanath Jena Vrs. Jadunath Jena & Others, **2000 OLR (II) Page-510**; Satyanath & Another Vs. Sarojamani, **AIR 2022 (SC) 2242**; Mukha Singh & Others vs. Ramchariter Singh & others, **AIR 1956 (Pat.) 143**, Madhura Gramani Vs. Thummala Sesha Reddi & Others, **AIR 1926 (Mad.) 1018**; Kannikandath Kizhe Purakkal Vella's Son, Thayyan

Vs. Kannikandath Kizhe Purakkal, **AIR 1935 (Mad.) 458**; Hari Basudev Vs. State of Orissa & Another, **AIR 2000 (Ori.) 125**; Devdutt vs. Shasi Verma & Others, **2021 (3) Civ.C.C. 412 (Chh) – referred to.**

Keywords

Withdrawal of previous suit; Maintainability of second suit; Continuing cause of action; Recurring right; Right to partition; Preliminary issue.

Case Arising From

Order dated 01.03.2024 passed by the Sr. Civil Judge, Kuchinda in C.S.No.166 of 2022.

Appearances for Parties

For Petitioners : Mr. N.C. Rout.

For Opp. Parties : Mr. P.K. Satapathy (O.P. 1),
Mr. T.K. Mishra (O.P. 2)

Judgment/Order

Judgment

ANANDA CHANDRA BEHERA, J.

1. This revision under Section 115 of the CPC, 1908 has been filed by the petitioners (defendants in the suit vide C.S. No.166 of 2022) against the Opposite Parties (plaintiffs in the suit vide C.S. No.166 of 2022) challenging an order of rejection to their petition for disposing of the suit vide C.S. No.166 of 2022 on a preliminary issue on the point of the maintainability of that suit on the ground of withdrawal of earlier suit for partition vide C.S. No.4 of 2018 by the plaintiff (Opp. Party No.1 in this revision) passed on dated 01.03.2024 by the learned Trial Court i.e. learned Sr. Civil Judge, Kuchinda.

2. I have already heard from the learned counsels of both the sides.

3. In order to assail the impugned order, the learned counsel for the petitioners (defendants in the suit vide C.S. No.166 of 2022) relied upon the following decisions:

I. In a case between **Sathyanath & Another Vs. Sarojamani** reported in **(2022) 7 SCC 644**.

II. In a case between **Sitaram & Others Vs. Antaryami Mohapatra** reported in **96 (2003) CLT 762**.

On the contrary in support of the impugned order the learned counsel for the Opp. Party No.1 (plaintiff in the suit vide C.S. No.166 of 2022) relied upon the following decisions:

TUSAGRA PRUSETH & ANR. V. CHUDAMANI PRUSETH & ORS. [A.C.BEHERA, J]

I. In a case between **Shiv Shakti Coop. Housing Society, Nagpur Vrs. M/s. Swaraj Developers & Others** reported in **AIR (SC) 2003 Page-2434**.

II. In a case between **Sitaram @ Mahendra Ghosh Vrs. Sri Antaryami Mohapatra & 18 others** reported in **2003 (2) OLR 409**.

III. In a case between **Radhanath Jena Vrs. Jadunath Jena & Others** reported in **2000 OLR (II) Page-510**.

IV. In a case between **Satyanath & Another Vs. Sarojamani** reported in **AIR 2022 (SC) 2242**.

4. The learned Trial Court has rejected the petition of the defendants for disposing of the suit vide C.S. No.166 of 2022 of the plaintiff on a preliminary issue on the ground of its nonmaintainability for the withdrawal of earlier suit for partition of the plaintiff vide C.S. No.4 of 2018 for the same properties as per Order dated 01.03.2024 assigning the reasons that,

“to end the litigation, issues are already framed in the present suit vide C.S. No.166 of 2022 filed by the plaintiff for partition, for which, whether the suit is maintainable or not shall be decided after final hearing of the suit. Therefore, the question of deciding the suit on a preliminary issue as sought for by the defendants does not arise. Therefore, the petition of the defendants stand rejected”.

5. It is the settled propositions of law that, High Court cannot interfere with an impugned order in a civil revision, when either by such impugned order, the suit has not been finally disposed of or if such impugned order shall allow to stand, the same would occasion in failure of justice or shall cause irreparable injury to the party against whom the impugned order is passed.

6. Here in this revision at hand, the impugned order dated 01.03.2024 passed by the learned trial court in the suit vide C.S. No.166 of 2022 rejecting the petition of the defendants (petitioners in this revision) for the disposal of that suit on a preliminary issue does not amount to the final disposal of that pending suit for partition vide C.S.No.166 of 2022.

There is also no material in the record to show that, due to the rejection of the petition of the defendants through the impugned order, there is any failure of justice. Rather the final adjudication of that suit for partition vide C.S. No.166 of 2022 shall be in furtherance of rendering substantial justice to the parties. Because, the suit properties have not been divided/partitioned between the parties through metes and bounds partition.

For which, this revision filed by the petitioners (defendants in the suit vide C.S. No.166 of 2022) is not entertainable under law.

The propositions of law has already been settled that, withdrawal of a suit for partition without obtaining permission for filing an another suit for partition by the same plaintiff for the same properties shall never preclude/debar the plaintiff

from filing a fresh suit for partition for the same suit properties. Because, cause of action in every suit for partition is recurring one.

7. On this aspect the proposition of law has already been clarified by the Hon'ble Courts in the ratio of the following decisions:

I. **Mukha Singh & Others vs. Ramchariter Singh & others** reported in AIR 1956 (Pat.) 143, **Madhura Gramani Vs. Thummala Sessa Reddi & Others** reported in AIR 1926 (Mad.) 1018 & **Kannikandath Kizhe Purakkal Vella's Son, Thayyan Vs. Kannikandath Kizhe Purakkal** reported in AIR 1935 (Mad.) 458 that, in a suit for partition, the cause of action is a recurring one. Unless and until the joint properties are divided/partitioned through metes and bounds partition, a fresh suit for partition is maintainable even after the decision made in the previous suit for partition, as the right to partition is a right accruing from time to time and there is a continuing cause of action till the continuance of jointness in the suit properties.

II. **Hari Basudev Vs. State of Orissa & Another** reported in AIR 2000 (Ori.) 125 that, no specific order granting liberty to institute fresh case was passed. However, in petition for withdrawal, petitioner sought to reserve his right to file fresh case. Held, in circumstances, permission to file fresh case could be said to be impliedly granted in withdrawal order. Hence, subsequent election petition in respect of same matter is maintainable. (Para Nos.6 & 7)

III. **Devdutt vs. Shasi Verma & Others** reported in 2021 (3) Civ.C.C. 412 (Chh) that, withdrawal of suit for partition without obtaining permission for filing a fresh suit. The plaintiff is not debarred from filing a fresh suit for partition, as cause of action for filing suit for partition is recurring one. (Para Nos.11 & 13)

8. Here in this revision at hand, when the present suit vide C.S. No.166 of 2022 is a suit for partition and when as per law, withdrawal of an earlier suit for partition by the same plaintiff shall not preclude/debar him/her from filing a fresh suit for partition in respect of the same properties like the present suit at hand vide C.S. No.166 of 2022 and when certified copy of the application for withdrawal of the previous suit vide C.S.No.4 of 2018 was not filed by the defendants (petitioners in this revision) for perusal of the trial court in order to ascertain, whether the plaintiff had filed that petition for withdrawal in the previous suit vide C.S. No.4 of 2018 reserving his right to file a fresh suit or not and when the issues have already been framed in the present suit vide C.S. No.166 of 2022 including one issue therein regarding the maintainability of the suit on the ground of withdrawal of the earlier suit vide C.S. No.4 of 2018 and when in view of the ratio of the decisions referred to *supra* in Para No.7 of this Judgment, withdrawal of the previous suit for partition vide C.S. No.4 of 2018 by the plaintiff shall not be a bar for the maintainability of the 2nd Suit for partition vide C.S. No.166 of 2022, as the cause of action in the suit for partition is recurring one, because, the right to partition is a right occurring from time to time and there is a continuing cause of action till the continuance of the jointness of the properties, then, at this juncture, the impugned order dated 01.03.2024 passed by the learned Trial Court in C.S. No.166 of 2022 rejecting the petition of the petitioners (defendants) cannot be held as erroneous.

TUSAGRA PRUETH & ANR. V. CHUDAMANI PRUETH & ORS. [A.C.BEHERA, J]

So, the decisions relied upon by the petitioners (defendants) indicated in Para No.3 of this Judgment are not applicable to this revision on facts and law as discussed above.

For which, the question of interfering with the impugned order passed by the Trial Court through this revision filed by the petitioners (defendants) does not arise.

9. Therefore, there is no merit in the revision of the petitioners (defendants in the suit vide C.S. No.166 of 2022). The same must fail.

10. In result, the revision filed by the petitioners (defendants in the suit vide C.S. No.166 of 2022) is dismissed on contest, but without cost.

11. Accordingly, the revision is disposed of finally.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

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Result of the case:

CRP disposed of.