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ARBITRATION AND CONCILIATION ACT, 1996 – Sections 5,8,11, 11(6-A) and 29 A r/w Sections 35, 36, 42, 42(2) of the Indian Stamp Act, 1899 r/w Order 23, Rule 1 of the Code of Civil Procedure, 1908 r/w provisions of the Indian Contract Act, 1872 r/w provisions of the Constitution of India, 1950 – Parties entered into an agreement on 01.05.2012 in respect of the hotel premises on lease valid for 10 years and extendable for another 10 years – Lease Agreement was unstamped and unregistered – Dispute arose due to non-payment of monthly rent as parties agreed upon – Ultimately, the matter was referred to the Arbitrator who passed the impugned order – Whether the Court can exercise its writ jurisdiction to interfere with the impugned order dated 01.08.2022 passed by the sole arbitrator.

Held: Yes – This Court believes that the present matter comes within the meaning of “exceptional” and writ jurisdiction ought to be exercised in the face of such patent illegality, which necessitates interference.

The impugned Order/Award is set aside – The Arbitral Tribunal having impounded the instrument, which is not duly stamped as per the provisions of the Indian Stamp Act, 1899, shall forward it to the Collector, if the same has not already been done – The Collector then, shall, direct the collection of the appropriate stamp duty and levy penalty – In this regard, it is clarified that the stamp duty and any penalty thereupon shall be borne by the Parties in the manner stipulated in the Agreement – Upon payment, the Collector shall endorse that the proper stamp duty has been paid under Section 42 of the Indian Stamp Act, 1899 – This endorsed instrument shall be returned to the Ld. Sole Arbitrator, after which the proceedings shall be conducted and concluded expeditiously – Till such time, the arbitration proceedings shall remain in abeyance.

M/s. Hotel Sea Point Pvt. Ltd, Puri V. M/s. Blueline Resorts Pvt. Ltd, Bhubaneswar

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BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 483 r/w Section 37 of NDPS Act – There is allegation against the Petitioner for possessing 1238 grams of Brown Sugar – After going through the evidence of the witnesses vis-à-vis the material placed on record, Court does not believe that the accused/ petitioner is not guilty of such offence – Whether bail should be granted to the petitioner in an offence under the NDPS Act while Court does not find any reasonable

ground for believing that the petitioner is not guilty of such offence and he is unlikely to commit any offence while on bail.

Held: No – The Petitioner having not satisfied the conditions of Section 37 of NDPS Act, this Court is not inclined to grant bail to the Petitioner.

Rashmi Ranjan Bhol @ Silu V. State of Odisha.

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BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 528 – Criminal Proceeding has been initiated against the petitioner and G.R. Case is pending in the Court of learned SDJM, Nabarangpur for commission of offences punishable U/s. 115(2) & 296 of the Bharatiya Nyaya Sanhita, 2023 and Section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015 – Matter has been settled between the petitioner and opposite party for which petitioner filed the present application for quashing the criminal proceeding – Whether the criminal proceeding pending before the learned JMFC should be quashed on the ground of amicable settlement of the matter between the petitioner and the victim.

Held: Yes – In view of the settlement between the parties, even though I am prima facie satisfied that the petitioner had beaten the child, but as the complainant does not want to proceed against the petitioner, I am of the view that no useful purpose will be served by keeping the proceeding pending as it will be an exercise in futility and the valuable time of the Court will be unnecessarily wasted.

Ashwini Ku. Pradhan V. State of Odisha & Ors.

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CIVIL PROCEDURE CODE, 1908 – Order 18, Rule 17 – The Petitioner filed an application U/o. 18, Rule 17 C.P.C. to recall for further cross-examination of Defendant 10 as D.W. 2 for confrontation of Ext. 21 – The copy of plaint filed in another suit has been marked as Ext. 21 in the year 2023 – D.W. 2 was examined in September 2017 and the application for his recall was received by learned Court below in November 2024 which was nearly after expiry of seven years – Whether an application U/o. 18, Rule 17 of C.P.C. can be allowed after a delay of seven years.

Held: Yes – Notwithstanding such delay, recall for further cross-examination of defendant no.10 could have been allowed with cost.

Orissa Rashtrabhasa Parishad, Puri & Ors. V. Goura Gopal Das & Ors.

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CIVIL PROCEDURE CODE, 1908 – Order 18, Rule 17 r/w Section 145 of the Evidence Act, 1872 – The Petitioner filed the application to recall Defendant No. 10 for confrontation of Ext. 21 – Whether absence of pleading in the present suit can be a ground for denying recall of Defendant No. 10 for further cross-examination.

Held: No – Such a witness should have been allowed to be further cross-examined for being confronted to Ext. 21 as the same is permissible in view of Section 145 of the Evidence Act – Absence of pleading in the present suit cannot be a ground denying recall of defendant No.10 – It is not that the reason for recall is to patch up any lacunae or introduce fresh facts but with regard to the earlier suit instituted by opposite party No.12 along with others and to confront about the same since the plea is that there is an admission by him, which is necessarily to be brought on record to fortify the claim of the petitioners and the same ought to have been allowed.

Orissa Rashtrabhasa Parishad, Puri & Ors. V. Goura Gopal Das & Ors.

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CIVIL PROCEDURE CODE, 1908 – Order 39 Rules 1 & 2 – The petitioner filed the CMP assailing the correctness of the impugned judgment passed in FAO No. 32 of 2024 by learned District Judge, Kendrapada where the order of status quo given by Trial Court was modified with a restriction vis-à-vis any such construction to be taken up over the suit land – This court by order dated 13th February 2025 modified the impugned decision in FAO 32 of 2024 allowing the petitioners to conclude the construction of the half built house situated over the suit schedule property, title over which, shall be subject to the result in the suit – The Opp. Parties 1 to 3 & 8 filed the I.A. seeking recall of the order dated 13.01.2025 – Whether allowing application of the petitioner by directing to conclude the construction of half built house situated over the suit schedule property violates the essential ingredients of Order 39, Rules 1 and 2 of C.P.C.

Held: No – The inconvenience would be more for the petitioners, if they are prevented from making construction besides the loss and damage, in case status quo is allowed to remain – Law is rather well settled that any such construction, if it has already undertaken and progressed extensively, the same should be allowed to complete

pending decision in the suit as the party making it having invested is likely to suffer immensely besides the pecuniary loss and damage on account of any such order of injunction.

Shree Shree Radha Krushna Raghunathjew Thakur & Ors. V. Kamala Nayak & Ors.

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CONSTITUTION OF INDIA, 1950 – Article 14 – Negative equality – Petitioner claims to protect his service in the same status in the same department and to direct the Opposite Parties to adjust or absorb him in the directorate of GWS & I w.e.f. 11.10.2007 as allowed to other two co-employees/tracers – Petitioner has neither proved to have exercised any option to come over to GWS & I nor has produced any material as to how these two co-employees have been absorbed subsequently – Whether non-consideration of petitioner’s case alike co-employees amounts to violation of Articles 14 & 16 of the Constitution of India.

Held: No – A litigant coming to the Court cannot claim negative discrimination/equality seeking direction from the Court to the Department to act in violation of the law or statutory Rules – It is a settled proposition of law that Article 14 of the Constitution of India does not envisage negative equality.

Nimai Harichandan Panda V. State of Odisha.

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CONSTITUTION OF INDIA, 1950 – Article 14, 16(1) – Creation of class within a class – The Central Government has sanctioned creation of 120 posts pursuant to which the State Government created 118 posts under the INSAT Scheme at different times in between 1983 to 1984 – The petitioners were recruited by a duly constituted selection committee through open advertisement against the said substantive post after 01.01.1990 – The Government treated 63 employees who are recruited by 31.12.1989 as Government employees and the employees who were engaged after 1.1.1990 were treated as autonomous employees as their engagement was temporary and subject to continuance of the scheme – Whether creation of a class within a class is permissible in law.

Held: No – From a conspectus of the analysis of facts and law and the contentions advanced, this Court holds that the Petitioners having been appointed against substantive posts created by the Government prior to 1.1.1990 and continuing in service for more than two decades, cannot be disengaged by treating them differently than the employees

appointed prior to 1.1.1990 – The attempt of the State to distinguish the Petitioners from the 63 employees, if permitted, would entail creation of a class within a class, which cannot be countenanced in law.

Pramod Ranjan Dash V. State of Odisha

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CONSTITUTION OF INDIA, 1950 – Article 226 – Whether Judicial Review in disciplinary proceeding is permissible.

Held: Yes – It is only in exceptional circumstances, where it is found that the penalty awarded by the Disciplinary Authority is shockingly disproportionate to the misconduct, the Courts may step in and interfere – No doubt the award of penalty which is grossly in excess to the misconduct cannot claim immunity and remains open for the interference under the limited scope for judicial review which is based on the “Doctrine of Proportionality”.

Sunil Ku. Rout V. Urban Co-operative Bank Ltd., Rourkela & Ors.

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CONSTITUTION OF INDIA, 1950 – Articles 226 & 21 – Electrocution death – Compensation – Maintainability – Petitioner’s 17 years old son, accidentally came in contact with a charged electric pole – The passers by attempted to rescue him using sticks and took him to Khajuria Kata CHC for treatment, but he was later declared as dead – Petitioner approached the Court seeking adequate compensation – Whether the Hon’ble Court has jurisdiction to pass the order/award compensation while entertaining an application under Article 226 of the Constitution of India.

Held: Yes – In light of different Judicial pronouncements and progression of the constitutional law for protection of constitutional rights and payment of compensation for damage caused to the citizens, the constitutional courts can comfortably assume the power to award compensation, in a scenario when the undisputed facts reveal that the death of a person was due to electrocution and such fact is established by prima facie evidence, otherwise failure to do so would ultimately amount to infringement of fundamental Right to Life guaranteed under Article- 21 of the Constitution of India, 1950.

Dusmanta Samal V. State of Orissa & Ors.

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CRIMINAL ANTECEDENTS – Necessary direction given to concerned authority to furnish the criminal antecedents to the learned court in seisin, wherever it is so directed, within three days from the date of such order/judgment.

The Principal Secretary (Home), State of Odisha is requested to issue necessary directions relating to furnishing of details of criminal antecedent in tune with the direction as contained in paragraph-18, to the UPDs and the Police Districts through the concerned D.C.Ps and S.Ps, in the interest of ensuring transparency in dispensation of justice in criminal cases.

Udhab Digal & Ors. V. State of Odisha

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CRIMINAL PROCEDURE CODE, 1973 – Section 438, r/w Section 37 (1) (b) (ii) of the NDPS Act – Pre-arrest bail for commission of an offence punishable under Section 20(b) (ii) (C) of the NDPS Act – The allegation against the petitioners is that they were involved in the transportation of contraband article with other co-accused persons – It is stated that the implication of the petitioners is on account of co-accused's statement and since the co-accused has been acquitted by the Special Judge on the ground of violation of the mandatory provisions of the Act, the petitioners who do not have any criminal proclivity may be protected by pre-arrest bail – Whether the petitioners are entitled to pre-arrest bail when the co-accused has been acquitted on the ground of violation of mandatory provisions U/ss. 42(2) and 57 of NDPS Act.

Held: Yes – Given the circumstances under which the Petitioners have been cited as accused solely basing on co-accused statement and violations of mandatory provisions of section 42(2) and 57 of NDPS Act in the context of seizure being a joint one, this Court is persuaded to hold that merely because warrants have been issued in the light of the manner in which the investigation has been done as noted by the learned Special Judge, the Petitioners are entitled to be released on pre-arrest bail.

Udhab Digal & Ors. V. State of Odisha

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CRIMINAL PROCEDURE CODE, 1973 – Sections 451 & 457 – Release of seized currency – In the present case during search an amount of ₹15.00/- lakh was seized from the cupboard of office chamber of the petitioner – Whether Court has power to order release of seized property to its lawful owner.

Held: Yes – By implementing the structured guidelines, courts and law enforcement agencies can ensure that seized property is managed in a manner that is efficient, legally sound, and beneficial to both the justice system and society at large – The Registry of this Court is advised to transmit a copy of this judgment to all District Courts, Special Courts, and other subordinate courts – Additionally, copies may also be forwarded to the Director General of Police, Odisha Police Headquarters, and all other law enforcement agencies, including the State Vigilance Directorate, Excise Department, Forest Department, and other investigating agencies, for the purpose of guidance.

Lakshman Srinivasan V. Republic of India (CBI)

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CRIMINAL PROCEDURE CODE, 1973 – Section 482 – Quash of criminal proceeding – Learned Court below has taken cognizance of the offences U/ss. 13 (2) r/w 13(1) (c) (d) of the Prevention of Corruption Act read with Sections 468/ 471/406/120B of the Indian Penal Code against the petitioners – The departmental proceedings initiated against the petitioners on the self-same allegations ended in exoneration – Whether exoneration of an accused in departmental proceeding having been concluded, should criminal proceedings based on the same set of facts be allowed to continue?

Held: Exoneration in the departmental proceeding which is the culmination of much lower standard of prove cannot enure to the advantage of the petitioners which would lead to quashing of the criminal proceeding.

This Court finds it appropriate to emphasize that exoneration in departmental proceedings does not necessarily preclude the prosecution to continue the proceedings.

Rikhiram Chandrakar V. State of Odisha (Vigilance)

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CRIMINAL TRIAL – Dying Declaration – The appellant was convicted for the offences punishable under Sections 302/201/34 of Indian Penal Code, 1860 – Whether the evidence of P.W. 16 who had heard the deceased shouting that the ‘appellant killed him and to save him’ can be utilized as dying declaration of the deceased.

Held: Yes – Whatever the deceased shouted after being assaulted by the appellant as deposed to by P.W.16 that he was being killed by the appellant and further shouted to save him, can certainly be relied upon as dying declaration of the deceased. The dying declaration is a

substantive evidence only for the reason that a person in acute agony is not expected to tell a lie and in all probability, it is expected from such person to disclose the truth and an order of conviction can be safely recorded on the basis of dying declaration, if the Court is fully satisfied that the declaration made by the deceased was voluntary, true and reliable and in such case, no further corroboration can be insisted. Dying declaration need not be addressed to a particular individual and we find there is no suspicious feature in such evidence in the case in hand and there is no infirmity in it.

Daktar Bhoi V. State of Odisha

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CRIMINAL TRIAL – Minor discrepancy in evidence – Whether minor discrepancy in evidence demolishes the entire prosecution case.

Held: No – Although there are certain minor discrepancies in the evidence of P.W. 13 & P.W. 16, but that by itself is not a ground to disbelieve the prosecution case and falsify the evidence of these two witnesses.

Daktar Bhoi V. State of Odisha

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CRIMINAL TRIAL – The appellant was found guilty for the offence U/s. 302 IPC – There is no eye witness – The case was based on circumstantial evidence – The prosecution witness reveals significant gaps and circumstances – It is an admitted fact that the house in which the offence took place was not exclusively occupied by the Appellant – The deceased was residing there with her husband as well as her foster parent, including the Appellant – No neighbour or third party has testified about any tension, quarrel, or observable discomfort between the deceased and the Appellant – The Prosecution has also not explained why the Appellant if truly driven by such motive, would act in broad daylight in a shared home, and leave behind multiple incriminating objects without making any attempt to conceal the evidence – Whether the prosecution's case is made out where the case is based upon circumstantial evidence.

Held: No – In cases resting on circumstantial evidence, motive assumes particular significance – It must be clear, cogent and surrounded by the overall factual matrix – In the present case, the prosecution's assertion of motive appears speculative and fails to inspire confidence – The testimony of P.W.10, being uncorroborated and delayed, does not rise above the threshold of suspicion – In the

absence of independent verification or prior consistent statements, the alleged motive remains weak and unconvincing, further loosening the chain of circumstances necessary for establishing the guilt of the Appellant beyond reasonable doubt.

Rajendra Jain V. State of Odisha

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Difference between Departmental Proceeding vis-a-vis Criminal Proceeding – Explained.

Rikhiram Chandrakar V. State of Odisha (Vigilance)

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DOCTRINE OF WAIVER – The Opposite Party No. 4 had filed bid security in the form of bank guarantee – Whether furnishing the bid security in the form of bank guarantee amounts to waiver of one’s right for exemption of EMS.

Held: No – In our considered opinion, the Opposite Party No.4 never waived his right of claiming exemption of EMD – In addition to its claim for exemption of EMD by furnishing MSME/UDAYAM Certificate, the Opposite Party No.4, as an abundant caution, furnished bid security in the form of bank guarantee, which was not at all required to be furnished by it as an MSME – Thus, this Court is of the view that, the doctrine of waiver has no application to the instant case.

M/s. Balaji Solar Systems-M/s.Unicorn India Pvt. Ltd. V. State of Odisha (Principal Secretary, Panchayati Raj & Drinking Water Deptt.) & Ors.

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HINDU MARRIAGE ACT, 1955 – Section 13 (1) (i-a) – Mental cruelty – The appellant/ wife passed comments on the physical infirmity of the husband saying him as ‘Kempa’, ‘Nikhatu’ remains un-rebutted as stated by the witness – Whether making statements against the husband towards his physical infirmity amounts to mental cruelty.

Held: Yes – A person is expected to give respect to another person in general and where it comes to relationship of Husband and Wife, it is expected that the Wife should support the Husband despite his physical infirmity, if any – Here it is a case where the Wife made aspersions to

Husband towards his physical infirmity and passed comments regarding the same – This definitely in our opinion amounts to mental cruelty leading to draw an inference against the Wife that she treated her Husband with cruelty owing to his physical deformity – Thus we are inclined with the finding of the learned Judge, Family Court, Puri that the Wife has treated her Husband with mental cruelty – On such ground, we are satisfied that the requirement in terms of Section 13(1)(i-a) of the Hindu Marriage Act is attracted to grant the decree of divorce – We thus confirm the impugned judgment granting the decree of divorce between the parties dissolving their marriage.

Priyanka Nayak @ Pradhan V. Pranaya Pradhan @ Nayak
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INDIAN LIMITATION ACT, 1963 – Article 57 – Limitation in case of fraud – Limitation when previous decree obtained without impleading the plaintiff as a party – Plaintiff filed a suit for declaration and for setting aside the judgment and decree passed in T.S. Nos. 17/71, 59/74, 19/75 and S.C.C. No. 7/3 of 1975 – Defendant Nos. 1 and 2 filed the above suits against some members of other branches of the family for declaration of their right, title and interest over the suit properties and for permanent injunction against them without impleading any members of the branch of the plaintiff and got the decree in the said suits behind back and without knowledge of the plaintiff – The plaintiff came to know about the said judgments and decrees for the first time on 31.05.1975 and filed the present suit – The trial Court decreed the suit of the plaintiff in part against the defendants and declared that the decrees passed in the previous suits are not binding upon the plaintiff and also declared his 1/4th interest in the suit schedule properties – The First Appellate Court as per its judgment and decree concurred the finding and observations made by the learned Trial Court – Whether the plaintiff's claim in the suit is barred by limitation as per Article 59 of the Limitation Act when the plaintiff prays to set aside the decrees dated 17.04.1972, 29.07.1971 and 30.05.1975.

Held: No – It is held that, the plaintiff had filed the suit vide T.S. No.30 of 1981 praying for a declaration that, the Judgments and Decrees in T.S. Nos.17/71, 59/74,19/75 & S.C.C. No.7/3 of 1975 have been passed behind his back without impleading him as party by practising fraud knowing fully well that, he (plaintiff) had/has 1/4th interest in the suit properties, then, at this juncture, it cannot be held that, the suit vide T.S. No.30 of 1981 filed by the plaintiff is barred by limitation.

Because, fraud is a continuous wrong and period of limitation begins to run at every moment – For which, there is no limitation to challenge the same – Therefore, it cannot be held that, the suit of the plaintiff is barred by limitation.

Nigamananda Rath V. Siba Narayan Pati (Dead)

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INTERPRETATION OF STATUTES – “Appointment to service in a particular year” – Whether the “year” is to be meant “the calendar year” when recruitment process started or the year in which the appointment was made.

Held: Here the relevant words are ‘appointed to service in a particular year’ and “year” means a calendar year as per section 2(1) (j).

The submissions of private Opposite Parties to stretch the meaning of the word ‘year’ as a ‘recruitment year’ other than the meaning defined in Section 2(1)(j) of the Rules is not found acceptable – So the seniority of the persons appointed to the cadre earlier on 27.1.2016 and 18.5.2016 are treated to be senior to the persons appointed subsequently in the same year.

Charan Singh Hembram & Ors. V. State of Odisha & Ors.

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INTERPRETATION OF STATUTES – Whether an order pronounced in the open Court becomes operative without having the signature.

Held: Yes – We are of the humble view that the order dated 24.02.2021 which was pronounced in the open Court by the Senior member of the Bench, became operative and such order to be operative does not await signing thereof by the Court as signing is a formality to follow after such pronouncement.

Malaya Ranjan Dash V. State of Odisha & Ors.

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JUDICIAL REVIEW – Scope of interference or judicial review with the findings of disciplinary authority – Discussed with reference to case law.

Malaya Ranjan Dash V. State of Odisha & Ors.

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LAND ACQUISITION ACT, 1894 – Sections 18, 3(b), 50 (2) r/w Order 1, Rule 10 of the CODE OF CIVIL PROCEDURE, 1908 – The appellant filed the present appeal being dissatisfied by the determination of the compensation amount as held by the referral Court – The East Coast Railway and/or Angul-Sukinda Railway Company are the project proponents/ beneficiary – Neither the beneficiary company nor the East Coast Railway were made party before the Referral Court – Whether the East Coast Railways and the Angul-Sukinda Railway company who are project proponents/ beneficiary should be impleaded as necessary parties being the persons interested before the referral Court.

Held: Yes – The beneficiary who undoubtedly bears the burden of compensation is an interested person within the meaning of Section 3(b) of the Act and is also a proper party if not a necessary party under Order 1, Rule 10 of CPC – It would be error of law if it is held that a beneficiary Company is not a person interested.

As a result of the above discussions the award dated 04.07.2014 in L.A. Misc. Case No.126 of 2013 decided by the learned Civil Judge (Senior Division), Kamakhyanagar is set aside and quashed – The L.A. Misc. Case No. 126 of 2013 is restored to file for adjudication afresh – The parties in the present case i.e. the appellants and the intervenors shall appear before the learned court of jurisdiction i.e. the learned Civil Judge (Senior Division), Kamakhyanagar or any other court that could be assigned the matter – The learned Court shall act upon production of the website copy of this order.

Ramesh Ch. Patra & Ors. V. Spl. L.A.O, Angul-Duburi-Sukinda Road, New Broad Gauge Rail Link Project

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LAW OF TORTS – Principle of strict liability – Petitioner's 17 years old son accidentally came into contact with charged electric pole, and subsequently expired in Hospital – The plea of Opp. Party that they did not act negligently or carelessly and were not responsible for death caused to the petitioner's son – Whether the electricity distribution companies/ Opp. Parties can escape from their liability by merely stating that they were not negligent in maintaining the apparatuses used for supply and distribution of electricity.

Held: No – With the advent of the doctrine of strict liability and acceptance thereof as a sound legal principle, the electricity distribution companies cannot escape from their liabilities – Doctrine of strict liability explained with reference to case laws.

MOTOR ACCIDENT – Just Compensation – The claimants’ plea is that while quantifying the compensation, the amount spent on account of hospitalization was not taken into account – The claimants are entitled to higher compensation as there is no dispute regarding the accident – The contention of Respondent/ insurance company is that since the medical bills were not independently proved, the same ought not to be taken into account – Whether while disposing of the claim application, strict rules of evidence are applicable.

Held: No – While disposing of the claim application strict rules of evidence are not applicable and the proceeding is summary in nature and the legislation is a benevolent one.

The fixation of the amount is always based on the doctrine of just compensation and in doing so one can break free from the shackles of pleadings of the parties – Rather the impelling grounds are one of equity and awarding compensation which is just and cannot be treated as a wind fall or bonanza.

Saraswati Routray @Rautray V. Susanta Ku. Sahoo

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MOTOR VEHICLES ACT, 1988 – Sections 47, 47(2), 44(2) r/w Rules 54, 54(2) of Central Motor Vehicles Rules, 1989 – Petitioner, a businessman, initially operated in Lakshadweep – Later he relocated his business at Jharsuguda, Odisha and sought to register his goods carrier vehicles in Odisha but the RTO, Jharsuguda refused to register the vehicles in question due to unavailability of NOC on the online portal issued by the RTO, Chetla – Verification process has revealed that the confirmation email produced by the petitioner is fabricated – Inspection conducted by Opposite Party Nos. 2 & 3 conclusively established that neither the vehicles nor the garage existed at the specified location – Whether, in the above circumstances, petitioner’s case merits consideration.

Held: No – A serious and compelling doubt arises regarding the authenticity of the NOC as well as the very existence of the vehicles purportedly presented before the Registering Authority – Accordingly, this Court is not inclined to direct the RTO, Jharsuguda, to proceed with the registration of the Petitioner’s vehicles.

ODISHA ESTATE ABOLITION ACT, 1951 – Section 7 – Undisputedly at the time of vesting of the suit properties in the State in the year 1964, Narayan Mishra Panigrahi (Grandfather of plaintiff) had already expired in the year 1939 – The OEA collector settled the suit properties in the name of Lakhrajdar i.e. in the name of grandfather of the plaintiff – Whether the decree passed in favour of a dead person is sustainable under law.

Held: No – When, undisputedly by the time of vesting of the suit properties in the State in the year 1964, Narayan Mishra Panigrahi was not in mortal earth, as he had expired much prior to that i.e. in the year 1939, then it was obvious and natural that, by the time of initiation of O.E.A Case No.724 of 1965-66 under Section 7 of the O.E.A. Act, Narayan Mishra Panigrahi was not in Khas possession over the suit properties, as he was dead by then and the settlement of the suit properties in O.E.A. Case No.724 of 1965-66 under Section 7 of the O.E.A. Act according to the Section 7 of the O.E.A. Act as per Ext.3 in favour of a dead person i.e. Narayan Mishra Panigrahi (who was not in possession over the suit properties due to his death much prior to 1964) shall be deemed as *non est* in the eye of law – Because, as per law, no order of settlement like the suit properties can be made under Section 7 of the O.E.A. Act in favour of a dead person, who was not in actual possession over the suit properties on the date of settlement of the same in his name – For which, it is held that, the order of settlement of the suit properties made in O.E.A. Case No.724 of 1965-66 as per Ext.3 in favour of the grandfather of the plaintiff i.e. Narayan Mishra Panigrahi is illegal, void and *non est* in the eye of law.

Raghunath Mishra V. Kailash Ch. Behera & Ors.

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ORISSA HIGH COURT ORDER, 1948 – Article 4 r/w Clause 10 of Letters Patent constituting the High Court of Judicature at Patna and Rule 6 of Chapter-III and Rule 2 of Chapter VIII of the Rules of the High Court of Orissa, 1948 – The learned Single Judge dismissed the writ petition based on perverse facts being *de hors* material on record – Whether the Judgment passed in writ petition is liable to be interfered with in this intra-Court appeal when the same was dismissed on perverse facts being *de hors* material on record.

Held: Yes – This Court finds that there is factual perversity apparent on the face of judgment dated 06.09.2024 of the learned Single Bench – Therefore, it is felt expedient to show indulgence in said judgment.

Ganesh Chandra Patra V. State of Odisha, [Principal Secy., Commerce & Transport (Transport) Deptt.] & Ors.

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ORISSA HIGH COURT RULES, 1948 – Registration of Suo Motu proceeding – The petitioner was charge sheeted for dereliction of duty which is based on registration of the Suo Motu proceeding without the approval of the Chief Justice – From the affidavit filed by the Special Officer (Administration), High Court of Orissa, it is apparent that no such rule/ law/ procedure/ standing order is there regarding obtaining permission of Hon’ble Chief Justice for registration of Suo Motu case basing on an Order passed by the Hon’ble Court – Whether approval of the note sheet placed by Deputy Registrar (Judicial) amounts to violation of any definite rule resultantly a deliberate misconduct of the petitioner.

Held: No – If there is no codified procedure or rule and no written practice or direction and the petitioner just approved the note sheet placed by Deputy Registrar (Judicial) basing on an unsigned order which was pronounced in open Court and as we have held that such order can be legally operative, it cannot be said it was an act of deliberate misconduct on the part of the petitioner as held by the Inquiring Authority.

Malaya Ranjan Dash V. State of Odisha & Ors.

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ORISSA INDUSTRIAL HOUSING ACT, 1966 – Section 6(c) r/w Orissa Industrial Housing Rules, 1969 – Rule 12(5) (p) – Allotment of tenement – The tenement in question was allotted in favour of the petitioner on the ground that the petitioner at the relevant point of time was an industrial worker, having been employed in Orissa Textiles and Steels Ltd. – Government in the Housing and Urban Development Department issued resolution dated 24.06.1987 for the purpose of transfer of the tenements constructed under integrated subsidized Housing Scheme for industrial workers and economically weaker sections of the community – One of the conditions prescribed in the scheme was that the person should be in continuous possession of the tenement allotted to him – The Assistant Labour Officer made an

enquiry and found that Opp. Party No. 5 was in possession – Basing on such report made by the Assistant Labour Officer the tenement made in favour of petitioner was cancelled and the tenement was allotted in favour of Opp. Part No. 5 – The cancellation was challenged in previous Writ Application – The Hon'ble Court set aside the cancellation order and remitted the matter for fresh decision by the tenement committee – The Committee in its proceeding dated 05.07.2002 once again decided to cancel the allotment for the reason that the petitioner already ceased to be an industrial worker and he is not in continuous possession of the tenement on the date of publication of the resolution dated 24.06.1987 – Whether the petitioner is eligible to get the tenement when the enquiry made by the Assistant Labour Commissioner found that the petitioner was not in possession of the tenement since January 1985 and permission was given to Opp. Party No. 5 to deposit the rent.

Held: No – In view of such inaction on the part of the Petitioner in not assailing the report submitted by the Asst. Labour Officer under Annexure-B/5 and the permission accorded to Opp. Party No.5 to deposit the rent for the period from January 1985 to July 1987, the stand taken by the Tenement Committee that Petitioner is not in occupation of the tenement and accordingly he is not entitled to get the benefit of Resolution dated 24.06.1987 cannot be found fault with.

Not only that, in view of the provisions contained under Section 5(6) of the Act and Rule 12(5)(p) of the Rules, since Petitioner ceases to be an Industrial Worker because of closure of the company w.e.f. 16.08.1984 as found from Annexure-5, no fault also can be found with regard to such stand of the Tenement Committee.

Bhaskar Rout V. State of Odisha & Ors.

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ODISHA SECRETARIAT SERVICE (METHOD OF RECRUITMENT AND CONDITIONS OF SERVICE) RULES, 2016 – Rule 17 r/w Rule 17 of ODISHA SECRETARIAT SERVICE (METHOD OF RECRUITMENT AND CONDITIONS OF SERVICE OF ASSISTANT SECTION OFFICERS) RULES, 2010 – Applicability of – In the instant case, 2010 came into force w.e.f. 07.04.2010 and continue to govern the field till 10.01.2017 – 2016 Rules was brought in supersession of 2010 Rules w.e.f. 11.01.2017 – All the parties were appointed prior to coming into force of the 2016 Rules – Whether the cadre Rule which came into force after the appointment of a civil servant/employee can be made applicable to determine their service seniority retrospectively.

Held: No – Seniority in service has to be reckoned from the date of first appointment – An employee gains his seniority by the length of service he renders – Therefore, the Rule prevailing on the date of initial appointment of an employee is relevant to count his seniority in service and not that the Rule that comes in force from a prospective date than the initial appointment date because by gaining every date in service an employee stocks each date of seniority in his favour to reckon for – Undoubtedly in the present cases, every party has already gained service seniority by the date of coming into force of 2016 Rules on 11.1.2017 – So the action of State-Opposite Parties to count the service seniority of the parties as on 1.1.2018 in terms of the provisions of 2016 Rules that was in force on 1.1.2018, by ignoring the provisions of 2010 Rules which was prevalent on the date of initial appointment of each party, is completely on faulty side – So in my humble opinion, the relevant rules applicable to determine service seniority of each ASO appointed prior to 11.1.2017 and after 7.4.2010 has to be reckoned in terms of the provisions contained in 2010 Rules.

Charan Singh Hembram & Ors. V. State of Odisha & Ors.
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ODISHA SECRETARIAT SERVICE (METHOD OF RECRUITMENT AND CONDITIONS OF SERVICE OF ASSISTANT SECTION OFFICERS) RULES, 2010 r/w ODISHA SECRETARIAT SERVICE (METHOD OF RECRUITMENT AND CONDITIONS OF SERVICE) RULES, 2016 – Rule 5(b)(c) and Rule 17(2) – How the *inter-se* seniority between the direct recruits and promotees should be determined?

Held: The petitioners who were appointed by promotion/induction in terms of clause (b) (c) of rule-5 shall be treated *en-bloc* senior to those appointed by direct recruitment.

Charan Singh Hembram & Ors. V. State of Odisha & Ors.
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ODISHA SUPERIOR JUDICIAL SERVICE AND ODISHA JUDICIAL SERVICE RULES, 2007 – Rule 21 – Petitioner a Court employee had staked his claim for appointment to the post of Civil Judge pursuant to Odisha Public Service Commission notification without obtaining “No Objection Certificate” for which he was permanently debarred from Government employment – Whether such order can be sustainable in law when it is a mistake simpliciter of the petitioner without any guilty mind.

Held: No – When right to public employment subject to conditions is one of the facets of Article 16, the Government or the Public Service Commission has to be circumspect in invoking such a penal provision, more particularly when the candidate is denied appointment to the post in question – No special reasons are assigned to justify a permanent embargo as if a heinous sin is committed by the candidate – After all, errors do occur in any human transaction – What needs to be looked into is, whether it is a misconduct with guilty mind or a mistake simpliciter – Our examination reveals that the arguably culpable act of the petitioner does not fit into the former and therefore his case is miles away from the precincts of penal provision.

Granting a direction to appoint such an erring candidate that too to the post of Civil Judge, in the circumstances is not warranted – A contra view if countenanced would lay dangerous precedent in the realm of service law – Had there been minor irregularities as were sought to be made out on behalf of the petitioner, we would have arrived at a different conclusion – A Writ Court cannot embark upon such a misadventure.

A writ of certiorari issues quashing the impugned order dated 30.06.2017 only to the extent it permanently debars the petitioner from staking claim for Government appointment and therefore he is entitled to participate in the future recruitment process, if he is otherwise eligible.

Dibakar Patra V. State of Odisha & Anr.

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PREVENTION OF CORRUPTION ACT, 1988 – Petitioners were charge sheeted under Sections 13(2) r/w 13(1) (c) (d) of the Prevention of Corruption Act – Petitioners were exonerated in departmental proceedings initiated against them on the self-same allegation – Notwithstanding the exoneration of the petitioners in departmental proceedings, the competent authority on evaluation of the materials on record accorded sanction to prosecute the petitioners – Whether continuation of such criminal proceeding should be deemed an abuse of the process of the Court and a wastage of judicial time.

Held: No – After grant of sanction by the competent authority, the effect of exoneration in departmental proceedings loses its sanctity because the sanctioning authority accords sanction to prosecute the accused on the material placed before him which from the part of the charge sheet and arrived at the satisfaction that *prima facie* materials are there against the public servant which warrant prosecution.

Rikhiram Chandrakar V. State of Odisha (Vigilance)
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PROPERTY LAW – Non-joinder of party – It is established that the properties held by the grandfather of the plaintiff was vested with the State, when plaintiff filed the suit for eviction against the defendants on the basis of his ownership over the properties – Plaintiff has not made the State as party – Whether the suit is maintainable due to non-joinder of party.

Held: No.

Raghunath Mishra V. Kailash Ch. Behera
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SERVICE JURISPRUDENCE – Abolition of post – Jurisdiction of Court – Petitioner was working as a tracer in Orissa Lift Irrigation Corporation Ltd (OLIC) – The OLIC vide notification dated 21.05.1986 abolished the Hydrological Division – The Additional Secretary to Govt. vide letter dated 30.12.1995 while addressing to the Managing Director OLIC Ltd., made it clear that the Directorate of GWS & I newly created will be transferred to the administrative control of the Department of Water Resources with effect from 01.01.1996 along with the staff on “as is where is basis” – The Petitioner has not exercised his option within the stipulated date and time – Petitioner challenges the abolition of post of tracer against which he was praying for absorption – Whether the Court has jurisdiction to interfere in the decision taken by the Government.

Held: No – The creation & abolition of posts is a matter of Government policy and every sovereign Government has this power in the interest and necessity of internal administration – It is, however, clarified that unless the creation and abolition of post is actuated with any *mala-fide*, the Court should go slow to interfere in the matter.

Nimai Harichandan Panda V. State of odisha
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SERVICE JURISPRUDENCE – Absorption – The appellant has been working as process server against vacant sanctioned post in the office of RTO, Chandikhole since 1997 – The Govt. of Odisha in Commerce and Transport Department vide letter dated 20.12.2019 issued sanction on abolition of the said post – Whether the sanction

with regard to abolition of post of process server in the office of RTO, Chandikhole by the Govt. of Odisha Commerce & Transport (Transport) Department vide letter dated 20.12.2019 pursuant to which the appellant was disengaged from service can be held to be legally sustainable.

Held: No – On the date of taking decision to abolish the post, the appellant was in position and had already served for more than 20 years since 16.01.1997 till 20.12.2019 – Added to the above, he was given Scale of Pay with Grade Pay and D.A. Having found that the decision to abolish the post of Process Server in the Office of RTO, Chandikhole in the foregoing paragraphs being arbitrary and non-application mind to the germane factors, taking note of ratio of decisions of different Courts on the subject-matter in similar facts, this Court is of the considered view that injustice has been meted out to the appellant – The appellant is entitled to be considered for absorption in the post of Process Server.

Ganesh Chandra Patra V. State of Odisha, [Principal Secy., Commerce & Transport (Transport) Deptt.] & Ors.

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SERVICE JURISPRUDENCE – Appellant was removed from service on the charge of taking bribe of Rs. 20,000/- – He was acquitted from the criminal charges under the Prevention of Corruption Act, 1988 – Appellant urged for invalidation of the impugned order on various grounds – Whether the case of the appellant merits consideration.

Held: No – Having consciously participated in the disciplinary proceedings without raising a little finger, he cannot now turn around to find fault with the same – In a way, he is estopped from taking such a contention appears to be an afterthought – Thirdly, what prejudice has been caused to him by virtue of an ex-employee of the organization holding the inquiry proceedings, remains unsubstantiated.

In our considered view, the Management cannot be faltered in not calling the complainant as a witness, when there was other abundant evidentiary material on record – It is not that invariably all persons named in the Charge Memo or in the list of witnesses should be examined – It all depends upon a host of factors that essentially lie within the wisdom of parties – Added lastly, what prejudice is caused to the appellant by employer not examining the complainant is not forthcoming – In disciplinary proceedings ordinarily the provisions of the Evidence Act, 1872 are not invokable, although general principles

of evidence do apply – In all fairness, opponent could have asked the management to examine the complainant so that he could elicit something in his favour in the cross-examination – That fairness having not been shown, he cannot complain of unfair treatment.

It hardly needs to be stated that a same set of facts can be a subject matter of a criminal case and a disciplinary proceeding; even if a criminal case against an accused employee fails, a disciplinary proceeding may culminate into an order of punishment against a delinquent employee.

Whether a case is of honourable acquittal has to be ascertained from discerning the substance of the judgment and not just by its terminology – The acquittal granted by the said High Court is on the benefit of doubt and paucity of evidence – Contra submission therefore does not merit acceptance.

A plea of breach principles of natural justice per se would not suffice; one has to demonstrate consequent prejudice due to such breach, in a cognizable measure – That is lacking in this case.

Appellant was in a higher rank of service (Assistant Manager, Finance), and not a Clerk or Group-C employee – He was a member of Tender Committee too, and had taken bribes in connection with the very tender in question – Bribery, corruption & misappropriation of funds are treated in any civilized jurisdiction as serious acts of misconduct involving high moral turpitude – It is more so, when such acts are committed by the employees in the higher rung of service associated with Finance Department – Such acts obviously shake public confidence and the trust of the employer – Therefore, it cannot be gainfully argued that the punishment of removal from service, as distinguished from dismissal, is disproportionate to the proven guilt – Thus there is no scope for invoking the principle of proportionality – It is not argued at the Bar that the punishment awarded to the appellant shocks the conscience of the Court, because it does not.

Dharmapada Ghadai V. Union of India & Ors.

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SERVICE JURISPRUDENCE – Difference between “appointment” and “recruitment” – Explained with reference to case law.

Charan Singh Hembram & ORS. V. State of Odisha & ORS.

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SERVICE JURISPRUDENCE – Disciplinary Proceeding – Guilty of gross misconduct – The Inquiring Authority held the petitioner guilty of three charges – The first charge relates to gross misconduct which is based on approval of a note of the then Deputy Registrar (Judicial) and thereby instructing for registration of a suo motu proceeding on the basis of an unsigned order bearing the date of 2nd Feb 2021 purported to be of a Division Bench though the petitioner had no authority to issue such an instruction under Orissa High Court Rules, 1948 – Whether approval of a note sheet placed by Deputy Registrar (Judicial) basing on an unsigned order which was pronounced in an open Court can be construed as a deliberate misconduct of the Petitioner.

Held: No – We are of the view that the approval of such note sheet by the petitioner can at best be termed as an error of judgment, but certainly not ‘misconduct’ when it is merely for registration of a case for hearing of the matter by the Division Bench of the Court and no party was going to be prejudiced or harmed by such registration – The term ‘misconduct’ implies a wrongful intention, and not a mere error of judgment resulting in doing of negligent act – ‘Misconduct’ means, misconduct arising from ill motive – An act of negligence, errors of judgment, or innocent mistake, does not constitute ‘misconduct’.

Malaya Ranjan Dash V. State of Odisha & Ors.

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SERVICE JURISPRUDENCE – Disciplinary Proceeding – Honorable acquittal in criminal case – Opp. Party No. 1 imposed punishment of withholding 10% of monthly pension for a period of ten years and the period of suspension should be treated as such – The contention of the petitioner is that as he was acquitted in the criminal proceeding, the disciplinary proceeding initiated against him on the self-same cause should be dropped – The order of acquittal was passed basing upon the compromise effected between the petitioner and the victim – Whether the acquittal based on compromise can be treated as an honorable acquittal.

Held: No – It is the view of this Court that acquittal of the Petitioner cannot be taken as an honorable acquittal as contended by the learned counsel appearing for the Petitioner and Petitioner accordingly is not eligible and entitled to get the benefit of the order passed by the Apex Court in the case of G.M. Tank and Ram Lal – It is also found from the record that Petitioner when initially was dismissed from his services vide order dtd.14.07.2014 under Annexure-5, challenging the same Petitioner moved the Tribunal in O.A. No. 3087 of 2014 – The Tribunal vide order dtd.24.03.2017 under Annexure-6, while quashing

order dtd.14.07.2014 remitted the matter to Opp. Party No. 1 to start the proceeding from the stage of supply of the documents and by affording opportunity of hearing to the Petitioner.

Dr. Surendranath Mahapatra V. State of Odisha
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SERVICE JURISPRUDENCE – *Inter-se* seniority between two batches of direct recruits in the ministerial cadre of Assistant Section Officer in the Odisha Secretariat Service – Advertisement No. 6 of 2015-16 was meant for recruitment of ST candidates only – Advertisement No.8 of 2012-13 was meant for all categories of candidates i.e. both unreserved and reserved categories – Two sets of select lists prevailing for two sets of direct recruits – Which select list is to be treated first in order to determine seniority when the advertisements are of the year 2012-13 & 2015-16 meant for the direct recruitment.

Held: The answer would be, in my humble opinion, the select list first came into existence – In other words, the select list which was acted first has to be reckoned first in order and in the instant case it is the select list dated 22.12.2015 of the OPSC pursuant to which the appointment orders dated 27.1.2016 was issued first – The select list pursuant to the Advertisement No.08 of 2012-13 is dated 10.9.2016 based on which the appointment orders dated 5.10.2016 was issued.

Charan Singh Hembram & ORS. V. State of Odisha & ORS.
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SERVICE JURISPRUDENCE – Regularization – The petitioner was appointed as Lady Supervisor on 25.08.2009 on contractual basis – Petitioner has rendered 17 years of continuous service – Whether the contractual employees appointed as per executive instructions to meet administrative exigencies can claim regularization as per the resolution dated 17.09.2013, after completion of six years of their contractual service.

Held: Yes – There is no dispute that the petitioner has rendered 17 years of continuous service – She having been appointed on contractual basis w.e.f. 25.08.2009 can lay a valid claim for being regularized six years thereafter i.e. from 25.08.2015 – Even reckoning six years from the date of publication of the resolution dated 17.09.2013, she can lay a valid claim after six years from said date, i.e. 17.09.2019.

SERVICE JURISPRUDENCE – Validity of resident certificate – An advertisement for engagement of Aganwadi Worker was floated on 18.07.2023 specifically providing that the applicant must upload copy of resident certificate which must have been issued within five years from the date of advertisement – Petitioner uploaded a resident certificate which was issued on 05.10.2015 which is obviously issued before five years of the date of application – The guidelines issued by the Government in Women and Child Development Department on 15.03.2023 reveals that there is no such stipulation requiring the candidate to submit such a certificate – In such a situation, when there is a conflict between the advertisement and guidelines, which will prevail.

Held: It is the settled position of law that in such situation, the guidelines will prevail.

This Court holds that there being no requirement in the relevant guidelines for submission of resident certificate issued within five years before the date of advertisement, such stipulation in the advertisement cannot be utilized to reject the certificate submitted by the petitioner along with her application.

Direction given to the concerned authorities to issue specific guidelines to be uniformly followed by all competent authorities across the State regarding the requirement of producing residential certificates by the applicants.

SPECIFIC RELIEF ACT, 1963 – Section 34 – Judgment in *rem* – The defendant filed T.S. No. 17/71, 59/74, 19/75 and SCC No. 7/3 of 1975 without implementing anybody from the plaintiff's branch in a suit for declaration and permanent injunction – Whether the judgment and decree passed in the suit are binding upon the plaintiff when he was not a party to it.

Held: No – It is the settled propositions of law that, the declaration made under Section 34 of the Specific Relief Act does not operate as *Judgment in Rem*.

A declaratory decree does not bind the parties to the suit or the persons claiming through parties to the suit and the same does not bind anybody other than the parties to the suit.

Likewise, the relief i.e. injunction is purely personal and independent – The matter relating to injunction is limited/concentrated only between the parties to the suit, not to anybody other than the parties to the suit.

Nigamananda Rath V. Siba Narayan Pati (Dead)

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TENDER MATTER – Exemption of EMD – The clause 2(c) of the request for proposal (for brevity the RFP) makes it clear that the MSMEs and startups are exempted from payment of EMD – The Opposite Party No. 4 filed MSME/UDAYAM certificates of both the members of the joint venture (JV) – Whether separate application is necessary to be filed by MSME against the certificate claiming exemption of EMD.

Held: No – In our considered opinion, filing of MSME/UDAYAM Certificates of both members of the JV is sufficient for granting exemption to the Opposite Party No.4 from payment of EMD – Nowhere in the RFP, it is instructed or stated that a bidder has to make a specific claim by filing an application for exemption of EMD.

M/s. Balaji Solar Systems-M/s.Unicorn India Pvt. Ltd. V. State of Odisha (Principal Secretary, Panchayati Raj & Drinking Water Deptt.) & Ors.

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TENDER MATTER – The District Tender Committee rejected the technical bid of the petitioner basing upon the objection raised by one of the bidders – The bidder who made a bald allegation was invited to produce the cogent evidence in support thereof by the said committee but instead of producing any document he sought for accommodation, yet the committee proceeded to reject the technical bid on the ground of ambiguity in the statement of the Petitioner – Whether the District Tender Committee has rightly rejected the technical bid of the petitioner and the ground assigned thereto can withstand on the test of reasonability.

Held: No – Even an administrative authority cannot shriek its responsibility in providing plausible reasons in taking a decision on rejection of the technical bid in a tender process – Right to participate in tender is a valuable right, which cannot be curbed taking a circuitous route not permitted in an administrative field – The moment serious allegation is made against the petitioner that he was a working President of ATMA Committee and transporting PDS and MDM rice

since last 15 years, such allegation is to be substantiated by cogent evidence and the committee should not have proceeded to reject the bid on the ipse dixit of such allegation.

The decision of tender committee in rejecting the technical bid of the petitioner is hereby quashed and set aside.

Raghunath Nayak V. State of Odisha & Ors.

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UNIVERSITY GRANTS COMMISSION ACT, 1956 – Section 12A r/w Regulation 2.1 of the UNIVERSITY GRANTS COMMISSION (AFFILIATION OF COLLEGES BY UNIVERSITIES) REGULATION, 2009 r/w Section 19 (1) of the ODISHA UNIVERSITIES ACT, 1989 r/w provisions of the ORISSA UNIVERSITY FIRST STATUTE, 1990 r/w provisions of the LEGAL EDUCATION RULES, 2008 – Affiliation – Gangadhar Mohapatra Law College, Puri was established in 1981 – On 07.11.1983, the college was granted provisional affiliation by Utkal University for the LL.B course with 320 seats for the Session 1982-83 – By notification dated 19.02.1996, the college was granted permanent affiliation – Madhusudan Law University was notified by the Government by notification dated 07.04.2021 – Vide the impugned letter dated 21.09.2024, the M.S. Law University granted provisional affiliation for the above G.M. Law college with 240 seats for the academic sessions 2022-2023 and 2023-2024 – Whether after notification of grant of permanent affiliation to LL.B Course by the Utkal University, upon whether after notification of grant of ‘... permanent affiliation to LL. B. Course...’ by the Utkal University, upon establishment of new University called ‘Madhusudan Law University’ the affiliation granted by Utkal University ceased to exist with effect from the date of notification establishing Madhusudan Law University.

Held: No – We have not shown any provision that confers such power upon the University that has affiliations of the colleges can declare the ‘permanent affiliation’ granted, to become ‘provisional affiliation’ without any intervening event having any such legal consequence – The Law University established by notification dated 07.04.2021 cannot outgrow the said notification to become a law unto itself and declare that the permanent affiliation(s) granted by the existing Universities of the State become provisional affiliation(s), which is neither contemplated nor intended in the notification dated 07.04.2021 – The fountain cannot rise above the source instead of flowing in its course and in case of the University it has to traverse a legal course being a creature of statute itself.

Governing Body, Gangadhar Mohapatra Law College, Puri & Anr. V. Madhusudan Law University, Cuttack & Ors.

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WORDS & PHRASES – Affiliation – “Affiliation” together with its grammatical variations, includes, in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of a university.

Governing Body, Gangadhar Mohapatra Law College, Puri & Anr. V. Madhusudan Law University, Cuttack & Ors.

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WORDS & PHRASES – Honourable Acquittal – Discussed with reference to case laws.

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WORDS & PHRASES – Honourable acquittal – The concept of ‘honourable acquittal’ is easy to say, but difficult to employ, there being no statutory definition thereof, more particularly in the IPC, CrPC & Indian Evidence Act – Discussed in reference to case law.

Dharmapada Ghadai V. Union of India & Ors.

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WORDS & PHRASES – Privileges – Discussed with reference to Odisha Universities Act, 1989.

Governing Body, Gangadhar Mohapatra Law College, Puri & Anr. V. Madhusudan Law University, Cuttack & Ors.

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2025 (II) ILR-CUT-259

**RAGHUNATH NAYAK
V.
STATE OF ODISHA & ORS.**

[W.P.(C). NO. 2833 OF 2025]

15 APRIL 2025

[HARISH TANDON, C.J. & K.R. MOHAPATRA, J.]**Issue for Consideration**

Whether the District Tender Committee has rightly rejected the technical bid of the petitioner and the ground assigned thereto can withstand on the test of reasonability.

Headnotes

TENDER MATTER – The District Tender Committee rejected the technical bid of the petitioner basing upon the objection raised by one of the bidders – The bidder who made a bald allegation was invited to produce the cogent evidence in support thereof by the said committee but instead of producing any document he sought for accommodation, yet the committee proceeded to reject the technical bid on the ground of ambiguity in the statement of the Petitioner – Whether the District Tender Committee has rightly rejected the technical bid of the petitioner and the ground assigned thereto can withstand on the test of reasonability.

Held: No – Even an administrative authority cannot shirk its responsibility in providing plausible reasons in taking a decision on rejection of the technical bid in a tender process – Right to participate in tender is a valuable right, which cannot be curbed taking a circuitous route not permitted in an administrative field – The moment serious allegation is made against the petitioner that he was a working President of ATMA Committee and transporting PDS and MDM rice since last 15 years, such allegation is to be substantiated by cogent evidence and the committee should not have proceeded to reject the bid on the *ipse dixit* of such allegation. (Para 5)

The decision of tender committee in rejecting the technical bid of the petitioner is hereby quashed and set aside. (Para 6)

Keywords

Plausible reason; Tender; Rejection of tender; Bald allegation; Test of reasonability; *ipse dixit*.

Case Arising From

Decision of the District Tender Committee dated 29.10.2024.

Appearances for Parties

For Petitioner : Mr. Anjan Kumar Biswal

For Opp. Parties : Mr. Saswat Das, AGA

Judgment/Order

Judgment

HARISH TANDON, C.J.

1. A tender was floated for appointment of a transporting agent under P.M. Posan Mid-day Meal (MDM) Programme for Nayagarh District for the period from 01.10.2024 to 30.09.2025. The tender was to be submitted in two parts. Firstly, technical bid and secondly, financial bid. The petitioner participated in the said tender offering the price and also submitted all the requisite documents in order to satisfy the concerns of the tendering committee that he has expertise in transporting the goods. Before the technical bid could be opened, an objection was raised by one of the bidders that the petitioner has been transporting PDS & MDM rice for last 15 years and also working as a President of ATMA Committee of Agriculture Department. It was further alleged that the petitioner had been transporting MDM rice without any tender by the DEO, Nayagarh and has also submitted the experience certificate obtained by manipulation for participating in the tender. The District Tender Committee meeting was held on 29.10.2024 at 3.30 PM to open the technical bid and a decision was taken to cancel the technical bid submitted by the petitioner as the explanation furnished by the petitioner is ambiguous.

2. At the time of moving the writ petition, the opposite parties authorities were restrained from floating any fresh tender for the same work, which is still operative. In course of hearing, we are informed that the tender process initiated earlier in which the petitioner offered his price, was cancelled by the District Tender Committee in a meeting held on 29.10.2024 as there was only one successful bidder. Though the order of injunction was passed by this Court not to publish a fresh tender but it is informed to us that in the interregnum a fresh tender was invited, which was subsequently cancelled.

3. Be that as it may, the only point involved in the instant writ petition is whether the District Tender Committee have rightly rejected the technical bid of the petitioner and the ground assigned thereto can withstand on the test of reasonability. We are conscious of the proposition of law that the writ court should be slow to interfere with the decision of the authority whether to continue with the tender or to cancel it, but equally, if the cancellation is preceded by any decision creating an impunity, such decision must appear to be reasonable and there is no fetter on the Court to interfere in such aspect.

4. The present case is a classic example of the second situation where the District Tender Committee upon analyzing the objections raised against the petitioner, rejected the technical bid solely on the ground of ambiguity in offering the explanation.

5. Interestingly, the objector who made a bald allegation was invited to produce the cogent evidence in support thereof by the said committee but instead of producing any document, he sought for accommodation yet the committee proceeded to reject the technical bid on the ground of ambiguity in the statement of the petitioner. It was a specific stand of the petitioner that he was not working as a President of the ATMA Committee Agricultural Department nor transported PDS rice in the previous year. He categorically admits that he had been transporting MDM rice as per the order of the Collector, Nayagarh and DEO, Nayagarh. According to the petitioner, the same cannot disentitle him to participate in the tender nor the conditions of the tender creates any brindle in this regard, more particularly, to a transporter who has been transporting MDM rice as per the order of the Collector, Nayagarh and DEO, Nayagarh. Even an administrative authority cannot shriek its responsibility in providing plausible reasons in taking a decision on rejection of the technical bid in a tender process. Right to participate in tender is a valuable right, which cannot be curbed taking a circuitous route not permitted in an administrative field. The moment serious allegation is made against the petitioner that he was a working President of ATMA Committee and transporting PDS and MDM rice since last 15 years, such allegation is to be substantiated by cogent evidence and the committee should not have proceeded to reject the bid on the *ipse dixit* of such allegation.

6. Ironically, the Committee proceeded despite the objector having sought time to produce evidence in support of such allegation, which does not appear to us can withstand on the reasonability test. The decision should be reasonable and rational and should not percolate the sense of any bias or malice. Since no fresh tender has been floated as of now nor any transporter has been selected/appointed, we therefore, find that the decision taken by the Committee warrants interference as it would not cause any prejudice to any person having accrued rights subsequently. The decision of the tender committee in rejecting the technical bid of the petitioner is hereby quashed and set aside. Since the entire tender process was cancelled solely on the ground of a sole bidder and in the event the petitioner is found suitable in absence of any evidence to be produced by the bidder, there is no fetter on the part of the authority to proceed with said tender and, therefore, the ultimate decision of cancellation of the tender process is also quashed and set aside.

7. The District Tender Committee is directed to take a decision on the technical bid submitted by the petitioner afresh after giving an opportunity of hearing both to the petitioner as well as the objector and take an informed decision on the basis of the evidence so produced. The decision shall be communicated to the petitioner. Since other bidders whose technical bids were rejected and did not approach the Court, this judgment would be restricted to the petitioner and shall not be treated as a precedent.

8. The writ petition stands disposed of accordingly.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Writ Petition disposed.

2025 (II) ILR-CUT-262

**SRI GANESH CHANDRA PATRA
V.
STATE OF ODISHA, [PRINCIPAL SECRETARY,
COMMERCE & TRANSPORT (TRANSPORT) DEPTT.] & ORS.**

[W.A. NO. 2733 OF 2024]

13 MAY 2025

[HARISH TANDON, C.J. & MURAHARI SRI RAMAN, J.]

Issues for Consideration

1. Whether the sanction of abolition of post of Process Server in the office of RTO, Chandikhole by the Govt. of Odisha Commerce and Transport (Transport) Department vide letter dated 20.12.2019 pursuant to which the appellant was disengaged from service can be held to be legally sustainable.
2. Whether the Judgment passed in the writ petition is liable to be interfered with in this intra-Court appeal when the same was dismissed on perverse facts being *de hors* material on record.

Headnotes

(A) SERVICE JURISPRUDENCE – Absorption – The appellant has been working as process server against vacant sanctioned post in the office of RTO, Chandikhole since 1997 – The Govt. of Odisha in Commerce and Transport Department vide letter dated 20.12.2019 issued sanction on abolition of the said post – Whether the sanction with regard to abolition of post of process server in the office of RTO, Chandikhole by the Govt. of Odisha Commerce & Transport (Transport) Department vide letter dated 20.12.2019 pursuant to which the appellant was disengaged from service can be held to be legally sustainable.

Held: No – On the date of taking decision to abolish the post, the appellant was in position and had already served for more than 20 years since 16.01.1997 till 20.12.2019 – Added to the above, he was given Scale of Pay with Grade Pay and D.A. Having found that the decision to abolish the post of Process Server in the Office of RTO, Chandikhole in the foregoing paragraphs being arbitrary and non-application mind to the germane factors, taking note of ratio of decisions of different Courts on the subject-matter in similar facts, this Court is of the considered view that injustice has been meted out to the appellant – The appellant is entitled to be considered for absorption in the post of Process Server.

(Para 10.4)

(B) ORISSA HIGH COURT ORDER, 1948 – Article 4 r/w Clause 10 of Letters Patent constituting the High Court of Judicature at Patna and Rule 6 of Chapter-III and Rule 2 of Chapter VIII of the Rules of the High Court of Orissa, 1948 – The learned Single Judge dismissed the writ petition based on perverse facts being *de hors* material on record – Whether the Judgment passed in writ petition is liable to be interfered with in this intra-Court appeal when the same was dismissed on perverse facts being *de hors* material on record.

Held: Yes – This Court finds that there is factual perversity apparent on the face of judgment dated 06.09.2024 of the learned Single Bench – Therefore, it is felt expedient to show indulgence in said judgment. (Para 11.7)

Citations Reference

Yogesh Mahajan Vrs. Professor R.C. Deka, Director, All India of Medical Sciences, **(2018) 3 SCC 218**; Secretary, State of Karnataka Vrs. Umadevi, **(2006) 4 SCC 1**; Oshiar Prasad Vrs. Employers in relation to Management of Sudamdih Coal Washery of M/s. Bharat Coking Coal Ltd., Dhanbad, Jharkhand, **(2015) 4 SCC 71**; 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, vide Judgment 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**; 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 = 2024 LiveLaw (SC) 1032**; Shripal Vrs. Nagar Nigam, **2025 SCC OnLine SC 221 = 2025 LiveLaw (SC) 153**; N. Karunanidhi Vrs. Union of India, **W.P. No. 12887 of 2016, Madras High Court vide Judgment dated 22.04.2022**; Dr. Prasana Kumar Mishra Vrs. State of Odisha, **W.P.(C) No.11148 of 2005, 2016 (I) ILR-CUT 373**; Ramesh Chandra Mohapatra Vrs. State of Odisha, **2022 SCC OnLine Ori 2587**; Vinod Kuma Vrs. Union of India, **(2024) 1 SCR 1230 = 2024 INSC 332**; Sheo Narain Nagar Vrs. State of Uttar Pradesh, **(2017) 11 SCR 138**; State of Karnataka Vrs. M.L. Kesari, **(2010) 9 SCC 247**; Neelima Srivastava Vrs. State of Uttar Pradesh, **2021 SCC OnLine SC 610**; N. Ramachandra Reddy Vrs. State of Telangana, **(2019) 11 SCR 792**; Management of Narendra & Company Pvt. Ltd. Vrs. Workmen of Narendra & Company, **(2016) 3 SCC 340**; Wander Ltd. Vrs. Antox India (P) Ltd., **1990 Supp. SCC 727**; Anindita Mohanty Vrs. The Senior Regional Manager, H.P. Co. Ltd., Bhubaneswar, **2020 (II) ILR-CUT 398 – referred to.**

List of Acts

Orissa High Court Order, 1948.

Keywords

Absorption; Regularization; Abolition of sanctioned post; Intra Court Appeal; Letter Patent Appeal; *Ad hoc* basis.

Case Arising From

Judgment dated 06.09.2024 rendered in W.P.(C) No.989 of 2020.

Appearances for Parties

For Appellant : M/s. Prasanta Kumar Mishra, K.L. Kar & S. Mishra
For Respondents : Mr. Bimbisar Dash, AGA

Judgment/Order

Judgment

MURAHARI SRI RAMAN, J.

The present intra-Court appeal has been preferred assailing the Judgement dated 06.09.2024 rendered in W.P.(C) No.989 of 2020 by a learned Single Bench with the following prayer(s):

“It is prayed, therefore that this Hon’ble Court may graciously be pleased to:

(i) Admit the Writ Appeal,

(ii) Issue notice to Respondents and after hearing be pleased to set aside the judgment dated 06.09.2024 passed by the Hon’ble Single Judge in W.P.(C) No.989 of 2020 as at Annexure-1 and

(iii) Further be pleased to allow the W.P.(C) No.989 of 2020 by granting the relief(s) prayed therein¹ in favour of the Appellant-Petitioner with direction upon Respondents

¹

The relief(s) sought for in the writ petition reads as follows:

“It is prayed therefore that this Hon’ble Court may graciously be pleased to:

(i) Admit the writ petition

(ii) Issue RULE NISI calling upon the opposite parties to show cause as to why the impugned order dated 20.12.2019 at Annexure-7 so far it relates to abolition of Group-D post (Class-IV grade) of the office of opposite party No.4 [Regional Transport Officer, Chandikhole] against which the petitioner is continuing and para 4 (b) of Finance Department Office Memorandum dated 31.08.2019 at Annexure-6 shall not be quashed and the petitioner shall not be absorbed in Group-D vacant post under regular establishment in the Office of the opposite party No.4 [Regional Transport Officer, Chandikhole] as he is continuing against the said vacant post since long.

to grant all consequential service and financial benefits within a stipulated period of time and;

(iv) Further be pleased to direct the Respondent Nos.3 and 4 to release salary from 16.05.2024 in favour of the Appellant within a stipulated period of time.

(v) And further be pleased to pass such other order (s), direction(s) as deem fit and proper to the facts and circumstances of the case to give complete relief to the Appellant;

And for this act of kindness, the Appellant as in duty bound shall ever pray.”

Facts:

2. Facts adumbrated by the appellant leading to filing of this writ appeal, are narrated hereunder:

2.1. The appellant herein (petitioner in the writ petition) was engaged as Process-Server (Group-D) against a vacant post on Temporary/*Ad hoc* basis on 16.01.1997 in the Office of the Regional Transport Officer, Chandikhole in the district of Jajpur with notional break of one day at every 44 days interval and such engagement being extended from time to time, last such extension was given *vide* Order dated 13.12.2019.

2.2. The Regional Transport Officer, Chandikhole (“RTO”, abbreviated) apprised by Letter No.5447, dated 29.09.2015 addressed to the Transport Commissioner-*cum*-Chairman, State Transport Authority, Cuttack (“STA”, abbreviated) recommending the name of the appellant for absorption as Process Server under regular establishment against sanctioned Group-D vacancy. The RTO *vide* his Letter No.2357, dated 11.07.2017 furnished information to the STA on being requested about details of the employment of the appellant which *inter alia* contained that the appellant has been engaged as Process Server temporarily for 44 days with one day notional break since 1997 against a sanctioned post carrying Scale of Pay of Rs.4750/- to 14680/- with Grade Pay of Rs.1500/- as per Pay Band

(i) And if the Opposite parties fail to show cause or show insufficient cause, the rule may be made absolute and appropriate writ may be issued and the impugned order dated 20.12.2019 at Annexure-7 in respect of abolition of Group-D post of the office of opposite party No.4 [Regional Transport Officer, Chandikhole] and para 4(b) of Office Memorandum dated 31.08.2019 at Annexure-6 be quashed;

(ii) And further be pleased to direct the opposite parties to absorb the petitioner in Group-D vacant post under regular establishment in the office of the opposite party No 4 within a time to be stipulated by this Hon’ble Court;

(iii) Pass such other order (s), direction(s) as deem fit and proper to the facts and circumstances of the case to give complete relief to the petitioner;

And for this act of kindness, the petitioner as in duty bound shall ever pray.”

S-1 for Group-D employee with usual D.A. and continued with same terms from time to time.

2.3. Pursuant to the Letter No.12098/TC, dated 22.10.2018 of STA, the RTO in Letter No.4575, dated 05.11.2018 supplied information that the appellant has been continuing as “Peon-cum-Process Server on *ad hoc* basis (NMR)”.

2.4. The Government of Odisha in Finance Department issued Office Memorandum No.29913 — FIN-TRY-ESTT-0011-2017/F., dated 31.08.2019 inviting submission of Annual Establishment Review Report (AER) in Human Resource Management System. Pursuant thereto, the Government of Odisha in Commerce and Transport (Transport) Department *vide* Letter No.TRN-FE-MISC-0026-2019/9131/T., dated 20.12.2019 suggested for termination of surplus/redundant posts in the Office of the Transport Commissioner, Odisha, Cuttack and its subordinate offices. Accordingly said sanction of abolition of different posts contained amongst others the posts against RTO, Chandikhole were Peon (1), Chowkidar-cum-Sweeper (1), Process Server (1) and Treasury Sarkar (1).

2.5. Even while the petitioner has been engaged to work as Process Server, another Letter bearing No.4395, dated 21.12.2019 has been issued by RTO addressed to Transport Commissioner, which reveals as follows:

“Sub.: Engagement of one process server and one Chowkidar-cum-Sweeper in RTO Office, Chandikhole after termination of surplus/ redundant post in the Office of the Transport Commissioner, Odisha, Cuttack and its subordinate offices.

Ref.: Letter No. 9133/T Dt. 20.12.2019 of Govt.in Commerce and Transport (Transport) department, Odisha, Bhubaneswar

Sir,

With reference to the letter on the subject cited above I am to inform that one post of process server and one post of Chowkidar-cum-Sweeper of this office have been lying vacant since long and 2 persons were engaged to work under contractual basis to attend the office work. As per the letter under reference of Government in Commerce and Transport (Transport) Department the said 2 posts have been abolished and accordingly no salary under this head can be given to the persons working as Process Server and Chowkidar-cum-Sweeper.

*Now **this office is running with shortage of staff and the services of Watchman and Process server play very important role in RTO Office** so far as movement of records and cleanness of Office is concerned.*

I would therefore request you to kindly allow to engage one Chowkidar-cum-Sweeper and one Process Server to work on daily wages basis for smooth management of the office.”

2.6. Aggrieved thereby, the appellant had approached this Court by way of filing a writ petition, bearing W.P.(C) No.989 of 2020, wherein by Order dated 14.01.2020 notices were issued to the respondents-opposite parties and an interim order in the Interlocutory Application, being I.A. No.391 of 2020, was passed to the following effect:

“In the event petitioner is continuing in the Group-D Post, he may continue as such for a period of six weeks from today.”

2.7. The appellant having again approached this Court by way of filing another Interlocutory Application, being I.A. No.11242 of 2020 (arising out of W.P.(C) No.989 of 2020), for disbursal of his salary from December, 2019 onwards, vide Order dated 30.03.2021 the respondents were directed to release the salary in favour of the appellant within a period of fifteen days if the appellant had been working since December, 2019. Against non-compliance of the said order dated 30.03.2021, the appellant filed a contempt petition, registered as CONTC No.5091 of 2021, wherein the following order was passed on 25.08.2023:

“***

11. Since the learned Counsel for the Petitioner submits that the present Petitioner is still working, but has not been paid his salary in terms of the direction given by this Court on 30.03.2021 in I.A. No.11242 of 2020, in view of the detailed deliberations made above, this court is of the view that the Petitioner should have been paid his salary in terms of the order passed in I.A. No.11242 of 2020 (Arising out of W.P.(C) No.989 of 2020), dated 30.03.2021 and the conduct of the Opposite Parties is contemptuous. This Court is of further view that false and contradictory affidavits have been filed in the present contempt proceeding to mislead this Court. Hence, the Opposite Parties are directed to comply the order dated 30.03.2021 passed in I.A. No.11242 of 2020 (Arising out of W.P.(C) No.989 of 2020) and file Compliance Affidavit by 12th September, 2023 after serving copy of the same on the learned Counsel for the Petitioner, failing which the Contemnors No.2, the deponent of the Show Cause Affidavit filed on 23rd August, 2023, so also the author of letter No.2905 dated 14.08.2023, present R.T.O., Chandikhol (Contemnors No.3) shall remain present before this Court on the adjourned date, at 2.00 P.M. to show cause as to why they shall not be booked under the Contempt of Courts Act, 1971 for willful flouting of order dated 30.03.2021 passed in I.A. No.11242 of 2020, arising out of W.P.(C) No.989 of 2020.”

2.8. The respondents filed appeal, being CONTAC No.7 of 2023, challenging the aforesaid Order dated 25.08.2023, which got disposed of with the following order on 22.11.2023:

“***

6. Opposing the said prayer made in I.A., neither any objection was filed by the petitioners herein nor any application for modification/clarification/variation of the order was filed. But for the first time, such a plea has been taken in the show cause affidavit filed on 03.07.2023 as to alleged disengagement of the applicant namely, Ganesh Chandra Patra with effect from 21.12.2019 which fact was not disclosed by petitioners herein. Rather, name of one “Ganeswar Patra”, Peon has been indicated in Annexure-5, i.e. letter dated 24.03.2020 issued by the RTO, Chandikhol to Inspector-in-Charge, Badchana P.S. Therefore, the learned Single Judge came to a prima facie conclusion that there is violation of the order dated 30.03.2021 and called upon the contemnors to remain present before the Court on the adjourned date.

7. In that view of the matter, this Court does not find any illegality or irregularity in the order dated 30.03.2021 passed by the learned Single Judge so as to cause interference.

8. Accordingly, CONTAC stands dismissed. Consequentially, the interim order dated 14.09.2023 stands vacated. The CONTC No.5091 of 2021 be placed before learned Single Judge for necessary orders."

2.9. Dissatisfied therefor, the respondents carried the matter before the Hon'ble Supreme Court of India in Special Leave to Appeal (C) No.4382 of 2024, which came to be dismissed on 23.02.2024. Thereafter, the respondents have complied with the Order dated 25.08.2023 of the learned Single Bench and disbursed salary to the appellant.

2.10. After the final hearing of the writ petition, the learned Single Bench *vide* Judgment dated 06.09.2024 dismissed W.P.(C) No.989 of 2020 with the following observation:

“***

16. In light of the facts and circumstances of the present case, this Court finds no merit in the current Writ Petition. The petitioner has not succeeded in establishing grounds for interference with the impugned order.

17. However, the opposite parties may consider any alternative arrangements for the petitioner, if available, ensuring that the petitioner extensive experience is effectively utilized.

18. In light of the foregoing, the Writ Petition is dismissed and disposed of in terms of the aforesaid observations."

2.11. Being not satisfied, the appellant beseeched for setting aside the Judgment dated 06.09.2024 passed in W.P.(C) No.989 of 2020 and craved for direction(s) to absorb him and in consequence thereof grant all consequential service and financial benefits.

Hearing:

3. The matter was on board under heading “Fresh Admission”. Upon hearing Sri Prasanta Kumar Mishra, learned Advocate for the appellant, Sri Bimbisar Dash, learned Additional Government Advocate would submit that after recent decisions of the Hon'ble Supreme Court of India and the appellant being appointed against sanctioned post, this Court may proceed to finally adjudicate the matter.

3.1. Heard Sri Prasanta Kumar Mishra, learned Advocate for the appellant and Sri Bimbisar Dash, learned Additional Government Advocate for the respondents. Since short point is involved, on the consent of the counsel for the parties, this matter is disposed of at the stage of “Fresh Admission”.

Rival contentions and submissions:

4. Sri Prasanta Kumar Mishra, learned counsel for the appellant with the above factual backdrop submitted that the learned Single Bench has proceeded to decide the matter on merit as if the appointment of appellant was contractual, but not *ad hoc* basis against sanctioned post. The learned Single Bench ignored to consider the fact that the appellant has been working as Process Server against

vacant sanctioned post in the Office of RTO, Chandikhole since 1997 and construed as the post of Process Server is surplus/redundant.

4.1. Arduously arguing, Sri Prasanta Kumar Mishra, learned Advocate would submit that while the Government felt the post of Process Server against which the appellant has been working as surplus/redundant, it is not aptly appreciated by the learned Single Bench that on the very next date, *i.e.*, 21.12.2019, the RTO shot up a letter to the Transport Commissioner citing necessity of the post of Process Server in the Office of RTO and sought permission for engagement of a Process Server.

4.2. The learned Single Bench without appreciating the documents available on record to show that the appellant was appointed against a vacant sanctioned post on *ad hoc* basis with notional break of one day since 16.01.1997, misplaced the ratio of decision rendered in *Yogesh Mahajan Vrs. Professor R.C. Deka, Director, All India of Medical Sciences*, (2018) 3 SCC 218 inasmuch as said reported decision proceeded on the basis that “There is nothing on record to indicate that the appointment of the petitioner on a contractual basis or on an *ad hoc* basis was made in accordance with any regular procedure or by following the necessary rules. That being so, no right accrues in favour of the petitioner for regularisation of his services.” He continued to urge that though learned Single Bench in its Judgment under the heading “Submission on behalf of the opposite parties” recorded that “The petitioner was continuing as Process Server/Peon temporarily on *ad hoc* basis in the Office of RTO, Chandikhole with effect from 16.01.1997”, referred to paragraph 38 of the Constitution Bench decision of *Secretary, State of Karnataka Vrs. Umadevi*, (2006) 4 SCC 1. As if the appointment of the appellant was contractual engagement, the learned Single Bench misdirected himself by applying the ratio of *Oshiar Prasad Vrs. Employers in relation to Management of Sudamdih Coal Washery of M/s. Bharat Coking Coal Ltd., Dhanbad, Jharkhand*, (2015) 4 SCC 71, which was a case of contractual nature of engagement wherein it has been held that “It is a settled principle of law that absorption and regularisation in the service can be claimed or/and granted only when the contract of employment subsists and is in force inter se employee and employer. Once it comes to an end either by efflux of time or as per terms of the contract of employment or by its termination by the employer, then in such event, the relationship of employee and employer comes to an end and no longer subsists except for the limited purpose to examine the legality and correctness of its termination.”

4.3. It is submitted at the Bar that the decisions so relied on by the learned Single Bench have no relevance to the present set of fact-situation. The present case does not relate to contractual appointment, rather the engagement of the appellant has been against a vacant sanctioned post since 1997.

4.4. The appellant continued to discharge his duty as Process Service beyond December, 2019 when the Government intimated sanction of abolition of post of Process Server instead of considering the Letter dated 11.07.2017 of the RTO

clarifying that the position of the appellant was against sanctioned post since 1997 and also in his recommendation *vide* Letter dated 29.09.2015.

4.5. It is strenuously argued that the Finance Department Office Memorandum dated 31.08.2019 based on which the Letter dated 20.12.2019 of the Government of Odisha in Commerce and Transport (Transport) Department came to be issued according sanction of abolition of post of Process Server in RTO, Chandikhole, did not contemplate abolition of post of Group-D against which a personnel is engaged.

4.6. Having exploited the appellant since 1997 by entrusting the job of Process Server-cum-Peon against vacant sanctioned post, on the pretext of abolition of such post in 2019, discontinuance of the service of appellant is not only unethical but is unbecoming of a model employer.

5. Sri Bimbisar Dash, learned Additional Government Advocate having conceded referring to paragraph 4 of the counter affidavit filed by State Transport Authority in connection with the contents of the writ petition that “the petitioner was continuing as Process Server/Peon temporarily on *ad hoc* basis in the Office of the RTO, Chandikhole with effect from 16.01.1997”, submitted that in view of policy decision of the State Government *vide* Finance Department Office Memorandum dated 31.08.2019 to abolish surplus/redundant Group-D post, and in pursuance of Letter No.9131, dated 20.12.2019 of Joint Secretary to Government in Commerce and Transport (Transport) Department, disengagement of the appellant from service was on justifiable reason.

Discussions and analysis:

6. The analysis is divided into two parts to examine:

- i. Whether the sanction of abolition of post of Process Server in the Office of RTO, Chandikhole by the Government of Odisha, Commerce and Transport (Transport) Department *vide* Letter dated 20.12.2019 pursuant to which the appellant was disengaged from service can be held to be legally sustainable?
- ii. Whether the judgment dated 06.09.2024 in W.P.(C) No.989 of 2020 is liable to be interfered with in this intra-Court appeal for the reason that the learned Single Bench dismissed the said writ petition based on perverse facts being *de hors* material on record?

7. Venturing into counter affidavit filed by the Secretary of State Transport Authority, Odisha it comes to fore that:

“4. That in reply to the averment made in Paragraphs-1 to 4 of the writ petition, it is humbly submitted that **the petitioner was continuing Process Server/ Peon temporarily on ad hoc basis in the office of the RTO, Chandikhole w.e.f. 16.01.1997 on the condition that the appointment is purely temporary and terminated at any point of time without giving any notice and hence, he cannot claim regularization as he was continuing on temporary basis.**

5. That in reply to the averment made in Paragraphs-5 and 6 of the writ petition, it is humbly submitted that **the petitioner had made several representations before Opposite**

Party No.4 for his absorption against regular vacancy under regular establishment. Opposite Party No.3 vide Letter No. X-29/2017— 1389/TC dated 01.02.2018 requested opposite party No.1, after considering all the relevant facts and law the claims have been rejected by the opposite parties.”

7.1. Letter vide Memo No.1461, dated 04.03.2002 reveals that the appellant was “engaged as Temporary Process Server in the scale of pay of Rs.2550-55-2660-60-3280 on *ad hoc* basis. Letter vide Memo No.3953, dated 31.10.2019 reveals that the appellant was engaged as “Process Server temporarily on *ad hoc* basis” “in the scale of Rs.4750/- to Rs.14680/- plus Grade Pay Rs.1,500/- with usual DA as admissible”.

7.2. The RTO, Chandikhole recommended the name of the appellant for absorption in service vide Letter No.5447, dated 29.09.2015 addressed to Transport Commissioner, with the following facts:

“With reference to the subject cited above I am to say that one Sri Ganesh Ch. Patra, Son of Pitainber Patra, At/P.O.: Alava, P.S.: Patamundai, District: Kendrapara was engaged as Temporary Process Server (Group-D) on 44 days basis since 1997. He belongs to Schedule Caste category and his qualification is under Metric. He has been continuing as Temporary Process Server and his performance is satisfactory. As per Resolution No. 261085/Gen., dated 17.09.2013 of General Administration Department he may be regularized in regular establishment in the existing vacant post of Process Server (Group-D employee) in this office.

In view of the above, necessary approval may kindly be considered in favour of Sri Patra to engage in regular establishment in Group-D vacancy.”

7.3. Clarification being sought for, the RTO, Chandikhole issued Letter No.2357, dated 11.07.2017 with the following information:

1.	The present status of employment of Sri Patra	Sri Patra is engaged as Process Server temporarily under 44 days basis
2.	The selection process adopted during his engagement	Engagement was made basing on the suitability of the applicant considering the application since 1997
3.	Whether the engagement has been against the sanctioned post	YES
4.	Scale of pay attached to the post and the present pay and allowance of Sri Patra	Scale of pay Rs.4750/- to Rs.14680/- with Grade Pay Rs.1500/- as per pay Band S-1 for Group-D employee. The present Pay of Sri Patra is Rs.4750/- with Grade Pay of Rs.1500/- with usual DA as admissible.

7.4. Despite such information supplied, by Letter dated 22.10.2018, the STA having asked to furnish details, the RTO, Chandikhole again furnished details regarding the appellant.

7.5. The documents referred to hereinabove evince that the appellant was engaged in the vacant sanctioned post of Peon-cum-Process Server since 1997 till 2019, i.e., around 22 years continuously, maybe on *ad hoc* basis, with extensions

from time to time at interval of 44 days. It is also pertinent to say that he has been paid on the basis of Scale of Pay with Grade Pay and usual D.A attached to such Process Server.

7.6. Notwithstanding such perennial nature of job without any break (artificial break of one day at 44 days interval is to be ignored), it appears on the basis of the Government of Odisha in Finance Department had issued Office Memorandum No.29913— FIN-TRY-ESTT-0011-2017/F., dated 31.08.2019 sanction of abolition of post of Process Server in the Office of RTO, Chandikhole being accorded by the Commerce and Transport (Transport) Department *vide* Letter No.TRN-FE-MISC-0026-2019/9131/T, dated 20.12.2019, without taking note of recommendation of the RTO in Letter dated 29.09.2015 read with information supplied in Letter dated 11.07.2017 and Letter dated 05.11.2018, the authority issued Order No.4392, dated 21.12.2019 seeking to disengage the appellant from duties with effect from 21.12.2019.

7.7. The RTO, Chandikhole issued a Letter dated 21.12.2019 eliciting role of Process Server in the Office sought for permission to engage Process Server on daily wage basis for smooth management of his Office.

7.8. Noteworthy here that even after such order being issued disengaging the appellant, Office Order *vide* Memo No.4292, dated 13.12.2019 of RTO, Chandikhole clearly shows that he is engaged “as Process Server temporarily on *ad hoc* basis for a period of 44 days with effect from 16.12.2019 to 28.01.2020 in the scale of pay of Rs.4750/- to Rs.14680/- plus Grade Pay Rs.1500/- with usual DA as admissible”.

7.9. At this juncture reference to relevant portion of paragraph 4 of Finance Department Office Memorandum dated 31.08.2019 may be pertinent, which reads as follows:

*“4. In the online arrangement for submission of AER, the functionality for submission of information on **posts to be terminated by Head of Office, Heads of Department and Administrative Department** has not been provided in HRMS (Human Resource Management System) until now. The facility for submission of Schedule-IA, Schedule-IIA and Schedule-IIIA in HRMS is being provided shortly. Before submission of aforesaid Information in HRMS, **there is need for assessment by Administrative Departments regarding continuance of sanctioned posts required for delivery of Public Service and termination of some posts**, which are otherwise found surplus/redundant over the period of time. **Administrative Departments are required to make an in-depth analysis at their level regarding the continuance of sanctioned posts** available with them and recommend on the basis of following principles for termination of posts.*

a) Termination of redundant posts.—

All Government Offices have certain redundant posts, which have lost their relevance in the changing context of time. For example, the post of ‘Treasury Sarkar’ has become redundant in the context of electronic payment being made through Treasuries and the post of ‘Typist’ in Issue Section has become redundant in the context of full scale

computerization of State Government Offices. Posts in Public Works Department like 'Works Sarkar', 'Gang Mulia', 'Carpenter', 'mason' and 'Road Roller Driver' etc. have lost their relevance as Departmental execution of works has been replaced with Contractor led execution of Public Works. Such redundant posts are to be identified and indicated for termination in Schedule-IA, Schedule-IIA and Schedule-IIIA of AER. **In case, there are men-in-position against the redundant posts, the Administrative Department will propose such posts for termination immediately after retirement of the personnel holding such posts in Schedule-IIIA of AER in HRMS in the respective year.**

b) Termination of vacant Group 'D' Posts.—

All Group-D posts remaining vacant in any Department/Heads of Department/Head of Office would be identified for termination in the changing context of outsourcing of services/ personnel for watch/ward housekeeping gardening, security service etc. as allowed by Finance Department vide Finance Department Office Memorandum No.37323/F, dated 30.11.2018 and Finance Department Letter No.49134/F, dated 29.11.2010 respectively. All such posts would be indicated for termination in Schedule-IA Schedule-A and Schedule-IIIA of AER.

*** ”

7.10. Those posts of Group-D category which remained vacant and keeping abreast of developments in the present day, such posts construed to have rendered redundant were required to be suggested for abolition/termination as per Finance Department Office Memorandum. Group-D post as per criteria specified in said Office Memorandum would come within its purview, if such post like treasury sarkar, carpenter, mason, etc. lost its significance. When the material available on record demonstrates that the role of a Process Server/Peon is indispensable and the service of the appellant being utilised since 1997 till 2020 with a Scale of Pay, Grade Pay and D.A., there cannot be any doubt in mind that the competent authority of administrative department has not applied his mind while suggesting for abolition of the post of Process Server in the Office of RTO, Chandikhole. The letter of RTO seeking permission for engaging Process Server on the very next date of abolition depicts the necessity of Process Server and Peon.

7.11. One of the criteria specified in the said Office Memorandum is that in case there are men-in-position against the redundant posts, the Administrative Department will propose such posts for termination immediately after retirement of the personnel holding such posts. As the appellant has been in position since 1997 and was continuing, the post of Process Server-cum-Peon could not be suggested as redundant. It appears the administrative department has ignored to take into consideration the nature of posts those are illustrated at paragraph 4 of the Office Memorandum to be construed as redundant or surplus.

7.12. When it is manifest from the documents that the appellant has been serving in the Office of RTO, Chandikhole since 1997 as Process Service on *ad hoc* basis being paid Scale of Pay, Grade Pay and D.A. against a vacant sanctioned post, the Letter dated 20.12.2019 of the Commerce and Transport (Transport) Department conveying sanction of abolition of post Process Server and Peon in the Office of

RTO, Chandikhole is not in consonance with the norms specified in the Finance Department Office Memorandum dated 31.08.2019.

7.13. To take such view this Court gets aid of Letter dated 21.12.2019 of the RTO, Chandikhole, wherein it has been clearly stated that the Office of RTO is running with shortage of staff and the services of the Process Server play significant role for movement of records for smooth administration and management of his office.

7.14. Under the above premise, it may be apposite to say that the abolition of post of Process Service as per Letter dated 20.12.2019 of the Commerce and Transport (Transport) Department being outcome of non-application of mind, is a fiat of arbitrary exercise of power and the decision contained by the Commerce and Transport (Transport) Department cannot withstand judicial scrutiny being contrary to the criteria specified in the Finance Department Office Memorandum dated 31.08.2019.

8. The undisputed fact remains that the appellant has been serving as the Process Server-cum-Peon for around 22 years. Without recognising the satisfactory performance of the appellant, as submitted by the RTO *vide* Letter dated 29.09.2015 along with information supplied by RTO by Letter dated 11.07.2017 that against vacant sanctioned post he has been working since 1997 with scale of pay, Grade Pay and usual D.A., as if the post is redundant the decision of the Government in Commerce and Transport (Transport) Department to abolish the post is immature. Since the appellant has been in position of Peon-cum-Process Server since 1997, the decision to abolish such post of Process Server in the Office of RTO, Chandikhole is contrary to paragraph 4(b) of the Office Memorandum dated 31.08.2019 for the reason that said post could not be stated as “remaining vacant” so as to identify it “for termination in the changing context of outsourcing of services/personnel”.

8.1. It is significant that the case of the appellant for absorption was recommended on 29.09.2015 and further information was furnished by the RTO to the concerned authority on being asked to supply on 11.07.2017 stating clearly that he has been paid Scale of Pay, Grade Pay and D.A. being engaged against vacant sanctioned post. It is further clarified that on being found suitable in a selection process adopted for engagement, in consideration of application the appellant has been working since 1997.

8.2. 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 employees cannot merely be 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 has transcended the *ad hoc* employment for consideration to be brought over to regular establishment. Continuous service of the appellant against vacant sanctioned posts as *ad hoc* appointees and his selection through a process of selection constitute a

substantive departure from the temporary and *ad hoc* nature of their initial appointment. Hence, his service conditions warrant reclassification from temporary/*ad hoc* to regular.

8.3. The Hon'ble Supreme Court of India dealing illuminatingly with the concept of regularization, in the case of *Narendra Kumar Tiwari Vrs. State of Jharkhand*, (2018) 8 SCC 238, said as follows:

“The purpose and intent of the decision in Umadevi (3), (2006) 4 SCC 1 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) (supra), 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.”

8.4. 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.’ ***”*

8.5. 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:

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 13.03.2015 [*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. '***'

8.6. Reference can also be had to *Amarendra Kumar Mohapatra Vrs. State of Odisha*, (2014) 4 SCC 583 = AIR 2014 SC 1716; and *Subrata Narayan Das Vrs. State of Odisha*, W.P.(C) No.18659 of 2016, vide Judgment dated 12.07.2022.

8.7. In *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 Niyamitikan 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."

8.8. 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. ***"**

8.9. 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.”

8.10. 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 the matter of *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.”

8.11. The view of Hon’ble Supreme Court of India expressed in the case of *Jaggo Vrs. Union of India, 2024 SCC OnLine SC 3826 = 2024 LiveLaw (SC) 1032*, is as follows (extracted from SCC):

*“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.”

8.12. In the case of *Shripal Vrs. Nagar Nigam*, 2025 SCC OnLine SC 221 = 2025 LiveLaw (SC) 153 referring to observations rendered in *Jaggo (supra)*, the Hon’ble Supreme Court of India has been pleased to clarify that (extracted from SCC):

“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 long time employees are not indefinitely retained on daily wages contrary to statutory and equitable norms."

8.13. 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 rendered with respect to exploitation of service. The following benevolent observation has been made by said Court in favour of the employees, whose services have been utilized by the Government for a substantial length of 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."*

8.14. 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.”

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.

8.15. In identical fact situation where in the context of 89 days *ad hoc* engagement in the case of *Ramesh Chandra Mohapatra Vrs. State of Odisha*, 2022 SCC OnLine Ori 2587 this Court observed as follows:

“3. The background facts are that the Petitioners were appointed as a Field Man Demonstrator in the Office of the Soil Conservation Officer (SCO), Koraput Division by an order dated 2nd April, 1992. The said order, which was common to the Petitioners and four others, reads as under:

‘The following outsiders are appointed as Field Man Demonstrator on ad hoc basis for a period of 89 days (eighty-nine) with effect from the date they report themselves for duties in the respective offices noted against them in the time scale of pay Rs.800-15-1010-EB-20-1150/- P.M. with usual D.A. as admissible under rules. The candidate should join the post within 7 days from the date of issue of this order failing which the appointment will be treated as automatically cancelled. The appointment is purely temporary and terminable at any time without assigning any reason thereof. This appointment will have no statutory value to claim for regular appointment either in the same post or in any other post in the Department in future.

4. Subsequently, by an order dated 20th November 1993, Ramesh Chandra Mohapatra was appointed as Junior Soil Conservation Assistant “purely on ad hoc basis for a period of 89 (eighty-nine) days in the scale of pay of Rs.950/- to 1500/- per month and all other allowances as admissible under the Rules from time to time. The usual clause that he would not have any legal claim to get a regular job in the Department by virtue of such ad hoc appointment was inserted. He was then deputed to work under the IFAD assisted Orissa Tribal Development Project, Kashipur by an order dated 23rd August 1995 in the newly created post of Junior Soil Conservation Assistant.

13. The orders appointing each of the above persons, the corresponding order of the OAT and that of the High Court and the Supreme Court of India have all been enclosed with the rejoinder affidavit. Specifically, in SLP (C) No.32178 of 2014 (State of Orissa Vrs. Prahallad Sahoo), the observation of the Supreme Court in its order dated reads as under:

Though the appointments of the respondents were irregular as they were not sponsored by the Employment Exchange, we do not intend to interfere with the judgment of the High Court in view of the long period of service rendered by the respondents. The question of law raised in these petitions is left open. The special leave petitions are dismissed accordingly.’

14. In the case of Harihar Prusty, this Court while dismissing the State’s W.P. (C) 9475 of 2016 by the order dated 30th January, 2018 declined to interfere with the order dated 15th September 2015 passed by the OAT in O.A. No.2137(C) of 2001 whereby the OAT had directed his regularization. Likewise, in the case of Manoj Kumar Parida, the order of the OAT was affirmed by this Court by an order dated 3rd December 2019 in W.P.(C) No.1366 of 2014.

17. **The Court has compared the appointment orders** issued to Prahallad Sahoo, Harihar Prusty and the present Petitioners and it finds that they are no different. The appointment orders of Prahallad Sahoo and Harihar Prusty also refer to them as ‘outsiders’ and they were appointed as Field Man Demonstrator in a scale of pay. The wording of their appointment letters is no different from that of the present Petitioners. As far as the cadres are concerned, the Petitioners belong to the Soil Conservation Technical Cadre to which Prahallad Sahoo and Harihar Prusty belong. Therefore,

there can be no justification for treating the present Petitioners differently. Meanwhile, as already pointed out even by the Government, another employee Subasish Sarangi who was also earlier Field Man Demonstrator has been reinstated in service pursuant to the order passed by this Court in W.P.(C) No.31174 of 2020.

18. With all these cases being identical and that the aforementioned three persons who have been reinstated being junior to the present Petitioners, there can be no justification for treating the present Petitioners differently.

19. Consequently, both these writ petitions are allowed. The orders dated 20th September, 2000 dispensing with the services of the present two Petitioners are hereby set aside. The impugned order of the OAT is also set aside. The Petitioners are directed to be reinstated in service. Necessary orders be issued by the concerned authorities within a period of eight weeks."

Conclusion:

9. Given the undisputed fact that the appointment of the appellant against vacant sanctioned post of Process Server temporarily on 44 days basis (artificial/notional break of one day) extended from time to time since 1997 till 2020 on assessment of suitability upon consideration of application of appellant should not have been abolished by the Commerce and Transport (Transport) Department *vide* Letter dated 20.12.2019 as the same runs counter to the norms specified in the Finance Department Office Memorandum dated 31.08.2019.

9.1. This apart, much prior to such decision to abolish the post of Process Server in the Office of RTO, Chandikhole, the case of the appellant was referred to authority concerned for absorption *vide* Letter dated 29.09.2015 read with subsequent Letter dated 11.07.2017 furnishing information. The Letter dated 21.12.2019 of the RTO, Chandikhole issued even after abolition clinches that there is requirement of Process Server and said letter emanates that the RTO recognises importance of such post.

9.2. Under the above perspective, irresistible conclusion can be drawn that there is lack of application of mind and non-consideration of material while taking decision to abolish sanctioned post, particularly when the appellant was in position since 16.01.1997.

10. By the time the post of Process Server in the Office of RTO, Chandikhole was sought to be abolished pursuant to Finance Department Office Memorandum dated 31.08.2019, the appellant had already served in the said Office as Temporary Process Server against vacant sanctioned post with Scale of Pay, Grade Pay and usual D.A. for more than two decades without intervention by way of order of Court or Tribunal. It is not in dispute his engagement was based on assessment of suitability on consideration of application (as affirmed by the authority *vide* Letter dated 11.07.2017 of RTO), therefore, the appointment could not be said to be irregular or illegal.

10.1. In the above circumstances, the following norms set forth by the Constitution Bench in *State of Karnataka Vrs. Umadevi (3)*, (2006) 4 SCC 1 does require to be adhered to:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa*, (1967) 1 SCR 128 = AIR 1967 SC 1071, *R.N. Nanjundappa*, (1972) 1 SCC 409 = (1972) 2 SCR 799 and *B.N. Nagarajan*, (1979) 4 SCC 507 = (1979) 3 SCR 937 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 bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

10.2. Culling out above paragraph from *Umadevi (supra)*, in the case of *Vinod Kumar Vrs. Union of India*, (2024) 1 SCR 1230 = 2024 INSC 332 it has been indicated as follows:

“4. The appellants have approached this Court arguing that the High Court erred in its judgment by failing to recognize the substantive nature of their duties, which align with regular employment rather than the temporary or scheme-based roles they were originally appointed for. Furthermore, their promotion by a regularly constituted Departmental Promotional Committee, the selection process they underwent, and the continuous nature of their service for over a quarter of a century underscored their argument for regularization and that the High Court has incorrectly applied the principles from the case of *Uma Devi (supra)* to their situation.

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 recognize 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.**”

10.3. In *Sheo Narain Nagar Vrs. State of Uttar Pradesh*, (2017) 11 SCR 138, the Hon’ble Supreme Court recognized such employment on temporary status as on exploitative terms. The pertinent observation made in the said case is quoted hereunder:

“8. When we consider the prevailing scenario, it is painful to note that the decision in Uma Devi (Supra) has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad-hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily wage basis etc. in exploitative forms. This situation was not envisaged by Uma Devi (supra). The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Uma Devi (supra) has been ignored and conveniently over looked by various State Governments/ authorities. We regretfully make the observation that Uma Devi (supra) has not be implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularizing the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Article 14, 16 read with Article 34(1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara Vrs. Union of India, AIR 1983 SC 130 from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits etc. There is clear contravention of constitutional provisions and aspiration of down trodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Uma Devi (supra). Thus, the time has come to stop the situation where Uma Devi (supra) can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas Uma Devi (supra) laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/adhoc basis or otherwise. This kind of action is not permissible, when we consider the pith and substance of true spirit in Umadevi (supra).

9. Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularization of the appellants. However, regularization was not done. The respondents chose to give minimum of the pay scale, which was available to the regular employees, way back in the year 2000 and by passing an order, the appellants were also conferred temporary status in the year 2006, with retrospective effect on 2.10.2002. **As the respondents have themselves chosen to confer a temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time when order was passed. Thus, the submission raised by learned counsel for the respondent that posts were not available, is belied by their own action. Obviously, the order was passed considering the long period of services rendered by the appellants, which were taken on exploitative terms.**

10. The High Court dismissed the writ application relying on the decision in Umadevi (supra). **But the appellants were employed basically in the year 1993; they had rendered service for three years, when they were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment. Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such Rules available at the relevant point of**

time, when their temporary status was conferred with effect from 02.10.2002. The appellants were required to be appointed on regular basis as a one-time measure, as laid down in paragraph 53 of Umadevi (supra). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect in the 02.10.2002, we direct that the services of the appellants be regularized from the said date i.e. 02.10.2002, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today.”

10.4. It is not the case of the respondents that the appellant has not undergone process of selection. This is not a case of backdoor entry. In the present case, the appellant has served the Office of RTO for more than two decades against sanctioned post. On the date of taking decision to abolish the post, the appellant was in position and had already served for more than 20 years since 16.01.1997 till 20.12.2019. Added to the above, he was given Scale of Pay with Grade Pay and D.A. Having found that the decision to abolish the post of Process Server in the Office of RTO, Chandikhole in the foregoing paragraphs being arbitrary and non-application mind to the germane factors, taking note of ratio of decisions of different Courts on the subject-matter in similar facts, this Court is of the considered view that injustice has been meted out to the appellant. The appellant is entitled to be considered for absorption in the post of Process Server.

11. As is argued by the counsel for the appellant and discussed above, the following perversity in settlement of facts is perceived on bare reading of the impugned judgment dated 06.09.2024 of the learned Single Bench:

i. The conclusion of the learned Single Bench proceeded as if the appointment of the appellant is contractual one and, therefore, reliance on the ratio of decisions in *Yogesh Mahajan Vrs. Professor R.C. Deka, Director, All India Institute of Medical Sciences*, (2018) 3 SCC 218; paragraph 38 of *Secretary, State of Karnataka Vrs. Umadevi*, (2006) 4 SCC 1; and *Oshiar Prasad Vrs. Employees in relation to Management of Sudamdih Coal Washery of M/s. Bharat Coking Coal Ltd., Dhanbad, Jharkhand*, (2015) 4 SCC 71 rendered in the context of contractual engagement and regularisation thereof does not apply to the fact-situation of the present case.

ii. Though the submission of the appellant was taken note of at paragraph 3 in the impugned judgment to the effect that it is the policy by virtue of the Finance Department Office Memorandum dated 31.08.2019 to terminate redundant/surplus posts in the changing context of outsourcing, at paragraph 11 it has been concluded that,

“Further, the employer, in the present case, has not taken a policy decision to hire outsourced staff suiting the organisational need.”

This observation posits contrary to material on record. From paragraph 4(b) of the Office Memorandum dated 31.08.2019 the policy of the Government can be discernible that the “termination of vacant Group-D posts” is on account of “changing context of outsourcing of services/personnel for watch-ward, housekeeping, gardening, security service, etc.”. It may also be taken note of that the RTO in his Letter on the very next date (21.12.2019) of issue of Letter dated 20.12.2019 by the Commerce and Transport (Transport) Department abolishing the post of Process Server, has sought for permission to engage “one Process Server to work on daily wages basis for smooth management” of his Office.

iii. At paragraph 7 of the judgment dated 06.09.2024 it has been stated as follows:

*“Since the appointment was purely on contractual and ad hoc basis **on consolidated pay for a fixed period** and terminable without notice, when the appointment came to an end by efflux of time, the appointee had no right to claim regularisation.”*

Comparing the Office Orders dated 04.03.2002, 31.10.2019 and 13.12.2019 (Annexure-1 series to the writ petition) it is unequivocal that the appellant has been engaged as Process Server temporarily with one day artificial/notional break at interval of 44 days, but he was paid on the basis of Scale of Pay, Grade Pay and usual D.A. attached to the said post.

iv. At paragraph 14 of the judgment dated 06.09.2024 the learned Single Bench made the following observation:

*“On the basis of the terms and conditions visible on record coupled with **the honorary status of the compensation having been accepted by the petitioner throughout**, in the considered opinion of this Court, it is not open for the petitioner now to approach the Court with a request to regularise him to the concerned post irrespective of the fact as to whether he has continued for quite some time. Mere continuance in service as a contractual employee would not give any leverage to the petitioner to claim as if he is a permanent employee.”*

It appears material *de hors* record has been considered. The appellant has been engaged in the post of Process Server against vacant sanctioned post and was being paid as per Scale of Pay attached to the said post besides Grade Pay and D.A. Since 1997 he has been engaged in the said post with artificial break at every 44 days.

11.1. Without delving any further to search out infirmity in finding of fact by the learned Single Bench, it would suffice to say that the judgment dated 06.09.2024 is liable to be intervened. In view of overwhelming material available on record as discussed in the foregoing paragraphs, the facts on the issue of nature of work, the perennial nature of work, continuous working of the appellant and need for engagement of such Process Server in the office for smooth administration, lead this Court to opine that there is merit in the appeal filed by the appellant. This is a case of wrongful denial of employment and regularization or absorption in the position held since 1997, for no fault of the appellant.

11.2. After taking note of judgments rendered in *Secretary, State of Karnataka Vrs. Umadevi*, (2006) 4 SCC 1, *State of Karnataka Vrs. M.L. Kesari*, (2010) 9 SCC 247, &c. the Hon’ble Supreme Court in the case of *Neelima Srivastava Vrs. State of Uttar Pradesh*, 2021 SCC OnLine SC 610 observed:

“33. By a majority decision in Naresh Shridhar Mirajkar Vrs. State of Maharashtra, AIR 1967 SC 1 has laid down the law in this regard as under:

‘When a Judge deals with matters brought before him for his adjudication, he first decides questions, of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate Court.’

11.3. In *N. Ramachandra Reddy Vrs. State of Telangana*, (2019) 11 SCR 792 it has been restated as follows:

“43. Further, in the case of Management of Narendra & Company Pvt. Ltd. Vrs. Workmen of Narendra & Company, (2016) 3 SCC 340, while considering the scope of the intra-Court appeal, this Court has held that, unless Appellate Bench concludes that findings of the learned Single Judge are perverse, it shall not disturb the same.”

11.4. In *Management of Narendra & Company Pvt. Ltd. Vrs. Workmen of Narendra & Company*, (2016) 3 SCC 340 it has been observed as follows:

“Be that as it may, in an intra-court appeal, on a finding of fact, unless the appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief.”

11.5. In *Wander Ltd. Vrs. Antox India (P) Ltd.*, 1990 Supp. SCC 727 following is the observation:

*“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. Vrs. Pothan Joseph*, (1960) 3 SCR 713 = AIR 1960 SC 1156: (SCR 721)*

*“*** These principles are well established, but as has been observed by Viscount Simon in *Charles Oseston & Co. Vrs. Jhanaton*, 1942 AC 130:*

*“*** the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case. ’ ***’***”*

11.6. In *Anindita Mohanty Vrs. The Senior Regional Manager, H.P. Co. Ltd., Bhubaneswar*, 2020 (II) ILR-CUT 398 this Court had the occasion to examine the scope of intra-Court appeal and observed as follows:

*“*** Let us first examine the power of the Division Bench while entertaining a Letters Patent appeal against the judgment/order of the Single Judge. This writ appeal has been nomenclature as an application under Article 4 of the Orissa High Court Order, 1948 read with clause 10 of the Letters Patent Act, 1992. Letters Patent of the Patna High Court has been made applicable to this Court by virtue of Orissa High Court*

Order, 1948. Letters Patent Appeal is an intra-Court appeal where under the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as vested in the Single Bench. (Ref: (1996) 3 SCC 52, Baddula Lakshmaiah Vrs. Shri Anjaneya Swami Temple). The Division Bench in Letters Patent Appeal should not disturb the finding of fact arrived at by the learned Single Judge of the Court unless it is shown to be based on no evidence, perverse, palpably unreasonable or inconsistent with any particular position in law. This scope of interference is within a narrow compass. Appellate jurisdiction under Letters Patent is really a corrective jurisdiction and it is used rarely only to correct errors, if any made.

In the case of B. Venkatamuni Vrs. C.J. Ayodhya Ram Singh reported in (2006) 13 SCC 449, it is held that in an intra-Court appeal, the Division Bench undoubtedly may be entitled to reappraise both questions of fact and law, but entertainment of a letters patent appeal is discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the Single Judge. Even a Court of first appeal which is the final Court of appeal on fact may have to exercise some amount of restraint. Similar view was taken in the case of Umabai Vrs. Nilkanth Dhondiba Chavan reported in (2005) 6 SCC 243. In the case of Commissioner of Income Tax Vrs. Karnataka Planters Coffee Curing Work Private Limited reported in (2016) 9 SCC 538, it is held that the jurisdiction of the Division Bench in a writ appeal is primarily one of adjudication of questions of law. Findings of fact recorded concurrently by the authorities under the Act concerned (Income Tax Act) and also in the first round of the writ proceedings by the learned Single Judge are not to be lightly disturbed. Thus a writ appeal is an appeal on principle where the legality and validity of the judgment and/or order of the Single Judge is tested and it can be set aside only when there is a patent error on the face of the record or the judgment is against established or settled principle of law. If two views are possible and a view, which is reasonable and logical, has been adopted by a Single Judge, the other view, howsoever appealing may be to the Division Bench; it is the view adopted by the Single Judge, which would, normally be allowed to prevail. If the discretion has been exercised by the Single Judge in good faith and after giving due weight to relevant matters and without being swayed away by irrelevant matters and if two views are possible on the question, then also the Division Bench in writ appeal should not interfere, even though it would have exercised its discretion in a different manner, were the case come initially before it. The exercise of discretion by the Single Judge should manifestly be wrong which would then give scope of interference to the Division Bench.”

11.7. With such delineated scope laid down with respect to consideration of writ appeal, this Court finds that there is factual perversity apparent on the face of judgment dated 06.09.2024 of the learned Single Bench. Therefore, it is felt expedient to show indulgence in said judgment.

12. For the reasons ascribed *supra* and in the light of discussions made in the foregoing paragraphs and bearing in mind the scope for interference while sitting in intra-Court appeal filed under Article 4 of the Orissa High Court Order, 1948 read with Clause 10 of the Letters Patent constituting the High Court of Judicature at Patna and Rule 6 of Chapter-III and Rule 2 of Chapter-VIII of the Rules of the High Court of Orissa, 1948, this Court sets aside the conclusions of the learned Single Judge *vide* Judgment dated 06.09.2024 rendered in W.P.(C) No.989 of 2020.

13. Having said that the decision of the Government of Odisha in Commerce and Transport (Transport) Department *vide* Letter dated 20.12.2019 abolishing of post of Process Server in the Office of Regional Transport Officer, Chandikhole is arbitrary and outcome of non-application of mind and consideration of non-germane factors, this Court holds that the appellant is entitled to be considered for absorption in the said sanctioned post against which the appellant has been continuously working since 16.01.1997. Accordingly, Order No.4392, dated 21.12.2019 issued by the RTO, Chandikhole disengaging the appellant in terms of the Finance Department Office Memorandum dated 31.08.2019 read with Letter dated 20.12.2019 of the Commerce and Transport (Transport) Department from duties with effect from 21.12.2019 is hereby set aside.

14. In the wake of the aforesaid discussions, the Judgement dated 06.09.2024 rendered in W.P.(C) No.989 of 2020 by a learned Single Bench is hereby set aside and the respondents are hereby directed to carry out the exercise as discussed hitherto and consider the service rendered by appellant for regularisation as he has been in the position against sanctioned post since 16.01.1997.

14.1. As the Order No.4392, dated 21.12.2019 of the RTO is set aside, the appellant, if has already been disengaged, he is to be reinstated in the same position forthwith treating as if Letter dated 20.12.2019 had never been issued.

14.2. The appellant is also entitled for consequential service and financial benefits, which shall be granted to him within a period of three months from date. Needless to say that all legitimate dues payable as per law be paid to the appellant within the aforesaid period.

15. In the result, this writ appeal is allowed and all pending interlocutory applications, if any, shall also stand disposed of. As a consequence thereof, the writ petition also stands allowed. 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 Appeal is allowed.

2025 (II) ILR-CUT-295

**DAKTAR BHOI
V.
STATE OF ODISHA**

[JCRLA NO. 21 OF 2010]

08 APRIL 2025

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

Issues for Consideration

1. Whether the evidence of P.W. 16 who had heard the deceased shouting that 'the appellant killed him and to save him' can be utilized as dying declaration of the deceased.
2. Whether minor discrepancy in evidence demolishes the entire prosecution case.

Headnotes

(A) CRIMINAL TRIAL – Dying Declaration – The appellant was convicted for the offences punishable under Sections 302/201/34 of Indian Penal Code, 1860 – Whether the evidence of P.W. 16 who had heard the deceased shouting that the 'appellant killed him and to save him' can be utilized as dying declaration of the deceased.

Held: Yes – Whatever the deceased shouted after being assaulted by the appellant as deposed to by P.W.16 that he was being killed by the appellant and further shouted to save him, can certainly be relied upon as dying declaration of the deceased – The dying declaration is a substantive evidence only for the reason that a person in acute agony is not expected to tell a lie and in all probability, it is expected from such person to disclose the truth and an order of conviction can be safely recorded on the basis of dying declaration, if the Court is fully satisfied that the declaration made by the deceased was voluntary, true and reliable and in such case, no further corroboration can be insisted – Dying declaration need not be addressed to a particular individual and we find there is no suspicious feature in such evidence in the case in hand and there is no infirmity in it. (Para 9)

(B) CRIMINAL TRIAL – Minor discrepancy in evidence – Whether minor discrepancy in evidence demolishes the entire prosecution case.

Held: No – Although there are certain minor discrepancies in the evidence of P.W. 13 & P.W. 16, but that by itself is not a ground to disbelieve the prosecution case and falsify the evidence of these two witnesses. (Para 9)

Citations Reference

Bakhshish Singh Vrs. State of Punjab & Anr., (2013) 12 Supreme Court Cases 187 – referred to.

List of Acts

Indian Penal Code, 1860; Indian Evidence Act, 1872.

Keywords

Dying declaration; Discrepancies in the evidence.

Case Arising From

Judgment and order dated 18.05.2010 passed by the Ad hoc Additional Sessions Judge (F.T.C), Balangir at Patnagarh in Sessions Case No. 217/1 of 2009-10.

Appearances for Parties

For Appellant : Mr. Radharaman Das Nayak
For Respondent : Mr. Jateswar Nayak, A.G.A.

Judgment/Order**Judgment**

S.K. SAHOO, J.

The appellant Daktar Bhoi along with his wife Smt. Binodini Bhoi faced trial in the Court of learned Adhoc Addl. Sessions Judge (F.T.C), Balangir at Patnagarh in Sessions Case No.217/1 of 2009-10 for the offences punishable under sections 302/201/34 of the Indian Penal Code (hereinafter 'I.P.C.') on the accusation that on 28.06.2009 at about 12.30 p.m. at village Damkipali, they committed murder of Jaylal Bhoi (hereafter 'the deceased') in furtherance of their common intention and that knowing or having reason to believe that the offence had been committed, they caused certain evidence of the said offence to disappear by removing the dead body in a gunny bag with an intention to screen themselves from legal punishment.

The learned trial Court vide impugned judgment and order dated 18.05.2010 while acquitting the co-accused Binodini Bhoi of all the charges, found the appellant guilty under sections 302/201 of I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/- (rupees two thousand), in default, to undergo R.I. for one year for commission of offence under section 302 of the I.P.C. and R.I. for two years and to pay a fine of Rs.1,000/- (rupees one thousand), in default, to undergo R.I. for a further period of six months for commission of offence under section 201 of I.P.C. and both the substantive sentences were directed to run concurrently.

Prosecution Case :

2. The prosecution case, in brief, is that on 28.06.2009 at about 2.00 p.m. Hadibandhu Sethi (P.W.23), A.S.I. of Larambha outpost received a telephonic information from an unknown person regarding the murder of the deceased and on receiving such information, he made Station Diary Entry No.437 dated 28.06.2009 and proceeded to village Damkipali along with Constable No.438 Hina Baralebda (P.W.17) to enquire into the matter. On reaching there, the informant Gahaki Bhoi (P.W.12), the son of the deceased presented a written report (Ext.3) before P.W.23 to the effect that on the same day morning, he had been to his field with buffalos for grazing and the deceased had gone to the paddy field locally known as Talimunda situated in the said village to spread manure. At about 12 noon, he returned home with buffalos and the deceased had been to the straw heap at their paddy field to bind straws. It is further stated in the written report that while he was taking rest after taking lunch, his elder father Jagabandhu Bhoi (P.W.13) and his son Kartika Bhoi (P.W.16) informed him that the appellant, who was staying near Kutramunda agricultural field, caught hold of his deceased father near his house while he was returning with straws and after tying the neck of the deceased by means of a napkin with wooden post near his house, killed the deceased by stabbing with a Trisul (trident) on his head and body and thereafter, packed the dead body of the deceased in a gunny bag, loaded it on his bicycle and went towards the jungle. On getting such information, P.W.12 immediately went in search of his deceased father towards the nearby jungle, but could not trace him out. Thereafter, he returned back to the house of his uncle and came to know that after committing the murder of his deceased father, the appellant fled away from the house. He also noticed blood stains on the wooden post, straws have been burnt and the wooden post has been wiped with water and mud. It is further stated that as mangoes from the tree belonging to their share were falling over the roof of the house of the appellant, the appellant had kept grudge on his deceased father to kill him.

Since the written report disclosed the commission of a cognizable case, P.W.23 sent the report to the Inspector incharge of Patnagarh police station through B. Tandi, the Grama Rakhi for its registration and accordingly, the Inspector incharge of Patnagarh police station registered Patnagarh P.S. Case No. 118 dated 29.06.2009 under sections 302/201 of I.P.C. against the appellant. P.W.23 took up preliminary investigation of the case, searched and detected the dead body of the deceased lying inside Budhiduguri Nala packed in a gunny bag tied with rope and he brought out the same from the Nala with the help of local people and shifted it to village Damkipali and kept it in the rest shed of the village since the place from where the dead body was recovered was a dense forest and there was apprehension of attack by wild animals.

The Inspector in-charge of Patnagarh police station handed over the charge of investigation to Kandarpasen Nayak (P.W.24), S.I. of police of the said police station who took up investigation of the case from P.W.23.

During course of investigation, he made requisition to the S.D.M., Patnagarh to depute one Executive Magistrate to remain present during inquest over the dead body of the deceased and also sought for the help of Scientific Team, Balangir. Thereafter, he visited the spot and after arrival of the Executive Magistrate and Scientific Team, he prepared the spot map (Ext.14) and effected seizure of bamboo lathi (M.O.III) from the courtyard of the appellant as per seizure list (Ext.4). He also examined the witnesses and held inquest over the dead body of the deceased and prepared the inquest report vide Ext.2, sent the dead body of the deceased for post mortem examination to the S.D.M.O., Patnagarh as per the dead body challan (Ext.15). On production of blood sample, saline gauge cloth, control gauge cloth, saline earth piece of blood stained gunny bag, piece of control gunny bag, saline extract of gauge cloth by the Scientific Team, the same were seized as per seizure list Ext.4. P.W.24 also seized a violate colour lungi (M.O.I), a blood stained gunny bag (M.O.VI), two nos. of vials containing the blood sample of the deceased collected by the Medical Officer during post mortem, which were marked as Ext.5. P.W.24 apprehended the appellant on 30.06.2009 and on the same day, he also arrested the co-accused Binodini Bhoi and while the appellant was in police custody, he made a disclosure statement under section 27 of the Evidence Act (Ext.12/2) in presence of the witnesses and stated that he had concealed the trident near a well and he would led and give recovery of the same. Accordingly, the appellant led P.W.24 to the place of concealment and in presence of witnesses, he gave recovery of the trident (M.O.IV) which was seized as per seizure list Ext.11/4. Thereafter, P.W.24 forwarded both the appellant and his wife, the co-accused to the Court. P.W.24 collected the post mortem report (Ext.9) and made a query as per Ext.10/2 to the doctor conducting post mortem examination as to whether the injuries found on the dead body could be possible by the seized weapon of offence along with the lathi and the trident and the doctor submitted the query report as per Ext.10. P.W.24 thereafter made a prayer to the learned S.D.J.M., Patnagarh to send the seized exhibits to R.F.S.L., Sambalpur for chemical examination as per Ext.17. P.W.24 also seized the bicycle on being produced by one Mahadev Padhan, which was used by the appellant in lifting the dead body of the deceased as per seizure list Ext.20. P.W.24 also effected seizure of Larambha outpost station diary book vide entry dated 16.06.2009 to 01.07.2009 as per seizure list Ext.6 and gave the same in the zima of P.W.23 on executing zimanama (Ext.13) and on completion of investigation, P.W.24 submitted charge sheet against the appellant and his wife, the co-accused Smt. Binodini Bhoi under sections 302/201/34 of the I.P.C.

Framing of Charges :

3. After submission of charge sheet, following due procedure, the case was committed to the Court of Session where the learned trial Court framed charges as aforesaid and since the appellant pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prove their guilt.

Prosecution Witnesses, Exhibits & Material Objects :

4. In order to prove its case, the prosecution examined as many as twenty four witnesses.

P.W.1 Sumitra Bhoi, the widow of the deceased has stated that her deceased husband and her son (P.W.12) had been to the agricultural land and during noon time, P.W.12 returned home with buffalos and when she enquired the whereabouts of the deceased, P.W.12 went in search of the deceased and in course of such search, his elder father Jagabandhu Bhoi (P.W.13) told him that the appellant had killed the deceased. Thereafter, P.W.12 along with some villagers went in search of the deceased and after returning to her house, they disclosed before her that the appellant, who was the brother of the deceased, after killing the deceased, put the dead body inside a gunny bag and had thrown in a Nala in Budhiduguri and accordingly, P.W.12 reported the matter at the police station.

P.W.2 Mohan Bhoi who is a co-villager of both the appellant and the deceased, has stated that on the date of occurrence during lunch time, when he was coming on the village road, Mena Bhoi (P.W.4) was coming towards his house and on seeing him, he disclosed that the appellant after killing the deceased, packed the dead body inside a gunny bag and went towards the jungle in a cycle and he advised P.W.2 to inform the matter to police. Both P.W.2 and P.W.4 went to the house of Radhakanta Bhoi (P.W.11) and disclosed the matter and requested him to report to the police over phone. Accordingly, P.W.11 informed the police over phone and on arrival of the police, P.W.2 also accompanied the police in search of the deceased. He further stated that at about 7.00 p.m. to 8.00 p.m., the dead body of the deceased was detected in a ditch (Nala), which was packed in a gunny bag and the dead body of the deceased was brought to the rest house situated near the bus stoppage of the village and the police guarded the dead body throughout the night. He also stated that after recovery of the dead body, P.W.12 presented the written report to the police at the spot.

P.W.3 Kailash Bariha, who is a co-villager of both the appellant and the deceased, has been declared hostile by the prosecution.

P.W.4 Mena Bhoi, who is the brother of both the appellant and the deceased, has stated that on 28.01.2009 during noon time, while he was taking rest, his nephew Kartika Bhoi (P.W.16) informed him that the appellant had killed the deceased by means of a Trisul and thereafter, he along with P.W.16 went to the headman of the village, namely, Mohan Bhoi, who went to P.W.11 to inform the incident to the police over phone as he had got a telephone and accordingly, P.W.11 intimated the matter to the police. He further stated that on arrival of the police, he also accompanied the police in search of the deceased towards Budhiduguri jungle and during search, they found a gunny bag packed with the dead body of the deceased in a ditch and as per the direction of the police, they brought out the packed gunny bag

to the village and kept it in the rest shed of the village and the police guarded the dead body throughout the night. He further stated that on the next day, the inquest over the dead body was conducted in presence of the Tahasildar. He further stated that fifteen days prior to the incident, there was an altercation between the appellant and the deceased relating to a mango tree which situates near the house of the appellant, which was falling to the share of the deceased and on his intervention, the matter was subsided.

P.W.5 Bidyadhar Tandi was the Grama Rakhi of the village, who has been declared hostile by the prosecution.

P.W.6 Malati Bhoi, who is a co-villager of both the appellant and the deceased, has stated that on the relevant date, he had been to the village and she heard that the appellant had killed his brother. The said witness has been declared hostile by the prosecution.

P.W.7 Netrananda Panigrahi who is a co-villager of both the appellant and the deceased, has stated that on the date of occurrence, while he was taking rest, Jagabandhu Bhoi (P.W.13) came to his house and disclosed that the appellant had killed his deceased brother and out of fear, he had come to his house and to leave his house only after the police reached his village and when police reached, the headman of the village came to his house and called P.W.13.

P.W.8 Parameswar Suna, who is a co-villager of both the appellant and the deceased, is a witness to the seizure of bamboo lathi as per seizure list Ext.1.

P.W.9 Jagannath Gadtia, who is a close relative of both the appellant and the deceased, has stated that on getting information about the death of the deceased, he had been to their village and accompanied the police and other villagers in search of the deceased and during such search, they noticed a gunny bag thrown in a Nala inside Budhiduguri jungle. He further stated that he along with other villagers brought the dead body to the village Damkipali and kept in rest shed and on the next day, the police held inquest over the dead body in presence of the Magistrate and prepared the inquest report (Ext.2). He is a witness to such inquest report.

P.W.10 Durga Charan Sahu was the Tahasildar -cum- Executive Magistrate, Patnagarh, in whose presence, the police held inquest over the dead body of the deceased. He proved the inquest report as per Ext.2.

P.W.11 Radhakanta Bhoi who is a co-villager of both the appellant and the deceased, has stated that on the date of incident at about 1.30 p.m., while he was taking rest, the village headman sent his son Debasis Bhoi to him to ascertain about the telephone number of the A.S.I. of Larambha outpost and he further disclosed that the elder brother of the deceased had come to his house to inform the police that the appellant had killed the deceased. Accordingly, he contacted P.W.23 on his mobile phone and disclosed about the incident. He further stated that he heard that after

committing the murder of the deceased, the appellant had kept the dead body of the deceased in a gunny bag and took it towards the jungle.

P.W.12 Gahaki Bhoi, who is the son of the deceased, is the informant in the case. He stated about the search made inside the jungle and detection of the gunny bag in the Nala carrying the dead body of the deceased. He is also a witness to the inquest over the dead body.

P.W.13 Jagabandhu Bhoi, who is the elder brother of the appellant and the deceased has stated that on the date of occurrence at about 12.30 p.m., while he was taking rest in his house, he heard a sound calling him 'DADA DADA' and on hearing such sound, he came out of the house and went towards the direction from where the sound was coming and found that the deceased was lying on the backside of the house of Chatrubhuja Bhoi and the appellant was standing near it by holding a lathi. The appellant on seeing P.W.13, declared that whosoever came near him, he would see him and thus, he returned to his house and told his family members not to come outside and out of fear, he went to the house of Netrananda Pujari (P.W.7) and disclosed before him that the appellant had killed the deceased. He further stated that though P.W.7 told him to go the spot and insist the appellant to surrender before police, but out of fear, he told him to go to the spot only after the arrival of police. He further stated that on that day at about 3.00 p.m., he was called by the police and he accompanied the police to the spot field and also to Budhiduguri jungle in search of the deceased. He further stated that during such search, they found that the dead body of the deceased in a Nala being packed with a gunny bag and the dead body was brought to the rest shed of the village and on the next day, inquest was held by the police and he is a witness to the inquest report Ext.2.

P.W.14 Laxmikanta Bag and P.W.15 Jagyan Kumar Bhoi, who were the constables attached to Patnagarh police station, are the witnesses to the seizure of saline extract of blood, control gauge cloth, blood stained earth, control earth, blood stained gunny bag piece, control gunny bag and saline extract of gauge cloth, control gauge cloth and one bamboo lathi as per seizure list Ext.4. They are also the witnesses to the seizure of one violet colour lungi, one gunny bag stained with blood, one command certificate and sample blood of the deceased collected by the Medical Officer during post mortem examination as per seizure list Ext.5.

P.W.16 Kartika Bhoi, who is the nephew of the appellant and the deceased, has stated that on the date of occurrence, while he was in his house, he heard a sound 'DAKATAR MOTE MARI DEUCHI MOTE BANCHA BANCHA' and on hearing the shout, he along with his father came outside and proceeded towards the direction from where the shout was coming and they found that the deceased was lying on the backside of the house of Chaturbhuja and the appellant was standing near him holding a bamboo lathi affixed with Trishul (trident) and the appellant was declaring to kill whosoever dare to come to him. On hearing the same, out of fear, his father

went inside the village and he was watching the incident by concealing himself. He further stated that the appellant went inside his house, brought a gunny bag with him and put the dead body of the deceased inside the gunny bag, tied the face of gunny bag by means of a rope, loaded the same on the middle of the cycle and went towards Budhiduguri jungle. He further stated that he went to the house of Mena Bhoi (P.W.4) and disclosed before him about the incident, who in turn went to the headman of the village to intimate to the police. He further stated that on arrival of police, he accompanied the police and other villagers in search of the deceased and found a gunny bag inside the Nala of the jungle in which the dead body of the deceased was packed. He further stated that as per the direction of the police, the said gunny bag was brought to the village and kept in the rest shed. He further stated that he along with his father and other villagers guarded the dead body of the deceased throughout the night and on the next day morning, inquest over the dead body was conducted and he is a witness to the inquest report vide Ext.2.

P.W.17 Hina Baralebdia, who was the constable attached to Laramba outpost, accompanied P.W.23 to the spot village as per his direction. He stated that he also accompanied P.W.23 along with other villagers in search of the deceased towards the jungle on getting information that the appellant had taken the dead body of the deceased in a bicycle and following the track mark of the bicycle, they went towards the jungle and during such search, they found a gunny bag stained with blood and its face was tied lying in a Nala inside the jungle. He further stated that they brought out the gunny bag from the Nala and kept in the rest shed. He further stated that he along with others guarded the dead body of the deceased throughout the night and on the next day, inquest over the dead body was held. He is a witness to the seizure of the wearing apparels of the deceased as per seizure list Ext.6.

P.W.18 Rabindra Kumar Patra, who was the Scientific Officer, DFSL, Bolangir, has stated that as per the requisition of the I.I.C., Patnagarh police station and on the direction of the S.P., Bolangir, he visited the spot and collected the samples as per seizure list Ext.7. He is also a witness to the seizure of photographs as per seizure list Ext.4.

P.W.19 Pramod Kumar Khamari, was the A.S.I. (Photographer) in the office of DFSL, Bolangir, who took the photographs of the dead body of the deceased as well as the spot and the scene of occurrence and the I.O. collected the same from their laboratory. He is a witness to the seizure of such photographs as per seizure list Ext.7.

P.W.20 Dr. Durga Dutta Das was working as Assistant Surgeon in Sub-divisional Hospital, Patnagarh. On police requisition, he conducted post mortem examination over the dead body of the deceased Jayalal Bhoi and proved his report vide Ext.9. He also proved query report as per Ext.10.

P.W.21 Mahendra Hariha and P.W.22 Subash Seth are the co-villagers of both the appellant and the deceased and though they were witnesses to the seizure of trident as per seizure list Ext.11, but they were declared hostile by the prosecution.

P.W.23 Hadibandhu Sethi was the A.S.I. of Larambha outpost who on getting telephone call about the murder of the deceased, made S.D. Entry No.437 dated 28.06.2009 and proceeded to the spot village along with P.W.17, where P.W.12 presented the written report which revealed a cognizable case under sections 302/201 of I.P.C. and accordingly, he took up investigation and sent the report to I.I.C., Patnagarh police station for its registration. During search, he detected the dead body found lying inside Budhiduguri Nala packed in a gunny bag being tied with a rope. The dead body was brought out from the Nala with the help of local people and since it was a dense forest and there was apprehension of attack by wild animals, the dead body was shifted to village Damkipali and kept in the rest shed of village Damkipali. He further stated that he also made a request to the I.I.C. to send Scientific Officers to the spot and thereafter, the charge of investigation was taken over by P.W.24. He is a witness to the written report (Ext.3) and zimanama (Ext.13).

P.W.24 Kandarpasen Naik was the Inspector incharge of Patnagarh police station and he is the Investigating Officer of this case.

The prosecution proved twenty numbers of documents to fortify its case. Exts.1, 4, 5, 6, 11 and 20 are the seizure lists, Ext.2 is the inquest report, Ext.3 is the F.I.R., Ext.7 is the spot visit report, Exts.8 to 8/10 are the photographs, Ext.9 is the post mortem examination report, Ext.10 is the report of the doctor (P.W.20), Ext.12/2 is the statement of the appellant recorded under section 27 of the Evidence Act, Ext.13 is the zimanama, Ext.14 is the spot map, Ext.15 is the dead body challan, Ext.16 is the command certificate, Ext.17 is the prayer of the I.O. for sending the exhibits to R.F.S.L., Sambalpur for chemical examination, Ext.18 is the forwarding letter for sending the exhibits to R.F.S.L., Sambalpur and Ext.19 is the chemical examination report.

The prosecution also produced seven material objects for proving its case. M.O.I is the lungi, M.O.II is the gamuchha, M.O.III is the lathi, M.O.IV is the trident, M.O.V is the piece of blood stained gunny bag and M.O.VI is the gunny bag.

Defence Plea :

5. The defence plea of the appellant is one of complete denial to the prosecution case and false implication.

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 from the evidence of the doctor (P.W.20), it can be conclusively held that the deceased died a homicidal death. It was further held that the discrepancies and contradictions as pointed out in the evidence of

P.Ws.12, 13 and 16 are insignificant and does not render their evidence unworthy of acceptance. The evidence of P.W.16 who is an eye witness to the occurrence, found corroboration from the evidence of the I.O. (P.W.23) who detected the dead body in a Nala inside the jungle which was put in a gunny bag. The prosecution has well proved its case against the appellant by adducing cogent, trustworthy evidence to the effect that on the relevant date and time, when the deceased was returning to his house with bundle of straws, near the spot, the appellant tied his neck by means of a napkin in a wooden post and dealt consecutive blows by means of a bamboo lathi fitted with trident (M.O.IV and M.O.III) with intention to commit his murder and due to such assault, the deceased sustained severe bleeding injuries on his person, which resulted in his death. Learned trial Court further held that after the death of the deceased, the appellant put the dead body in a gunny bag (M.O.VI), loaded it in his bicycle and took the same and threw it in a Nala inside Budhiduguri jungle in order to cause disappearance of the evidence of the offence of murder with intention to screen himself from legal punishment and accordingly, held the appellant guilty under sections 302/201 of I.P.C. However, so far as the co-accused Binodini Bhoi, the wife of the appellant is concerned, the learned trial Court relying on the evidence of the eye witnesses, namely, P.W.13 and P.W.16 held that neither they had stated about the participation of the said co-accused along with her husband while the appellant was committing the murder of the deceased nor about her presence near the scene of occurrence nor there is any evidence except the uncorroborated testimony of the I.O. (P.W.24) that the co-accused Binodini knew or had reason to believe that the offence of murder had been committed by her husband and caused evidence of commission of the said offence to disappear by concealing the trident. Learned trial Court further held that simply because the co-accused Binodini happened to be the wife of the appellant, no presumption can be drawn that she shared common intention with him in committing the crime in absence of any positive evidence against her and thus, culpability of the offences under sections 302/201/34 of I.P.C. cannot be fastened against her and thereby, the learned trial Court acquitted the co-accused Smt. Binodini Bhoi of all the charges.

Contentions of Parties :

7. Mr. Radharaman Das Nayak, learned counsel for the appellant strenuously urged that there are discrepancies in the evidence of the two eye witnesses i.e. P.W.13 and P.W.16. He further argued that though P.W.16, son of P.W.13 has stated that he along with his father (P.W.13) on hearing the shout of the deceased that the appellant was killing him and to save him, went in the direction from where such shout was coming and found that the deceased was lying on the back side of the house of Chaturbhuj Bhoi and the appellant was standing near him holding a bamboo lathi affixed with a Trishul, but P.W.13 has stated that on hearing the call like 'DADA DADA', he went outside and proceeded in the direction from where such sound was coming and found that the deceased was lying on the back side of

the house of Chaturbhuj Bhoi and the appellant was standing near him holding a lathi. P.W.13 has not stated to have accompanied to the spot with P.W.16 and what they heard from the shout of the deceased, was also discrepant. He argued that it was not expected on the part of the appellant to remain present at the spot after committing murder of the deceased just to be seen by P.W.13 and P.W.16. He further argued that the weapon of offence i.e. trident (M.O.IV) was sent for chemical examination, but the chemical examination report (Ext.19) reveals that no blood was found in the same and therefore, the prosecution case that the appellant committed the crime with such weapon becomes a doubtful feature. He further argued that though all the seized material objects were sent for chemical examination, but the report (Ext.19) reveals that human blood was found in some exhibits, but the origin/group of such human blood could not be detected. Learned counsel further submitted that in view of the discrepancies in the evidence of the witnesses, absence of any specific motive on the part of a brother to kill another brother, benefit of doubt should be extended in favour of the appellant.

Mr. Jateswar Nayak, learned Addl. Government Advocate, on the other hand, supported the impugned judgment and argued that the evidence of P.W.16 to have heard the deceased shouting that the appellant was killing him and to save him can be utilized as dying declaration of the deceased. He further stated that what P.W.13 and P.W.16 heard while they were present in their house may be little discrepant in nature, but P.W.16 was quite younger in age and almost half the age of P.W.13 and therefore, it was not expected that what P.W.16 had heard, would also be audible to P.W.13 in view of his age. However, their version regarding the presence of the appellant near the dead body of the deceased holding a lathi in the backside of the house of Chaturbhuj Bhoi so also the threat given by the appellant at that point of time is consistent. He argued that the opinion given by the doctor (P.W.20) to have noticed number of injuries and his opinion that some of the injuries were possible by trident (M.O.IV) and injury on the occiput was possible by bamboo stick (M.O.III) corroborates the ocular testimonies of P.W.13 and P.W.16. He further argued that the evidence of P.Ws.2, 4, 11 and 12 regarding recovery of the dead body of the deceased packed in a gunny bag inside the jungle is another relevant feature which lends support to the evidence of P.W.16 who has stated that the appellant put the dead body of the deceased in a gunny bag, loaded it on the cycle and went towards Budhiduguri jungle. The learned counsel further argued that absence of any blood in the trident which was seized at the instance of the appellant or non-finding of human blood on the bamboo stick cannot be a ground to disbelieve the prosecution case and as such, the learned trial Court is quite justified in convicting the appellant and therefore, the appeal should be dismissed.

Whether the deceased met with homicidal death ?:

8. Before advertng to the contentions raised by the learned counsel for the respective parties, we have to carefully scrutinize the evidence on record to see as to

how far the prosecution has proved that the deceased Jaylal Bhoi met with a homicidal death.

The doctor (P.W.20) conducted post-mortem examination over the dead body of deceased Jaylal Bhoi and noticed the following injuries:

- (i) Average body built male with sign of decomposition.
- (ii) Incised wound of size 3"x ½" x ½" over the left side cheek;
- (iii) Incised wound of size 3"x ½" x 3" over the medial aspect of left mid fore arm;
- (iv) Incised wound over the occiput of size 1"x ½" x ½";
- (v) Stab wound of size 3" x 1" brain deep over the left side forehead with fracture bone with underline hematoma in the brain measuring 10 c.m. x 10 c.m.;
- (vi) Stab wound of size 1"x ¼ " deep into the peritoneal cavity with hemoperitoneum injury mesenteric vessels and transverse colon;
- (vii) Ligature mark of size 1 c.m. width over the neck above the thyroid cartilage without any bony injury with subcutaneous bleeding, it was parchment hard to feel and was present in front of the neck horizontally in direction and deficient at the back of the neck.

On internal dissection, P.W.20 found that there was homicidal brain injury along with injury to peritoneum and the cause of death was due to the brain injury accompanied by shock. He proved the post mortem report (Ext.9).

The I.O. also made a query regarding the possibility of the injuries sustained by the deceased Jaylal Bhoi by the weapon 'trident' (M.O.IV) seized during investigation at the instance of the appellant and the doctor opined that all the injuries detected on the person of the deceased except the injury over the occiput were possible by the trident (M.O.IV) and the injury over occiput was possible by bamboo stick (M.O.III). The query report has been marked as Ext.10.

In view of the evidence available on record, the inquest report of the deceased vide Ext.2, the post mortem report findings as per Ext.9 and the evidence of the doctor i.e. P.W.20, who conducted post mortem examination over the dead body of the deceased Jaylal Bhoi, we are of the view that the learned trial Court has rightly held that the prosecution has successfully established that the deceased met with a homicidal death.

Whether the eye witnesses account of P.W.13 & P.W.16 are reliable and trustworthy? :

9. There are two eye witnesses to the occurrence, i.e. P.W.13 and P.W.16.

P.W.13 is the elder brother of the appellant so also the deceased. He has stated that on the date of occurrence at about 12.30 p.m., while he was taking rest in his house, he heard somebody was calling him 'DADA DADA'. On hearing such sound, he came out of the house and went towards the direction from where such sound was coming and found that the deceased was lying on the backside of the

house of Chatrubhuja Bhoi and the appellant was standing near it by holding a lathi and on seeing him, the appellant declared that whosoever came near him, he would see him and on hearing such threat, he returned to his house and told his family members not to come outside and out of fear, he went to the house of Netrananda Pujari (P.W.7) and disclosed before him that the appellant had killed the deceased. He further stated that though P.W.7 asked him to go the spot and insist the appellant to surrender before the police, but out of fear, he told P.W.7 to go to the spot only after arrival of police. He further stated that on that day at about 3.00 p.m., he was called by the police and he accompanied the police to the spot field and also to Budhiduguri jungle in search of the deceased. He further stated that during such search, they found that the dead body of the deceased in a Nala being packed with a gunny bag and the dead body was brought to the rest shed of the village and on the next day, inquest was held by the police and he is a witness to the inquest report (Ext.2). He also stated that the police effected seizure of lungi, gamucha and lathi marked as M.Os.I, II and III respectively from the courtyard of the appellant. In the cross-examination, he stated that they all the three brothers were separated in house and mess and the family of the appellant and the deceased had cordial relationship.

P.W.16 is the son of P.W.13 and he has stated that on the date of occurrence, while he was in his house, he heard a sound 'DAKATAR MOTE MARI DEUCHI MOTE BANCHA BANCHA' and on hearing the shout, he along with his father (P.W.13) came outside and proceeded towards the direction from where the shout was coming and they found that the deceased was lying on the backside of the house of Chaturbhuja Bhoi and the appellant was standing near him holding a bamboo lathi affixed with Trishul (trident) and the appellant was declaring to kill whosoever dare to come to him. On hearing the same, out of fear, his father went inside the village and he was witnessing the incident by concealing himself. He further stated that the appellant went inside his house, brought a gunny bag with him and put the dead body of the deceased inside the gunny bag, tied the face of gunny bag by means of a rope, loaded the same on the middle of the bicycle and went towards Budhiduguri jungle. He further stated that he went to the house of Mena Bhoi (P.W.4) and disclosed him about the incident, who in turn went to the headman of the village to intimate to the police. He further stated that on arrival of police, he accompanied the police and other villagers in search of the deceased and found a gunny bag inside the Nala of the jungle where the dead body of the deceased was packed. He further stated that as per the direction of the police, the said gunny bag was brought to the village and kept in the rest shed. He further stated that he along with his father and other villagers guarded the dead body of the deceased throughout the night and on the next day morning, in presence of Magistrate, inquest over the dead body was conducted and he is a witness to the inquest report (Ext.2). In the cross-examination, he has stated that all the brothers of his father have separated mess and property including houses. He further stated that the house of the appellant was at a distance of 15 to 20 cubits from their house and that except the appellant

and the deceased, no one was present at the spot. He further stated that Trishul, who was affixed in a lathi having about five feet length.

The contention of the learned counsel for the appellant that there are discrepancies in the evidence of P.W.13 and P.W.16 is not acceptable. Both P.W.13 and P.W.16, who are the father and son were in the same house when they heard the shout of the deceased. P.W.13 heard somebody was calling him 'DADA DADA', whereas P.W.16 stated to have heard the deceased shouting 'DAKTAR MOTE MARI DEUCHHI MOTE BANCHA BANCHA' (Daktar was killing me. Save me. Save me). What exactly was heard by the two might be little discrepant, but as rightly pointed out by the learned State counsel, P.W.13 was aged about sixty years whereas P.W.16 was thirty five years. Therefore, their power of audibility which refers to the ability of human ear to detect and perceive sounds, encompassing the range of frequencies and sound levels may be different. It is a normal phenomena that as people grow older, their ability to hear, particularly high frequency sounds, declines, a condition known as presbycusis, affecting communication. It is, of course, correct that though P.W.16 stated that hearing the sound of the deceased, he himself and his father (P.W.13) came out of the house and proceeded towards the place from where the shout was coming and found the deceased lying dead on the backside of the house of Chaturbhuj Bhoi, but P.W.13 has not stated to have proceeded to the spot along with his son (P.W.16), but both of them noticed the presence of the appellant in the backside of the house of Chaturbhuj Bhoi where the dead body of the deceased was lying. The appellant was holding a lathi as stated by P.W.13 whereas P.W.16 has stated that the lathi was affixed with Trishul with three heads. When both P.W.13 and P.W.16 reached at the spot, the appellant threatened them for which P.W.13 out of fear returned back immediately whereas P.W.16 remained there concealing himself till the appellant removed the dead body of the deceased by putting it in a gunny bag and tying the face of the gunny bag by means of rope and loading it on the cycle, since P.W.16 was present at the spot for a longer period, he could have noticed that the lathi was affixed with Trishul which P.W.13 might have missed it because of his short presence at the spot.

Although there are certain minor discrepancies in the evidence of P.W.13 and P.W.16, but that by itself is not a ground to disbelieve the prosecution case and falsify the evidence of these two witnesses. Law is well settled as held in the case of **Bakhshish Singh -Vrs.- State of Punjab and another reported in (2013) 12 Supreme Court Cases 187** that minor inconsistent versions/discrepancies do not necessarily demolish the entire prosecution story, if it is otherwise found to be credible. It is pertinent to note that the lathi (M.O.III) which was found in the hands of the appellant was identified by P.W.13 and the trident (M.O.IV) was recovered at the instance of the appellant from the place of concealment and both these weapons were sent to the doctor (P.W.20), who conducted post mortem examination and after examining the same, he has specifically opined that all the injuries detected on the person of the deceased except injury over the occiput and the injury over occiput as

per his report Ext.9 were possible by trident (M.O.IV) and bamboo stick (M.O.III) respectively and the query report has been marked as Ext.10. No explanation has been offered by the appellant regarding his presence near the dead body holding the weapon and he has simply taken a plea of false implication.

P.W.16 had seen the appellant packing the dead body in a gunny bag, tying the face of the bag by means of a rope, loading it in the cycle and going towards Budhiduguri jungle. Number of witnesses examined by the prosecution including P.W.17, the constable and P.W.23, A.S.I. of Larambha Outpost stated about the recovery of a gunny bag lying inside Budhiduguri Nala in the forest being tied with a rope, which was brought to the village and kept in the rest house and on opening the same in presence of the Magistrate, the dead body of the deceased was recovered and accordingly, inquest was conducted. Similarly, P.W.13 stated to have disclosed before P.W.7 regarding the appellant killing the deceased and P.W.7 also supported the same. P.W.16 also disclosed about the commission of crime by the appellant before P.W.4 and P.W.4 also supported the same. The conduct of P.W.13 and P.W.16 in disclosing about the incident immediately after returning from the spot before P.W.7 and P.W.4 respectively is relevant under section 6 of the Evidence Act as *res gestae*. A statement to be admissible under section 6 of the Evidence Act, must be substantially contemporaneous with the fact i.e. made either during or immediately before or after the occurrence. To form a particular statement as part of the same transaction, utterance must be simultaneous with the incident, or soon after it so as to make it reasonably certain that the speaker is still under stress of excitement in respect of the transaction in question. This statement made by P.W.13 before P.W.7 so also P.W.16 before P.W.4 lends very important corroboration to the other evidence, in support of the culpability of the appellant. P.W.13 is not interested in either side, in other words, he is the brother of the deceased as well as the appellant so also P.W.16 who is closely related to both the appellant and the deceased and therefore, their versions deserve to be acted upon particularly when it is getting corroboration from the medical evidence.

The submission of the learned counsel for the appellant that the presence of the appellant at the spot, after committing the crime till the arrival of P.W.13 and P.W.16, is a doubtful feature, cannot be accepted. Reaction of an accused after committing the crime may vary from person to person and in the case in hand, the appellant remained at the spot and made every effort to cause disappearance of evidence by packing the dead body in the gunny bag and shifting the same inside the jungle in a cycle as stated by P.W.16. Therefore, his presence at the spot after committing the crime seems to be for a particular purpose i.e. to cause disappearance of evidence from the scene of crime and in the meantime he could got noticed by P.W.13 and P.W.16.

As rightly pointed out by the learned counsel for the State that whatever the deceased shouted after being assaulted by the appellant as deposed to by P.W.16 that

he was being killed by the appellant and further shouted to save him, can certainly be relied upon as dying declaration of the deceased. The dying declaration is a substantive evidence only for the reason that a person in acute agony is not expected to tell a lie and in all probability, it is expected from such person to disclose the truth and an order of conviction can be safely recorded on the basis of dying declaration, if the Court is fully satisfied that the declaration made by the deceased was voluntary, true and reliable and in such case, no further corroboration can be insisted. Dying declaration need not be addressed to a particular individual and we find there is no suspicious feature in such evidence in the case in hand and there is no infirmity in it.

P.W.4 has stated that a fortnight prior to the incident, there was altercation between the appellant and the deceased relating to a mango tree which situated near the house of the appellant, but falling to the share of the deceased. The submission of the learned counsel for the appellant that there is no motive on the part of the appellant, cannot be accepted.

Even though the bamboo stick (M.O.III) which was found from the house of the appellant was containing blood but its origin could not be found out and even though no blood was found in the trident (M.O.IV), but in view of sufficient evidence available on record regarding the culpability of the appellant particularly that of P.W.13 and P.W.16 and the medical evidence, we are of the view that the learned trial Court has rightly found the appellant guilty of the offences charged.

Conclusion :

10. In view of the foregoing discussions, we are of the view that the conviction of the appellant under sections 302 and 201 of the I.P.C. is quite justified and the sentence imposed thereunder by the learned trial Court is also proper and justified and we find no illegality or infirmity to interfere with the same.

Accordingly, the impugned judgment of the learned trial Court stands confirmed.

In the result, the JCRLA stands dismissed.

Before parting with the case, we would like to put on record our appreciation for Mr. Radharaman Das Nayak, Advocate for the appellant for rendering his valuable help and assistance towards arriving at the decision above mentioned. This Court also appreciates the valuable help and assistance provided by Mr. Jateswar Nayak, Addl. Govt. Advocate.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

JCRLA stands dismissed.

2025 (II) ILR-CUT-311

**MALAYA RANJAN DASH
V.
STATE OF ODISHA & ORS.**

[W.P.(C) NO. 28874 OF 2023]

02 MAY 2025

[S.K. SAHOO, J. & S.S. MISHRA, J.]

Issues for Consideration

1. Whether approval of a note sheet placed by Deputy Registrar (Judicial) basing on an unsigned order which was pronounced in an open Court can be construed as a deliberate misconduct of the Petitioner.
2. Whether an order pronounced in an open Court held to be operational if such order does not contain the valid signature.
3. Whether approval of the note sheet placed by Deputy Registrar (Judicial) amounts to violation of any definite rule resultantly a deliberate misconduct of the petitioner.

Headnotes

(A) SERVICE JURISPRUDENCE – Disciplinary Proceeding – Guilty of gross misconduct – The Inquiring Authority held the petitioner guilty of three charges – The first charge relates to gross misconduct which is based on approval of a note of the then Deputy Registrar (Judicial) and thereby instructing for registration of a *suo motu* proceeding on the basis of an unsigned order bearing the date of 2nd Feb 2021 purported to be of a Division Bench though the petitioner had no authority to issue such an instruction under Orissa High Court Rules, 1948 – Whether approval of a note sheet placed by Deputy Registrar (Judicial) basing on an unsigned order which was pronounced in an open Court can be construed as a deliberate misconduct of the Petitioner.

Held: No – We are of the view that the approval of such note sheet by the petitioner can at best be termed as an error of judgment, but certainly not ‘misconduct’ when it is merely for registration of a case for hearing of the matter by the Division Bench of the Court and no party was going to be prejudiced or harmed by such registration – The term ‘misconduct’ implies a wrongful intention, and not a mere error of judgment resulting in doing of negligent act – ‘Misconduct’ means, misconduct arising from ill motive – An act of negligence, errors of judgment, or innocent mistake, does not constitute ‘misconduct’.

(Para 15)

(B) INTERPRETATION OF STATUTES – Whether an order pronounced in the open Court becomes operative without having the signature.

Held: Yes – We are of the humble view that the order dated 24.02.2021 which was pronounced in the open Court by the Senior member of the Bench, became operative and such order to be operative does not await signing thereof by the Court as signing is a formality to follow after such pronouncement. (Para 13)

(C) ORISSA HIGH COURT RULES, 1948 – Registration of Suo Motu proceeding – The petitioner was charge sheeted for dereliction of duty which is based on registration of the Suo Motu proceeding without the approval of the Chief Justice – From the affidavit filed by the Special Officer (Administration), High Court of Orissa, it is apparent that no such rule/ law/ procedure/ standing order is there regarding obtaining permission of Hon’ble Chief Justice for registration of Suo Motu case basing on an Order passed by the Hon’ble Court – Whether approval of the note sheet placed by Deputy Registrar (Judicial) amounts to violation of any definite rule resultantly a deliberate misconduct of the petitioner.

Held: No – If there is no codified procedure or rule and no written practice or direction and the petitioner just approved the note sheet placed by Deputy Registrar (Judicial) basing on an unsigned order which was pronounced in open Court and as we have held that such order can be legally operative, it cannot be said it was an act of deliberate misconduct on the part of the petitioner as held by the Inquiring Authority. (Para 15)

(D) JUDICIAL REVIEW – Scope of interference or judicial review with the findings of disciplinary authority – Discussed with reference to case law. (Para 8)

Citations Reference

Surendra Singh & Ors. -Vrs.- The State of U.P., **(1953) 2 Supreme Court Cases 468**; Vinod Kumar Singh -Vrs.- Banaras Hindu University, **(1988) 1 Supreme Court Cases 80**; Union of India and Others -Vrs.- J. Ahmed, **(1979) 2 Supreme Court Cases 286**, Insp. Prem Chand -Vrs.- Govt. of NCT of Delhi, **(2007) 4 Supreme Court Cases 566**; Abhay Jain -Vrs.- High Court of Judicature for Rajasthan, **(2022) 13 Supreme Court Cases 1**; A.L. Kalra -Vrs.- Project & Equipment Corporation, **(1984) 3 Supreme Court Cases 316**; Vijay Singh -Vrs.- State of Uttar Pradesh and Others, **(2012) 5 Supreme Court Cases 242**; Subash Chandra Panda -Vrs.- State of Odisha and others, **2013 (I) ILR-CUT 750**; State of Uttar Pradesh -Vrs.- Dr. Dinesh

Singh Chauhan (Para 18), **2016 (9) SCC 749**; United Bank of India -Vrs.- Biswanath Bhattacharjee, **(2022) 13 Supreme Court Cases 329**; Rasaiklal Vaghajibhai Patel -Vrs.- Ahmedabad Municipal Corporation and another, **(1985) 2 Supreme Court Cases 35**; State of Bihar and Anr. -Vs.- P.P. Sharma, IAS and Anr., **1992 Supp (1) SCC 222 – referred to.**

List of Acts

Rules of the High Court of Orissa, 1948; Odisha Civil Services (Classification, Control and Appeal) Rules, 1962.

Keywords

Misconduct; Gross misconduct; Dereliction of duty; Imputation of statement; Representation; Major penalty; Judicial review; Suo Motu proceeding; Findings of disciplinary authority; Departmental proceeding.

Case Arising From

Notification No. 2100 dated 21.12.2022 and Office Order No. 6950 dated 16.02.2023 of the Govt. of Odisha, Home Department.

Appearances for Parties

For Petitioner : Mr. Budhadev Routray, Sr. Adv.

For Opp. Parties : Mr. Pitambar Acharya, AG, Mr. Aurobinda Mohanty, ASC

Judgment/Order

Judgment

S.K. SAHOO, J.

The foundation of justice is good faith. The good faith of the Judges is the firm bed-rock on which the system of administration securely rests. Richard Eyre said, “The principle of acting in good faith is at the heart of decent work.”

In the case in hand, the crux of the matter lies in whether the alleged act/omission on the part of the petitioner can be said to be a ‘misconduct’ or an act done on ‘good faith’ which could at best be termed as an inadvertent mistake or error of judgment.

The petitioner Malaya Ranjan Dash, who is an officer in the rank of Odisha Superior Judicial Service has filed this writ petition with a prayer for a direction to quash the impugned notification no.2100 dated 21st December 2022 under Annexure-22 in which he has been awarded with the major penalty of reduction to a lower grade i.e. Selection Grade (SG) in the same rank of District Judge as envisaged in Sub-rule (vi) of Rule 13 of the Odisha Civil Services (Classification, Control and Appeal) Rules, 1962 (hereafter ‘1962 Rules’) and fixation of his pay at the initial scale of Selection Grade with entitlement to annual increments in the Selection Grade and that his upgradation to the next higher grade in the Supertime

Scale to be considered after five years. He has also challenged the consequential office order no.6950 dated 16th February, 2023 of the Govt. of Odisha, Home Department under Annexure-23, with a further prayer to exonerate him of all the charges and extend all service benefits attached to the post of a District Judge (Super Time Scale) w.e.f. 21st December, 2022 treating the entire disciplinary proceeding including the enquiry undertaken by the Inquiring Authority to be illegal and in violation of principle of natural justice and/or to pass any other order/orders, direction/directions as this Court deems fit and proper for the ends of justice.

2. The factual matrix of the case is as follows:-

(i) The petitioner got selected in the written test for the post of District Judge directly from the Bar in the year 2010 and attended the interview on 4th September 2010 and came out successful and declared topper amongst four candidates and selected for the post of District Judge through direct recruitment from the Bar in that year. During his entire service career, the petitioner had remained sincere, committed to his work and had performed his job to the utmost satisfaction of higher authorities and till initiation of disciplinary proceeding, he had never received any adverse comment/remark from the High Court.

(ii) It is the further case of the petitioner that after successful completion of five years in the cadre of District Judge, the petitioner was granted Selection Grade Scale of pay with effect from 15th December, 2015 and on satisfactory performance in the said cadre, he was further granted Super Time Scale of pay with effect from 3rd August, 2017 by this Court. During the tenure of the petitioner as Addl. District & Sessions Judge in four different districts and as Principal District & Sessions Judge in four districts of Odisha consecutively for around seven years, the petitioner was appreciated by the Administrative Judges of those stations/districts and he truly believed that he must have received CCR grading of high rank from them. Even during his stint in Orissa High Court as Registrar General, the performance of the petitioner was appreciated by the then Hon'ble Chief Justice and other puisne Judges of this Court.

(iii) It is the further case of the petitioner that while he was working as such, on 26th February, 2021, a copy of the order dated 24th February, 2021 of one Division Bench of this Court was received by the Registrar (Judicial) I/C of the Court, namely, Dr. Pabitra Mohan Samal and he endorsed on it and sent to the Deputy Registrar (Judicial), namely, Sri Janmejaya Das, an officer assigned with the job of filing and listing of the cases. On very same day, the then Deputy Registrar (Judicial) of the Court placed a note sheet before the petitioner and urged to approve the same in order to comply the said order of the Division Bench of the Court dated 24th February 2021 as it was directed in the said order that the brief along with the copy of the order was to be supplied to the learned Senior Advocates engaged as Amicus Curiae by 26th February 2021, i.e. on that day itself and unless a case was registered, the same could not be done. On good faith, with an honest intention to comply the judicial order of the Court as well as believing the officers of the Registry, *Suo Motu* Writ Petition (Civil) No.7943 of 2021 was registered.

(iv) It is the further case of the petitioner that the then Hon'ble Chief Justice took exception of the matter as to why the matter was registered without bringing the same to his notice and as a consequence, the petitioner was immediately removed from Registry and ultimately he was transferred to the District of Rayagada.

(v) It is the further case of the petitioner that a preliminary show cause notice was served on him calling upon him to show cause regarding registration of Suo Motu Writ Petition (Civil) No.7943 of 2021 and to explain as to why and under what circumstances, the said Suo Motu Writ Petition came to be registered. On being supplied with the copy of the dissenting order of the said Division Bench along with the show cause notice, for the first time, the petitioner came to know that the 2nd Judge of the Division Bench of the Court recorded his dissenting view and the matter was directed to be put up before the third Judge after getting permission from Hon'ble the Chief Justice.

(vi) It is the further case of the petitioner that without disputing the fact of approval of the note sheet leading to the registration of the above mentioned Suo Motu Writ Petition, the petitioner submitted his explanation as to under what circumstances, the same was approved and stated that it was an inadvertent mistake on his part as he was neither vetted by the then Deputy Registrar (Judicial) nor could focus that he was acting upon a copy of the order without the signature of Hon'ble Judges and the petitioner could not know that there was dissenting opinion of one of the Hon'ble Judges of the Bench, as the note sheet was placed before him after two days of the date of the order unaccompanied with that part of dissenting order. It is further stated that on his query from the concerned Presiding Judge of the Division Bench regarding the manner of compliance of the order over phone, it was not even disclosed that the order was unsigned rather the Presiding Judge asked to comply the order and on good faith to give effect the judicial order of the Court with promptitude, the petitioner approved the same.

(vii) It is the further case of the petitioner that on 2nd August, 2022, he was transferred from the post of District & Sessions Judge, Rayagada to the Government of Odisha, Department of Labour & E.S.I as Presiding Officer, Industrial Tribunal Rourkela on deputation, where the Petitioner joined on 11th August, 2021. For the reasons best known to the opp. parties, the petitioner was debarred from getting the disturbance allowance during such transfer stated to have been done on administrative ground, without even disclosing such ground to the petitioner on which the disturbance allowance was disallowed. According to the petitioner, the disturbance allowance paid to the Judicial Officer on his transfer to a different place could only be debarred on valid grounds, but without intimating the petitioner as to what made the Authority to debar him from such right, the authority disallowed the same, which deemed to be a punishment imposed on him without any proceedings.

(viii) It is the further case of the petitioner that the petitioner received the memorandum of charges from the opp. parties vis-a-vis initiation of departmental proceeding vide memo No.03 of 2021 dated 9th November, 2021 on the ground of (a) gross misconduct (b) dereliction in duty (c) administrative indiscipline while dealing with judicial records and (d) failure to maintain absolute integrity and honesty, under Rule 3 of the Odisha Government Servants' Conduct Rules, 1959 (hereafter '1959 Rules'). Although the charge memo was containing the memo of

evidence proposed to be proved against the delinquent officer, but no such document was supplied with the charge memo as required under sub-rule (3) of Rule 15 of the 1962 Rules though there was a direction to inspect the documents during the working hour of the Court.

(ix) It is the further case of the petitioner that in obedience to the aforesaid direction, the petitioner submitted his written note of defence on 9th December, 2021 taking almost identical stand as was taken by him in his preliminary show cause reply and prayed not to treat the alleged act/omission as a misconduct as the action done on good faith by oversight could at best be termed as an inadvertent mistake or error of judgment for the another reason that there was nothing to gain by him in doing so, at the risk of his career and accordingly, the petitioner prayed to exonerate him from all the charges. It is further stated that since he merely intended to comply the judicial order of the Court and same in any circumstances, cannot be termed as a misconduct but at best an inadvertent mistake or error of judgment for which he may be excused.

(x) It is the further case of the petitioner that the petitioner was neither intimated that his written note of defence was found to be not satisfactory nor that an inquiry committee was constituted to conduct inquiry on the charges leveled against him whereas suddenly on 22nd April, 2022, he received a notice from the Inquiring Authority (the Judge was one of the members in the same Suo Motu Writ Petition (Civil) bearing W.P.(C) No.7943 of 2021, for registration of which the disciplinary proceeding against the petitioner was initiated) to appear on 7th May 2022 in D.P. No.3 of 2021.

(xi) It is the further case of the petitioner that in obedience to the aforesaid direction, the petitioner appeared before the Inquiring Authority on the first date of inquiry i.e. on 7th May, 2022. On that day, petitioner came to know for the first time that besides him, two other officers, namely, Dr. Pabitra Mohan Samal, the then Registrar (Judicial) I/C who had first received the copy of the order of said Division Bench and Sri Janmejaya Das, the then Deputy Registrar (Judicial), who had put up the note sheet before the petitioner for registration of Suo Motu Case, were facing the same inquiry with him in respect of the same incident.

(xii) According to the petitioner, though a joint enquiry is contemplated in Rule 17 of the 1962 Rules, where two or more Government servants are concerned in any case and for that an order is required to be passed by the competent Authority, but to the utter dismay, in contravention of such provision, the inquiry was conducted under Rule 15 of the 1962 Rules that too without making the petitioner aware of the fact that other two officers were facing the same proceeding and even without supplying the copy of the defence submitted by those officers in reply to the charges leveled against them thereby making the entire process of enquiry opaque and in gross violation of principle of natural justice and thus, the proceeding is liable to be vitiated.

(xiii) It is the further case of the petitioner that on the first date of inquiry, the petitioner filed a petition to direct the Marshalling Officer to supply the photocopies of the documents as per the schedule of the said petition. At the same time, Inquiring Authority directed the Marshalling officer to supply copy of the petition already filed by the department on 5th April, 2022 before the Inquiring Authority to

take around fourteen documents on record for the purpose of the departmental proceeding. The Inquiring Authority directed the Marshalling officer to supply copies of those documents as mentioned in the petition dated 5th April, 2022 except the copy of the order of the Hon'ble the then Chief Justice dated 4th April, 2021 directing the Registrar General to call upon the delinquent officers to show cause (six pages in three sheets), which they allowed mere inspection by the delinquent officers and also to submit reply on the petition filed by the petitioner on 7th May 2022 although such document was the basis of initiating proceedings against the petitioner and other officers and finds place in the Memo of Evidence under Annexure-III of the Memorandum of Charges, and in view of the mandate of sub-rule (3) of Rule 15 of the 1962 Rules required to be served on the petitioner along with the memorandum of charges in order to defend him properly and having not done so and merely allowing the document consisting of six pages, for only inspection cannot held to be sufficient compliance of the above provision and thus, the proceeding is vitiated for violation of principle of natural justice.

(xiv) It is the further case of the petitioner that on the next date of the inquiry proceeding i.e. on 28th May, 2022, the Marshalling Officer supplied copies of all the documents to the delinquent officers as per the petition dated 5th April, 2022 except the copy of the order of the Hon'ble the then Chief Justice dated 4th April, 2021 directing the Registrar General to call upon the delinquent officers to show cause (six pages in three sheets), which they allowed inspection by the delinquent officers. The Marshalling Officer filed the reply to the petition of the petitioner dated 7th May, 2022 for supply of documents. As some confusion arose about the documents to be supplied by the department to the delinquent officers as per the direction of the Inquiring Authority and the documents sought for in the petition dated 7th May, 2022 filed by the petitioner, the petitioner was allowed to file a fresh petition for supply of documents.

(xv) It is the further case of the petitioner that the petitioner filed a fresh petition to supply the remaining documents which he sought for and which was quintessential for preparation of his statement of defence. It is further submitted that on the very day, even without getting any written response from the Marshaling Officer, the Inquiring Authority outrightly rejected the said petition mostly holding that the documents were not relevant for the purpose of the disciplinary proceeding. To the utter dismay and surprise, the Inquiring Authority failed to appreciate that after the order dated 24th February, 2021 in *Suo Motu Writ Petition (Civil) bearing No.7943 of 2021* was passed, there was an order dated 9th September, 2021 wherein, the said writ petition was disposed of by a three-Judge Bench consisting of Hon'ble the Chief Justice, Hon'ble Judge, who was member of the Division Bench passed order on 24th February, 2021 and the Enquiring Authority as its members.

(xvi) It is the further case of the petitioner that after the evidence of the Department Witness No.1 was closed on 30th July, 2022, the petitioner filed a petition before the Inquiring Authority to supply the copy of the deposition of the Department Witness No.1 and any other witnesses as would be examined in the departmental proceeding soon after their examination, to enable him to make himself ready for final hearing. However, the said petition was rejected by the Inquiring Authority on the ground that there was no such provision in the 1962 Rules to provide copy of the deposition

of the witness in the midst of the inquiry which would be supplied to him with the inquiry report by the Disciplinary Authority after conclusion of the inquiry.

(xvii) It is the further case of the petitioner that after such rejection of the petition filed by the petitioner for supplying relevant documents, taking of evidence begun from both the parties and when the turn of the petitioner came, before adducing his evidence, he filed three petitions before the Inquiring Authority i.e., (i) the petition to recall the Department witness No.1 for further cross-examination; (ii) a petition to direct the Marshaling Officer to produce true copy of the order dated 7th April, 2021 passed in W.P.(C) No.11802 of 2020 (Orissa High Court Employees Association -Vrs.- Orissa High Court, Cuttack & Ors.) and (iii) to issue notice to the co-delinquent officers, Dr. Pabitra Mohan Samal, the then Registrar (Judicial) I/c and Shri Janmejy Das, the then Dy. Registrar (Judicial) for their examination/confrontation by the petitioner, but the Inquiring Authority did not find any merit in all those three petitions and instantly on the very day of its filing, rejected those petitions and thereafter, proceeded to take evidence of the petitioner on the same date and finally closed the proceeding and posted the case to 3rd September, 2022 for preparation of inquiry report.

(xviii) It is the further case of the petitioner that on 15th September, 2022, the petitioner received the notice of the Court vide No.13986 dated 9th September, 2022 through its department i.e., L & ESI Department, Govt. of Odisha under sub-rule (10)(i)(a) of the Rule 15 of the 1962 Rules along with the inquiry report dated 3rd September, 2022 of the Inquiring Authority with a direction to submit representation, if any, within 15 days as regards the findings of the Inquiring Authority in the inquiry report dated 3rd September, 2022.

(xix) It is the further case of the petitioner that on perusal of the inquiry report, it is found that the Inquiring Authority held the petitioner and co-delinquent Shri Janmejy Das guilty of three charges i.e. (a) Gross Misconduct; (b) Dereliction of Duty and (c) Administrative indiscipline while dealing with judicial records but at the same time exonerated from the charge of failure to maintain absolute integrity and honesty and the Inquiring Authority pleased to also recommend the punishment of reduction to the lower grade in the pay. However, to the utter dismay and surprise, with the same set of fact and evidence, Inquiring Authority was pleased to exonerate co-delinquent Dr. Pabitra Mohan Samal, who had initially handled the copy of the order dated 24th February, 2021 of the said Division Bench and endorsed the same to the D.R(J), of all the charges.

(xx) It is the further case of the petitioner that although there is no dispute about the fact which gave rise to registration of the Suo Motu Writ Petition, but surprisingly it is seen from the memo of charge issued to the co-delinquent Dr. Pabitra Mohan Samal, the then Registrar (Judicial) I/c that the fact/imputation of statement as against him is completely different and narrated a completely different story. Even though such discrepancy was candidly admitted by the Department Witness No.1 in his evidence, but Inquiring Authority did not take any step to remove such a glaring discrepancy which finally gave way for exoneration of co-delinquent Dr. Pabitra Mohan Samal of all the charges, when the petitioner was held guilty in respect of three head of charges, on self-same fact and incident.

(xxi) It is the further case of the petitioner that in obedience to the aforesaid notice dated 9th September, 2022, the petitioner submitted his representation under sub-rule (10)(i)(a) of the Rule 15 of the 1962 Rules through its department on 26th September 2022 with a prayer to exonerate him of all the charges as suggested against co-delinquent Dr. Pabitra Mohan Samal taking into account all the evidence available in his favour, his past unblemished service career so also the written note of submission dated 30th August, 2022 which was not at all considered by the Inquiring Authority.

(xxii) It is the further case of the petitioner that without taking into consideration the representation dated 26th September, 2022 in its proper prospective and even without giving any findings on the charges, said to have been established against the petitioner, as required under sub-rule (9) of the Rule 15 of the 1962 Rules, the Disciplinary Authority, inter alia, proposed to award with major penalty to the petitioner of reduction to a lower grade i.e. Selection Grade in the cadre of District Judge as envisaged in sub-rule (vi) of Rule 13 of the 1962 Rules. Further, it was also clarified that upon reduction to the lower grade of Selection Grade, the pay of the petitioner would be fixed at the initial scale of the Selection Grade with entitlement to annual increments in the Selection Grade and that the petitioner's upgradation to the next higher grade of Super Time Scale would be considered after five years. The Court accordingly, by notice No.16840 dated 3rd November, 2022 asked the petitioner to submit representation, if any, in accordance with Rule 15(10)(i)(b) of the 1962 Rules against the proposed penalty within ten days from the date of receipt of the above notice.

(xxiii) It is the further case of the petitioner that vide notification No.2100 dated 21st December, 2022, the Court pleased to observe that the misconduct of the petitioner, a Senior Judicial Officer holding an important position of trust, responsibility and confidence in the organizational hierarchy of the High Court cannot be condoned and accordingly, awarded the petitioner with major penalty of reduction to a lower grade i.e., Selection Grade in the rank of the District Judge as envisaged in sub-rule(vi) of Rule 13 of the 1962 Rules and further clarified that upon reduction to the lower grade of Selection Grade, the pay of the petitioner would be fixed at the initial scale of Selection Grade with entitlement of annual increments in the Selection Grade with further stipulation that his upgradation to the next higher grade in the Supertime Scale would be considered after five years.

(xxiv) It is the further case of the petitioner that pursuant to the aforesaid order of the Court, the opposite party No.1 in its order No.6950 dated 16.02.2023 re-fixed the revised judicial scale of pay, 2022 at Rs.1,63,030/- in Cell No.1 of Level J-6 (Selection Grade) of the pay Matrix w.e.f. 21st December, 2022 with further stipulation that the upgradation to the next higher grade in the Supertime Scale will be considered after five years from the date 21st December, 2022.

3. In response to the notice issued by this Court as per order dated 12.10.2013, all the opp. parties being represented by the Special Officer (Administration), High Court of Orissa filed their counter affidavit to the writ petition.

(i) In the counter affidavit, the stand has been taken that initiation of disciplinary proceeding, appointment of Inquiring Authority and the consequential action of

imposition of punishment were lawful and were done by following the cardinal principles of natural justice and not in violation thereof as alleged. The imposition of major penalty on the petitioner is not disproportionate as alleged. The Court imposed major penalty taking into consideration all the surrounding materials which is quite evident from the notification dated 21.12.2022 itself. It is stated that the copy of the order dated 24.02.2021 of the Division Bench which is discussed is an unsigned one. It is also stated that the contention that the then DR (Judicial) Sri J. Das placed the note sheet before the petitioner on 26.02.2021 and urged to approve the same is against the materials on record. It is further stated that DR (Judicial) Sri J. Das in his written statement of defence in D.P. No.3 of 2021 has rather stated that it was the petitioner who after discussion with the Senior Judge of the Division Bench which passed the order, had instructed him to place the notes before him (petitioner).

(ii) It is further stated that soon after the registration of *Suo Motu Writ*, the same came to the knowledge of Hon'ble the Chief Justice from other source and thereafter the petitioner was transferred from the Registry of the Court to the District of Rayagada as the District Judge.

(iii) It is further stated that the petitioner acted carelessly in approving the note sheet without the original order passed by the Hon'ble Division Bench. The petitioner instead of approving the note on the basis of telephonic instruction of the Presiding Judge, should have examined the concerned record. The plea taken by the petitioner that in order to give effect to the judicial order, he acted with promptitude on good faith is an afterthought stand in order to escape from his administrative responsibility.

(iv) It is stated that the contents are matters of record and at the time of transfer of the petitioner from Rayagada to the Industrial Tribunal, Rourkela, D.P. No.3 of 2021 had been initiated which was within his knowledge. As per the Circular No.787/L dated 28.01.2010, as the transfer was made on administrative ground, the disturbance allowance was denied to him. The contention of the petitioner that the "Memo of Evidence" was not supplied to him along with the Memorandum dated 09.12.2021 was denied. The Memorandum itself speaks that the list of documents by which and a list of witnesses by whom the articles of charge were proposed to be sustained. That apart, while submitting his written statement of defence, the petitioner had never pointed out that he did not receive the "Memo of Evidence". After receipt of the written statement of defence of the petitioner, the Court in its prudence resolved for inquiry into the charges and Inquiring Authority was appointed.

(v) It is further stated that the provision of Joint Inquiry as provided in Rule 17 of the 1962 Rules is not mandatory which would be evident from use of the word "may" therein. There is also nothing in the said Rules prescribing different set of procedure of inquiry under Rule 15 and Rule 17. The provision contained in Rule 17 of the 1962 Rules does not prescribe that failure to adhere to Rule 17 in inquiry of more than one delinquent, will vitiate a proceeding. The petitioner could not explain as to how he was prejudiced due to inquiry under Rule 15 instead of Rule 17. The entire inquiry was lawful and has been conducted giving due regard to the principles of natural justice.

(vi) It is stated that the contents are matters of record and though the contention of the petitioner is that he should have been supplied with the order dated 04.04.2021 of Hon'ble the Chief Justice, but the same is nothing more than a chart of sequence of events which the petitioner had inspected. The truth is that as per directions, explanations were sought from the petitioner and the other two delinquents, but the same cannot be held to be a vital document which ought to have been supplied to the petitioner. Moreover, the same was not even marked as an exhibit by the Inquiring Authority in the disciplinary proceeding. When the petitioner inspected the order, non-supply thereof cannot be said to have caused any prejudice to him as claimed. Similarly, the order dated 09.09.2021 passed in *Suo Motu Writ Petition (Civil) No.7943 of 2021* was never in dispute and also never a document necessary for the purpose of inquiry. The manner of initiation of *Suo Motu Writ Petition (Civil) No.7943 of 2021* formed the basis of inquiry not the manner of its disposal. Moreover, it is not the case of the petitioner that the case was not disposed of. Further, he has not challenged the final order passed therein. It is stated that in absence of any specific provision in 1962 Rules for supply of copies of deposition in the midst of inquiry, the petitioner was rightly denied supply of statement of Department Witness No.1 on 30.07.2022. However, after conclusion of the inquiry, he was supplied with the inquiry report along with the statements of the witnesses which he had filed. The entire inquiry and recording of the deposition of the witnesses was carried out by the Inquiring Authority in the presence of the petitioner and not behind him. The contention of the petitioner that the entire proceeding was in violation of natural justice and that it was not fair and transparent is a myth.

(vii) So far as the rejections of the three petitions of the petitioner are concerned, the same were disposed of by the Inquiring Authority considering their merits. The petition to recall the Department Witness No.1 for further cross-examination was felt to be not required as the petitioner had cross-examined him (Department Witness No.1) at length earlier. The second petition for calling for the original copy of order dated 07.04.2021 in W.P.(C) No. 11802 of 2022 was also felt unnecessary as the petitioner had filed the downloaded copy thereof which was not disputed and he was asked to utilize such downloaded copy in his favour if he so wanted. The other petition to issue notice to the other two delinquent officers did not find favour with the Inquiring Authority as prior thereto, both of them had declined to adduce their respective evidence in the inquiry. That apart, the petitioner had prayed for examining them in order to confront them with the facts asserted in the preliminary show-cause and written statements of defence which were matters of record, were undisputed. Hence, their examination was found to be not essential. So far as the contention regarding non-supply of copies of order sheets is concerned, the petitioner had never raised such claim at any point of time before the Inquiring Authority. The petitioner has also not mentioned as to in what way he was prejudiced due to non-supply of the copies of orders and thus, the same cannot be said to have violated any principle of natural justice.

(viii) It is stated that in absence of any specific provision in 1962 Rules for fixing a date for summing up of the case by both the parties, the Inquiring Authority in its wisdom preferred to prepare the inquiry report after the conclusion of evidence from both the sides. It is also not the case of the petitioner that the department was

allowed to sum up its case and not the petitioner. The procedure which was adopted by the Inquiring Authority was the same for both the department and the delinquents. There is absolutely no violation of principle of natural justice. It is stated that the Inquiring Authority had taken all the materials into consideration and found the petitioner and delinquent Sri Dash guilty of the charges while exonerating another delinquent Sri Samal thereof. The Inquiring Authority has given ample reasons for the conclusion arrived at in the report. There is nothing in the report for the petitioner to be shocked as Shri Samal unlike the petitioner and Shri Das had a limited role in the entire process.

(ix) It is stated that the petitioner is under the mistaken notion that in a common inquiry, all the delinquents are to be commonly judged irrespective of their degree of involvement and culpability. The Inquiring Authority after due inquiry exonerated Dr. Samal from the charges and the same is no way connected with the petitioner.

(x) It is further stated in the report that since Sri Samal had a limited role in the entire scenario by marking the document to the DR (Judicial) on a day when he was in charge of the Registrar (Judicial), he was exonerated with suggestion that he should be warned to be more cautious in future. Per Contra, the Inquiring Authority taking into consideration the gravity of misconduct recommended the penalty of reduction to lower grade of pay against the petitioner and Sri Das. The imposition of penalty on the petitioner by the Court was also done after taking his representation under Rules 15(10)(i)(a) and 15(10)(i)(b) of 1962 Rules into consideration. It is stated that not only did the findings arrived at the inquiry report were considered and accepted, but also in compliance of Rule 15 (9.A) of the 1962 Rules, the representation under Rule 15(10)(i)(a) and subsequent representation under Rule 15(10)(i)(b) of 1962 Rules were invited from the petitioner. The petitioner's contention that the entire proceeding was vitiated and natural justice has been violated is baseless and without a grain of truth. The petitioner was granted opportunity at every stage of the inquiry and at all the subsequent stages as per Rules. The disciplinary authority duly considered the representation submitted by the petitioner and thereafter imposed penalty on him.

(xi) The provisions of 1962 Rules have been scrupulously followed while imposing penalty on the petitioner, therefore, impugned order does not require interference of this Court. The surreptitious conduct of the petitioner in the entire sequence of events while heading the Registry as has been highlighted by the Inquiring Authority justifies the penalty imposed on him.

(xii) It is further stated that the contention of the petitioner that his representation has not been considered at all is a wild conjecture and is far from truth. As a matter of fact, his representation was considered in its true perspective and thereafter penalty was imposed on him.

(xiii) It is stated that the Inquiring Authority never travelled beyond the charges during the inquiry and have examined all the aspects meticulously. The Inquiring Authority had never misread the imputations of misconduct as alleged. It rather appears that the petitioner had misread the same and derived his own meaning therefrom. It is stated here that the approval of the note sheet which the petitioner

seeks to trivialize was actually the trigger point which unleashed a flurry of consequential events which, if not timely detected, could have been fatal.

(xiv) Furthermore, it was not only approval of a mere note sheet, but also acting on an unsigned order which is very much there in the first limb of the imputations of misconduct. The petitioner has contended that the words ‘practice and procedure’ are absent in the Articles of Charge and Statement of Imputations of Misconduct whereas it finds place in Para-7 of the inquiry report.

(xv) It is further stated that the practice and procedure which have been violated by the petitioner have been mentioned quite clearly in the initial two limbs of both Articles of Charge and Statement of Imputations of Misconduct. It is stated that the findings arrived at in the inquiry are in accordance to the charges leveled. The contention of the petitioner that the Inquiring Authority had collected the evidence is against the materials on record. The petitioner has perhaps forgotten the basic tenet of inquiry that it was the Marshalling Officer who tendered the evidence on behalf of the department in presence of the petitioner before the Inquiring Authority. There was never a point in the evidence that the petitioner had raised any objection that the Marshalling Officer had tried to prove extraneous aspect.

(xvi) It is further stated that it was the petitioner who was beating around the bush during the cross-examination highlighting/suggesting about his own so-called past efficiency.

(xvii) It is further stated that all the findings of the Inquiring Authority are spot-on and are in keeping with the Articles of Charge and the imputations of misconduct. It is stated that the contents are matters of record and the evidence adduced by the Department Witness no.1 on whose testimony the petitioner relied upon is exactly the evidence which the Inquiring Authority took into consideration while returning a finding against the petitioner. The inquiry report is a complete document by itself which has adequately dealt with all the aspects and any addition thereto will tantamount to bringing fresh salvo against the petitioner. The contention of the petitioner that the department had failed to establish any of the charges against him is figment of his own imagination and is far from truth.

(xviii) It is further stated that the petitioner has deduced his own logic out of nowhere that there is no bar to act on an unsigned order of a Division Bench so far relates to only registration of a *Suo Motu* writ petition more particularly when admittedly one of the Senior Judge presiding the Bench was consulted and confirmed about such order with suitable instruction to carry out the same. It is further stated that there is no codified provision for registration of *Suo Motu* proceeding or writ, the petitioner seeks to justify his action of approval of the note sheet for registration of the same.

(xix) It is further stated that the petitioner cannot and should not be allowed to blow hot and cold at the same breath. On one hand, he claims that he had no knowledge at the time of approving the note sheet that the order was unsigned which as per his words was an act “done on good faith by oversight”, “an inadvertent mistake” and “an error of judgment” and on the other, he tried to justify his action of approval by slating that there was no bar in registration on the basis of an unsigned order after orally consulting a Senior Judge of the Bench.

(xx) That apart, absence of a codified provision in express words should not be misconstrued as giving a free hand to an officer in the Registry to do and undo things at his own sweet will, to consult or ignore any Judge as per wish and/or to willfully keep the Chief Justice under ignorance. On the other hand, if there is no express provision for something, an officer is put on guard before acting; he/she is to be circumspect before taking a call on something; he/she is to inform the Chief Justice and is required to take orders before acting. Not resorting to any such course and trying to justify his action by boasting of absence of any codified procedure, the petitioner's claim that the department failed to prove that the registration of *Suo Motu* proceeding was not to be acted upon without approval of the Chief Justice deserves to be rejected.

(xxi) It is stated that the inquiry report dealt with all the concerns raised by the petitioner. The petitioner despite being the erstwhile Registrar General pretends to be blissfully unaware of the allocation of duties amongst the officers of the Registry. The contention of the petitioner as to what he would have done if he knew that the order was unsigned, or that there was a dissenting view or that he was under an impression that it was a routine compliance, are not matters to be dealt with in this proceeding.

(xxii) It is further stated that there cannot be any direct evidence of motive and proof of motive, in all cases is not mandatory and merely because motive could not be brought out in an administrative inquiry is not a ground to brand an inquiry to be vitiated or to chastise an inquiry report to be perverse. The contents of this paragraph would rather show that the petitioner himself is confused and the inquiry report is not full of surmises and conjectures as he has delved on what he would have done had the circumstances been otherwise.

(xxiii) It is stated that the statement of the Department Witness No.1 has been duly considered by the Inquiring Authority while deriving conclusions in the report. Dissecting the etymological meaning of a word recorded in evidence and to say that the report is based on surmises and conjectures is unwarranted on the part of the petitioner.

(xxiv) It is further stated the then DR (Judicial) in his written statement of defence has stated that the note sheet was put up by him as per the instructions of the petitioner. The Inquiry Report has taken all the submissions of the delinquents including the petitioner and the department into consideration while arriving at the conclusions, which is never vitiated from any angle.

(xxv) It is stated that the petitioner has tried to justify his own wrong by submitting that *Suo Motu* proceeding was already initiated by the Bench as is evident from the tenor of the order dated 24.02.2021 and that registration only remained a mere formality. It is further stated that if registration was a mere formality, it should have been registered then and there on 24.02.2021 itself. Further, in such event, what was the need for approval of a Registrar General, who never had any business to meddle in the judicial matters. Despite that the petitioner had chosen to approve a note sheet which had its root on an unsigned order which catapulted the registration of the *Suo Motu* Writ Petition. The acts of the petitioner was out and out wrong and no amount of justification can come to his rescue. In the Inquiry Report, it has been clearly stated that Ext.5 was a mere scrap of paper containing some purported directions of

a Division Bench of the Court. Such categorical words of the report summarize the validity of Ext.5. Any other interpretation of Ext.5 as is made by the petitioner is without any basis.

(xxvi) It is stated that the petitioner cannot equate his own position with that of co-delinquent Shri Samal as Shri Samal was in-charge of Registrar (Judicial) on that fateful day, while the petitioner was heading the Registry then. The reason for exoneration of Shri Samal and the imposition of penalty on the petitioner have been succinctly detailed in the inquiry report, which did not require any supplement by these opp. parties.

(xxvii) It is further stated that at Para-12 and 13 of the report, the Inquiring Authority has mentioned as to how the conduct of the petitioner were characterized as „misconduct“. The contentions of petitioner about absence of any codified rule have already been dealt with in the preceding paragraphs.

(xxviii) It is stated that the then Chief Justice was a prime member of the Disciplinary Authority who was in a position to influence the decision making process was far from truth. As a matter of fact, the Disciplinary Authority in the matter was the High Court as per the definition available at Rule i.e. The Rules of the High Court of Orissa, 1948 (hereafter “1948 Rules”). The matter of the inquiry in D.P.No.03 of 2021 was not the subject matter of the merits of the Sua Moto writ petition. That apart, merely because the Inquiring Authority happened to be one of the members of the Bench, the same per se does not render the inquiry illegal. No circumstance has been brought out in the writ petition to show bias of the Inquiring Authority and the petitioner at no point of time had expressed his reservations on appointment of the Inquiring Authority. Only after the adverse finding, the petitioner has come up with these kinds of afterthought pleas in desperation to stay afloat.

(xxix) It is further stated that the inquiry report is very clear about the grave nature of acts of the petitioner and the punishment imposed by the Disciplinary Authority was never disproportionate, but was quite appropriate. The punishment as prescribed in the 1962 Rules was never exhaustive to deal with each and every situation. The penalty imposed on the petitioner is just, proper, in proportion with the misconduct and needs no interference by this Court.

FINDING IN INQUIRY REPORT Dt.03.09.2022

4. The Inquiring Authority has observed as follows:-

“10. As stated earlier, none of the delinquent officers dispute the note under Ext.4 prepared and placed by Shri Janmejaya Das and approved by Shri Malaya Ranjan Dash. Further, Ext.5 and the endorsement of Dr. Pabitra Mohan Samal under Ext.5/1 on it also remains undisputed by Dr. Pabitra Mohan Samal and other two delinquent officers. The signatures and endorsement under Exts.4/1 and 4/2 on Ext.4 are admitted by Shri Janmejaya Das and Shri Malaya Ranjan Dash. Similarly the registration of Sua Motu W.P.(C) No.7943 of 2021 and consequent communication and receipt of copy of Ext.5 by the Office of Advocate General through Department Witness No.2 as endorsed under Exts.1/2 & 3/2 are neither doubted nor disputed by any of the parties. In other words, all such documents

brought on record under Exts.1 to 5 and the signatures and endorsement appearing on them remains admitted without any sort of doubt.

11. It needs to be mentioned at the outset that none of the delinquent officers have ever whispered anything about intimating the Chief Justice on Ext.5 or such discussions made with Justice.....or the instructions given by her to them till 2nd March, 2021 when he came to know about the same from other source...Usually a *Suo Moto Writ Proceeding* is initiated by the order of the Chief Justice or a Bench consisting of the Chief Justice as one of the member. Despite all such rules and guidelines, neither Janmejaya Das nor Malaya Ranjan Dash in the capacity of Deputy Registrar (Judicial) and Registrar General respectively did think it proper to bring such an unusual fact of initiation of *Suo Motu Proceeding* based upon a plain unsigned document under Ext.5....Department Witness No.1, the present Registrar (Judicial) had worked for a long tenure in the Court in the capacity of Deputy Registrar (Judicial) as well as in his present post, who has specifically said that initiation of a *Suo Motu Proceeding*; by a Division Bench other than the Chief Justice is itself an unusual fact and therefore it is incumbent upon the officers of the Registry to bring the same to immediate attention of the Chief Justice. Admittedly, none of the delinquent officers being the key Registrars of the Court did even attempt to bring it to the notice of the Chief Justice.

12. With regard to the authenticity of Ext.5 as a valid Judicial Order that prompted the delinquent officers to act upon, it is explained by all the delinquent officers that they acted on good faith and bona fide belief upon Ext.5 as a valid judicial order. It needs to be reiterated here that admittedly Ext.5 is not a signed order nor is it endorsed to be a true copy of the order with authorized signatory. Ext.5 reveals to be a mere scrap of paper containing some purported directions of a Division Bench of the Court. None of the delinquent officers claim to have made any attempt to see or verify the original order or the file, which of course was their first duty....As such, the explanation offered by Shri Malaya Ranjan Dash and Shri Janmejaya Das that they acted bonafidely, is not found convincing because the circumstances showing their doubtful conduct to ignore the other Judge as well as the Chief Justice is deplorable. They failed to explain this. It casts doubt on their conduct. However, in absence of any conspicuous material to satisfy their dishonest intention, it cannot definitely be opined that they did so dishonestly. So the charge with regard to failure to maintain absolute integrity and honesty is not established.

13. Shri Malaya Ranjan Dash says in his written statement that the approval of the note under Ext.4 by him is an error and inadvertent mistake. He further says that it was an error of judgment not actuated with any mala fide dishonest intention. But in my humble opinion, it is not an error of judgment, rather a deliberate misconduct....As such, the charges of gross misconduct, dereliction of duty and administrative indiscipline are well established against Shri Janmejaya Das and Shri Malaya Ranjan Dash. Accordingly, both of them are found guilty of those three charges.

XX XX XX XX XX

15. In view of the discussions made above and the reasons stated, and considering the entirety of the charges, the imputations thereof as well as the gravity of

misconduct, the punishment of reduction to the lower grade in the pay is recommended against Shri Janmejaya Das and Shri Malaya Ranjan Dash.”

Submissions on behalf of the petitioner:

5. Mr. Budhadev Routray, learned Senior Advocate appearing for the petitioner contended that the order dated 24.02.2021 was passed in open Court when Bench assembled and it was not varied till the date of registration of the *Suo Motu Writ Petition* which would be evident from the order dated 07.04.2021 passed by same Division Bench in W.P.(C) No.11802 of 2020 under Annexure-17 which has been marked as Ext.A from the side of the petitioner in the departmental inquiry. Therefore, such an order becomes operative even without the signatures of the Hon’ble Judges. In support of his submission, he relied upon the decisions of the Hon’ble Supreme Court in the cases of **Surendra Singh & Ors. -Vrs.- The State of U.P. reported in (1953) 2 Supreme Court Cases 468 and Vinod Kumar Singh - Vrs.- Banaras Hindu University reported in (1988) 1 Supreme Court Cases 80.**

He further contended that admittedly the copy of the order was sent after dictation in open Court, unaccompanied with the dissenting order which was penned subsequently. The note sheet was approved for registration of *Suo Motu Writ Petition*, on last hour of the day of its stipulated date of compliance on good faith and there is no malafide intention or without violating any definite Rule or law. Merely basing on the claim of the department that there was a convention/practice to act upon an original order only in case of registration of *Suo Motu Writ Petition*, otherwise it should have been brought to the notice of Hon’ble Chief Justice, the charges of gross misconduct, dereliction of duty and administrative indiscipline could not have been said to be well established against the petitioner. The act of approval by the petitioner can at best be termed as an error of judgment, but certainly not „misconduct“ when it was merely for registration of a case for hearing of the matter by the Division Bench of the Court and no party was going to be prejudiced or harmed by such registration or notice. According to him, misconduct arises from wrongful intention and ill motive, but an act of negligence, errors of judgment, or innocent mistake do not constitute misconduct. In support of his submission, he relied upon the decisions of the Hon’ble Supreme Court in the cases of **Union of India and Others -Vrs.- J. Ahmed reported in (1979) 2 Supreme Court Cases 286, Insp. Prem Chand -Vrs.- Govt. of NCT of Delhi reported in (2007) 4 Supreme Court Cases 566 and Abhay Jain -Vrs.- High Court of Judicature for Rajasthan reported in (2022) 13 Supreme Court Cases 1.**

He argued that the order was valid in the eyes of law being dictated in open Court and communicated through proper channel. There was no scope for the Registry either to see the order of the Court in distrust or verify its authenticity and if at all it was an error but to err is human and cannot be termed as grave misconduct particularly when there is no violation of definite Rule/Law/Procedure. Acts of misconduct must be precisely and specifically stated in the rules or standing orders and cannot be interpreted ex-post facto by the department. He relied upon the

decisions of the Hon'ble Supreme Court in the cases of **A.L. Kalra -Vrs.- Project & Equipment Corporation reported in (1984) 3 Supreme Court Cases 316 and Vijay Singh -Vrs.- State of Uttar Pradesh and others reported in (2012) 5 Supreme Court Cases 242.**

Learned counsel for the petitioner further argued that without quoting any specific provision or guideline and contrary to the evidence of the Department witnesses, the Hon'ble Inquiring Authority held that the guidelines for functioning of each Officer of the Registry have been issued from time to time prescribing their duties and despite all such guidelines, the petitioner in the capacity of Registrar General, did not think it proper to bring such unusual fact of initiation of *Suo Motu* Proceeding based upon a plain unsigned document under Ext.5. According to him, if there is no such guidelines to show that the order passed by a Bench in open Court for initiation of *Suo Motu* Proceeding is to be brought to the notice of the Hon'ble Chief Justice or it is to get approval of the Hon'ble Chief Justice before its registration in spite of the order passed by a Bench, the finding of the Hon'ble Inquiring Authority is perverse and not legally sustainable.

Learned counsel further contended highlighting discrimination that the co-delinquent Dr. Pabitra Mohan Samal, the then Registrar (Judicial) I/C was exonerated though he was implicated basing on the same incident and had a pivotal role to play. In fact, the unsigned order was first received by him, who endorsed it to the Deputy Registrar (Judicial) and he was exonerated on the plea that he was in the charge of Registrar (Judicial) on that day only.

The learned Senior Counsel emphasised that the imposition of punishment under Annexure-22 is shockingly disproportionate and even past unblemished service record of the petitioner was not considered. In support of his submission, he placed reliance upon a decision of this Court in the case of **Subash Chandra Panda -Vrs.- State of Odisha and others reported in 2013 (I) ILR-CUT 750.**

While concluding his argument, learned Senior Counsel urged that in the factual scenario and in the interest of justice, the impugned notification no.2100 dated 21st December 2022 under Annexure-22 and the consequential office order no.6950 dated 16th February, 2023 under Annexure-23 be quashed and the writ petition be allowed granting all consequential service benefits to the petitioner as per law.

Submissions on behalf of the opposite parties:

6. Mr. Pitambar Acharya, learned Advocate General, being ably assisted by Mr. Aurobinda Mohanty, learned Addl. Standing Counsel on the other hand, fairly submitted that if in a Division Bench, an order was dictated in open Court by one of the Hon'ble Judge and the other Hon'ble Judge has not dissented from it in open Court, it is to be accepted that the order was passed on consensus. Such an order becomes operative even without signature of the learned Judges and cannot be altered thereafter and if any dissenting view is given thereafter, it is unsustainable.

Signing is a formality to follow when judgment/order is pronounced in open Court and such judgment/order to be operative does not await signing thereof by the Court. He emphasised that it is nobody's case that the order was not dictated in open Court and that after one of the Hon'ble Judges dictated the order in open Court, the other Judge gave his dissent in open Court or dictated the dissenting order in open Court and therefore, such order becomes operative even without signature of both the Hon'ble Judges. He further argued that since the order was not varied till the date of registration of the *Suo Motu Writ Petition* and admittedly, there is no rule or guidelines that the permission of Hon'ble Chief Justice is required to be taken for registration of the *Suo Motu Writ Petition* even in spite of the open Court order, therefore, no fault can be found with the petitioner in approving the note placed before him relating to registration of the case. He fairly stated that in the factual scenario, there is nothing about any wrongful intention or ill motive on the part of the petitioner, but it may be an act of negligence or errors of judgment which is difficult to be said to be gross misconduct, dereliction of duty and administrative indiscipline. He endorsed the submission made by the learned Senior Counsel for the petitioner that in view of the past unblemished service record of the petitioner, punishment imposed on the petitioner is shockingly disproportionate.

Our observation on perusal of original records:

7. When the matter was taken up for hearing on 31.01.2025, we summoned the entire original records. Subsequently, again on 07.02.2025, we directed Registry of this Court to produce the original records in a sealed cover. We had the advantage of perusing the entire file of the departmental proceeding as well as the proceeding pertaining to the *Suo Moto* case.

Perusal of the original records produced before us in the sealed cover shockingly revealed certain aspects, which was confronted to the Registry Officials present in the Court and also to the learned Advocate General, however, none could satisfactorily answer to the query of the Court. We refrain ourselves from delving upon those aspects, rather would confine ourselves to the limited issues prominently highlighted before us. It appears from the records that the whole case hinges upon the two documents, which we felt it appropriate to reproduce.

A. On 24.02.2021 open Court hearing took place and the Division Bench pronounced the order in the open Court directing registration of a *suo motu* case. The Court after taking consent from the learned Senior Counsel present in the Court, appointed them as *Amicus Curiae*. There was no dissent expressed in the Court by any of the Hon'ble Judges to the proceeding. The order No 1, dated 24.02.2021 dictated in the open Court is reproduced hereunder:

1. **24.2.2021** The Odisha Reservation of Posts and Services (For Socially and Educationally Backward Classes) Act, 2008 regarding reservation of SEBC category has already been quashed by this Court in the Judgment dated 29.6.2017. After quashing of the said Act, the Reservation in respect of SEBC category is still going on in respect of the advertisement issued by the State Government, Public

Sector Undertakings and even by this Court. In the meantime, four years have already passed and no further legislation was made by the State Government as stated above and it is a continuous cause of action and the above State functionaries are violating the Court's order.

Since it came to the knowledge of the Court that the said Reservation is still continuing without taking further step by the Government, this Court initiates a *Suo Motu* proceeding impleading the State Government as well as the Registrar (Judicial) of this Court as Opposite Parties and engage Mr. Buddhadev Routray, learned Senior Advocate, Mr. Manoranjan Mohanty, learned Senior Advocate and Mr. Ashok Kumar Mohanty, learned Senior Advocate as *Amicus Curiae* to argue the matter. The name of the learned *Amicus Curiae* be reflected in the brief as well as in the cause list.

Issue notice to the Opposite Parties i.e. Chief Secretary, Government of Odisha, Bhubaneswar, Principal Secretary, General Administration Department, Government of Odisha, Bhubaneswar and Registrar (Judicial), Orissa High Court.

Learned Additional Government Advocate shall accept notice on behalf of the Registrar (Judicial), Orissa High Court, Cuttack and shall file counter on his behalf. Counter be filed by the opposite parties by 15th March, 2021.

Copy of this order be supplied to the learned Senior Advocates engaged as *Amicus Curiae* by 25.2.2021.

List this matter on 15.3.2021.

Sd-
-----, J.
-----, J.

B. On 26.02.2021 the Deputy Register (Judicial) put up a note before the petitioner for necessary orders by verbatim reproducing the order dated 24.02.2021. The petitioner approved the note routinely which according to the petitioner was done in good faith and consequentially the *Suo Motu* proceeding was registered. It is borne out of the record that the copy of the said order dated 24.02.2021 was also dispatched to the appointed *Amicus Curiae*, which was received by one of the learned *Amicus Curie* on the same day. It is also apparent on record that the original proceeding signed by one of the Hon'ble Judges was not placed before the petitioner on 26.02.2021. At least nothing contrary is coming to the fore on record to suggest otherwise. The note sheet dated 26.02.2021 which was put up before the petitioner for approval on 26.02.2021 was approved on the same day.

C. The same Division Bench had the occasion to hear another allied matter on 07.04.2021 in W.P.(C) No.11802 of 2020. In that proceeding, the Division Bench recorded that the Second Judge to the Bench had written a separate order dissenting the First Judge's order dated 24.02.2021 only on 02.03.2021 and thus following order was passed:

W.P.(C) No. 11802 of 2020**07. 07.04.2021***This matter is taken up by video conferencing mode.**Heard Mr. B. Routrai, learned Senior Counsel appearing for the petitioner.**Pursuant to the earlier order dated 15.3.2021, Mr. Routrai, learned Senior Counsel submitted that Court can consider the matter as one of the issue involved in the present writ petition i.e. the High Court of Orissa (Appointment of Staff and Conditions of Service) Rules, 2019 which was notified on 18th October, 2019 wherein Rule-3(2) also stipulates regarding Reservation of vacancies (S.E.B.C.). Even if the said provision has not been challenged, the Court can consider the same in view of the decision of this Apex Court reported in 2016 (9) SCC 749 in the case of **State of Uttar Pradesh Vrs. Dr. Dinesh Singh Chauhan (Para 18)**.**A Suo Motu proceeding i.e. Suo Motu W.P.(C) No. 7943 of 2021 was initiated on 24.2.2021 involving the issue regarding S.E.B.C. reservation where the Orissa Reservation of Posts and Services(For Socially and Educationally Backward Classes)Act, 2008 was quashed by this Court since June,2017. However, the said reservation is still continuing.**In the suo motu proceeding the order which was passed in the Court on 24.2.2021 was served on the learned counsel who were engaged as Amicus Curiae on 26.2.2021 with the signature of one of the Hon'ble Judge. However, on 2nd March, 2021 the Hon'ble second Judge of the Bench has passed another order dissenting the views of the Presiding Judge and put his signature. The said order came to the light of the day on the aforesaid date i.e.(2.3.2021).**In view of the above fact and circumstances, it will be better to place the matter before the Hon'ble Chief Justice to list this matter before the appropriate Bench.**As the restrictions due to the COVID-19 situation are continuing, learned counsel for the parties may utilize a soft copy of this order available in the High Court's website or print out thereof at par with the certified copy in the manner prescribed, vide Court's Notice No.4587 dated 25th March, 2020.*

Sd-

-----, J.

-----, J.

It is apparent from the above proceeding that the dissenting view of one of the Hon'ble Judges to the proceeding dated 24.02.2021 only came to be recorded on 02.03.2021. Thus, on 26.02.2021 when the note was put up before the petitioner, there was no dissent existed on record, rather the proceeding was conducted in the open Court on 24.02.2021 and the order that was dictated had been holding field till the one of the Hon'ble Judge dissented subsequently.

On the conspectus of the aforementioned factual scenario germinates from original record, we venture into analyzing the pleadings and arguments advanced by the learned counsel for both the parties.

Scope of interference or judicial review with the findings of disciplinary authority:

8. Before advertng to the contentions raised by the learned counsel for the respective parties, it would be apt to discuss here the scope of interference or judicial review with the findings of disciplinary authority in service matters.

In the case of **United Bank of India -Vrs.- Biswanath Bhattacharjee reported in (2022) 13 Supreme Court Cases 329**, it is held as follows:-

“21. The Bank is correct, when it contends that an appellate review of the materials and findings cannot ordinarily be undertaken, in proceedings under Article 226 of the Constitution. Yet, from **Union of India -Vrs.- H.C. Goel (AIR 1964SC 364)** onwards, this Court has consistently ruled that where the findings of the disciplinary authority are not based on evidence, or based on a consideration of irrelevant material, or ignoring relevant material, are mala fide, or where the findings are perverse or such that they could not have been rendered by any reasonable person placed in like circumstances, the remedies under Article 226 of the Constitution are available, and intervention, warranted. For any Court to ascertain if any findings were beyond the record (i.e. no evidence) or based on any irrelevant or extraneous factors, or by ignoring material evidence, necessarily some amount of scrutiny is necessary. A finding of “no evidence” or perversity, cannot be rendered sans such basic scrutiny of the materials, and the findings of the disciplinary authority. However, the margin of appreciation of the Court under Article 226 of the Constitution would be different; it is not the appellate in character.”

Thus, interference by this Court under Article 226 of the Constitution is warranted when there is no evidence to establish the misconduct of a public servant after a departmental enquiry is conducted. This Court in its power of judicial review does not act as an appellate authority; it does not reappraise the evidence adduced in departmental enquiry. The technical rules of the Evidence Act and the proof of fact or evidence as defined therein, do not apply to disciplinary proceeding. In other words, the strict proof of legal evidence and finding on that evidence or adherence to the provisions of the Evidence Act are not essential. Question of adequacy of the evidence or reliable nature of the evidence will not be the grounds for interfering with the findings in departmental enquiry.

Availability of rule/law/procedure/standing order for registration of Suo Motu case:

9. In pursuant to the order dated 21.03.2025 as to whether there is any rule/law /procedure/standing order regarding permission of the Hon’ble Chief Justice for registration of Suo Motu case basing on an order passed by the Hon’ble Court, the Special Officer (Administration), High Court of Orissa filed an affidavit on 04.04.2025 indicating therein, inter alia, that he verified the Rules of the High Court of Orissa, 1948 regarding the existence of any rule/law/procedure/standing order requiring permission of the Hon’ble Chief Justice for registration of a suo motu case basing on an order passed by the Hon’ble Court but could not trace the same.

Thereafter, a request has been made to the Registrar (Judicial) of the Court for furnishing such rule/law/procedure/standing order and as per his instruction, the Superintendents, Rules Section, List Section and Computerized Filing Section of the Court were requested to furnish the rule/law/procedure/standing order, if any, requiring permission of the Hon'ble Chief Justice for registration of suo motu case basing on an order passed by the Hon'ble Court. It is further indicated in the affidavit that the Superintendent, Rules Section of the Court enclosed the copy of judgment dated 05.04.2022 of Madurai Bench of the Madras High Court in Suo-Motu W.P. (MD) No.5273 of 2022 and submitted that no rule/standing order of this Court is available with regard to taking permission of the Hon'ble Chief Justice for registration of suo motu case basing on an order passed by the Hon'ble Court. It is further indicated that the Superintendent, List Section of the Court has submitted that as per usual practice, any order passed by the Hon'ble Court in this regard are sent to concerned branch and the branch places the matter before the Registrar (Judicial) for further course of action regarding registration of a suo motu case. List Section has no role regarding registration of suo motu case and also no such instruction is available in the List Section for registration of suo motu case. It is further indicated that the Superintendent, Computerized Filing Section of the Court has submitted that as per previous practice, the Section receives the Suo Motu Writ proceedings from the Registrar (Judicial) for the purpose of registration, as such with approval of the Hon'ble the Chief Justice. The procedure is being followed by the concerned section. Hence, such rule/law/procedure/standing order has not been encountered by the Section. It is further indicated therein that no such rule/law/procedure/standing order regarding obtaining permission of the Hon'ble the Chief Justice for registration of suo motu case basing on an order passed by the Hon'ble Court is available.

Articles of Charge:

10. The first charge relates to gross misconduct, which is based on approval of a note of the then Deputy Registrar (Judicial) and thereby instructing for registration of a Suo Motu proceeding on the basis of an unsigned order bearing the date 24th February 2021 purported to be of a Division Bench though the petitioner had no authority to issue such instruction under Orissa High Court Rules, 1948.

The second charge relates to dereliction of duty, which is based registration of the Suo Motu proceeding on his instruction and approval as if he had acted on a validly signed judicial order passed by the Division Bench of the Court, though no such signed order was available on record and that an unsigned order carrying direction for registration of Suo Motu proceeding was not to be acted upon without the approval of the Chief Justice.

The third charge relates to administrative indiscipline while dealing with judicial records, which is based on his instruction and approval, the Registry of the High Court registered Suo Motu Writ Petition (Civil) No.7943 of 2021 "Registrar (Administration), Orissa High Court -versus- Chief Secretary, Govt. of Odisha and

Others” and sent notices to the opposite parties enclosing copies of the unsigned order. Office of the Advocate General, Odisha received the notice and a copy of such notice was also received by the office of one of the Amicus Curiae, Mr. Manoranjan Mohanty.

The fourth charge was the failure to maintain absolute integrity and honesty. The Inquiring Authority held the charge to be not established.

Whether an order pronounced in the open Court becomes operative without signature:

11. We have given our thoughtful consideration to the submissions advanced at the Bar and the materials available on record.

Adverting to the contentions raised, if we go to the root of the matter, we find that it is nobody’s case that the order was not dictated in open Court in the Division Bench on 24th February 2021 and that after one of the Hon’ble Judges (in this case the Senior Judge) dictated the order in open Court, the other Judge gave his dissent in open Court or dictated the dissenting order in open Court on that day.

In the case of **Surendra Singh** (supra), it is held as follows:

“14. As soon as the judgment is delivered, that becomes the operative pronouncement of the court. The law then provides for the manner in which it is to be authenticated and made certain. The rules regarding this differ but they do not form the essence of the matter and if there is irregularity in carrying them out, it is curable. Thus, if a judgment happens not to be signed and is inadvertently acted on and executed, the proceedings consequent on it would be valid because the judgment, if it can be shown to have been validly delivered, would stand good despite defects in the mode of its subsequent authentication.”

In the case of **Vinod Kumar Singh** (supra), it is held as follows:

“6. The above observations were made, as already mentioned, in a case where the judgment had been signed but not pronounced in the open court. In the present case, we are concerned with a judgment that had been pronounced but not signed. The provision in Order 20, Rule 3 of the Code of Civil Procedure indicates the position in such cases. It permits alterations or additions to a judgment so long as it is not signed. This is also apparently what has been referred to in the last paragraph of the extract from the judgment of Bose, J. quoted above, where it has been pointed out that a judgment which has been delivered “can be freely altered or amended or even changed completely without further formality, except notice to the parties and re-hearing on the point of change, should that be necessary, provided it has not been signed”. It is only after the judgment is both pronounced and signed that alterations or additions are not permissible, except under the provisions of Section 152 or Section 114 of the Code of Civil Procedure or, in very exceptional cases, under Section 151 of the Code of Civil Procedure.

7. But, while the court has undoubted power to alter or modify a judgment, delivered but not signed, such power should be exercised judicially, sparingly and for adequate reasons. When a judgment is pronounced in open court, parties act on

the basis that it is the judgment of the court and that the signing is a formality to follow.

8. We have extensively extracted from what Bose J. spoke in this judgment to impress upon everyone that pronouncement of a judgment in court whether immediately after the hearing or after reserving the same to be delivered later should ordinarily be considered as the final act of the court with reference to the case. Bose J. emphasised the feature that as soon as the judgment is delivered that becomes the operative pronouncement of the court. That would mean that the judgment to be operative does not await signing thereof by the court. There may be exceptions to the rule, for instance, soon after the judgment is dictated in open court, a feature which had not been placed for consideration of the court is brought to its notice by counsel of any of the parties or the court discovers some new facts from the record. In such a case the court may give direction that the judgment which has just been delivered would not be effective and the case shall be further heard. There may also be cases, though their number would be few and far between where when the judgment is placed for signature the court notices a feature which should have been taken into account. In such a situation, the matter may be placed for further consideration upon notice to the parties. If the judgment delivered is intended not to be operative, good reasons should be given.”

If a judgment/order is dictated in the open Court by one of the Hon’ble Judge in a Division Bench and if the other Judge does not agree with the view expressed (dictated) in open Court, he would have to pronounce his view/dissent immediately in the Court itself. When the judgment/order is pronounced, parties present in the Court know the conclusion in the matter and often on the basis of such pronouncement, proceed to conduct their affairs. Even if the parties are not present when the order is dictated in open Court, the counsels for the respective parties use to inform their parties. Now-a-days when the court proceedings are live streamed, the chance of the party knowing the order instantly and likely to proceed to conduct himself accordingly is more certain. If what is pronounced in the Court is not acted upon, certainly litigants would be prejudiced. A judgment/order pronounced in open court should be acted upon unless there be some exceptional feature and if there be any such cause, the same should appear from the record of the case. Once the judgment/order is pronounced (dictated) in the open Court on conclusion of arguments, the companion Judge on the Bench, if he does not agree with the view expressed in the dictated/pronounced judgment/order, he should express his dissent either by dictating his opinion/view immediately thereafter in the open Court itself or should at least inform counsel appearing for the parties and the parties, if they are present in the Court, that he does not agree with the view expressed by the Senior (other) member of the Bench and that he would be delivering his judgment/order recording dissent soon. If he fails to do so, the decision which is so pronounced (dictated) becomes a declaration of the mind of the Bench (Court) and becomes the operative pronouncement of the Court. After the judgment/order becomes the operative pronouncement of the Court, it can be altered or amended and even

changed completely, only with notice to the parties and a re-hearing on the point of change should that be necessary, provided it has not been signed.

12. The public trust and confidence in the judiciary should not go in vain. If confidence in the Judiciary goes, the due administration of justice definitely suffers. The judiciary is the guardian of the Rule of law and is the central pillar of the democratic State. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. In a Division Bench, when the judgment/order is dictated in open Court by one Judge and the other Judge does not express his dissent either by dictating his opinion/view and remains silent instantly and subsequently passes a dissenting judgment/order, the public will be confused and there will have no sanctity in the dictation of an order or judgment in open court and they have to wait till they verify the order or judgment after it is signed by both the Hon'ble Judges.

13. Ext.A marked on behalf of the petitioner in the departmental inquiry, which is a downloaded copy of the order dated 07.04.2021 passed in W.P.(C) No.11802 of 2020 by the same Division Bench which has got nexus with the matter in which the order dated 24.02.2021 was passed, on the basis of which *Suo Motu* Proceeding was registered. In Ext.A, it is stated as follows:-

“In the suo motu proceeding, the order which was passed in the Court on 24.2.2021 was served on the learned counsel who were engaged as *Amicus Curiae* on 26.2.2021 with the signature of one of the Hon'ble Judge. However, on 2nd March, 2021 the Hon'ble second Judge of the Bench has passed another order dissenting the views of the Presiding Judge and put his signature. The said order came to the light of the day on the aforesaid date i.e. (2.3.2021).”

Thus from such order, it is apparent that the order was passed in the open Court on 24.2.2021 and dissenting view to the order dated 24.2.2021 came only on 02.03.2021.

In such a scenario, in our humble view, when the order dated 24.02.2021 was dictated in open Court by the Hon'ble Senior Member of the Division Bench and the other Judge did not express his dissent either by dictating his opinion/view immediately in the Court itself on that day nor there is anything on record that he informed the counsel appearing for the parties and the parties, if any present in the Court, that he did not agree with the view expressed by the Senior member of the Bench and that he would be delivering his judgment/order recording dissent soon, such an order becomes operative even without signature of the learned Judges.

Thus, we are of the humble view that the order dated 24.02.2021 which was pronounced in the open Court by the Senior member of the Bench, became operative and such order to be operative does not await signing thereof by the Court as signing is a formality to follow after such pronouncement.

14. In the case in hand, as appears from the records that the copy of the order 24.02.2021 after its dictation in open Court, unaccompanied with the dissenting

order (which came only on 02.03.2021), was placed with the note sheet before the petitioner on 26.02.2021 by the Deputy Registrar (Judicial).

In the said order, it was directed that the brief along with copy of the order was to be supplied to the learned Senior Advocates engaged as Amicus Curie by 26th February 2021 i.e., on that day itself. Since there was a stipulated date of compliance, obviously, it could not have been unless a case is registered. The petitioner approved the note sheet for registration of Suo Motu Writ Petition, on the last day of its stipulated date of compliance.

The learned Inquiring Authority has not found any malafide intention on the part of the petitioner in approving the note sheet placed before him by the Deputy Registrar (Judicial). However, it has been held that it was not an error of judgment, rather a deliberate misconduct.

Basing on the decisions of the Hon'ble Supreme Court, as we have already held that the order dated 24.02.2021 was pronounced in open Court became operative and such order to be operative does not await signing thereof by the Court, therefore terming such order as a „plain unsigned piece of paper“ by the learned Inquiring Authority is not proper and justified. The learned Inquiring Authority has not kept in view the ratio laid down by the Hon'ble Supreme Court in the aforesaid two decisions regarding the effect of an unsigned order which was dictated in open Court by one of the Hon'ble Judge and the other Hon'ble Judge has not dissented from it in open Court.

15. From the affidavit filed by the Special Officer (Administration), High Court of Orissa on 04.04.2025, it is apparent that no such rule/law/procedure/standing order is there regarding obtaining permission of the Hon'ble Chief Justice for registration of Suo Motu case basing on an order passed by the Hon'ble Court. Therefore, in approving the note sheet placed by Deputy Registrar (Judicial), the question of violation of any definite rule or law by the petitioner does not arise.

The claim of the department that there was a convention/practice to act upon an original order only in case of registration of Suo Motu Writ Petition otherwise it should have been brought to the notice of Hon'ble Chief Justice cannot be accepted when the same is not mentioned in the article of charges that any such established practice of the Court has been violated. There was no material or instances of such practice placed before the Inquiring Authority by the Department Witness. It should have at least brought on record the numbers of suo motu proceedings registered during the tenure of the petitioner as Registrar General of this Court or even prior to that and the procedure adopted in such proceedings. Without the same, the vague statement given by the Department Witness no.1 that the fact of initiation of a Suo Motu writ petition by a Bench constituting Judges other than the Hon'ble Chief Justice is itself an unusual act, ought not to have been accepted by the Inquiring Authority when the witness himself states that no codified procedure or rule is there

requiring prior intimation to the Hon'ble Chief Justice before approving the note of D.R. (Judicial) by the petitioner and no written practice or direction is there.

Law is well settled that mere practice is insufficient. The fact that an authority has always behaved in a certain way is no warrant for saying that it ought to behave in that way, but if the authority itself and those connected with it believe that they ought to do so, then the convention does exist. Practice alone is not enough. It must be normative. The practices and function of a Court are evolved by time looking to particular background and set of facts. The practice of a Court ripens into a convention by passage of time and rich heritage of conventions are time tested. Whether a practice or precedent has become convention, Sir W. Ivor Jennings in 'The Law and the Constitution' lays down following tests:

“...We have to ask ourselves three questions: first, what are the precedents; secondly, did the actors in the precedents believe that they were bound by a rule; and thirdly, is there a reason for the rule? A single precedent with a good reason may be enough to establish the rule. A whole string of precedents without such a reason will be of no avail, unless it is perfectly certain that the persons concerned regarded them as bound by it. And then, as we have seen, the convention may be broken with impunity.”

If there is no codified procedure or rule and no written practice or direction and the petitioner just approved the note sheet placed by Deputy Registrar (Judicial) basing on an unsigned order which was pronounced in open Court and as we have held that such order can be legally operative, it cannot be said it was an act of deliberate misconduct on the part of the petitioner as held by the Inquiring Authority.

We are of the view that the approval of such note sheet by the petitioner can at best be termed as an error of judgment, but certainly not 'misconduct' when it is merely for registration of a case for hearing of the matter by the Division Bench of the Court and no party was going to be prejudiced or harmed by such registration.

The term 'misconduct' implies a wrongful intention, and not a mere error of judgment resulting in doing of negligent act. 'Misconduct' means, misconduct arising from ill motive. An act of negligence, errors of judgment, or innocent mistake, does not constitute 'misconduct'.

In the case of **J. Ahmed** (supra), it is held as follows:

“10. It would be appropriate at this stage to ascertain what generally constitutes misconduct, especially in the context of disciplinary proceedings entailing penalty.

11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see **Pierce v. Foster : 17 QB 536,542**). A disregard of an essential condition of the contract of service may

constitute misconduct [see **Laws Vs. London Chronicle (Indicator Newspapers : (1959) 1 WLR 698)**]. This view was adopted in **Shardaprasad Onkarprasad Tiwari Vs. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur : 61 Bom LR 1596 and Satubha K. Vaghela Vs. Moosa Raza : 10 Guj LR 23**. The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

“Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.”

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in **Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik : AIR 1966 SC 1051** in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In **S. Govinda Menon Vs. Union of India : AIR 1967 SC 1274**, the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences, the same may amount to misconduct as was held by this Court in **P.H. Kalyani Vs. Air France, Calcutta : AIR 1963 SC 1756**, wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence.

Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabin man signals in a train on the same track where there is a stationery train causing head-on collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil (see **Navinchandra Shakerchand Shah Vs. Manager, Ahmedabad Co-op. Department Stores Ltd. : (1978) 19 Guj LR 108, 120**). But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty.”

In the case of **Insp. Prem Chand** (supra), it is held as follows:

“10. **In State of Punjab v. Ram Singh, ExConstable : (1992) 4 SCC 54**, it was stated: (SCC pp. 57-58, para 5)

“5. Misconduct has been defined in Black’s Law Dictionary, 6th Edn. at p. 999, thus:

‘A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.’

Misconduct in office has been defined as:

‘Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.’

11. In **R Ramanatha Aiyar’s Law Lexicon, 3rd Edn., at p. 3027**, the term “misconduct” has been defined as under:

“The term ‘misconduct’ implies a wrongful intention, and not a mere error of judgment.

* * *

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word ‘misconduct’ is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. ‘Misconduct’ literally means wrong conduct or improper conduct.”

(See also **Bharat Petroleum Corpn. Ltd. Vs. T.K. Raju : (2006) 3 SCC 143**)

12. It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was willful in character. No such finding was arrived at. An error of judgment, as noticed herein before, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In **Union of India Vs. J. Ahmed : (1979) 2 SCC 286** whereupon Mr. Sharan himself has placed reliance, this Court held so stating: (SCC pp. 292-93, para 11)

“11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see **Pierce Vs. Foster : (1886) 17 QBD 536**). A disregard of an essential condition of the contract of service may constitute misconduct [see **Laws Vs. London Chronicle (Indicator Newspapers) : (1959) 1 WLR 698**]. This view was adopted in **Shardaprasad Onkarprasad Tiwari Vs. Divisional Supdt., Central Rly., Nagpur Division,**

Nagpur : (1959) 61 Bom LR 1596 and Satubha K. Vaghela Vs. Moosa Raza : 10 Guj LR 23. The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

‘Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct’.” (emphasis supplied)

In the case of **Abhay Jain** (supra), it is held as follows:

“71. This Court in **Krishna Prasad Verma Vs. State of Bihar : (2019) 10 SCC 640**, while setting aside the High Court's order, quashed the charges against the officer therein and granted him consequential benefits while holding that: (SCC pp. 643, 646 & 648, paras 4, 11 & 16)

“4. No doubt, there has to be zero tolerance for corruption and if there are allegations of corruption, misconduct or of acts unbecoming of a judicial officer, these must be dealt with strictly.

However, if wrong orders are passed, that should not lead to disciplinary action unless there is evidence that the wrong orders have been passed for extraneous reasons and not because of the reasons on the file.

* * *

11. The main ground to hold the appellant guilty of the first charge is that the appellant did not take notice of the orders of the High Court whereby the High Court had rejected the bail application of one of the accused vide order dated 26.11.2001. It would be pertinent to mention that the High Court itself observed that after framing of charges, if the non-official witnesses are not examined, the prayer for bail could be removed, but after moving the lower court first. The officer may have been guilty of negligence in the sense that he did not carefully go through the case and file and did not take notice of the order of the High Court which was on his file. This negligence cannot be treated to be misconduct. It would be pertinent to mention that the enquiry officer has not found that there was any extraneous reason for granting bail. The enquiry officer virtually sat as a court of appeal picking holes in the order granting bail.

* * *

16. We would, however, like to make it clear that we are in no manner indicating that if a judicial officer passes a wrong order, then no action is to be taken. In case a judicial officer passes orders which are against settled legal norms but there is no allegation of any extraneous influences leading to the passing of such orders then the appropriate action which the High Court should take is to record such material on the administrative side and place it on the service record of the judicial officer concerned. These matters can be taken into consideration while considering career progression of the judicial officer concerned. Once note of the wrong order is taken and they form part of the service record these can be taken into consideration to deny selection grade, promotion, etc. and in case there is a continuous flow of wrong or illegal orders then the proper action would be to compulsorily retire the judicial officer, in accordance with the Rules. We again reiterate that unless there are clear-cut allegations of misconduct, extraneous influences, gratification of any

kind, etc., disciplinary proceedings should not be initiated merely on the basis that a wrong order has been passed by the judicial officer or merely on the ground that the judicial order is incorrect.” (emphasis supplied)

* * *

73. In light of the above judicial pronouncements, we hold that the appellant may have been guilty of negligence in the sense that he did not carefully go through the case file and did not take notice of the order of the High Court which was on his file. This negligence cannot be treated to be misconduct. Moreover, the enquiry officer virtually sat as a court of appeal picking holes in the order granting bail, even when he could not find any extraneous reason for the grant of the bail order. Notably, in the present case, there was not a string of continuous illegal orders that have been alleged to be passed for extraneous considerations. The present case revolves only around a single bail order, and that too was passed with competent jurisdiction. As has been rightly held by this Court in **Sadhna Chaudhary : (2020) 11 SCC 760**, mere suspicion cannot constitute “misconduct”. Any “probability” of misconduct needs to be supported with oral or documentary material, and this requirement has not been fulfilled in the present case. These observations assume importance in light of the specific fact that there was no allegation of illegal gratification against the present appellant. As has been rightly held by this Court, such relief oriented judicial approaches cannot by themselves be grounds to cast aspersions on the honesty and integrity of an officer.”

In the case of **A.L. Kalra** (supra), it is held as follows:-

22. Rule 4 bears the heading ‘General’. Rule 5 bears the heading ‘Misconduct’. The draftsmen of the 1975 Rules made a clear distinction about what would constitute misconduct. A general expectation of a certain decent behaviour in respect of employees keeping in view Corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behavior befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Any attempt to telescope Rule 4 into Rule 5 must be looked upon with apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. It is not necessary to dilate on this point in view of a recent decision of this Court in **Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut : (1984) 1 SCC 1** where this Court held that “everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short, it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing order

but yet a misconduct for the purpose of imposing a penalty”. Rule 4 styled as ‘General’ specifies a norm of behaviour but does not specify that its violation will constitute misconduct. In Rule 5, it is nowhere stated that anything violative of Rule 4 would be per se a misconduct in any of the sub-clauses of Rule 5 which specifies misconduct. It would therefore appear that even if the facts alleged in two heads of charges are accepted as wholly proved, yet that would not constitute misconduct as prescribed in Rule 5 and no penalty can be imposed for such conduct. It may as well be mentioned that Rule 25 which prescribes penalties specifically provides that any of the penalties therein mentioned can be imposed on an employee for misconduct committed by him. Rule 4 does not specify a misconduct.”

In the case of **Vijay Singh** (supra), it is held as follows:-

“14. The issue involved herein is required to be examined from another angle also. Holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one. (Vide **Bachhittar Singh Vs. State of Punjab : AIR 1963 SC 395, Union of India Vs. H.C. Goel : AIR 1964 SC 364, Mohd. Yunus Khan Vs. State of U.P. : (2010) 10 SCC 539 and Coal India Ltd. Vs. Ananta Saha : (2011) 5 SCC 142**)

* * *

20. Unfortunately, a too trivial matter had been dragged disproportionately which has caused so much problem to the appellant. There is nothing on record to show as to whether the alleged delinquency would fall within the ambit of misconduct for which disciplinary proceedings could be initiated. It is settled legal proposition that (sic it cannot be left to) the vagaries of the employer to say ex post facto that some acts of omission or commission nowhere found to been numerated in the relevant rules is none the less a misconduct.”

16. An important aspect to be kept in mind is that the order as was placed before the petitioner was valid in the eyes of law being dictated in open Court and communicated through proper channel and there was no scope for the petitioner at that stage to see the order of the Court in distrust. There is no allegation of any extraneous influences on the petitioner leading him to approve the note sheet placed by Deputy Registrar (Judicial). The petitioner has taken a specific stand that after the order was placed before him, he sought instructions over phone from the learned Senior Judge of the Division Bench regarding the matter and then approved the note. The Inquiring Authority has not disbelieved such stand taken by the petitioner rather observed that the petitioner and Deputy Registrar (Judicial) though thought it proper to discuss with the learned Senior Judge of the Division Bench but did not feel it appropriate to bring it to the kind notice of the Hon’ble Chief Justice who came to know all such facts from other source. It was further observed by the Inquiring Authority that the actions taken on the part of the petitioner in taking instructions and approving the note keeping the Hon’ble Chief Justice in dark was certainly

deliberate and amounting to administrative indiscipline, dereliction of duty as well as gross misconduct.

We are of the humble view that even if the action taken by the petitioner in approving the note sheet can be stated to be an error but to err is human. Making mistakes is a natural and expected part of being human and cannot be termed as gross misconduct, when there is no violation of definite Rule/Law/Procedure and there was nothing to gain by the petitioner by putting his career at risk at the displeasure of the Hon'ble Chief Justice. In the case of **Krishna Prasad Verma** (supra), it is held as follows:-

“3. Article 235 of the Constitution of India vests control of the subordinate courts upon the High Courts. The High Courts exercise disciplinary powers over the subordinate courts. In a series of judgments, this Court has held that the High Courts are also the protectors and guardians of the Judges falling within their administrative control. Time and time again, this Court has laid down the criteria on which actions should be taken against judicial officers. Repeatedly, this Court has cautioned the High Courts that action should not be taken against judicial officers only because wrong orders are passed. To err is human and not one of us, who has held judicial office, can claim that we have never passed a wrong order.”

Law is well settled that the acts of misconduct must be precisely and specifically stated in rules or standing orders and cannot be interpreted ex-post facto by the authority. We are of the view that the manner in which the note sheet was placed by Deputy Registrar (Judicial) before the petitioner, the action taken by the petitioner seeking for instructions from the learned Senior Judge of the Division Bench regarding the matter and then approving the note cannot be said to be deliberate and amounting to administrative indiscipline, dereliction of duty as well as gross misconduct as held by the Inquiring Authority.

Law is well settled that the finding should not be perverse or unreasonable, nor should the same be based on conjectures and surmises. There is a distinction in ‘proof’ and ‘suspicion’. The authority must record reasons for arriving at the findings of fact in the context of the statute defining the misconduct.

The Inquiring Authority has held that the guidelines for functioning of each Officer of the Registry have been issued from time to time prescribing their duties and despite all such guidelines, the petitioner in the capacity of Registrar General, did not think it proper to bring such unusual fact of initiation of *Suo Motu* proceeding based upon a plain unsigned document to the notice of the Hon'ble Chief Justice. Admittedly, there are no such guidelines to show that the order passed by a Bench in open Court for initiation of *Suo Motu* proceeding is to be brought to the notice of the Hon'ble Chief Justice or it is to get approval of the Hon'ble Chief Justice before its registration in spite of the order passed by a Bench.

The Inquiring Authority held that usually a *Suo Motu* Writ proceeding is initiated by the order of the Chief Justice or a Bench consisting of the Chief Justice as one of the members and based its entire findings on such alleged „unusual fact“ whereas the facts on which the articles of charge based under Annexure-I and the statement of imputation of misconduct under Annexure-II of the Memorandum of Charges dated 9th November, 2021 even never remotely whispered about any such fact/allegation and that such precedent has been violated by the delinquent officer. Either in the Certified Standing Order or in the service Regulations, an act or omission is to be prescribed as misconduct. It is not open to the Authority to fish out some conduct as misconduct and punish a delinquent even though the alleged misconduct would not be comprehended in any of the enumerated misconduct. The Hon'ble Supreme Court in the case of **Rasaiklal Vaghajibhai Patel -Vrs.- Ahmedabad Municipal Corporation and another reported in (1985) 2 Supreme Court Cases 35** has held as follows:-

“4....It is thus well-settled that unless either in the Certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconducts.”

It is the case of the petitioner that on good faith, with an honest intention to comply the judicial order of the Court as well as believing the officers of the Registry, he approved the note sheet placed before him by the Deputy Registrar (Judicial) of the Court. In a legal context, „good faith“ generally means acting honestly and fairly, without intent to deceive or defraud. It implies a lack of malice or bad intent, and a willingness to fulfill obligations and promises. Section 3(22) of the General Clauses Act defines ‘good faith’ as an act performed honestly, regardless of whether it is done negligently or not. As per Law.Com Legal Dictionary, the term „good faith“ means honest intent to act without taking an unfair advantage over another person or to fulfill a promise to act, even when some legal technicality is not fulfilled. The term is applied to all kinds of transactions. In the popular sense, the phrase ‘in good faith’ simply means "honestly, without fraud, collusion or deceit; really, actually, without pretence and without intent to assist or act in furtherance of a fraudulent or otherwise unlawful scheme". (See: Words and Phrases, Permanent Edition, Vol. 18A, page 91).

Obedience of the orders of the Courts is foremost and sacred for maintenance of rule of law. Disobedience of the orders strikes at the very roots of rule of law and shakes the foundation on which the judicial system rests. Tolerance to disobedience is not in the interest of the judicial system because it will lose the confidence of those who have succeeded in the Courts. An order passed by a Court is sacrosanct and should be implemented. Implementation of an order cannot be refused under any pretext, so long as it remains in force and is not eclipsed or set aside in the hierarchy of remedies.

It cannot be lost sight of the fact that the co-delinquent Dr. Pabitra Mohan Samal, the then Registrar (Judicial) I/C was exonerated though he was implicated basing on the same incident and had a pivotal role to play. In fact, the unsigned order was first received by him, who endorsed it to the Deputy Registrar (Judicial) and he was exonerated on the plea that he was in the charge of Registrar (Judicial) on that day only. In that sense, the petitioner's case was dealt with tough hands though he dealt with such type of the matter for the first time.

Whether the imposition of punishment is shockingly disproportionate:

17. Mr. Budhadev Routray, learned Senior Advocate urged that the imposition of punishment is shockingly disproportionate, even past unblemished service record of the petitioner was not considered. The learned Advocate General also endorsed the submission made by the learned Senior Counsel for the petitioner that in view of the past unblemished service record of the petitioner, punishment imposed on him is shockingly disproportionate.

In the case of **Subash Chandra Panda** (supra), it is held as follows:-

“7....That apart the past service record of the petitioner was not taken into consideration. Therefore, the major punishment imposed on the petitioner is shockingly disproportionate to the charges proved and violative of the principles of natural justice. On this ground the impugned order of removal of the petitioner from service is liable to be quashed.”

Learned counsel for the petitioner argued that Sub-Rule (vi) of Rule 13 of OCS (CCA) Rule, which only prescribed penalty of reduction to a lower service, grade or post or to a lower time scale or to a lower stage in a time scale and it does not prescribe penalty i.e., reduction to a lower grade in initial scale of pay. The penalty which is not prescribed could not be granted and imposition of such penalty is against mandates of law. He further argued that the awarded punishment that „the upgradation to the next higher grade in the Super Time Scale will be considered after five years is against the spirit of Rule 13 of the O.C.S. (C.C.A) Rules, 1962 read with Rule 5 of the Odisha Superior Judicial Service Rules, 2007 (as amended).

We are of the humble view that ordinarily a person in service cannot be visited with a punishment not specified in the contract of service or the law governing such service. Punishments may be specified either in the contract of service or in the Act or the Rules governing such service. While imposing the punishment, the Disciplinary Authority cannot override the provision as envisaged in Rule 5 of the Odisha Superior Judicial Service Rules, 2007 (as amended) which mandates as to when the upgradation to the higher time scale of super time scale shall be considered.

In the case of **State of Bihar and Anr. -Vs.- P.P. Sharma, IAS and Anr. reported in 1992 Supp (1) SCC 222**, it is held that the administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done

negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated bylaw, or improperly exercised discretion to achieve some ulterior purpose.

We are of the view that the action of the petitioner approving the note sheet placed by Deputy Registrar (Judicial) for registration of Suo Motu proceeding as per the order passed by the Division Bench in open Court, cannot be said to be gross misconduct, dereliction of duty and administrative indiscipline and the error of judgment or laches or inadvertent mistake, if any on the part of the petitioner in the background of surrounding circumstances which seems to have been done in good faith and especially in the light of his past service record, there is no escape from the conclusion that the punishment imposed on the petitioner is grossly and shockingly disproportionate.

Conclusion:

18. In view of the foregoing discussions, we are of the humble view that the findings of the Inquiring Authority that charges of gross misconduct, dereliction of duty and administrative indiscipline are well established against the petitioner, are perverse and untenable in the eyes of law and therefore, the same are hereby set aside. The petitioner thus stands exonerated of all the charges levelled against him. The impugned notification no.2100 dated 21st December 2022 of this Court under Annexure-22 and the consequential office order no.6950 dated 16th February 2023 of the Govt. of Odisha, Home Department under Annexure-23, stands quashed. Consequently, the opposite parties nos.1 and 2 are directed to extend all the service benefits attached to the post of a District Judge (Super Time Scale) w.e.f. 21st December, 2022 to the petitioner forthwith.

Accordingly, the writ petition is allowed. No costs.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Writ Petition is allowed.

2025 (II) ILR-CUT-348

**RAJENDRA JAIN
V.
STATE OF ODISHA**

[JCRLA NO. 23 OF 2007]

29 APRIL 2025

[S.K. SAHOO, J. & CHITTARANJAN DASH, J.]**Issue for Consideration**

Whether prosecution's case is made out where the case is based upon circumstantial evidence.

Headnotes

CRIMINAL TRIAL – The appellant was found guilty for the offence U/s. 302 IPC – There is no eye witness – The case was based on circumstantial evidence – The prosecution witness reveals significant gaps and circumstances – It is an admitted fact that the house in which the offence took place was not exclusively occupied by the Appellant – The deceased was residing there with her husband as well as her foster parent, including the Appellant – No neighbour or third party has testified about any tension, quarrel, or observable discomfort between the deceased and the Appellant – The Prosecution has also not explained why the Appellant if truly driven by such motive, would act in broad daylight in a shared home, and leave behind multiple incriminating objects without making any attempt to conceal the evidence – Whether the prosecution's case is made out where the case is based upon circumstantial evidence.

Held: No – In cases resting on circumstantial evidence, motive assumes particular significance – It must be clear, cogent and surrounded by the overall factual matrix – In the present case, the prosecution's assertion of motive appears speculative and fails to inspire confidence – The testimony of P.W.10, being uncorroborated and delayed, does not rise above the threshold of suspicion – In the absence of independent verification or prior consistent statements, the alleged motive remains weak and unconvincing, further loosening the chain of circumstances necessary for establishing the guilt of the Appellant beyond reasonable doubt. (Para 18)

Citations Reference

Sharad Birdhichand Sarda vs. State of Maharashtra, **AIR 1984 SC 1622 & (1984) 4 SCC 116**; Satpal vs. State of Haryana, **(2018) 6 SCC 610, para 6** – referred to.

List of Acts

Indian Penal Code, 1860; Indian Evidence Act, 1872.

Keywords

Circumstantial evidence, Absence of motive, Chain of circumstances.

Case Arising From

Judgment and Order of Conviction dated 28th of November, 2006 passed by Addl. Sessions Judge, Jharsuguda in Sessions Trial No.41 of 2006.

Appearances for Parties

For Appellant : Mr. B.C. Parija

For Respondent : Mr. G Tripathy, AGA

Judgment/Order

Judgment

CHITTARANJAN DASH, J.

1. The Appellant, namely Rajendra Jain, faced the trial on the charge under Section 302 of the Indian Penal Code (in short, hereinafter referred to as “IPC”) before the learned Addl. Sessions Judge, Jharsuguda, in Sessions Trial No.41 of 2006, wherein, the learned Court found him guilty for the offence under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for two years.

2. The prosecution case, in brief, is that on 27.12.2005, the informant (P.W.10), who is the husband of the deceased, Pinky Jain, lodged a written report at Belpahar Police Station. He stated that after their marriage, he and his newly-wed wife had been residing with the Appellant and one Manju, who were the foster father and mother of the deceased. The family earned their livelihood by collecting scrap iron and discarded materials such as polythene and tins from dustbins. On the date of occurrence, the Informant had left for Lakhanpur in the morning to transport some materials in his rickshaw for a Congress Rally. As usual, his mother-in-law had gone out to collect scrap materials, leaving the deceased and the Appellant alone in the house. When the Informant returned at around 5:00 p.m., he found the house locked. On peeping through the gap of the door, he noticed blood stains inside. Being alarmed, he called nearby shopkeepers and with their help, broke open the lock. Inside, they discovered the deceased lying in a pool of blood with severe injuries. A screw driver, an iron hammer, a small iron spade, and knives were found lying near the dead body. A brown-coloured full pant belonging to the Appellant was also found at the scene. Suspecting the Appellant to be responsible for the murder particularly as he was known to have a lustful eye on the victim, the Informant accused the Appellant in the written report. Consequently, Belpahar P.S. Case No.

161 dated 27.12.2005 was registered under Sections 302 of the IPC, and the investigation commenced.

3. In course of the investigation, P.W.11, the Investigating Officer, registered the FIR on 27.12.2005 vide Ext.1/3 and 1/4 based on the written complaint lodged by P.W.10. He visited the spot on the same evening, secured the area, and made requisitions for the scientific team and an Executive Magistrate. On 28.12.2005, inquest was conducted in the presence of witnesses and the Magistrate, an inquest report was prepared (Ext.2). The I.O. seized blood stained weapons and articles from near the dead body, including a hammer (M.O.VI), a spade (M.O.IX), an iron slab (M.O.VIII), two knives (M.O.X and XI), and a screw driver (M.O.VII). These were sealed by the scientific team and seized under the seizure list marked as Ext.3. Medical opinion was sought for regarding these weapons, and it was opined that the injuries found on the deceased were possible by such weapons. Biological samples of the Appellant, including hair clippings and blood, were collected and seized under Ext.4. The Accused-Appellant, who had allegedly consumed poison, was later traced, identified, hospitalised, and formally arrested. Upon conclusion of the investigation, the charge sheet was submitted vide Ext.18, to face trial.

4. The case of the defence is one of complete denial.

5. To bring home the charge, the prosecution examined 12 witnesses in all. P.W.1 is the scribe of the F.I.R., P.W.2 is the landlord of the Appellant, P.W.3 is a neighbour, P.Ws.4 and 9 are the inquest witnesses, P.Ws.5 and 6 are seizure witnesses, P.W.7 is a medical officer, P.W.8 is the doctor who conducted the P.M. examination, P.W.10 is the Informant, P.W.11 is the I.O. and P.W.12 is the scientific officer.

6. The defence, on the other hand, examined one witness, D.W.1, who is the foster mother of the deceased.

7. The learned trial Court leaning to the side of prosecution, 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.

8. Mr. B.C. Parija, learned counsel appearing on behalf of the Appellant, argues that the prosecution has failed to establish a complete and unbroken chain of circumstances to prove the guilt of the Appellant beyond reasonable doubt. It was argued that the last seen theory is weak and inconclusive, as no independent witness had seen the deceased in the exclusive company of the Appellant at the relevant time. The testimonies of P.Ws.2, 3, and 4 did not support this theory, and there was no precise evidence indicating the time of death to link it with the Appellant's presence. Mr. Parija further submits that the house was jointly occupied by the deceased, her husband (P.W.10), her foster mother, and the Appellant, and as such, the recovery of a blood stained brown pant from the room could not be conclusively attributed to the Appellant. He adds that the motive alleged by the prosecution as to

the inappropriate behaviour of the Appellant towards the deceased is also insufficient to establish the motive for murder, especially when P.W.8, the doctor who conducted the post-mortem, clearly stated that there were no signs of sexual assault. Mr. Parija emphasizes that suspicion, however strong, cannot substitute proof, and that the evidence on record lacked the cogency and conclusiveness required for a conviction in a case based purely on circumstantial evidence, and the Appellant is hence liable to be acquitted.

9. Mr. Gautam Tripathy, learned Additional Government Advocate, on the other hand, contends that the prosecution had successfully established a strong chain of circumstantial evidence pointing to the guilt of the Appellant. It was contended that the deceased was last seen alive in the company of the Appellant, who was residing in the same house, and that he had no plausible explanation for his absence and subsequent conduct, including his alleged attempt to commit suicide by consuming poison. Mr. Tripathy emphasised that the recovery of blood stained weapons and a brown coloured pant from the spot, linked to the Appellant, corroborated the sequence of events narrated by the prosecution witnesses. He further submitted that the motive behind the crime was rooted in the Appellant's inappropriate conduct towards the deceased, which had caused tensions in the household and provided a compelling reason for the Appellant to eliminate her. The statements of key witnesses, particularly P.W.10, the husband of the deceased, gave a detailed account of the strained relationship between the deceased and the Appellant. As the case was based on circumstantial evidence, Mr. Tripathy asserts that the cumulative effect of the circumstances formed a complete chain unerringly pointing towards the guilt of the Appellant, warranting his conviction.

10. Needless to mention that in a case where the offence charged is one under section 302 IPC, the nature of death of the deceased has to be decided first. Accordingly, we find it right to evaluate the evidence vide Ext.7 in this issue.

External Injuries:

- (i) Lacerated wound on the left side of the head in front of the face 4" × 1 and 1/2" × muscle and vessels are exposed
- (ii) Lacerated wound on left side below left mastoid (behind left ear) which is 2" × 3/4" × muscle deep
- (iii) Lacerated wound on the left side of mandible area 4" × 1 1/2" × bone deep
- (iv) Lacerated wound 1" below the left ear of size 1" × 1/2" × muscle deep
- (v) Lacerated wound on the left side of the frontal area of size 1" × 1/2" × muscle deep
- (vi) Lacerated wound on the left side of the frontal area 1" a part of the injury no. (v) of size 1" × 1/2" × muscle deep
- (vii) Lacerated wound on the left side of left eye brow of size 1" × 1/2" × muscle deep
- (viii) Lacerated wound on the upper part of left ear, upper 1/4th of Pinna was detached and not found on the body
- (ix) Lacerated wound on right cheek of size 1" × 1/2" × muscle deep

- (x) Lacerated cut injury below the right side of mandibular area on the neck of size 4 ½" × 1 ½" × deep in the trachea vessels. Vessel's trachea and esophagus were exposed
- (xi) Two bruises on the lower part of the neck towards right of size 1" × 1/2"
- (xii) Lacerated wound on the lower lip of size 1/2" × 1/4"
- (xiii) Lacerated wound on the back side of neck on the left in horizontal direction of size 2 ½" × 1" × muscle deep
- (xiv) Bruise on the medial side of right elbow joint of size 1" × 1/4"

On dissection, it was found that the corresponding injury to no.(x) i.e. vessels, trachea, and esophagus were cut. The deceased was not sexually assaulted.

11. The medical evidence on record by P.W.8, clearly establishes that the death of the deceased was homicidal in nature. The deceased had sustained multiple lacerated wounds and bruises across her head, neck, face, and body, including a grievous injury (Injury No. x) that cut through the trachea, major vessels, and esophagus, an injury which P.W.8 opined was sufficient in the ordinary course of nature to cause death. All injuries were noted to be ante mortem, indicating they were inflicted during the lifetime of the deceased. Notably, there were no signs of sexual assault, and the cause of death was consistent with deliberate, forceful violence. This finding has not been disputed by either party, and it conclusively supports that the death was indeed homicidal in nature.

12. 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.2 stated that more than a year prior to the incident, he had purchased a house from one Kishori Mohan Sahu in the name of his son. At that time, Rajendra Jain (the Appellant), his wife, daughter, and son-in-law were residing in that house as tenants. He stated that the Appellant used to collect scrap materials and sell them in the market. He also confirmed that Rajkumar Rout was the Appellant's son-in-law. On the evening of the incident, around 5:30 p.m., P.W.2 heard about the murder of Pinky. In his sworn testimony, he denied having seen the dead body or the injuries on the deceased. He further denied having told the Investigating Officer that on 27.12.2005, Rajkumar Rout and his mother-in-law had left the house for work, and upon their return, found the bedroom locked and later discovered the deceased inside. He also denied suppressing the truth or seeing any specific injuries on the deceased's body. In his cross-examination, P.W.2 stated that he was not called by Rajkumar Rout. His house was located about a five-minute walk from the house of the Appellant. He admitted that he did not know the character or nature of the Appellant and clarified that he had not given any statement to the police.

P.W.3 deposed that he knew the Appellant and his family, who were residing in a house adjacent to his shop. On 27.12.2005, in the evening, Rajkumar Rout approached him and, in a distressed state, informed him that his wife had been

killed by the Appellant. P.W.3 and others advised him to report the matter to the police. When the police arrived, P.W.3 accompanied them to the house of the Appellant. In their presence, Rajkumar broke the lock of the room. Inside, they discovered the body of the deceased, lying in a pool of blood with severe injuries. A hammer, screwdriver, two knives (one iron, one steel), a thick iron plate, and a brown-coloured pant, all stained with blood, were found near the body. These were seized by the police under seizure list marked Ext.3. The police took photographs, made inquiries, and prepared documents, which were explained to P.W.3. He also identified his signature on the inquest report (Ext.2), which had been prepared in his presence, along with Kartik Sahu and the informant. In cross-examination, P.W.3 stated that his shop remained open from 6 a.m. to 12 noon and again from 4 p.m. to 9 p.m. He confirmed not hearing any abnormal sound between 6 a.m. and 12 noon. The police arrived within 10–15 minutes of Rajkumar lodging the complaint. The lock was broken in the presence of the police, and about 4–5 other persons were also present. He noted that Rajkumar did not approach him before 5 p.m. and that he returned to his shop around 6–6:15 p.m., then again went back to the spot after 20 minutes and stayed until the end. His statement was recorded the following morning around 9–10 a.m., and he was called after a week to sign Ext.3.

P.W.4 stated that he went to the house of the Appellant after hearing some commotion and, by then, the door lock had already been broken. He saw the body of the deceased, Pinky, with a cut injury on the neck and a bleeding head injury. He could not remain inside the room for long due to discomfort and was asked to step out. He further stated that he accompanied the police to Raigarh in search of the Appellant but returned that night around 2 a.m. On the following day, the inquest was held, and the inquest report (Ext.2) was prepared. An ambulance was called, and the dead body was sent for post-mortem examination. In cross-examination, P.W.4 stated that he had reached the scene about 15–20 minutes after the arrival of the police. On the night of the incident, the police did not take photographs or prepare any paperwork. He confirmed accompanying the police to Raigarh and signing 3–4 documents, though he could not specify which ones. He also mentioned that photographs were taken simultaneously.

P.W.10 (Informant and Husband of the Deceased) stated that on the morning of 27.12.2005, around 8 a.m., he left the house for work, pulling a rickshaw. His mother-in-law, a rag picker, also left after him. His wife and the Appellant remained inside the house. He clarified that the Appellant was not married to his mother-in-law and that his wife had been fostered by them. P.W.10 returned home at around 5 p.m. and noticed the house locked. He usually kept the house key on the window pan, but that day the key was missing. Peering through the door gap, he saw a body inside. He broke the lock and entered, discovering the dead body of his wife with cut injuries on the left ear, right cheek, neck, and back, and heavy bleeding. Her saree, saya, and blouse were soaked in blood. He found a hammer (M.O.VI), a spade (M.O.IX), an iron slab with a hole (M.O.VIII), two knives (M.O.X, M.O.XI), and a

screwdriver (M.O.VII), all blood stained, near the body. He immediately called nearby shopkeeper Rahamat and one K. Sahu. His mother-in-law was sitting outside the house at the time. Despite her objections, he went to the police station and lodged a written report, which was scribed by one Kishore Tanty under his instructions. The FIR was marked Ext.1. Police took photographs the next day. He stated that he married the deceased on 09.11.2005 and resided at Pipilimal before moving to Ahmad Nagar about a month prior to the incident, upon the Appellant's invitation promising him a job. While they lived happily for about 15 days, the Appellant later began assaulting the deceased. When P.W.10 objected, he was also threatened. His wife had expressed fear and only agreed to disclose details if they lived separately. When he found a rented house, the Appellant did not allow them to leave. After the incident, the Appellant was found lying on a bridge at Brajarajnagar after consuming poison. He was admitted to a hospital and subsequently arrested. P.W.10 further stated that the deceased had confided that the Appellant used to call her at night to massage him, including his private parts, and that he would peep through the door whenever the couple was intimate. In cross-examination, P.W.10 stated that he had studied up to Class VII. He confirmed asking Kishore to write the FIR. He was working as an apprentice in a hotel at the time and was a trolley rickshaw puller. He denied keeping any tools like hooks or hammers used for work. He reiterated that the Appellant had informed them on the morning of the incident that he would keep the items they needed to carry for relocation. He also denied the suggestion that he killed his wife instead of the Appellant.

13. D.W.1, the foster mother of the deceased, deposed that on the day of the incident, her husband (the Appellant) had left the house early in the morning for work. She stated that by the time she also left the house, the deceased and her husband (P.W.10) were still present inside. On the way, the Appellant informed her that he was going to Calcutta. According to her, two days after the occurrence, the Appellant returned from Calcutta. She then informed him about the deceased's murder and that P.W.10 is accusing Appellant not only of the murder but also of having had an illicit relationship with the deceased. Upon hearing this, the Appellant was shocked and expressed that he would not show his face again, and walked away towards Brajarajnagar, saying he would commit suicide.

In her cross-examination, D.W.1 clarified that the deceased was not her biological daughter. She stated that she had adopted Pinky as an infant after finding her abandoned by her mentally ill biological mother near Rourkela railway bridge. She also described her personal history, stating that she was originally from Howrah, had left her first husband Ramu Rao, and had been living with the Appellant as his partner for over 20 years. D.W.1 stated that on the evening of the incident, she was sitting in the verandah when her son-in-law returned. The house was locked and the Appellant was not present. The lock was broken open after the police arrived. She stated that the Appellant was brought to the police station four days later. She further confirmed that the room where the deceased was found dead was shared by the

deceased and her husband, while she and the Appellant used to sleep in the verandah. D.W.1 denied all suggestions made in cross-examination about the Appellant being sexually exploitative towards the deceased, or that he had assaulted the deceased or herself. She also denied the suggestion that her testimony was false or that she was deposing under the influence of the Appellant.

14. 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.”

15. 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) 6SCC 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”

16. In the instant case, a careful scrutiny of the testimonies of the prosecution witnesses reveals significant gaps and inconsistencies that weaken the evidentiary value of this theory. P.W.10, the husband of the deceased, stated that on the morning of 27.12.2005, he had left the house around 8:00 a.m. for work, and his mother-in-law also left soon after for rag picking, leaving the deceased and the accused alone in the house. While this assertion attempts to place the Appellant in the exclusive company of the deceased at the relevant time, it is unsupported by any independent or corroborative testimony. None of the neighbouring witnesses, including P.W.2, P.W.3, or P.W.4, have categorically deposed to having seen the deceased and the Appellant together on the morning of the incident. P.W.2, whose house is a five minute walk from the scene, explicitly denied having seen the deceased that day. P.W.3, a shopkeeper situated adjacent to the house, did not witness any unusual activity or interaction between the Appellant and the deceased during the day and only came to know of the incident after being informed by P.W.10 in the evening. P.W.4 arrived at the scene only after the door was broken open and also did not support the last seen theory. Moreover, there is no evidence indicating the exact time of death of the deceased to narrow the window of occurrence and connect it definitively with the Appellant's presence. The prosecution has also failed to establish whether the Appellant was continuously present in the house until the discovery of the dead body. In the absence of any clear and unblemished chain of circumstances to prove that the Appellant was the last person seen with the deceased in proximity to the time of death, the “last seen” theory loses its probative force. It remains a mere suspicion and cannot, by itself, form the basis of conviction unless corroborated by other clinching evidence, which, in this case, is lacking.

17. The second circumstance relied upon by the prosecution is the recovery of a brown coloured pant, allegedly stained with blood, found near the dead body at the scene of occurrence. It is contended that this pant belonged to the Appellant and thereby links him to the offence. However, this piece of evidence fails to advance the prosecution's case in any meaningful way due to the absence of conclusive proof regarding its ownership. None of the prosecution witnesses have deposed with certainty that the said pant belonged to the Appellant. No witness has stated that they had ever seen the Appellant wearing that particular pant, nor has the prosecution adduced any material evidence such as prior photographs, identification, or any statement by the Appellant acknowledging ownership. The mere presence of the

pant at the scene, even if stained with blood, cannot by itself establish a nexus with the Appellant in the absence of such proof.

Furthermore, it is an admitted fact that the house in which the offence took place was not exclusively occupied by the Appellant. The deceased was residing there with her husband, the informant (P.W.10), as well as her foster parents, including the Appellant. In such a shared domestic setup, it is entirely plausible and even expected that clothing and other personal effects of different individuals would be found in common areas. This dilutes the evidentiary value of the pant being found near the body, as a different and more plausible hypothesis, such as the pant belonging to the informant himself or another family member cannot be ruled out. The prosecution has failed to exclude these reasonable alternatives. In a case based purely on circumstantial evidence, where every link in the chain must be firmly established and lead only to the guilt of the Appellant, the ambiguity surrounding the ownership of the brown pant renders this circumstance inconclusive and insufficient to support the prosecution's narrative.

18. The prosecution has further sought to establish motive by suggesting that the Appellant, being the foster father of the deceased, harboured inappropriate intentions towards her, which ultimately led to her murder. This allegation is primarily based on the testimony of P.W.10, the husband of the deceased, who stated that the Appellant used to call the deceased at night to massage him, including his private parts, and that he would peep through the door when the couple was intimate. He further alleged that the deceased had confided in him about the Appellant's behaviour and had expressed a desire to live separately.

However, even assuming that there was some discord or discomfort within the household, mere allegations of improper conduct, without any supporting evidence, are not sufficient to establish motive strong enough to impel the Appellant to commit murder. Even assuming, for the sake of argument, that the prosecution has succeeded in establishing a motive of sexual misconduct on the part of the Appellant towards the deceased, that by itself cannot suffice to establish a motive for committing murder. The motive to commit sexual assault and the motive to commit homicide are distinct, each requiring its own set of circumstances and evidentiary support. Moreover, P.W.10 and the deceased had only recently moved into the house and were residing there for barely a month prior to the incident. During that short span, there is no evidence of any formal complaint or effort to distance themselves from the Appellant despite the alleged advances. No neighbour or third party has testified about any tension, quarrels, or observable discomfort between the deceased and the Appellant. The prosecution has also not explained why the Appellant, if truly driven by such a motive, would act in broad daylight in a shared home, and leave behind multiple incriminating objects without making any attempt to conceal the evidence.

In cases resting on circumstantial evidence, motive assumes particular significance. It must be clear, cogent, and supported by the overall factual matrix. In the present case, the prosecution's assertion of motive appears speculative and fails to inspire confidence. The testimony of P.W.10, being uncorroborated and delayed, does not rise above the threshold of suspicion. In the absence of independent verification or prior consistent statements, the alleged motive remains weak and unconvincing, further loosening the chain of circumstances necessary for establishing the guilt of the Appellant beyond reasonable doubt.

19. It is further noted that the prosecution's own medical evidence undercuts the possibility of any sexual assault being the reason or trigger for the homicidal act. P.W.8, the doctor who conducted the post-mortem examination, has clearly stated that the deceased was not subjected to sexual assault. When specifically questioned on this aspect, he categorically ruled out any signs of sexual violence. The injuries found on the deceased though undoubtedly homicidal in nature and caused by sharp and blunt weapons, do not indicate any struggle or resistance typically associated with sexual violence. This medical opinion significantly weakens the prosecution's narrative of motive, leaving a wide evidentiary gap. When the alleged motive itself is neither established convincingly nor supported by objective medical evidence, it would be unsafe to draw adverse inferences against the Appellant solely on the basis of suspicion. As such, the prosecution's case in respect of motive remains speculative and unsubstantiated.

20. Furthermore, in considering the defence version, the testimony of D.W.1, the foster mother of the deceased, also merits attention. While the version of D.W.1, if true, could potentially displace the prosecution's suggestion of the Appellant being present at the scene of the crime, her testimony does not conclusively establish his absence during the critical window of time. Her statement stands uncorroborated by any independent evidence such as travel details, witness accounts from Calcutta, or any proof of his location during the alleged period of absence. Further, being the long-time partner of the Appellant, her testimony cannot be viewed as wholly disinterested. Although her narrative offers an alternative possibility, it does not, by itself, firmly rebut the prosecution's case or sufficiently establish an alibi. At best, it adds to the uncertainties already present in the prosecution's version, reinforcing the existence of reasonable doubt rather than providing a definitive exoneration.

21. It is also relevant to note that the Appellant was later found lying unconscious on a bridge at Brajarajnagar, having allegedly consumed poison. While the prosecution seeks to attribute this act as a sign of guilt, the defence submits that such conduct, in isolation, cannot be treated as conclusive proof of involvement in the crime. The circumstances surrounding the alleged suicide attempt remain unclear, and no medical or forensic evidence has been placed on record to definitively establish that the Appellant's act was directly linked to the incident in question. In the absence of corroborative evidence, such conduct may at best raise suspicion, but falls short of the standard required to infer guilt.

22. While the death of the deceased is undeniably tragic and the cause of death clearly homicidal in nature, the settled principles of criminal law require that the prosecution must prove its case against the Appellant beyond all reasonable doubt. As reiterated by the Hon'ble Supreme Court in ***Sharad Birdhichand Sarda vs. State of Maharashtra*** reported in (1984) 4 SCC 116, in a case based solely on circumstantial evidence, the chain of circumstances must be complete, each link must be established with clarity, and the entire sequence must point unerringly to the guilt of the Appellant, ruling out every possible hypothesis of innocence. In the present case, the prosecution has failed to meet this threshold. The last seen theory is not established by consistent or corroborated evidence, the blood-stained pant allegedly recovered from the spot is not proven to be one belonging to the Appellant, the motive remains speculative in light of the post-mortem findings which rule out sexual assault, and the recovery of weapons is also doubtful. These glaring gaps and inconsistencies render the prosecution's case insufficient to establish the guilt of the Appellant with the degree of certainty the law requires, and thereby entails a benefit of doubt in favour of the Appellant.

23. In view of the above discussion, we are of the considered view that the prosecution has not been able to prove the charge against the Appellant beyond all reasonable doubt, and the evidence on record falls short of the standard required to fasten criminal liability.

24. Accordingly, the judgment and order of conviction dated 28.11.2006 passed by the learned Additional Sessions Judge, Jharsuguda, is hereby set aside. The Appeal is allowed. The Appellant, is acquitted of the charge under section 302 of IPC, who is in jail custody be released forthwith unless required in connection with any other case.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Appeal allowed.

2025 (II) ILR-CUT-360

**M/s.BALAJI SOLAR SYSTEMS-M/s.UNICORN INDIA PVT.LTD.
V.**

**STATE OF ODISHA (PRINCIPAL SECRETARY,
PANCHAYATI RAJ & DRINKING WATER DEPTT.) & ORS.**

[W.P.(C) NO. 13631 OF 2024]

27 MAY 2025

[K.R. MOHAPATRA, J. & SANJAY KUMAR MISHRA, J.]

Issues for Consideration

1. Whether separate application is necessary to be filed by MSME against the certificate claiming exemption of EMD.
2. Whether furnishing the bid security in the form of bank guarantee amounts to waiver of one's right for exemption of EMS.

Headnotes

(A) TENDER MATTER – Exemption of EMD – The clause 2(c) of the request for proposal (for brevity the RFP) makes it clear that the MSMEs and startups are exempted from payment of EMD – The Opposite Party No. 4 filed MSME/UDAYAM certificates of both the members of the joint venture (JV) – Whether separate application is necessary to be filed by MSME against the certificate claiming exemption of EMD.

Held: No – In our considered opinion, filing of MSME/UDAYAM Certificates of both members of the JV is sufficient for granting exemption to the Opposite Party No.4 from payment of EMD – Nowhere in the RFP, it is instructed or stated that a bidder has to make a specific claim by filing an application for exemption of EMD. (Para 17)

(B) DOCTRINE OF WAIVER – The Opposite Party No. 4 had filed bid security in the form of bank guarantee – Whether furnishing the bid security in the form of bank guarantee amounts to waiver of one's right for exemption of EMS.

Held: No – In our considered opinion, the Opposite Party No.4 never waived his right of claiming exemption of EMD – In addition to its claim for exemption of EMD by furnishing MSME/UDAYAM Certificate, the Opposite Party No.4, as an abundant caution, furnished bid security in the form of bank guarantee, which was not at all required to be furnished by it as an MSME – Thus, this Court is of the view that, the doctrine of waiver has no application to the instant case. (Para 18)

Citations Reference

Ireo Grace Realtech Private Limited Vs. Abhishek Khanna & Ors., **(2021) 3 SCC 241**; Kalpraj Dharamshi & Ors. Vs. Kotak Investment Advisors Limited & Anr., **(2021) 10 SCC 401**; Monarch Infrastructure (P) Limited Vs. Commissioner, Ulhasnagar Municipal Corporation Limited, **AIR 2000 SC 2272**; Manikchand & Co. Vs. State of Manipur & Ors., MANU/MN/0069/2017; LAWS (MIP)-2012017-8-3; Tirupati Constructions Vs. the State of Maharashtra & Ors., **2021 SCC OnLine Bom 11044**; Poddar Steel Corporation Vs. Ganesh Engineering Works and others; **(1991) 3 SCC 273**; Sri Kaustav Sahu Vs. State of Odisha and others; **(2017) 3 OLR 342**; Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited & Anr., **(2016) 16 SCC 818**; Galaxy Transport Agencies Contractors Traders Transport and Suppliers Vs. New J.K. Roadways, Fleet Owners and Transport Contractors & Ors., **(2021) 16 SCC 808**; Silppi Construction Contractors Vs. Union of India & Anr., **(2020) 16 SCC 489**; Tata Motors Limited Vs. Brihan Mumbai Electric Supply and Transport Undertaking (BEST) & Ors., **2023 SCC OnLine SC 671**; M/s Tamil Nadu General and Distribution Corporation Limited (TANGEDCO) & Anr. Vs. CSEPD-TRISHE CONSORTIUM & Anr., **(2017) 4 SCC 318**; Nabam Tullon LLP Vs. State of Arunachala Pradesh & Ors., **2024 SCC OnLine Gau 1404**; Bharat Cooking Col Limited & Ors. Vs. AMRDEV Prabha & Ors., **(2020) 16 SCC 759**; AIR India Vs. Cochin International Airport Limited, (2000) 2 SCC 617 – **referred to.**

List of Acts

Constitution of India, 1950

Keywords

Tender; Doctrine of Waiver; Exemption of EMD; Bank guarantee.

Case Arising From

Bid summary uploaded in website on 3rd February 2024.

Appearances for Parties

For Petitioner : Mr. Goutam Mukherjee, Sr. Adv. & Mr. Sidhant Dwibedi
For Opp. Parties : Mr. Debasis Tripathy, AGA (O.P. 1 to 3)
Mr. Prabodha Chandra Nayak (O.P. 4)

Judgment/Order

Judgment

K.R. MOHAPATRA, J.

1. This matter is taken up through hybrid mode.

2. Petitioner, being the unsuccessful L3 bidder, has filed this writ petition assailing technical evaluation summary (Annexure-6) of the bid in question. It also assails the technical qualification of Opposite Party No.4 (the L1 bidder). Further, the Petitioner prays for a direction that the Opposite Party No.5 (L2 bidder) may be declared disqualified and to declare it (the Petitioner) as successful bidder.

3. Shorn of unnecessary details, the facts relevant for proper adjudication of the writ petition are as under:-

3.1 The Opposite Party No.2-Director, DW and S, Panchayati Raj and Drinking Water Department, Government of Odisha issued Request for Proposal (RFP) for execution of work, namely, 'Selection of Contractors/Executing Agency for Design, Engineering, Supply, Installation, Testing, Commissioning and Acceptance of Solar PV Integrated Dual Pump based Water Supply system through Off-Greed Mode including Laying of Distribution Pipe Lines and providing Functional Household Tap Connections (FHTCs) along with comprehensive maintenance for five (five) years pertaining to Nuapada and Phulbani Divisions in the State of Odisha' (Package-VI) bearing Bid Identification No.EIC/RWSS-46_VI/2023-24 dated 18th September, 2023 (for brevity 'the RFP'). The Petitioner, Opposite Party No.4, Opposite Party No.5 and others filed their respective bids. The bid was required to be submitted in two parts; i.e., Technical Bid and Financial Bid. In the Technical Evaluation of the bids, seven bidders, including the Petitioner, Opposite Party Nos.4 and 5, were declared qualified and the bid summary was uploaded in the website on 3rd February, 2024 (Annexure-6). In the evaluation of financial bids, the Opposite Party No.4 was found to be L1; Opposite Party No.5 was declared L2 and the Petitioner was L3.

3.2. The Petitioner alleges following defects in the technical bid document submitted by Opposite Party No.4, which are briefly stated as under:-

- (a) The bid security submitted by Opposite Party No.4 was defective;
- (b) The Joint Venture Agreement submitted by Opposite Party No.4 was defective;
- (c) Although Opposite Party No.4 did not claim benefit as a MSME, but the same was extended to Opposite Party No.4;
- (d) The turnover certificate of Opposite Party No.4 was defective;
- (e) There was delay on the part of Opposite Party No.4 to submit Performance Security and Additional Performance Security, which was not permissible.

On the touchstone of above-mentioned grounds, this writ petition has been filed claiming the relief, as aforesaid.

3.3 Mr. Mukherjee, learned Senior Advocate appearing for the Petitioner elaborated and explained the defects in the tender documents of Opposite Party No.4 with the following submissions.—

- (i) The Opposite Party No.4 submitted a bid security of Rs.15,60,000/- as per Clause-1.3.7 of RFP. The bid security was submitted in the form of bank guarantee as per the

format mentioned in Appendix-II. The bid identification number mentioned in the bid security submitted by Opposite Party No.4 was **EIC/RWSS-65_VI/22-23** whereas the Bid Identification number for which the RPF was invited was **EIC/RWSS-46_VI/2023-24**. Further, the date mentioned in the bid security was '06.10.2023', whereas the tender was floated on '10.07.2023'. Thus, the bid security submitted by Opposite Party No.4 ought to have been rejected outright.

(ii) The Opposite Party No.4 participated in the tender process as a Joint Venture (JV). As per the requirement in the RFP, the JV was required to submit a joint bidding agreement along with the bid documents. In the joint bidding agreement submitted by Opposite Party No.4, the bid identification number was mentioned as EIC/RWSS-45_VI/23-24 instead of EIC/RWSS-46_VI/2023-24. Thus, the technical bid of Opposite Party No.4 was liable to be rejected as per Clause 1.5.3.2 and 1.5.4.2 of the RFP.

(iii) Although Opposite Party No.4 filed MSME certificate along with bid document, but it did not claim exemption of EMD as MSME by furnishing EMD exemption certificate, as was submitted by the Petitioner along with its bid documents. But the technical bid of Opposite Party No.4 was accepted granting exemption of EMD as a MSME. On the other hand, the Petitioner claims exemption of EMD by furnishing EMD exemption certificate along with its bid documents. Merely because the Opposite Party No.4 filed MSME certificate along with its bid documents, it was not entitled to exemption of EMD in absence of an exemption certificate filed along with the bid document. Thus, the technical bid of Opposite Party No.4 was defective on this score also.

(iv) The Opposite Party No.4 had produced a fraudulent turnover certificate in order to make it eligible/qualified to participate in the tender process. The turnover certificate filed by Opposite Party No.4 along with its tender documents reveal that the turnover of the Opposite Party No.4 was Rs.8,36,35,368/- for the year 2020-21, whereas another turnover certificate of Opposite Party No.4 revealed that its turnover was Rs.19,76,59,032/- for the same year, i.e., 2020-21 issued by the same Chartered Accountant. The UDIN numbers given in both the turnover certificates are active till date and not even deactivated. The argument advanced by Opposite Party No.4 that turnover certificate of Rs.19,76,59,032/- was with M/s Greenco Systems Private Limited as Joint Venture and does not form part of tender document in question and present turnover certificate filed along with tender document was with the Jagdish Agarwal (JV). The said argument does not hold good as the turnover for rest of the years are identical in both the turnover certificates.

(v) It is further argued by Mr. Mukherjee, learned Senior Advocate that as per Clause-1.6.2.3 of the bid (ITBs), the successful bidder, namely, Opposite Party No.4 was required to submit the Performance Security (as per Clause-1.6.3) within fifteen days from the date of issuance of Letter of Intent (LoI) failing which, the bid was liable for rejection and the bid security be forfeited. Further, the Additional Performance Security (APS) was required to be submitted within seven days failing which, the bid of the successful bidder, as per Clause-5.2.4.1 of the ITB, was liable to be cancelled and the bid security be forfeited. The Opposite Party No.4 in its counter affidavit, took a plea that due to imposition of Model Code of Conduct (for short, 'MCC') imposed by the Election Commission for the General Election, 2024, the Performance Security (PS) and Additional Performance Security (APS) could not be submitted in time. But the MCC (Annexure-1 to the rejoinder affidavit of the Petitioner) nowhere provided for an embargo or restraint from furnishing Performance Security (PS) and Additional Performance Security (APS). On the other hand, the MCC provided for permission of the Election Commission in signing of the MOU/Agreement. Further, the Opposite Party

No.4 submitted the letter only on 28th March, 2024 praying for time to submit the PS and APS. From the counter affidavit of Opposite Party No.4, it appears that the Opposite Party No.4 had submitted the aforesaid letter for extension of time for submission of PS and APS before withdrawal of the MCC. Hence, it establishes that there was no impediment on the part of Opposite Party No.4 for submission of PS and APS during subsistence of Model Code of Conduct. There being violation on the part of Opposite Party No.4 in submitting PS and APS as per the schedule mentioned in the tender document, its bid was liable to be rejected.

3.4 Mr. Mukherjee, learned Senior Advocate further argued that the Petitioner admittedly was L3 as would reveal from the financial bid summary annexed to the writ petition. Be that as it may, in the RFP, it is clearly stated that a successful bidder can be awarded up to two packages out of all the packages mentioned in the RFP. The Opposite Party No.5 was L2 as per the financial bid summary and Letters of Intent, in respect of two packages other than impugned package No.VI, have already been issued to Opposite Party No.5. Thus, in view of Clause-1.6.4 of the RFP, the Opposite Party No.5 cannot be awarded with the package No.VI even if the Opposite Party No.4 (L1) is declared unsuccessful/ disqualified in this Writ Petition and in that event, the Petitioner being the L3 would be awarded with the contract of the work under package-VI. He, accordingly prayed for allowing the writ petition and grant the relief claimed therein in favour of the Petitioner.

4. Mr. Mukherjee, learned Senior Advocates, placed reliance on the following case laws in favour of the Petitioner.

(a) *Ireo Grace Realtech Private Limited Vs. Abhishek Khanna and others*; (2021) 3 SCC 241

(b) *Kalpraj Dharamshi and other Vs. Kotak Investment Advisors Limited and another*; (2021) 10 SCC 401;

(c) *Monarch Infrastructure (P) Limited Vs. Commissioner, Ulhasnagar Municipal Corporation Limited*; AIR 2000 SC 2272;

(d) *Manikchand and Co. Vs. State of Manipur and others*; MANU/MN/0069/2017;LAWS(MIP)-2012017-8-3

(e) *Tirupati Constructions Vs. the State of Maharashtra and others*; 2021 SCC OnLine Bom 11044

5. Mr. Nayak, learned counsel for Opposite Party No.4 referring to the counter affidavit as well as additional affidavit filed by the Petitioner, in which the entire tender document of the Opposite Party No.4 has been annexed, made elaborate argument which is summarized in the line of objection/argument raised by Mr. Mukherjee, learned Senior Advocate appearing for the Petitioner, as follows;

(a) So far as objection with regard to bid security of Opposite Party No.4 is concerned, it is submitted that Opposite Party No.4 submitted MSME Certificate as well as required amount of bid security in the shape of bank guarantee with the name of the beneficiary. Although name of the work has been correctly stated in the bid security, but the issuing Bank inadvertently mentioned the bid identification number incorrectly. The bid identification number was inadvertently stated as EIC/RWSS/65_VI/2022-23 in the

bank guarantee. The inadvertent error was at the end of the Bank issuing such bank guarantee, which was filed as bid security. Thus, the Opposite Party No.4 has no contribution to it. He further relied upon the ratio in the case of ***Poddar Steel Corporation Vs. Ganesh Engineering Works and others***; (1991) 3 SCC 273 and ***Sri Kaustav Sahu Vs. State of Odisha and others***; (2017) 3 OLR 342 and submitted that when the document, i.e., bank guarantee itself in clear terms mentioned the name of the work correctly, inadvertent error in Bid Identification number and the date of the tender in the bank guarantee would not invalidate the same. He further submitted that the issue was specifically clarified by seven members Technical Committee of the Tender Inviting Authority (for short, 'TIA') on 27th December, 2023 (Annexure-A/3 series to the counter affidavit of Opposite Party Nos.1 to 3). Further, considering the MSME/UDYAM Certificate furnished by Opposite Party No.4-JV, its EMD exemption was accepted in conformity with the tender conditions. The technical evaluation of the bids was held on 27th December, 2023 and 18th January, 2024. The result was published on 3rd February, 2024. If the Petitioner was aggrieved by the decision of the Technical Evaluation Committee (TEC), it could have challenged the same within a reasonable period. Instead, the writ petition was filed on 27th May, 2024, i.e., with a delay of 117 days that too after the Opposite Party No.4 was declared successful. In order to delay the entire process and harass the Opposite Party No.4, this writ petition has been filed. The price bid of the bidders was opened on 7th February, 2024 and LoI has already been issued in favour of Opposite Party No.4, being the L1 bidder.

(b) Answering the objection raised by the Petitioner with regard to the joint bid agreement, Mr. Nayak, learned counsel for Opposite Party No.4 submitted that the same has not been pleaded in the writ petition. The joint bid agreement was in conformity with the tender conditions of RFP. Both the bidders of Opposite Party No.4-JV have duly signed the agreement. Further, the name of the work has been correctly stated in the joint bid agreement. The objection with regard to the joint bid agreement was also not raised by the Petitioner in its complaint submitted to the TIA. In view of the ratio in the case of ***Poddar Steel Corporation*** (supra) and ***Kaustav Sahu*** (supra), the objection raised by the Petitioner with regard to wrong mentioning of the Bid Identification number in the joint bid agreement merits no consideration, more particularly, when the name of the work and the date has been correctly stated in the joint bid agreement.

(c) An objection has also been raised with regard to MSME exemption granted in favour of Opposite Party No.4. Answering the same, Mr. Nayak, learned counsel submitted that Petitioner in its additional affidavit dated 11th December, 2024 filed the entire bid document submitted by Opposite Party No.4 (Annexure-3/C). From the above, it is apparent that Opposite Party No.4 had uploaded MSME Certificates of both the members of the JV along with the tender document.

Further, there is nothing in the tender document (RFP), which provides that the bidders if want exemption of EMD as MSME should make a claim in that regard by uploading MSME exemption Certificate. On the other hand, Clause-2(c) of the RFP clearly indicates that in order to claim exemption as MSME, a bidder has to upload the MSME Certificate, which has been complied with by Opposite Party No.4 by furnishing MSME Certificates of the members of the JV along with its bid document. He also drew attention to Clause 2(c) of the RFP, which is reproduced hereunder for ease of reference:-

“Instruction of Works Department Vide OM No.503 dated 17.01.2022 will be followed. The local MSEs/Start-Ups (as defined in Odisha MSME Development Policy, 2016 & as defined under para-7 (vi) of Odisha Start-up Policy-2016) are exempted from payment of EMD and on conclusion of the bidding process, if selected shall pay 25% of the value of Performance security.”

Thus, there was no error on the part of the Tender Evaluation Committee (TEC) in granting EMD exemption to the Opposite Party No.4. The said issue has already been clarified by the TEC on 27th December, 2023 (Annexure-A/3 to the counter affidavit of Opposite Party Nos.1 to 3) and the TEC has granted exemption of EMD to Opposite Party No.4 as per the MSME Certificates of both JV members in conformity with the tender conditions. The Petitioner had never also raised this ground before the TEC. It has also not specifically raised the ground in the writ petition. When such objection raised at the time of argument has already been clarified by the seven member TEC of the TIA, such a misconceived objection should not be entertained at a belated stage. Further, the Petitioner claimed EMD exemption by way of a separate application because one of the members of the Petitioner-JV had not uploaded MSME Certificate. Thus, the Petitioner is estopped to raise such a plea at a belated stage.

6. Mr. Nayak, learned counsel for Opposite Party No.4 also strongly refuting objection of forged turnover certificate raised by the Petitioner, made elaborate submission. It is submitted that the Opposite Party No.4 participated in the tender by submitting its bid on 18th November, 2023. Along with the tender document, Opposite Party No.4 also uploaded turnover certificate (Annexure-A/4 to its counter affidavit), issued by Chartered Accountant in compliance of Clause-4.2 of the RFP. The allegation of forged turnover certificate made by the Petitioner is an attempt to mislead this Court without disclosing the material facts, which was verified by the TEC consisting of seven technical members (Annexure-A/3 to the counter affidavit of State-Opposite Party Nos.1 to 3). Turnover certificate dated 19th June, 2022 referred to by the Petitioner was never uploaded by the Opposite Party No.4 and did not form part of the tender document. The turnover certificate uploaded by Opposite Party No.4 was issued on 3rd September, 2023 (Annexure-A/4) by the Chartered Accountant. The turnover certificate dated 19th June, 2022 referred to by the Petitioner was uploaded in a separate bid by one of the members of the Opposite Party No.4-JV for which the bidder was declared disqualified, as it was an incorrect one. Thus, the same has no bearing in the instant tender process. The objection raised by the Petitioner in the writ petition was also raised by one of the bidders-Law Line Marble, which was dealt with by the TEC and found the complaint to be not correct, as it was uploaded in a different tender process and the bid of the said bidder had already been held to be disqualified. Thus, he submitted that the objection raised has no bearing in the instant case.

7. Objection with regard to submission of the Performance Security (PS) and Additional Performance Security (APS) as raised by the Petitioner was also refuted by Mr. Nayak, learned counsel for Opposite Party No.4. It is submitted that the LoI

was issued in favour of Opposite Party No.4 on 15th March, 2024 and it was directed to submit the Performance Security within fifteen days of issue of such LoI. But on the very next day, i.e., on 16th March, 2024, General Election, 2024 Model Code of Conduct (MCC) was implemented by the Election Commission providing certain restrictions. Due to implementation of MCC, Opposite Party No.4 could not furnish the Performance Security (PS) and Additional Performance Security (APS) in the form of bank guarantee within the time stipulated. Thus, the Opposite party No.4 intimated the Tender Inviting Authority (TIA) on 28th March, 2024 (Annexure-F/3 to the counter affidavit of Opposite Party Nos.1 to 3) to furnish the bank guarantee as well as other documents within seven days after lifting of the MCC, which was taken into consideration by the TIA. After lifting of the MCC, the Opposite Party No.4 furnished the total bank guarantee of Rs.3,84,15,000/- as PS and APS for execution of the agreement, which was duly accepted by the TIA. Further, the Petitioner itself admitted at para-10 of the writ petition that there was imposition of MCC for the General Election, 2024. As such, the TIA could not have accepted the PS and APS during continuance of MCC. It is further submitted that when the TIA, considering the imposition of MCC, allowed deferment of PS and APS and accepted the same on lifting of the MCC, the Petitioner could not have any objection to the same.

8. It is further submitted that admittedly the Petitioner is L3 as per the financial bid summery and Opposite Party No.4 is L1 having quoted 14.99% less than the cost of tender. Thus, the Opposite Party No.4 was rightly selected and was issued with LoI. The Opposite Party No.4 has also submitted PS and APS, which has already been accepted by the TIA. Thus, the objection raised by the Petitioner merits no consideration and the writ petition is liable for dismissal.

8.1 The writ petition has been filed to delay the tender process and to harass the Opposite Party No.4 in performing the work for which the RFP was invited. The Opposite Party No.4 also relied upon the case laws in the case of ***Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited and another***; (2016) 16 SCC 818 and ***Galaxy Transport Agencies Contractors Traders Transport and Suppliers Vs. New J.K. Roadways, Fleet Owners and Transport Contractors and others***; (2021) 16 SCC 808 and submitted that the TIA is in the best position to understand and appreciate the requirement and interpret the tender document. Mr. Nayak, learned counsel also relied upon the case laws in ***Silppi Construction Contractors Vs. Union of India and another***; (2020) 16 SCC 489, ***Tata Motors Limited Vs. Brihan Mumbai Electric Supply and Transport Undertaking (BEST) and others***; 2023 SCC OnLine SC 671, which dealt with the scope of interference of Constitutional Court in tender matters. On the objection of delay in filing the writ petition, the Opposite Party No.4 relied upon the case law in ***M/s Tamil Nadu General and Distribution Corporation Limited (TANGEDCO) and another Vs. CSEPD-TRISHE CONSORTIUM and another***; (2017) 4 SCC 318. So far as objection regarding alleged forged documents is concerned, Opposite Party No.4

relied upon the case law *in Nabam Tullon LLP Vs. State of Arunachala Pradesh and others*; 2024 SCC OnLine Gau 1404. On the objection of delay in deposit of PS, Mr. Nayak, learned counsel relied upon the case law in *Bharat Cooking Col Limited and others Vs. AMRDEV Prabha and others*; (2020) 16 SCC 759. The Opposite Party No.4 also relied upon the case law in *AIR India Vs. Cochin International Airport Limtied*; (2000) 2 SCC 617, which emphasizes that larger public interest, which should always be kept in mind while entertaining an application under Article-226 of the Constitution in the matter of such tender.

9. The matter was heard on several occasions and we have heard Mr. Tripathy, learned AGA for Opposite Party Nos.1 to 3 in detail. It was his submission that Clause-2 of the RFP clearly stipulates that instruction of the Works Department, vide OM No.503 dated 17th January, 2022, was to be followed in the matter of RFP in question. Local MSMEs/Start-Ups, as defined in Odisha MSME Development Policy, 2016 and para-7 (vi) of Odisha Start-up Policy, 2016, are exempted from EMD and at the conclusion of bidding process, if selected, shall pay 25% of the value of Performance Security. The MSMEs/Start-Ups, which participated in the bidding process, were only required to upload MSME/UDAYAM Certificate at the time of submission of bid. The Opposite Party No.4 submitted MSME Certificate of both the members of its JV, which was categorically admitted by the Petitioner in its additional affidavit. The Opposite Party Nos.1 to 3 in their counter affidavit also categorically stated that MSME Certificate of Opposite Party No.4 was furnished along with its technical bid and the same were verified by the Technical Committee in its meeting held on 27th December, 2023, wherein, it was observed that bank guarantee furnished in the same tender did not match with the tender bid ID EIC/RWSS/46-III/23-24, but taking into consideration the OM No.503 dated 17th January, 2022 of the Works Department, Government of Odisha, Opposite Party No.4 was exempted from payment of bid security/EMD. Thus, the Committee accepted the technical bid of Opposite Party No.4 and held it to be correct in the technical evaluation summery. On 18th January, 2024, the Technical Committee in its 2nd meeting considered the complaints raised against Opposite Party No.4-JV by one Law Line Marble and held it to be not correct, as the same was meant for different ID and different tender. As per the technical evaluation summery dated 3rd February, 2024, the Petitioner, Opposite Party Nos.4 and 5 along with four other bidders were technically qualified. On 7th February, 2024, the financial bids of the technically qualified bidders were opened. On scrutiny of the said financial evaluation summery, Opposite party No.4 became the lowest bidder quoting 14.99% less than the value of the tender. Opposite Party No.5 was the 2nd lowest bidder having quoted 11.0% less and the Petitioner was the third lowest bidder quoting 10.3% less. The Petitioner raised an objection that Opposite Party No.4 did not submit any letter regarding exemption of EMD as MSME. Such contention of the Petitioner is baseless, as there was no provision in the RFP requiring the bidder to make a request for exemption of EMD being a MSME. Furnishing of MSME/UDAYAM Certificate as per Clause-2 (c) of RFP is sacrosanct to claim

exemption of EMD. The Opposite Party No.4 had submitted the MSME certificates of both the members of the JV. Thus, Opposite Party No.4 was exempted from EMD.

10. It is further submitted by Mr. Tripathy, learned AGA that objection of the Petitioner regarding delayed submission of PS and APS by Opposite Party No.4 after the cut-off date is baseless and merits no consideration. The Opposite Party No.4, being the successful bidder, was directed to furnish PS and APS in the form of bank guarantee within fifteen days from the date of issue of LoI, but on the very next day of issuance of such letter, MCC for General Election, 2024 was implemented. Thus, the Opposite Party No.4 requested to furnish the PS and APS within fifteen days of lifting of the MCC. The said request of Opposite Party No.4 was accepted. Relying upon the case law in ***Bharat Cooking Col Limited*** (supra), Mr. Tripathy, learned AGA submitted that there is no prohibition against public authorities for grant of extension of time to the successful bidder for furnishing PS and APS for bona fide reasons. Even if there is minor deviation from explicit terms of NIT, it would not be sufficient by itself in the absence of any mala fide for the Court to set aside the tender at the behest of an unsuccessful bidder. In the instant case, imposition of MCC itself restricted the TIA to proceed with the tender process by accepting PS and APS. Further, within a reasonable time after lifting of the restriction imposed in MCC, the Opposite Party No.4 furnished the PS and APS in the form of bank guarantee, which was accepted by the TIA. As such, implied extension granted to Opposite Party No.4 for bona fide reason of imposition of MCC, should not be a ground to disqualify the Opposite Party No.4, who became the lowest and successful bidder after a cumbersome process of evaluation by the Technical Evaluation Committee. Mr. Tripathy, learned AGA also refuted the objection raised by the Petitioner with regard to allegation of submission of forged turnover certificate by the Opposite Party No.4. It was submitted that the allegation of submission of forged turnover certificate was verified by the TIA comprising of seven technical members. The Petitioner referred to turnover certificate dated 19th June, 2022, which was never uploaded by Opposite Party No.4 along with its tender document. The same was also not a part of the tender document nor the Opposite Party No.4 had ever relied upon the same in the instant tender process. The turnover certificate furnished by Opposite Party No.4 (Annexure-A/4) was verified and found to be valid. Therefore, such objection raised by the Petitioner is not only incorrect but also thoroughly misconceived. As such, he prayed for dismissal of the writ petition. In support of his case, Mr. Tripathy, learned AGA relied upon the case laws in the case of ***Bharat Cooking Coal Limited*** (supra), ***Galaxy Transport Agencies Contractors Traders Transport and Suppliers*** (supra) as well as ***Silppi Constructions Contractors*** (supra).

11. Learned counsel for the parties were heard at length. This Court perused the documents as well as case laws referred to by learned counsel for the parties in course of argument.

12. The admitted position in this writ petition is that, pursuant to invitation of RFP by Opposite Party No.2, the Petitioner, Opposite Party Nos.4 and 5 as well as others submitted their bids. In total, seven bidders were found to be technically qualified as per the technical evaluation summery. On evaluation of the financial bids, Opposite Party No.4 was adjudged to be the lowest bidder having quoted 14.99% less than the tender cost; Opposite Party No.5 was found to be the 2nd lowest bidder quoting 11% less and the Petitioner was found to be 3rd lowest bidder having quoted 10.3% less than the tender cost. Thus, the Opposite Party No.4 was found to be the successful bidder and LoI has already been issued in its favour. The Opposite Party No.4, whose selection is in question in the present writ petition, is a Joint Venture. Both members to the JV are MSMEs. Thus, they furnished MSME/UDAYAM Certificate along with the bid document. They have also submitted joint bidding agreement of the JV as required under the RFP. The Opposite Party No.4 had also submitted the bid security, though it had submitted MSME/UDAYAM Certificate.

13. For the sake of convenience, this Court discussed the objections raised by the Petitioner in the seriatim mentioned while discussing the case of the Petitioner as follows:-

(i) Defective Bid Security

It is contended by the Petitioner that Opposite Party No.4 submitted bid security of Rs.15,60,000/- as per Clause- 1.3.7 of the RFP. The bid ID mentioned in the bid security, which was submitted in the form of bank guarantee, was mentioned as EIC/RWSS-65_VI/2022-23, whereas the bid ID of RFP in question was EIC/RWSS-46_VI/2023-24. The date of tender mentioned in bid security furnished by Opposite Party No.4 was '06.10.2023', whereas the invitation of RFP in question was floated on 27th October, 2023. The bid security was executed on 6th October, 2023, i.e., prior to the date floating of RFP. Thus, the bid security of Opposite Party No.4 could not have been accepted. Such objection was strongly refused by the TIA- Opposite Party Nos.1 to 3 as well as the successful bidder, namely, Opposite Party No.4. According to them, the Opposite Party No.4 was not required to submit the bid security, as both the members of the JV had furnished their respective MSME/UDAYAM Certificates. Mr. Nayak, learned counsel for Opposite Party No.4 submitted that the successful bidder had no contribution in reflecting inadvertent bid ID in the bid security. Concerned Bank had prepared it. Further, name of the work of the RFP was correctly stated in the bid security. Thus, there was no ambiguity in respect of the bid security, which was furnished. He further submitted that such an inadvertent error of furnishing incorrect bid ID as well as date has no bearing on evaluation of the tender document of the Petitioner during technical evaluation, as Opposite Party No.4 had submitted the MSME/UDAYAM Certificates as per Clause-2 (c) of the RFP, which clearly stipulated that "Instruction of Works Department Vide OM No.503 dated 17.01.2022 will be followed. The local MSEs/Start-Ups (as defined in Odisha MSME Development Policy, 2016 & Start-

ups as defined under para-7 (vi) of Odisha Start-up Policy-2016) are exempted from payment of EMD and on conclusion of the bidding process, if selected shall pay 25% of the value of Performance security.” Thus, a close reading of the aforesaid Clause-2(c) of the RFP, clearly indicates that the bidders, who furnished MSME/UDAYAM Certificate, are exempted from payment of EMD. Admittedly, both the members of the Opposite Party No.4-JV are MSMEs and they had furnished their respective MSME/UDAYAM Certificates. Thus, in view of Clause-2 (c) of RFP, they are exempted from payment of EMD. Only because the Opposite Party No.4 had furnished the bid security in the form of bank guarantee, which was stated to be a defective one, it could not have been assumed that it was required to furnish EMD. When the Opposite Party No.4-JV, being MSMEs, are exempted from payment of EMD, furnishing of EMD being defective one, does not render it disqualified in the technical bid. In addition to the above, the TIA, considering the MSME/UDAYAM Certificates furnished by Opposite party No.4, exempted it from payment of EMD. Thus, the Petitioner cannot have any objection to the same when the Technical Evaluation Committee, comprising of seven technical members, accepted the MSME/UDAYAM Certificates furnished by Opposite Party No.4-JV and exempted it from payment of EMD. No mala fide or arbitrariness can be attributed to the TIA in granting exemption to Opposite Party No.4 from payment of EMD, when they are entitled to the same in view of Clause- 2 (c) of the RFP.

(ii) **Defective Joint Bidding Agreement for JV**

The objection with regard to the defective joint bidding agreement was neither pleaded nor specifically raised in the writ petition. The said objection was apparently not raised before the TIA by the Petitioner. However, Mr. Mukherjee, learned Senior Advocate, appearing for the Petitioner, raised such objection in course of argument and also reflected the same in its written argument. Hence, the same is taken into consideration. Mr. Mukherjee, learned Senior Advocate submitted that the bid identification number was incorrectly stated in the Joint Bidding Agreement of Opposite Party No.4, which is a Joint Venture. The bid ID, as mentioned in the joint bid agreement, was EIC/RWSS/45_23-24, which was not the correct bid identification of the RFP in question. Hence, it was contended that the joint bid agreement for JV, being a defective one, should have been rejected outrightly and the technical bid of Opposite Party No.4 ought to have been rejected as per Clause-1.5.3.2 and 1.5.4.2 of the RFP. Admittedly, in the joint bidding agreement for JV filed by Opposite Party No.4, the bid ID number was stated as EIC/RWSS-45_vi 2023-24 dated 18th September, 2023. But the name of the work has been correctly stated at Clause-‘A’ of the said joint bidding agreement. In the case of ***Poddar Steel Corporation*** (supra), it is held as follows:-

“.....As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance.”

In the instant case, save and except the digit '45' in place of '46', rest of the bid particulars were correctly stated in the Joint Bidding Agreement. The same does not significantly affect the technical qualification of eligibility of Opposite Party No.4, more particularly when the name of the work (RFP) and date of the tender along with other particulars have been correctly stated in the joint bidding agreement. The inadvertent mistake in mentioning the bid ID itself does not, in any manner, influence either the identity of the bidder (JV) or the requirement of furnishing the joint bidding agreement. Moreover, such an objection was not raised before the Technical Evaluation Committee or immediately thereafter. It is raised for the first time in course of argument. When the identity of either the bidder or the work to be performed is in no manner affected by stating the digit, i.e., '45' in place of '46' inadvertently, the same does not in any manner attract Clause- 1.5.3.2 and 1.5.4.2 of the RFP. Clause 1.5.3.2 of the RFP relates to examination of technical bids. The parent Clause 1.5.3 of the RFP deals with 'Qualification of the Bidder'. Clause- 1.5.3.2 thereunder reads as under:-

"1.5.3.2.RWS&S, ODISHA shall confirm that all the requirements have been provided in the Technical Bid in all respect. If any of the documents or information is missing, the Bid shall be liable for rejection."

In view of the discussion made above, the Petitioner has not made any case to invoke Clause-1.5.3.2 of the RFP.

13.1 Parent Clause- 1.5.4 of the RFP deals with 'Responsiveness of the Technical Bid'. Clause 1.5.4.2 thereunder, which is relied upon by the Petitioner, reads as under:-

"1.5.4.2.If a Bid is not responsive to the requirements of the RFP, it shall be liable for rejection by RWS&S, ODISHA and may not subsequently be made responsive by correction of the material deviation, reservation, or omission."

14. In the instant case, no case is made out by the Petitioner that the technical bid of Opposite Party No.4 JV was not responsive. It was responsive in all manner. But inadvertently, number in the bid ID has been stated as '45' in place of '46' in the joint bidding agreement. When the name of the work (RFP) and the date of the tender, were correctly stated in the joint bidding agreement submitted by Opposite Party No.4 JV, this Court is constrained to reject the said objection raised by the Petitioner.

(iii) **Exemption as MSME not claimed, but granted**

15. It is argued by Mr. Mukherjee, learned Senior Advocate that the Opposite Party No.4 did not claim for MSME exemption although it had furnished the MSME/UDAYAM Certificate of both the members of Opposite Party No.4-JV. It is his submission, like the Petitioner, an application should have been filed by the Opposite Party No.4 along with MSME Certificates claiming exemption of EMD. Such claim for exemption of EMD having not been made, the Technical Evaluation Committee could not have granted EMD exemption to Opposite Party No.4-JV. It is

his submission that by its conduct, Opposite Party No.4-JV waived its right of claiming exemption of EMD.

16. Mr. Tripathy, learned AGA and Mr. Nayak, learned counsel for Opposite Party No.4 made submissions in the light of Clause-2(c) of the RFP, which deals with instruction of the Works Department in OM No.503 dated 17th January, 2022. They unequivocally submitted that as per Clause-2(c) of the RFP, instruction issued by the Works Department in the office memorandum has been followed in its letter and spirit. According to them, aforesaid office memorandum dated 17th January, 2022 of the Works Department clearly stipulates that local MSEs/Start-ups [as defined in MSME Development Policy, 2016 and para 7 (vi) of the Odisha Start-up Policy, 2016] are exempted from payment of EMD. Both the members of Opposite Party No.4-JV are MSEs. They had also submitted their respective MSME/UDAYAM Certificate along with the tender document. Thus, the Opposite Party No.4 was not required to make any specific claim for exemption of EMD in view of instructions/Guidelines of the Works Department in OM No.503 dated 17th January, 2022. It is their submission that the Petitioner had, in fact, filed an application claiming exemption of EMD as a MSME, but it was not required under the terms and conditions of the RFP to make any such specific claim. Further, the issue with regard to exemption of EMD by Opposite Party No.4 was discussed by the seven members Technical Committee while evaluating technical bid of the bidders. Discussing the same, the Technical Evaluation Committee, exempted Opposite Party No.4 from payment of EMD. It is further submitted that the Petitioner has neither raised any specific objection in this regard before the Technical Evaluation Committee nor any specific ground has been taken in the writ petition with regard to exemption of EMD of Opposite Party No.4.

17. In view of the rival contentions raised by learned counsel for the parties, this Court scrutinized the relevant provisions of RFP as well as bid documents of Opposite Party No.4 filed by the Petitioner along with its additional affidavit dated 11th December, 2024. Clause-2 of the RFP deals with important note as quoted herein above (supra). Thus, the Clause-2(c) itself makes it clear that the MSEs and Start-ups are exempted from payment of EMD. In support of his case, the Opposite Party No.4 filed MSME/UDAYAM Certificates of both the members of the JV. Thus, in our considered opinion, filing of MSME/UDAYAM Certificates of both members of the JV is sufficient for granting exemption to the Opposite Party No.4 from payment of EMD. Nowhere in the RFP, it is instructed or stated that a bidder has to make a specific claim by filing an application for exemption of EMD. The Petitioner might have filed an application claiming exemption of EMD, but that does not become the rule to be applied to other bidder(s) who claim(s) exemption of EMD being MSME/Start-up.

(iv) **Waiver of right to claim exemption of EMD**

18. The next question arises for consideration, which is a sequel of the objection of the Petitioner to file separate application for exemption of EMD, is as to whether by furnishing the bid security in the form of bank guarantee, the Opposite Party No.4 has waived its right of exemption of EMD or not. True it is that, the Opposite Party No.4 had filed bid security in the form of bank guarantee. When the Opposite Party No.4 filed MSME/UDAYAM Certificates of both the members of the JV, it was not required to furnish bid security in the form of bank guarantee. Mr. Mukherjee, learned Senior Advocate submitted that by furnishing such bid security, though defective one, the Opposite party No.4 has waived its right of exemption of EMD. In support of his case, he relied upon the case law in **Kalpraj Dharamshi** (supra), wherein, at para-117 and 118, it is held as under:-

“117. The word ‘waiver’ has been described in Halsbury’s Laws of England, 4th Edn., Para 1471, which reads thus:

“1471. Waiver.—Waiver is the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct. ...

118. In Halsbury’s Laws of England, Vol. 16(2), 4th Edn., Para 907, it is stated:

“The expression ‘waiver’ may, in law, bear different meanings. The primary meaning has been said to be the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct. It may arise from a party making an election, for example whether or not to exercise a contractual right... Waiver may also be by virtue of equitable or promissory estoppel; unlike waiver arising from an election, no question arises of any particular knowledge on the part of the person making the representation, and the estoppel may be suspensory only... Where the waiver is not express, it may be implied from conduct which is inconsistent with the continuance of the right, without the need for writing or for consideration moving from, or detriment to, the party who benefits by the waiver, but mere acts of indulgence will not amount to waiver; nor may a party benefit from the waiver unless he has altered his position in reliance on it.”

(emphasis supplied)

It is, thus submitted that ‘waiver’ is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed. In fact, it is an agreement not to assert a right. There can be no waiver unless the person said to have waived, is fully involved as to his rights and with full knowledge about the same that he intentionally abandons the same. It is alleged that the Opposite Party No.4, being informed about the terms and conditions of the RFP and being fully conscious of the same, furnished the bid security. Thus, the conduct of Opposite Party No.4 acts as a waiver of its right to claim exemption of EMD. We are unable to accept the contention, inasmuch as, the Opposite Party No.4 along with the bid documents furnished MSME/UDAYAM Certificate of both the members of

the JV. Thus, the Opposite Party No.4 by its conduct intended an exemption of EMD, but it had submitted the bid security along with tender documents. Thus, in our considered opinion, the Opposite Party No.4 never waived his right of claiming exemption of EMD. In addition to its claim for exemption of EMD by furnishing MSME/UDAYAM Certificate, the Opposite Party No.4, as an abundant caution, furnished bid security in the form of bank guarantee, which was not at all required to be furnished by it as an MSME. Thus, this Court is of the view that, the doctrine of waiver has no application to the instant case, as claimed by Mr. Mukherjee, learned Senior Advocate. As such, the objection of the Petitioner with regard to MSME exemption not claimed is overruled.

(v) **Defective Turnover Certificate by Opposite Party No.4**

19. It is submitted by Mr. Mukherjee, learned Senior Advocate appearing for the Petitioner that the Opposite Party No.4 had submitted fraudulent turnover certificate just to fit itself in the tender process. It is submitted that the turnover certificate dated 19th May, 2022 of the Opposite Party No.4 stipulates that the turnover of the Opposite Party No.4 for the financial year 2020-21 was Rs.19,76,59,032/- issued by Chartered Accountant. The same Chartered Accountant issued another turnover certificate on 3rd September, 2023 disclosing the turnover of Opposite Party No.4-JV for the said financial year 2020-21 to be Rs.8,36,35,368/-. The Opposite Party No.4 had submitted a fraudulent turnover certificate dated 3rd September, 2023, which was accepted by the Technical Evaluation Committee. Thus, it was alleged by the Petitioner that the Opposite Party No.4 played fraud upon the TIA to get the work in its favour. Mr. Tripathy, learned AGA appearing for Opposite Party Nos.1 to 3 and Mr. Nayak, learned counsel for Opposite Party No.4 contended that the turnover certificate dated 19th May, 2022 (page 230 of the writ petition) relates to one of the members of the Opposite Party No.4-JV, who had submitted the same in another tender and its bid was held to be disqualified because of erroneous turnover certificate. The said turnover certificate dated 19th May, 2022, although issued by the same Chartered Accountant, was never formed part of the tender documents filed by the Opposite Party No.4 pursuant to instant RFP. On the other hand, the turnover certificate dated 3rd September, 2023 of the Opposite Party No.4-JV (page 218 of the writ petition) formed part of tender document of the instant tender process and was taken into consideration by the TIA. Thus, the previous turnover certificate has no bearing for assessment of the bid documents of Opposite Party No.4 in the present tender in question. Thus, they contended that such objection has no bearing on evaluation of the tender document of Opposite Party No.4 in the present RFP/tender.

20. In order to appreciate the rival contentions of the parties, this Court verified both the turnover certificates. The turnover certificate dated 3rd September, 2023 was filed by the JV, namely, M/s Ajay Infra and Construction Private Limited (previously known as Sri Ajay Kumar Agrawal)-M/s Jagdish Prasad Agrawal (Joint Venture) in the instant tender process. Both the turnover certificates dated 19th May,

2022 (at page-230 and page-218 of the writ petition) were issued by the selfsame Chartered Accountant. Turnover Certificate dated 19th May, 2022 in which, the turnover of one of the members of the JV, namely, M/s Ajay Infra and Construction Private Limited (previously known as Sri Ajay Kumar Agrawal), was shown to be Rs.90,76,59032/-. But, the same was not furnished along with the present bid documents. The turnover certificate dated 3rd September, 2023 in which, the turnover of the said member of the JV for the year 2020-21 was sworn to be Rs.8,36,35,368/-, was filed along with the instant bid documents and was taken into consideration by the TIA. The turnover certificate dated 19th May, 2022 has no bearing on the present case as it was not part of the bid documents. It is also contended by Opposite Party No.4 that one of the members of the JV had furnished the said turnover certificate in another tender for which the bid of the said member was cancelled. Furnishing an erroneous turnover certificate in another tender does not disqualify the Opposite Party No.4 either to participate in the present tender process or to furnish correct turnover certificate, which was in fact filed along with the bid documents of present RFP. The Petitioner has not furnished any material to show or at least make out a prima facie case that turnover certificate dated 3rd September, 2023 (page 218 of the writ petition) of one of the members of the Opposite Party No.4-JV, namely, M/s Ajay Infra and Construction Limited is either erroneous or obtained fraudulently. On the other hand, the Technical Evaluation Committee had scrutinized the bid documents along with turnover certificate dated 3rd September, 2023 filed by the Opposite Party No.4 and accepted the same to be correct. In fact, one of the bidders, namely, Law Line Marble had raised such an objection before the Technical Evaluation Committee. After scrutinization of the documents, seven members Technical Committee overruled the said objection and accepted the turnover certificate submitted by Opposite Party No.4-JV dated 3rd September, 2023. Hence, the contention of Mr. Mukherjee, learned Senior Advocate with regard to the defective turnover certificate is not sustainable and is accordingly overruled.

(vi) **Delay in submission of Performance Security and Additional Performance Security:-**

21. It is submitted by Mr. Mukherjee, learned Senior Advocate that Opposite party No.4 was required to furnish the PS and APS within fifteen days from the date of issue of the LoI. The Opposite Party No.4, being adjudged as successful bidder, was issued with LoI on 15th March, 2024, but the PS and APS was not furnished within fifteen days as per the requirement of RFP. It is contended that the Opposite Party No.4 had taken the plea of imposition of MCC for General Election, 2024. It is submitted that there was no restriction in the MCC which would have restricted Opposite Party No.4 in furnishing PS and APS within the stipulated period, but taking such a plea, it delayed the payment of PS and APS and the TIA arbitrarily accepted the PS and APS much beyond the stipulated period, which is not only mala fide but also violates the terms and conditions of the RFP itself.

21.1 Mr. Nayak, learned counsel for Opposite Party No.4 contended that although the LoI was issued on 15th March, 2024 in its favour, the Opposite Party No.4 and it was directed to furnish the PS and APS in the shape of bank guarantee within fifteen days therefrom, but on the very next day, i.e., on 16th March, 2024 MCC of General Election, 2024 was implemented restricting the execution of the contract work.

21.2 Since MCC was implemented, the Opposite Party No.4 on 28th March, 2024 requested the Opposite Party No.2 to deposit the PS and APS within seven days of lifting of MCC, which was accepted. After lifting of the MCC, the Opposite Party No.4 furnished PS and APS to the tune of Rs.3,84,15,000/- for execution of the agreement, which was duly accepted by the TIA. Thus, there was no illegality or irregularity either on the part of Opposite Party No.4 in making payment of PS and APS immediately after lifting of the MCC or on the part Opposite Party Nos.1 to 3 in accepting such PS and APS. Mr. Tripathy, learned AGA also reiterated the submission made by Mr. Nayak, learned counsel for Opposite Party No.4. It is his submission that due to imposition of MCC for General Election, 2024 neither the Opposite party No.4 could furnish PS and APS within the time stipulated nor was the TIA in a position to accept the same. Request made by Opposite Party No.4 for extension of time to furnish the PS and APS within seven days of lifting of MCC was duly accepted by the TIA. Extension of time for furnishing PS and APS is within the domain of the TIA; so, no fault can be found with Opposite Parties in accepting the same.

22. Upon hearing learned counsel for the parties and on perusal of restrictions imposed in the compendium of instruction of General Election, 2024 Model Code of Conduct (Annexure-1/4 to the rejoinder affidavit filed by the Petitioner), we find that the MCC came into effect on 16th March, 2024. It has elaborately discussed the restrictions imposed during continuance/imposition of the said MCC. Admittedly, the LoI was issued on 15th March, 2024 to deposit PS and APS within fifteen days therefrom. Due to imposition of the MCC from the very next day, the Opposite Party No.4 made a request to the TIA on 28th March, 2024 to furnish PS and APS within seven days from the date of lifting of the MCC. The request of the Opposite party No.4 was accepted by the TIA. We find no infirmity or illegality on the part of the TIA in accepting the request of the Opposite Party No.4 for extension of time to furnish the PS and APS within seven days of lifting of the MCC. The TIA was well within its competence and jurisdiction in extending the period of furnishing PS and APS by Opposite Party No.4 due to imposition of restriction in MCC. Indisputably, the Opposite Party No.4 deposited the PS and APS in the form of bank guarantee immediately after lifting of the restrictions of MCC.

23. An argument was raised by Mr. Mukherjee, learned Senior Advocate for the Petitioner that a request could have been made by Opposite Party No.4 to the Election Commission to furnish the PS and APS. Only because no request was made to the Election Commission to permit the Opposite Party No.4 to furnish the PS and

APS and for acceptance of the same by the TIA was not made, that does not render acceptance of the PS and APS by the TIA after lifting/withdrawal of MCC vulnerable. In order to avoid further complications in proceeding with the contract, Opposite Party Nos.1 to 3 have rightly accepted the request made by the Petitioner extending the period for furnishing PS and APS and have also committed no error in accepting the same after lifting/withdrawal of MCC. Hence, we find no substance in the submission of learned Senior Advocate in the regard.

24. It is submitted by Mr. Mukherjee, learned Senior Advocate that in the event the writ petition is allowed, the Opposite Party No.5, who is the L2 bidder, cannot be awarded with the contract as it had already been awarded with two packages. Thus, the Petitioner being the L3 can be awarded with such contract in respect of package No.VI. Although it is correct to submit that as per the tender conditions, a successful bidder cannot be awarded with more than two packages and the Opposite Party No.5 has already been awarded with two packages, but the submission of Mr. Mukherji, learned Senior Advocate for awarding package No.VI in favour the Petitioner does not hold good as we find no illegality or irregularity or arbitrariness in awarding the package No.VI to Opposite Party No.4.

25. Before parting with the judgment, we make it clear that we have not dealt with all the case laws cited by learned counsel for the parties and have only referred to those relevant for just adjudication of the case.

26. In view of the discussions made above, we are of the considered opinion that the writ petition merits no consideration and 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)

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Result of the case:

Writ Petition dismissed.

2025 (II) ILR-CUT-379

**DIBAKAR PATRA
V.
STATE OF ODISHA & ANR.**

[W.P.(C) 14410 OF 2017]

17 JUNE 2025

[DIXIT KRISHNA SHRIPAD, J. & M.S. SAHOO, J.]

Issues for Consideration

“No objection certificate” not obtained prior to applying for the post of Civil Judge – Application not submitted through employer – Petitioner was permanently debarred from Government employment – Whether such order can be sustainable in law when it is a mistake simpliciter of the petitioner without any guilty mind.

Headnotes

ODISHA SUPERIOR JUDICIAL SERVICE AND ODISHA JUDICIAL SERVICE RULES, 2007 – Rule 21 – Petitioner a Court employee had staked his claim for appointment to the post of Civil Judge pursuant to Odisha Public Service Commission notification without obtaining “No Objection Certificate” for which he was permanently debarred from Government employment – Whether such order can be sustainable in law when it is a mistake simpliciter of the petitioner without any guilty mind.

Held: No – When right to public employment subject to conditions is one of the facets of Article 16, the Government or the Public Service Commission has to be circumspect in invoking such a penal provision, more particularly when the candidate is denied appointment to the post in question – No special reasons are assigned to justify a permanent embargo as if a heinous sin is committed by the candidate – After all, errors do occur in any human transaction – What needs to be looked into is, whether it is a misconduct with guilty mind or a mistake simpliciter – Our examination reveals that the arguably culpable act of the petitioner does not fit into the former and therefore his case is miles away from the precincts of penal provision.

(Para 4.7)

Granting a direction to appoint such an erring candidate that too to the post of Civil Judge, in the circumstances is not warranted – A contra view if countenanced would lay dangerous precedent in the realm of service law – Had there been minor irregularities as were sought to be made out on behalf of the petitioner, we would have arrived at a different conclusion – A Writ Court cannot embark upon such a misadventure.

(Para 4.8)

A writ of certiorari issues quashing the impugned order dated 30.06.2017 only to the extent it permanently debars the petitioner from staking claim for Government appointment and therefore he is entitled to participate in the future recruitment process, if he is otherwise eligible. (Para 4.8)

Citations Reference

Indira Nehru Gandhi v. Shri Raj Narain, **AIR 1975 SC 2299**; Ram Krishna Dalmia v. Justice S.R. Tendolkar, **AIR 1958 SC 538**; Mohinder Singh Gill v. The Chief Election Commissioner, **AIR 1978 SC 851**; Secretary, State of Karnataka v. Umadevi, **AIR 2006 SC 1806**; Bhupendra Nath Hazarika v. State of Assam, **AIR 2013 SC 234 – referred to.**

List of Acts

Odisha Superior Judicial Service and Odisha Judicial Service Rules, 2007; Constitution of India, 1950.

Keywords

No Objection Certificate; Public employment; Penalty for misconduct in the examination; Right to public employment; Debar from Government employment.

Case Arising From

Order No. 7025 dated 30.06.2017 of Opposite Party No. 1.

Appearances for Parties

For Petitioner : Mr. P.K. Rath, Sr. Adv. & M/s. A. Behera,
S.K. Behera, P. Nayak, S. Das & S. Rath.
For Opp. Parties : Mr. S.B. Panda, AGA (O.P. No. 1),
Mr. P.K. Mohanty, Sr. Adv., M/s. D.N. Mohapatra,
Smt. J. Mohanty, Mr. P.K. Nayak, Mr. S.N. Dash,
P.K. Pasayat & Mr. P. Mohanty (O.P. No. 2)

Judgment/Order

Judgment

DIXIT KRISHNA SHRIPAD, J.

Petitioner, a Court employee aspiring for employment in the Odisha Judicial Service, having been denied appointment and further debarred from public employment, is knocking at the doors of Writ Court essentially with the following prayers:

- (i) To declare “Rule-18(2) and Rule 19(1) proviso or Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 as ultra virus to Article-14 and 16 of the Constitution of India (*sic*),

(ii) To quash order No.7025 dated 30.06.2017 of the opposite party no.1 under Annexure-9 and clause-5(ii)(iii) and clause-6 (v) of the advertisement No.3 of 2016-17 under Annexure-1 (sic), and

(iii) To issue a writ of mandamus to the opposite party no.1 to grant appointment letter to the post of Civil Judge on the basis of selection vide Notification dated 02.03.2017 issued by Orissa Public Service Commission.

2. After service of notice the opposite parties having entered appearance through the learned AGA and the panel counsel have filed the counter resisting the petition. To the said counter petitioner has filed rejoinder. Learned advocates representing the opposite parties make submission in justification of impugned Rules and proceedings.

3. Foundational Facts:-

(a) Petitioner, a Court employee belonging to the Scheduled Caste, had staked his claim for appointment to the post of Civil Judge, pursuant to Orissa Public Service Commission Notification, in question. To put it shortly, he was found to have applied for the post not through his employer, as required under the notification, nor had he taken “No Objection Certificate” before gaining entry to the recruitment fray. This having angered the answering respondents, the order dated 30.06.2017 at Annexure-9 came to be issued. The same reads as below:-

“No.7025/L Dated the Bhubaneswar, 30th June, 2017

25-28/17

After careful consideration of the show cause reply submitted by Sri Dibakar Patra, S/o Taru Patra, At/P.O.-Kaunrikala, Via-Ukhanda, P.S.-Baria, Dist.- Keonjhar, in response to the show cause notice issued vide No.5600/L dated 25.05.2017, the Government have been pleased to debar him from employment under the Government.

By order of the Governor

Sd/- S.R. Bohidar

2nd A.L.R.-cum-Addl. Secretary”

(b) The above order permanently debarring the petitioner from Government employment is premised essentially on two factors: that he had applied for appointment to the judicial post directly, i.e., not through the Head of the Department in which he has already been employed, and secondly that he has falsely stated in his online application that he was not a departmental candidate. It is a specific case of the opposite parties that the petitioner had perpetrated certain misconduct in the examination and therefore in terms of extant Rule the impugned action has been taken to deny appointment coupled with a permanent ban for Government employment.

(c) The impugned action taken against the petitioner by the Government, according to learned Addl. Government Advocate, has been perfectly in accordance with law and after giving reasonable opportunity of hearing and therefore there is no warrant for the interference of Writ Court, some arguable lacunae notwithstanding. He also tells us that a Writ Court is not a Court of appeal to undertake deeper

examination of the dispute, its jurisdiction being limited in focusing the decision making process as distinguished from decision itself. However, all this is controverted by the learned Senior Advocate appearing for the petitioner.

4. Having heard the learned counsel for the parties and having perused the petition papers, we are inclined to grant a limited indulgence in the matter as under and for the following reasons:-

4.1. The Odisha Superior Judicial Service and Odisha Judicial Service Rules, 2007 have been promulgated in exercise of powers conferred by the proviso to Article 309 read with Articles 233, 234 and 235 of the Constitution of India. Essentially, petitioner inter alia has called in question the proviso to Rule 19(1), which reads as under:-

“Provided that in case of a person already in Government service, the application shall be submitted through the appointing authority.”

It is admitted case of the petitioner that he had not applied through his present employer. His counsel submits that there is no such requirement, since he is not in Government service. Alternatively, he argues that this proviso is unconstitutional being violative of Articles 14 and 16. It is not uncommon to find a proviso of the kind enacted in several recruitment rules. Such a proviso is a matter of policy arising from working experience of the Government. It was Justice Oliver Wendell Holmes who said *“The life law is not logic but experience....”* Legislative decisions of the kind need to be shown due deference by the judicial institution. Courts cannot run a race of opinions with other organs of the State, separation of powers being one of the basic features of our Constitution vide **Indira Nehru Gandhi v. Shri Raj Narain**, AIR 1975 SC 2299.

4.2. The proviso to Article 309 read with the Articles 233, 234 & 235 of the Constitution bestow on the High Court a quasi legislative power in exercise of which 2007 Rules have been promulgated. Statutes and delegated legislations like the 2007 Rules enjoy a measure of presumptive constitutionality vide **Ram Krishna Dalmia v. Justice S.R. Tendolkar**, AIR 1958 SC 538. Neither lack of competence nor arbitrariness is demonstrated despite vociferous submissions made by learned counsel for the petitioner. We are aware that the degree of presumption of constitutionality of a delegated/subordinate legislation like 2007 Rules is comparatively not as high as in the case of a statute. Even to rebut this, no convincing argument is made. A piece of subordinate legislation made by the delegate from the experience gained through the years cannot be struck down by a stroke of pen. An argument to the contrary runs counter to the constitutional jurisprudence of at least half a century. The subject clauses of OPSC recruitment notification are nothing but the replica of what the Rules prescribed and therefore they too cannot be faltered.

4.3. Learned Addl. Government Advocate submitted that not sending the online application through the Head of the Department with whom a candidate is already

employed, virtually amounts to fraud and therefore impugned action is sustainable. To us, this appears to be too farfetched a contention, guilty mind having not been pleaded, much less prima facie proved. There is also scope for the argument that the service of petitioner is not with the „Government“ as such, inasmuch as he happens to be in the Court Service (non-judicial). As a layman, what he has done is wrong simpliciter and therefore, he cannot be crushed by sledge hammer, when a mild pinch would do the rightful. There is also force in the submission of learned for the petitioner that the impugned order debarring his client from Government service permanently is too harsh to be sustained. A harsh and disproportionate treatment meted out an erring citizen runs amuck of doctrine of proportionality.

4.4. The impugned order, which not only de-candidatured the petitioner for the recruitment but also debarred him permanently from Government employment, is not a speaking order, as rightly argued by petitioner’s counsel. A perusal of its text does not show for what reason such harsh penal action is levied on the petitioner. The contention of learned Addl. Government Advocate that though the order itself does not have the reasons inbuilt, the relevant file contains the reasons, runs counter to **Mohinder Singh Gill v. The Chief Election Commissioner**, AIR 1978 SC 851, wherein Justice Krishna Iyer speaking for the 5- Judge Bench observed as under:-

“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.”

4.5. Reasons should emanate from the very order itself so that for an onlooker it provides the opportunity to know why such an order is made. It is a most legitimate expectation of the person who suffered such orders, more particularly when the right to stake claim for public employment is a facet of Article 16 of the Constitution of India vide **Secretary, State of Karnataka v. Umadevi**, AIR 2006 SC 1806. The authority who makes an order in exercise of statutory power cannot say that the reasons are available in the file that is not indicated in the order itself. In a constitutionally ordained Welfare State a citizen cannot be told that the reasons for a decision are stacked in the Godown of the Government. After all, ours is not the East India Company of bygone era. The Government has to conduct itself as a model employer vide **Bhupendra Nath Hazarika v. State of Assam**, AIR 2013 SC 234.

4.6. The vehement contention of learned Addl. Government Advocate that under Rule-21 power does avail to the Government *inter alia* to debar a candidate from future public employment cannot be much disputed. Rule-21 of 2007 Rules has the following text:-

“21. Penalty for misconduct in the examination - A candidate who is or has been declared guilty of impersonation or of submitting fabricated document or documents specified in Sub-rule (3) of Rule 19 which has been tampered with or of making statements which are incorrect or false or of suppressing material information or of

using or attempting support for his candidature may in addition to the liability for criminal prosecution, be debarred either permanently or for a specified period –

(a) by the Commission from appearing at any Preliminary Written Examination or Main written examination or any interview held by it for selection of candidates, and

(b) by the Government, from employment under them as may be directed by the Commission or the Government, as the case may be.”

4.7. It hardly needs to be stated that existence of power is one thing and its exercise is another; existence per se is not a justification for its exercise. Heading of the Rule is crystal clear “Penalty for misconduct in the examination”. The text obviously gives power, as already mentioned. What is the false statement or incorrect statement allegedly made by the candidate, remains to be a mystery wrapped in enigma. When right to public employment subject to conditions is one of the facets of Article 16, the Government or the Public Service Commission has to be circumspect in invoking such a penal provision, more particularly when the candidate is denied appointment to the post in question. No special reasons are assigned to justify a permanent embargo as if a heinous sin is committed by the candidate. After all, errors do occur in any human transaction. What needs to be looked into is, whether it is a misconduct with guilty mind or a mistake simpliciter. Our examination reveals that the arguably culpable act of the petitioner does not fit into the former and therefore his case is miles away from the precincts of penal provision. More is not necessary to specify.

4.8. All the above being said, learned Addl. Government Advocate is right in telling us that no appointment order can be issued to the petitioner, since his entry to the recruitment fray was marred by illegalities, such as, not sending the application through Head of the Department nor with the no objection from the employer, as prescribed by law. Granting a direction to appoint such an erring candidate that too to the post of Civil Judge, in the circumstances is not warranted. A contra view if countenanced would lay dangerous precedent in the realm of service law. Had there been minor irregularities as were sought to be made out on behalf of the petitioner, we would have arrived at a different conclusion. A Writ Court cannot embark upon such a misadventure.

In the above circumstances, this petition is allowed in part. The challenge to subject proviso of Rules 2007 and so also to the impugned paragraphs of subject OPSC Recruitment Notification is repelled. However, a writ of certiorari issues quashing the impugned order dated 30.06.2017 only to the extent it permanently debars the petitioner from staking claim for Government appointment and therefore he is entitled to participate in the future recruitment process, if he is otherwise eligible.

Costs made easy.

Headnotes prepared by:

Shri Pravakar Ganthia, Editor-in-Chief
ILR-Cuttack Series

Result of the case:

Writ Petition allowed in part.

2025 (II) ILR-CUT-385

**DHARMAPADA GHADAI
V.
UNION OF INDIA & ORS.**

[W.A. NO. 2720 OF 2024]

19 JUNE 2025

[DIXIT KRISHNA SHRIPAD, J. & M.S. SAHOO, J.]

Issues for Consideration

Appellant was removed from service for taking bribe – Representation for reinstatement after acquittal was dismissed – Vide the impugned order, the writ petition of the petitioner has been negated – Whether the case of the appellant merits consideration.

Headnotes

(A) SERVICE JURISPRUDENCE – Appellant was removed from service on the charge of taking bribe of Rs. 20,000/- – He was acquitted from the criminal charges under the Prevention of Corruption Act, 1988 – Appellant urged for invalidation of the impugned order on various grounds – Whether the case of the appellant merits consideration.

Held: No – Having consciously participated in the disciplinary proceedings without raising a little finger, he cannot now turn around to find fault with the same – In a way, he is estopped from taking such a contention appears to be an afterthought – Thirdly, what prejudice has been caused to him by virtue of an ex-employee of the organization holding the inquiry proceedings, remains unsubstantiated. (Para 6.1)

In our considered view, the Management cannot be faltered in not calling the complainant as a witness, when there was other abundant evidentiary material on record – It is not that invariably all persons named in the Charge Memo or in the list of witnesses should be examined – It all depends upon a host of factors that essentially lie within the wisdom of parties – Added lastly, what prejudice is caused to the appellant by employer not examining the complainant is not forthcoming – In disciplinary proceedings ordinarily the provisions of the Evidence Act, 1872 are not invokable, although general principles of evidence do apply – In all fairness, opponent could have asked the management to examine the complainant so that he could elicit something in his favour in the cross-examination – That fairness having not been shown, he cannot complain of unfair treatment.

[Para 6.2 (iii) & (iv)]

It hardly needs to be stated that a same set of facts can be a subject matter of a criminal case and a disciplinary proceeding; even if a criminal case against an accused employee fails, a disciplinary proceeding may culminate into an order of punishment against a delinquent employee.

[Para 6.3 (iv)]

Whether a case is of *honourable* acquittal has to be ascertained from discerning the substance of the judgment and not just by its terminology – The acquittal granted by the said High Court is on the benefit of doubt and paucity of evidence – Contra submission therefore does not merit acceptance.

[Para 6.3 (v)]

A plea of breach principles of natural justice per se would not suffice; one has to demonstrate consequent prejudice due to such breach, in a cognizable measure – That is lacking in this case.

(Para 6.5)

Appellant was in a higher rank of service (Assistant Manager, Finance), and not a Clerk or Group-C employee – He was a member of Tender Committee too, and had taken bribes in connection with the very tender in question – Bribery, corruption & misappropriation of funds are treated in any civilized jurisdiction as serious acts of misconduct involving high moral turpitude – It is more so, when such acts are committed by the employees in the higher rung of service associated with Finance Department – Such acts obviously shake public confidence and the trust of the employer – Therefore, it cannot be gainfully argued that the punishment of removal from service, as distinguished from dismissal, is disproportionate to the proven guilt – Thus there is no scope for invoking the principle of proportionality – It is not argued at the Bar that the punishment awarded to the appellant shocks the conscience of the Court, because it does not.

(Para 6.6)

(B) WORDS & PHRASES – Honourable acquittal – The concept of ‘honourable acquittal’ is easy to say, but difficult to employ, there being no statutory definition thereof, more particularly in the IPC, CrPC & Indian Evidence Act – Discussed in reference to case law.

(Para 6.4)

Citations Reference

Ram Lal v. State of Rajasthan, (2024) 1 SCC 175; Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., AIR 1999 SC 1416; State of Punjab v. Gurdev Singh, AIR 1992 SC 111 (Paras 5 & 6); ROBERT STUART WAUCHOPE v. EMPEROR, (1934) 61 ILR Cal.168; P.V. Rudrappa v. State of Karnataka, 2024 SCC Online Kar 10628; Quinn v. Leathem, [1901] UKHL 2 – referred to.

List of Acts

Prevention of Corruption Act, 1988; Indian Evidence Act, 1872; Constitution of India, 1950; CIL Conduct, Discipline and Appeal Rules, 1978 (as amended in 2006).

Keywords

Honourable acquittal; Misconduct; Principle of proportionality; Punishment disproportionate to the proven guilt; Removal from service; Representation; Second show cause notice.

Case Arising From

Order dated 31.07.2024 passed in W.P.(C) No. 18538 of 2021.

Appearances for Parties

For Appellant : M/s. A.K. Pandey, L. Pradhan, D.Pradhan, R.K. Mishra,
D.P. Das & S.K. Mandal

For Respondents : Mr. M.K. Pati, Senior Panel Counsel

Judgment/Order

Judgment

DIXIT KRISHNA SHRIPAD, J.

An employee of respondent organization, who has suffered removal from service on account of proven misconduct of bribery is invoking intra-Court appellate jurisdiction for laying a challenge to a learned Single Judge's order dated 31.07.2024 whereby his following two writ petitions have been negated:

- (i) In W.P.(C) No.17035 of 2016 he had called in question the punishment order dated 19.12.2014 as affirmed in departmental appeal dismissed on 30.08.2016;
- (ii) In W.P.(C) No. 18538 of 2021 he had laid a challenge to the management's order dated 09.04.2021 whereby his representation for reinstatement after acquittal in the criminal appeal was dismissed.

2. FOUNDATIONAL FACTS:

(a) The delinquent employee gained entry into service of respondent organization as Accounts Officer with effect from 23.12.2006. He earned promotion as Assistant Manager (Finance) in due course. In a CBI Raid he was found red handed on 28.08.2012 whilst accepting a bribe of Rs.20,000/- from a person, namely, Sugris Singh associated with the tender in question. Appellant happened to be one of the members of the Tender Committee.

(b) Appellant was served with a Charge Memo on 26.03.2013 in relation to the misconduct in question. A disciplinary inquiry was held at the hands of a retired official of the organization and he was found guilty. A copy of Inquiry Report dated 14.08.2014 was served on him and he submitted his representation against the same on 27.09.2014. The Disciplinary Authority passed the punishment order of removal

from service on 23.12.2014. Appellant's departmental appeal also came to be disfavoured vide order dated 30.08.2016. This he had challenged in W.P.(C) No. 17035 of 2016, which is not the subject-matter of this appeal.

(c) Above apart, appellant was prosecuted for the offences punishable inter alia under the provisions of the Prevention of Corruption Act, 1988 in R.C. No. 19A of 2012. The Special CBI Court at Dhanbad vide order dated 21.01.1019 had entered conviction and sentenced him to undergo a simple imprisonment for two years coupled with levy of fine of Rs.50,000/-. However, a learned Single Judge of Jharkhand High Court vide order 29.09.2020 allowed his Criminal Appeal (SJ) No. 138 of 2019 and set aside order of conviction & sentence. Thus, he was acquitted of the criminal charges.

(d) Appellant made a representation seeking his reinstatement in service on the basis of acquittal order contending that his was a case of honourable acquittal. The same having been rejected by the Management, W.P.(C) No. 18538 of 2021 came to be filed. As already mentioned above, both the writ petitions were heard together and came to be dismissed by the learned Single Judge of this Court. We repeat that the order in WP(C) No. 18538 of 2021 alone is put in challenge before us.

3. Learned counsel appearing for the delinquent-employee urged the following grounds for the invalidation of impugned order:

(a) The entire disciplinary proceedings are vitiated inasmuch as under the extant Conduct Rules, it was not open to the Management to appoint an ex-employee of the organization as the Inquiry Officer and therefore, everything would fall down on the principle of *ex nihilo nihil fit* meaning nothing comes out from nothing.

(b) The Management ought to have examined the complainant (Shri Sugriw Singh) as a witness to prove demand & acceptance of bribe and that having not been done, the finding of guilt is vitiated. Similarly, all the persons associated with the trap event ought to have been examined; no explanation is offered for their non-examination.

(c) Second show cause notice after the acceptance of the recommendation of Inquiry Officer is a sine qua non for passing the punishment order. No opportunity of hearing was given to the delinquent before passing the major penalty of removal from service. Thus, the decision to remove him from service is unsustainable.

(d) In criminal proceedings, although trial ended in the conviction & sentencing of appellant, he came to be acquitted by the Jharkhand High Court honourably and therefore he ought to have been reinstated in service, disregarding the subject removal order.

(e) Lastly, the punishment is disproportionate to the gravity of charges even if the finding of guilt is sustained and therefore, the impugned order of termination is liable to be set aside on the doctrine of proportionality.

In support of theses contentions, learned counsel representing the appellant banked upon certain rulings.

4. After service of notice, Respondent No.1-Union of India has entered appearance through its Senior Panel Counsel, Mr. M.K.Pati. However, no formal

notice was served on the employer-organizations since requisites were not complied and that would not come in the way of disposing of this appeal on merits, since these organizations are under the aegis of Central Government.

5. Learned Senior Panel Counsel made the following submission in justification of the impugned orders:

(a) that there is absolutely no warrant for the indulgence of this Court in the appeal, since the findings therein operate as *res judicata*;

(b) that the challenge to punishment order in the departmental appeal and subsequently in W.P.(C) No. 17035 of 2016 has been negated and the same has attained finality, there being no further challenge to the same;

(c) that once a finding of guilt is recorded in a properly constituted inquiry, after full opportunity to the delinquent, and punishment is upheld in the departmental appeal and further in writ petition, this Court may not undertake a deeper examination of the matter, even if there are some arguable errors;

(d) that the subject Conduct Rules do not prohibit the appointment of an ex-employee as Inquiry Officer. Even otherwise, no prejudice is shown to have been thereby caused; and

(e) that there is no need of issuing a second show cause notice to the delinquent who had already submitted his representation to the Inquiry Report. The punishment awarded is not dismissal but only removal from service.

6. Having heard the learned counsel appearing for the parties and having perused the appeal papers, we decline indulgence in the matter for the following reasons:-

6.1. The first submission of learned counsel for the appellant that the entire disciplinary proceeding is vitiated inasmuch as there is no scope in the CIL Conduct, Discipline & Appeal Rules, 1978 (as amended in 2006) to appoint an ex-employee of the organization as the Inquiry Officer, does not impress us even in the least. Reasons for this are not far to seek: Firstly, a Conduct Rule promulgated by the Employer Organization like the one herein is not under any statute as such. It is a product of exercise of employer's prerogative and more in the nature of contract. Therefore, it cannot be construed as being literally mandatory. Obviously, it mentions "any officials of the company" and this phrase has to be liberally construed to include ex-officials as well. What we are construing is, a bye-law like thing and not a statute of Westminster Abbey. Secondly, the delinquent employee ought to have taken objection at the earliest point of time, which he did not. Having consciously participated in the disciplinary proceedings without raising a little finger, he cannot now turn around to find fault with the same. In a way, he is estopped from taking such a contention appears to be an afterthought. Thirdly, what prejudice has been caused to him by virtue of an ex-employee of the organization holding the inquiry proceedings, remains unsubstantiated.

6.2. The second submission of learned counsel that non-examination of alleged bribe giver i.e the complainant is fatal to the case of Management, is difficult to agree with, for more than one reason:

i) It is a CBI trap case wherein the appellant was caught red handed and admittedly the phenolphthalein test proved positive, the sparkling lotion turning pink. Added, he himself admitted the receipt of Rs.20,000/- from the complainant. The norm that *admitted facts need not be proved*, is as old as mountains. Of course, admission is not a conclusive piece of evidence, is true. However, it is sacrosanct unless a plausible explanation rebutting the same is offered.

ii) Appellant had pleaded that this amount was not the bribe but it was taken for some other purpose. What was that other purpose, was never spelt out by him. Employer cannot fathom out what lurked in the mind of his delinquent employee. The so called ‘other purpose’ was ‘especially within the knowledge’ of employee himself and therefore he ought to have put the same across in the disciplinary inquiry on the general principle akin to the one enacted in Section 106 of the Evidence Act, 1872.

iii) It is for the management to decide as to who should be examined as its witness, and a delinquent employee cannot dictate terms, in matters like this. In our considered view, the Management cannot be faltered in not calling the complainant as a witness, when there was other abundant evidentiary material on record. It is not that invariably all persons named in the Charge Memo or in the list of witnesses should be examined. It all depends upon a host of factors that essentially lie within the wisdom of parties.

iv) Added lastly, what prejudice is caused to the appellant by employer not examining the complainant is not forthcoming. In disciplinary proceedings ordinarily the provisions of the Evidence Act, 1872 are not invokable, although general principles of evidence do apply. In all fairness, opponent could have asked the management to examine the complainant so that he could elicit something in his favour in the cross-examination. That fairness having not been shown, he cannot complained of unfair treatment.

6.3. Appellant’s contention that subsequently on the same set of facts he has been honourably acquitted by the Jharkhand High Court and therefore he ought to have been reinstated in service in the light of Apex Court decision in **Ram Lal v. State of Rajasthan**,¹, cannot be countenanced because:

(i) The incident of bribery happened on 28.08.2012; the Charge Memo was served 23.06.2013; appellant filed his reply on 10.04.2013; inquiry proceedings were accomplished vide report dated 14.08.2014; appellant sent his representation against the report on 27.09.2014. The punishment order of removal was passed on 23.12.2014; departmental appeal against the same was negatived on 30.08.2016. Challenge was laid to the same in WP(C) No. 17035 of 2016 and no interim order of any kind was granted to him. He could have sought for stay of disciplinary proceedings pending disposal of criminal case vide **Capt.**

¹ (2024) 1 SCC 175

M. Paul Anthony v. Bharat Gold Mines Ltd.,². However, that endeavor does not appear to have been undertaken.

(ii) The case in WP(C) No.17035 of 2016 was heard, along with WP(C) No. 18538 of 2021 (this was filed subsequent to Jharkhand High Court order of acquittal). Both the writ petitions came to be rejected by the learned Single Judge of this Court. However, what is challenged before us is only the order made in WP(C) No.18538 of 2021. In other words, no grievance is made out against the order concerning WP(C) No.17035 of 2016 and thus the lis in that writ petition is laid to rest once for all. The findings recorded therein have attained finality, regardless of they being right or wrong and they bind the parties vide **State of Punjab v. Gurdev Singh**³.

(iii) In the CBI criminal case (RC No.19A of 2012), the appellant was tried for the offence of bribery. The Criminal Court vide order dated 21.01.2019 had convicted and sentenced him to undergo two year imprisonment, apart from levying a fine of Rs.50,000/-. The Jharkhand High Court, on 29.09.2020, favoured appellant's Criminal Appeal No. 138 of 2019 and acquitted him of the charges. That would not liquidate the punishment order of removal from service that was made long before such acquittal and findings as to its regularity entered by the learned Single Judge having attained finality.

(iv) If delinquent employee was removed from service only on the ground of conviction & sentencing in a criminal case involving moral turpitude, we would have straightway directed reinstatement on the strength of acquittal order secured in criminal appeal, regardless of such acquittal being *honourable* or otherwise. However, that is not the case before us. It hardly needs to be stated that a same set of facts can be a subject matter of a criminal case and a disciplinary proceeding; even if a criminal case against an accused employee fails, a disciplinary proceeding may culminate into an order of punishment against a delinquent employee.

(v) We carefully perused the copy of Jharkhand High Court order supplied to us at the Bar and it availed in the original record of writ petition too, which we had secured from the Registry. In **Ram Lal** supra it is broadly delineated as to when an acquittal is said to be *honourable*, is true. Whether a case is of *honourable* acquittal has to be ascertained from discerning the substance of the judgment and not just by its terminology. The acquittal granted by the said High Court is on the benefit of doubt and paucity of evidence. Contra submission therefore does not merit acceptance.

6.4. Since the ground of *honourable* acquittal was passionately pressed into service, a little more deliberation in this regard is undertaken. The concept of '*honourable acquittal*' is easy to say, but difficult to employ, there being no statutory definition thereof, more particularly in the IPC, CrPC & Indian Evidence Act. Lord Williams, J. in **ROBERT STUART WAUCHOPE v. EMPEROR**,⁴ observed:

"The expression '*honourably acquitted*' is one which is unknown to court of justice. Apparently it is a form of order used in courts martial and other extra judicial tribunals...."

² AIR 1999 SC 1416

³ AIR 1992 SC 111 (Paras 5 & 6)

⁴ (1934) 61 ILR Cal.168

The idea of ‘honourable acquittal’ is not easy to define although it can be illustrated, vide Karnataka High Court decision in **P.V. Rudrappa v. State of Karnataka**,⁵. If an accused is discharged at pre-trial stage or the criminal proceeding launched against him is quashed, there is no difficulty in treating the same as the cases of ‘honourable acquittal’ for the limited purpose of disciplinary enquiry. A case of ‘honourable acquittal’ may arise when, after trial the Criminal Court orders acquittal with any of nearly following observations:

- (i) that accused is falsely prosecuted to seek vengeance or for such other ulterior motive;
- (ii) that there is absolutely no evidence or very little evidence on record to implicate the accused in the criminal case;
- (iii) that the prosecution has miserably failed to prove the charges against the accused;
- (v) that the prosecution witnesses are unworthy of any credence and their version does not generate any confidence.

Applying these parameters, we are of the considered opinion that the case of appellant herein is not one of ‘honourable acquittal’.

6.5. The next contention of learned counsel that after the disciplinary authority accepted the recommendation of Inquiry Officer, the appellant ought to have been granted a second show cause notice before awarding the punishment of removal from service, is unworthy of acceptance. Article 311(2) of the Constitution, as amended, dispenses with such a second show cause notice. The principle enacted in this provision can be extended to the case of appellant, although he was not a ‘civil servant’ *stricto sensu*, inasmuch as, he was given full opportunity by providing a copy of the Inquiry Report and he had submitted an elaborate representation against the same. Added, never he had sought for any opportunity of hearing on the punishment aspect. Further, he is not telling us as to how he would have been benefited, had a second show cause notice been issued. The principles of natural justice cannot be chanted like *vedic mantr* or hymns. A plea of breach principles of natural justice per se would not suffice; one has to demonstrate consequent prejudice due to such breach, in a cognizable measure. That is lacking in this case.

6.6. The last contention of the appellant that the award of punishment of removal from service is disproportionate to the gravity of charge, does not gain acceptance. Ordinarily, once the guilt is proved in a properly constituted disciplinary inquiry, what punishment should be awarded to a delinquent employee, belongs to the domain of the Disciplinary Authority, of course subject to all just exceptions into which argued case of the appellant does not fit in. Appellant was in a higher rank of service (Assistant Manager, Finance), and not a Clerk or Group-C employee. He was

⁵ 2024 SCC Online Kar 10628

a member of Tender Committee too, and had taken bribes in connection with the very tender in question. Bribery, corruption & misappropriation of funds are treated in any civilized jurisdiction as serious acts of misconduct involving high moral turpitude. It is more so, when such acts are committed by the employees in the higher rung of service associated with Finance Department. Such acts obviously shake public confidence and the trust of the employer. Therefore, it cannot be gainfully argued that the punishment of removal from service, as distinguished from dismissal, is disproportionate to the proven guilt. Thus there is no scope for invoking the principle of proportionality. It is not argued at the Bar that the punishment awarded to the appellant shocks the conscience of the Court, because it does not.

6.7. Several rulings were cited before us.

(a) We have reproduced the script of the appellant as it is:

“1999 (8) SCC 582 Hardwari Lal vs State of U.P. and ors Para 3

On the point that if the complainant not examined then the enquiry not proper.

2011 (6) SCC 376 Para 16 Commissioner of police Vs Jai Bhagwan

On the point that non examination of material witness is fatal.

1999 (2) SCC 10 Kuldeep Singh VS Commissioner of police

Court can interfere with conclusion reached if there was no evidence to support finding or finding is perverse.

2009 Suppl 1 OLR 1096 Duryodhan Lenka vs Chairman of Board of Director Kalinga Gramya Bank and others

Second show cause is mandatory before major punishment.”

(b) We are of the considered view that the case of appellant fits into the foundational principles of service jurisprudence. We have no quarrel with the broad propositions emerging from the above rulings. However, case of the appellant being bit different and peculiar, the said rulings cannot be readily imported disregarding the variables apparent from the record. It hardly needs to be stated that a case is *an authority for the proposition laid down in a given fact matrix and not for all that, that logically follows from what has been so laid down*, said Lord Halsbury more than a century ago in **Quinn v. Leatham**⁶. Much in this regard is not necessary to deliberate.

In the above circumstances, this appeal being devoid of merits is liable to be dismissed, and accordingly it is, costs having been made easy.

Headnotes prepared by:

Shri Pravakar Ganthia, Editor-in-Chief
ILR Cuttack Series

Result of the case:

WA is dismissed.

— o —

⁶ [1901] UKHL 2

2025 (II) ILR-CUT-394

**GOVERNING BODY, GANGADHAR
MOHAPATRA LAW COLLEGE, PURI & ANR.
V.
MADHUSUDAN LAW UNIVERSITY,
CUTTACK & ORS.**

[W.P.(C) NO. 26270 OF 2024]

17 JUNE 2025

[DIXIT KRISHNA SHRIPAD, J. & MRUGANKA SEKHAR SAHOO, J.]

Issues for Consideration

Permanent affiliation granted by Utkal University – Subsequently, provisional affiliation granted by Madhusudan University – Whether after notification of grant of permanent affiliation to LL.B Course by the Utkal University, upon establishment of new University called ‘Madhusudan Law University’ the affiliation granted by Utkal University ceased to exist with effect from the date of notification establishing Madhusudan Law University.

Headnotes

(A) UNIVERSITY GRANTS COMMISSION ACT, 1956 – Section 12A r/w Regulation 2.1 of the UNIVERSITY GRANTS COMMISSION (AFFILIATION OF COLLEGES BY UNIVERSITIES) REGULATION, 2009 r/w Section 19 (1) of the ODISHA UNIVERSITIES ACT, 1989 r/w provisions of the ORISSA UNIVERSITY FIRST STATUTE, 1990 r/w provisions of the LEGAL EDUCATION RULES, 2008 – Affiliation – Gangadhar Mohapatra Law College, Puri was established in 1981 – On 07.11.1983, the college was granted provisional affiliation by Utkal University for the LL.B course with 320 seats for the Session 1982-83 – By notification dated 19.02.1996, the college was granted permanent affiliation – Madhusudan Law University was notified by the Government by notification dated 07.04.2021 – Vide the impugned letter dated 21.09.2024, the M.S. Law University granted provisional affiliation for the above G.M. Law college with 240 seats for the academic sessions 2022-2023 and 2023-2024 – Whether after notification of grant of permanent affiliation to LL.B Course by the Utkal University, upon whether after notification of grant of ‘... permanent affiliation to LL. B. Course...’ by the Utkal University, upon establishment of new University called ‘Madhusudan Law University’ the affiliation granted by Utkal University ceased to exist with effect from the date of notification establishing Madhusudan Law University.

Held: No – We have not shown any provision that confers such power upon the University that has affiliations of the colleges can declare the ‘permanent

affiliation' granted, to become 'provisional affiliation' without any intervening event having any such legal consequence – The Law University established by notification dated 07.04.2021 cannot outgrow the said notification to become a law unto itself and declare that the permanent affiliation(s) granted by the existing Universities of the State become provisional affiliation(s), which is neither contemplated nor intended in the notification dated 07.04.2021 – The fountain cannot rise above the source instead of flowing in its course and in case of the University it has to traverse a legal course being a creature of statute itself. (Para 9)

(B) WORDS & PHRASES – Affiliation – “Affiliation” together with its grammatical variations, includes, in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of a university. (Para 8)

(C) WORDS & PHRASES – Privileges – Discussed with reference to Odisha Universities Act, 1989. (Para 8)

List of Acts

University Grants Commission Act, 1956; University Grants Commission (Affiliation of Colleges by Universities) Regulation, 2009; Odisha Universities Act, 1989; Orissa Universities First Statute, 1990; Legal Education Rules, 2008.

Keywords

Affiliation; Permanent affiliation; Provisional affiliation; Cessation of affiliation; Recognition of Law Colleges; Privileges.

Case Arising From

Letters dated 21.09.2024 & 05.10.2024 issued by the Opposite Party No. 1- University.

Appearances for Parties

For Petitioners : Mr. Sudarshan Nanda
For Opp. Parties : Mr. Prabhu Prasanna Behera (O.P. Nos. 1 to 4)
Mr. J.K. Khandayatray, ASC (O.P. No.5)

Judgment/Order

Judgment

MRUGANKA SEKHAR SAHOO, J.

By filing the writ petition the petitioner, Governing Body of Gangadhar Mohapatra Law College, Puri (hereinafter called 'Law College' for short) challenges the letter dated 21.09.2024 (Annexure-12 to the writ petition) issued by the opposite

party no.1-University and the subsequent letter issued by it dated 05.10.2024 (Annexure-14 to the writ petition).

2. The undisputed facts and events those have preceded the issuance of the impugned letter dated 21.09.2024 are briefly summarized.

The Law College was established in the year 1981 the Director of Public Instruction (DPI), Department of Higher Education accorded provisional concurrence for opening up of LL.B Course (Bachelor of Law for the Academic Session, 1981-1982). The concurrence granted by the DPI was provisional which was extended from time to time. On 07.11.1983 the college was granted provisional affiliation by Utkal University for the LL.B. Course with 320 seats for the Session 1982-83 subject to fulfilment of the statutory conditions.

Pursuant to application made by the college, the Bar Council of India (BCI) carried inspection and granted approval of affiliation by the BCI. By notification dated 19.02.1996 (Annexure-3), the college was granted 'permanent affiliation' to LL.B. Course conducted by the college with 320 seats from the academic session 1995-96. The said notification of 'permanent affiliation' was intimated to the Government in the Department of Higher Education as well as the BCI. Thereafter, there has been some decisions of the Utkal University qua the college e.g. decision intimated by letter dated 23.06.2004 issued to the College for reduction of number of students to 160 for the Pre-Law classes for the session 2004-2005. The said decision of the University was challenged by filing W.P.(C) No.13527 of 2004 that was disposed of by the order dated 05.01.2006 allowing the college to continue with a sanctioned and affiliated student strength of 240 in PreLaw, Inter-Law and Final-Law classes.

3. The present opposite party no.1, i.e., Madhusudan Law University (hereinafter 'the Law University' for short) came into being, notified by the Government by notification dated 07.04.2021 (Annexure-8) for convenience of reference and contents of the notification in toto are reproduced herein :

"... In supersession of this Department Notification No.11494 dated 04.03.2020 and Notification No.18940 dated 11.06.2020, the State Government do hereby alter the territorial jurisdiction of all the existing Universities of the State and establish a new University called "Madhusudan Law University" at Cuttack by upgrading Madhusudan Law College, Cuttack with effect from the 28th April, 2021. All the existing Government and Private Law Colleges, except the constituent Law Colleges of different Universities of the State, shall cease to be affiliated from their respective University from 28th April, 2021 and shall stand affiliated to the Madhusudan Law University from that date. The said Madhusudan Law University shall have jurisdiction, save as aforesaid, over all Law Colleges of the State.

By order of the Governor
Sd/-

Principal Secretary to Government
Dated:07.04.2021."

[Emphasis Supplied]

4. Purportedly, acting upon the powers conferred by Orissa University First Statute, 1990, guidelines issued by the Bar Council of India regarding recognition of law colleges, guidelines issued by the UGC, the Odisha Universities Act 1989 and the Legal Education Rules, 2008 the opposite party no.1-Law University started issuing several letters/orders to regulate activities of the Law College. As per the petitioners the proverbial *last straw on the camel's back* was the letter dated 21.09.2024, i.e., impugned in the present writ petition.

5. The opening paragraph of the said impugned letter is reproduced herein for convenience of reference and analysis:

“MADHUSUDAN LAW UNIVERSITY, CUTTACK

(State University Established under the Odisha Universities Act, 1989),

Station Road, Cuttack, Odisha-753 003

Letter No: MLU-Affiliation/1990/2024

Date:21.09.2024

The Hon'ble Vice Chancellor has been pleased to grant provisional affiliation in favour of G.M. Law College, Puri with 240 seats for the academic sessions 2022-2023 and 2023-2024 to regularize the affiliation for 3 year LL.B. course and three sections @ 60 each from the academic session 2024-2025 for the above course in anticipation of approval of the Bar Council of India and the Syndicate of the Madhusudan Law University. Further the college has also been granted with 30 seats for LL.M. course for each academic sessions i.e., 2022-2023, 2023-2024 and 2024-2025. After the approval of the Syndicate, regular Affiliation letter will be communicated in due course of time subject to fulfillment of the following conditions:”

In response to the letter dated 21.09.2024 the petitioners-law college filed their reply addressed to the Chairman, Affiliation Committee-opposite party no.3 by letter dated 29.09.2024.

The petitioners are aggrieved by use of the words “... *has been pleased to grant provisional affiliation in favour of G.M. Law College, Puri with 240 seats...*”. The said letter dated 21.09.2024 was followed by the letter dated 05.10.2024 with captioned subject: ‘Return of Demand Draft amounting to Rs.36,000/- along with Return of Matriculate of 3 years LL.B. Course for the admission batch-2024-25’. The said subsequent letter dated 05.10.2024 is also under challenge.

6. The opposite party no.1-University have filed their counter affidavit in response to the writ petition, inter alia, contending that the University is well within its competence under law to issue such letter dated 21.09.2024. The petitioner-Institution is not properly represented as it is represented through the Principal-cum-Secretary of the Governing Body after he has superannuated on attaining the age of superannuation. Therefore, the writ petition cannot be maintained by the law college through the said Principal. Inter alia, it has been further stated that the petitioner-Institution does not comply the guidelines for maintaining the students strength for LL.B. Course. The Orissa Universities First Statute(s), 1990: paras-185, 190, 191, 193, 195, combinedly read, would lead to conclusion that the syndicate of the

University enjoys absolute power in terms of affiliation of the college. After coming into being of the Law University vide notification dated 7th April, 2021 the concept of ‘permanent affiliation’ is no more in existence as after establishment of the Law University all the affiliations have ceased.

7. The learned counsel, Mr. Nanda for the petitioner-Law College, Mr. Behera for the Law University were heard in extenso. In view of the judgment that would be passed the voluminous material brought before this Court in form of pleadings and the additional pleadings is not required to be gone into in further detail, which was also fairly accepted by both the learned counsel for the parties.

8. The word “*affiliation*” has been defined under Section 12A of the University Grants Commission Act, 1956 and *Regulation-2.1* University Grants Commission (Affiliation of Colleges by Universities) Regulation 2009*, (same definition) as hereunder:

“affiliation” together with its grammatical variations, includes, in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of a university.”

Section-19 (1) of the Odisha Universities Act, 1989, refers to the word “Privileges”.

“19. (1) Any two members of the Syndicate or the Director may bring forward a proposal in the Syndicate that a college be deprived, either in whole or part, of its privileges.”

9. In view of the challenge to the issuance of the letter dated 21.09.2024 stating ‘*the Hon’ble Vice Chancellor has been pleased to grant provisional affiliation of G.M. Law College, Puri ...*’. The issue to be adjudicated by this Court boils down to the question: whether after notification of grant of ‘... permanent affiliation to LL. B. Course...’ by the Utkal University, upon establishment of new University called ‘Madhusudan Law University’ the affiliation granted by Utkal University ceased to exist with effect from the date of notification establishing Madhusudan Law University.

10. In our considered opinion the answer can be obtained and ascertained from the notification establishing Madhusudan Law University, i.e., notification dated 07.04.2021 (Annexure-8) which has been reproduced above. The language used in the notification is clear and unambiguous regarding affiliation.

It is stated in the said notification (as indicated above) that all the existing Government and private law colleges ‘...shall cease to be affiliated from their respective universities from 28th April, 2021 and shall stand affiliated to the Madhusudan Law University from that date ...’. [Emphasis Supplied]

11. The notification dated 7th April, 2021 does not contemplate cessation of affiliation from the respective Universities resulting in temporary affiliation with the newly established Law University. The plain grammatical meaning that would

emanate is that the existing private and government law colleges stood affiliated to the Law University from 28th April, 2021.

12. We have not shown any provision that confers such power upon the University that has affiliations of the colleges can declare the ‘permanent affiliation’ granted, to become ‘provisional affiliation’ without any intervening event having any such legal consequence. The Law University established by notification dated 07.04.2021 cannot outgrow the said notification to become a law unto itself and declare that the permanent affiliation(s) granted by the existing Universities of the State become provisional affiliation(s), which is neither contemplated nor intended in the notification dated 07.04.2021. The fountain cannot rise above the source instead of flowing in its course and in case of the University it has to traverse a legal course being a creature of statute itself. On the contrary, the notification given plain grammatical meaning leads to irresistible conclusion that the territorial jurisdiction of the existing Universities has been altered and the existing Government and private law colleges except the constituent law colleges of different Universities stand affiliated to the law University from 28.04.2021.

13. In view of the discussions made above, the letter dated 21.09.2024 (Annexure-12 to the writ petition) issued by the opposite party no.1-University is set aside to the extent it declares the affiliation granted to the petitioner college to be provisional affiliation. No part of the said letter or any other communication made on behalf of opposite party no.1- University shall be interpreted to indicate/mean or have a consequence that the affiliation granted by the Utkal University to the petitioner-Law College by letter dated 19.02.1996 has ceased with effect from 28.04.2021 and metamorphosed to ‘provisional affiliation’ with effect from 28.04.2021 by the Law University.

14. It is further clarified and added by this Court that setting aside of the letter dated 21.09.2024 to the extent indicated above and our observations do not in any manner curtail the power of the Law University to ensure/regulate academic standards of the petitioner-Law College in accordance with law and compliance to be made by the Law College(s). The suzerainty of the Law University over the law college(s) shall remain as such, in accordance with the relevant rules and statute. It is expected that the petitioner-College shall maintain the teaching standards, comply with all the necessities in maintaining such teaching standards.

15. The writ petition is allowed to the extent as indicated above and is disposed of accordingly. In the facts and circumstances of the case, there shall be no order as to costs.

Headnotes prepared by:
Shri Pravakar Ganthia, Editor-in-Chief
ILR-Cuttack Series

Result of the case:
Writ Petition allowed.

2025 (II) ILR-CUT-400

**PRIYANKA NAYAK @ PRADHAN
V.
PRANAYA PRADHAN @ NAYAK**

[MATA NO. 264 OF 2023]

05 MAY 2025

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

Whether making statements against the husband towards his physical infirmity amounts to mental cruelty.

Headnotes

HINDU MARRIAGE ACT, 1955 – Section 13 (1) (i-a) – Mental cruelty – The appellant/ wife passed comments on the physical infirmity of the husband saying him as ‘Kempa’, ‘Nikhathu’ remains un-rebutted as stated by the witness – Whether making statements against the husband towards his physical infirmity amounts to mental cruelty.

Held: Yes – A person is expected to give respect to another person in general and where it comes to relationship of Husband and Wife, it is expected that the Wife should support the Husband despite his physical infirmity, if any – Here it is a case where the Wife made aspersions to Husband towards his physical infirmity and passed comments regarding the same – This definitely in our opinion amounts to mental cruelty leading to draw an inference against the Wife that she treated her Husband with cruelty owing to his physical deformity – Thus we are inclined with the finding of the learned Judge, Family Court, Puri that the Wife has treated her Husband with mental cruelty – On such ground, we are satisfied that the requirement in terms of Section 13(1)(i-a) of the Hindu Marriage Act is attracted to grant the decree of divorce – We thus confirm the impugned judgment granting the decree of divorce between the parties dissolving their marriage. (Para 10)

Citations Reference

V. Bhagat v. D. Bhagat (Mrs), (1994) 1 SCC 337; Samar Ghosh vs. Jaya Ghosh, (2007) 4 SCC 511 – referred to.

List of Acts

Hindu Marriage Act, 1955.

Keywords

Statement against Husband; Physical infirmity; Mental cruelty.

Case Arising From

Judgment dated 10.07.2023 passed by learned Judge, Family Court, Puri in C.P. No.123 of 2019.

Appearances for Parties

For Appellant : Mr. B. Das

For Respondent : Mr. H. Mohapatra

Judgment/Order**Judgment*****B.P. ROUTRAY, J.***

1. Heard Mr. M.B. Das, learned counsel for the Appellant-Wife and Mr. H. Mohapatra, learned counsel for the Respondent-Husband.
2. Present appeal is directed against the impugned judgment dated 10.07.2023 passed by learned Judge, Family Court, Puri in C.P. No.123 of 2019, wherein the decree of divorce has been granted at the behest of the Husband dissolving the marriage between the parties without any grant of permanent alimony
3. The Wife-Appellant has come up in challenging the said judgment dated 10.07.2023 and according to her submissions, the ground of cruelty, based on which, the learned Family Court has granted decree of divorce is not established on record. It is further submitted on behalf of the Wife-Appellant that, it was the Husband, who compelled the Wife to leave the matrimonial companion and till date the Wife is staying separately in her parent's house since 25.03.2018.
4. The admitted facts of the case are that, marriage between the parties solemnized on 1.6.2016 according to Hindu rites and customs. It is alleged on the part of the Husband that, the Wife was always passing comments towards physical infirmity of the Husband, for which unpleasant situations arose between the parties. In the meantime on 15.9.2016, the Wife left the house of the Husband and again came back on 5.1.2017 after negotiation, and then also continued to aspersing the Husband for his physical infirmity which resulted serious dispute between the parties and finally on 25.3.2018 she voluntarily left the matrimonial house. Thereafter she also lodged a criminal case alleging the offences under Section 498-A, I.P.C. and other offences against the Husband and in-law members.
5. Present proceeding was filed by the Husband on 03.04.2019 against the Wife praying to dissolve the marriage. In the said proceeding though two witnesses were examined on behalf of the Husband-Plaintiff, the Wife did not chose to examine any witness and not to adduce any evidence from her side though she cross-examined the Husband and his witnesses. Therefore, what is to be seen is that, in absence of any evidence led from the side of the Wife, whether the evidences brought on record by the Husband would satisfy his grounds of cruelty to grant the decree of divorce ?
6. Learned Judge, Family Court, Puri has framed five issues, amongst which Issue No.(ii) speaks about subjecting the Plaintiff to illtreatment and mental cruelty by the Wife. All such issues including Issue No.(ii) has been answered in favour of the Husband.

7. It is not disputed that the Husband is a physically handicapped person. As borne out from the evidence of the Husband (P.W.1) that, the Wife is passing comments to her Husband saying “Kempa, Nikhatu, etc.” Though the Wife has cross-examined the Husband, but did not suggest anything to rebut such statements made on the part of the Husband and it is also admitted by the Wife that, she has initiated a criminal proceeding against the Husband and other in-law members. P.W.2 in his evidence has corroborated the statements of P.W.1 regarding the aspersions made by the Wife towards his physical infirmity and here also the Wife did not able to rebut such contentions of P.W.2 made during his evidence.

8. Cruelty includes mental cruelty. Time and again, it has been clarified regarding the scope of mental cruelty. The Supreme Court in the case of **V. Bhagat v. D. Bhagat (Mrs)**, (1994) 1 SCC 337 have held as follows:-

“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 been 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 were 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.”

9. In **Samar Ghosh vs. Jaya Ghosh**, (2007) 4 SCC 511, it is clarified as follows:-

98. On proper analysis and scrutiny of the judgments of this Court and other courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of “mental cruelty” within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human behavior is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behavior in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person

depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior 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 considerations 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, discommodore or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behavior 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 behavior 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.”

10. As stated by the witness in the case at hand that the Wife passed comments to the physical infirmity of the Husband saying him as “Kempa, Nikhatu” remains un-rebutted. The Wife making such statements against the Husband towards his physical infirmity definitely is causing mental pain. Such behaviour by the Wife towards the Husband discloses her thought and respect to the Husband. A person is expected to give respect to another person in general and where it comes to relationship of Husband and Wife, it is expected that the Wife should support the Husband despite his physical infirmity, if any. Here it is a case where the Wife made aspersions to Husband towards his physical infirmity and passed comments regarding the same. This definitely in our opinion amounts to mental cruelty leading to draw an inference against the Wife that she treated her Husband with cruelty owing to his physical deformity. Thus we are inclined with the finding of the learned Judge, Family Court, Puri that the Wife has treated her Husband with mental cruelty. On such ground, we are satisfied that the requirement in terms of Section 13(1)(i-a) of the Hindu Marriage Act is attracted to grant the decree of divorce. We thus confirm the impugned judgment granting the decree of divorce between the parties dissolving their marriage.

11. At this stage, with regard to grant of permanent alimony and return of Streedhan properties, as claimed by the Appellant-Wife, are left open to her to be agitated before the learned Judge, Family Court, Puri in terms of Sections 25 & 27 of the Hindu Marriage Act. We say so for the reason that, there is no material produced on record with regard to income of the Husband or the Wife and in absence of any material, we are unable to decide the question of permanent alimony here.

12. With the aforesaid observation and direction, the appeal is disposed of.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Appeal disposed of.

2025 (II) ILR-CUT-405

**CHARAN SINGH HEMBRAM & ORS.
V.
STATE OF ODISHA & ORS.**

[W.P.(C) NO. 37471 OF 2020]

WITH

A. RAMA KRISHNA & ORS. V. STATE OF ODISHA & ORS.

[W.P.(C) NO. 17311 OF 2020]

ARJUN MURMU V. STATE OF ODISHA & ORS.

[W.P.(C) NO. 24191 OF 2020]

SARMILA MURMU V. STATE OF ODISHA & ORS.

[W.P.(C) NO. 24192 OF 2020]

AJIT KUMAR MURMU V. STATE OF ODISHA & ORS.

[W.P.(C) NO. 24193 OF 2020]

SANJAY KUMAR SOREN @ SANJAY SOREN V. STATE OF ODISHA & ORS.

[W.P.(C) NO. 24194 OF 2020]

LASABAN MALLICK V. STATE OF ODISHA & ORS.

[W.P.(C) NO. 26739 OF 2020]

ABHAYA KUMAR PADHI & ORS. V. STATE OF ODISHA & ORS.

[W.P.(C) NO. 29089 OF 2020]

SATCHIDANANDA SETHI & ORS. V. STATE OF ODISHA & ORS.

[W.P.(C) NO. 36444 OF 2020]

NISHIKANT TETE & ORS. V. STATE OF ODISHA & ORS.

[W.P.(C) NO. 36496 OF 2020]

03 JUNE 2025

[B.P. ROUTRAY, J.]

Issues for Consideration

1. Which select list is to be treated first in order, when the advertisements are of the year 2012-13 & 2015-16 meant for direct recruitment.
2. Whether the cadre Rule which came into force after the appointment of a civil servant/employee can be made applicable to determine their seniority retrospectively.
3. How the *inter-se* seniority between the direct recruits and promotees should be determined?
4. Whether the “year” is to be meant “the calendar year” when the recruitment process started or the year in which the appointment was made.

Headnotes

(A) SERVICE JURISPRUDENCE – *Inter-se* seniority between two batches of direct recruits in the ministerial cadre of Assistant Section Officer in the Odisha Secretariat Service – Advertisement No. 6 of 2015-16 was meant for recruitment of ST candidates only – Advertisement No.8 of 2012-13 was meant for all categories of candidates i.e. both unreserved and reserved categories – Two sets of select lists prevailing for two sets of direct recruits – Which select list is to be treated first in order to determine seniority when the advertisements are of the year 2012-13 & 2015-16 meant for the direct recruitment.

Held: The answer would be, in my humble opinion, the select list first came into existence – In other words, the select list which was acted first has to be reckoned first in order and in the instant case it is the select list dated 22.12.2015 of the OPSC pursuant to which the appointment orders dated 27.1.2016 was issued first – The select list pursuant to the Advertisement No.08 of 2012-13 is dated 10.9.2016 based on which the appointment orders dated 5.10.2016 was issued. (Para 28)

(B) ODISHA SECRETARIAT SERVICE (METHOD OF RECRUITMENT AND CONDITIONS OF SERVICE) RULES, 2016 – Rule 17 r/w Rule 17 of ODISHA SECRETARIAT SERVICE (METHOD OF RECRUITMENT AND CONDITIONS OF SERVICE OF ASSISTANT SECTION OFFICERS) RULES, 2010 – Applicability of – In the instant case, 2010 came into force w.e.f. 07.04.2010 and continue to govern the field till 10.01.2017 – 2016 Rules was brought in supersession of 2010 Rules w.e.f. 11.01.2017 – All the parties were appointed prior to coming into force of the 2016 Rules – Whether the cadre Rule which came into force after the appointment of a civil servant/employee can be made applicable to determine their service seniority retrospectively.

Held: No – Seniority in service has to be reckoned from the date of first appointment – An employee gains his seniority by the length of service he renders – Therefore, the Rule prevailing on the date of initial appointment of an employee is relevant to count his seniority in service and not that the Rule that comes in force from a prospective date than the initial appointment date because by gaining every date in service an employee stocks each date of seniority in his favour to reckon for – Undoubtedly in the present cases, every party has already gained service seniority by the date of coming into force of 2016 Rules on 11.1.2017 – So the action of State-Opposite Parties to count the service seniority of the parties as on 1.1.2018 in terms of the provisions of 2016 Rules that was in force on 1.1.2018, by ignoring the provisions of 2010 Rules which was prevalent on the date of initial

appointment of each party, is completely on faulty side – So in my humble opinion, the relevant rules applicable to determine service seniority of each ASO appointed prior to 11.1.2017 and after 7.4.2010 has to be reckoned in terms of the provisions contained in 2010 Rules. (Para 26)

(C) ODISHA SECRETARIAT SERVICE (METHOD OF RECRUITMENT AND CONDITIONS OF SERVICE OF ASSISTANT SECTION OFFICERS) RULES, 2010 r/w ODISHA SECRETARIAT SERVICE (METHOD OF RECRUITMENT AND CONDITIONS OF SERVICE) RULES, 2016 – Rule 5(b)(c) and Rule 17(2) – How the *inter-se* seniority between the direct recruits and promotees should be determined?

Held: The petitioners who were appointed by promotion/induction in terms of clause (b) (c) of rule-5 shall be treated *en-bloc* senior to those appointed by direct recruitment. (Para 27)

(D) INTERPRETATION OF STATUTES – “Appointment to service in a particular year” – Whether the “year” is to be meant “the calendar year” when recruitment process started or the year in which the appointment was made.

Held: Here the relevant words are ‘appointed to service in a particular year’ and “year” means a calendar year as per section 2(1) (j). (Para 27)

The submissions of private Opposite Parties to stretch the meaning of the word ‘year’ as a ‘recruitment year’ other than the meaning defined in Section 2(1)(j) of the Rules is not found acceptable – So the seniority of the persons appointed to the cadre earlier on 27.1.2016 and 18.5.2016 are treated to be senior to the persons appointed subsequently in the same year. (Para 29)

(E) Service Jurisprudence – Difference between “appointment” and “recruitment” – Explained with reference to case law. (Para 27)

Citations Reference

K. Meghachandra Singh and others vs. Ningam Siro and others, **2020 (5) SCC 689**; Mervyn Coutindo and others vs. Collector of Customs, Bombay and others, **1966 SCC OnLine SC 13**; Direct Recruit Class II Engineering Officers’ Association vs. State of Maharashtra and others, **(1990) 2 SCC 715**; Jagadish Ch. Patnaik and others vs. State of Orissa and others, **(1998) 4 SCC 456**; M. Subba Reddy and others vs. A.P. State Road Transport Corporation and others, **(2004) 6 SCC 729**; Pawan Pratap Singh and others vs. Reevan Singh and others, **(2011) 3 SCC 267**; Union of India and others vs. N.R. Parmar and others, **(2012) 13 SCC 340**; P. Sudhakar Rao and others vs. U. Govinda Rao and others, **(2013) 8 SCC 693**; Bhupendra Nath Hazarika and others vs. State of Assam and others, **(2013) 2 SCC 516**;

Ganga Vishan Gujrati and others vs. State of Rajasthan and others, **(2019) 16 SCC 28**; State of Bihar and others vs. Arbind Jee, **2021 SCC OnLine SC 821**; Ajay Kumar Shukla vs. Arvind Rai, **(2022) 12 SCC 579**; Hariharan and others vs. Harsh Vardhan Singh Rao and others, **(2022) SCC OnLine SC 1717**; Amit Singh vs. Ravindra Nath Pandey and others, **(2022) 20 SCC 559**; Bihar State Electricity Board and others vs. Dharamdeo Das, **AIR 2024 SC 4609**; Prafulla Kumar Swain vs. Prakash Chandra Misra and others, **(1993) Suppl 3 SCC 181**; K. Narayanan and others vs. State of Karnataka and others, **1994 Supp (1) SCC 44 – referred to.**

List of Acts

Odisha Secretariat Service (Method of Recruitment and Conditions of Service) Rules, 2016; Odisha Secretariat Service (Method of Recruitment and Conditions of Service of Assistant Section Officers) Rules, 2010.

Keywords

Advertisement; Select List; *Inter-se* seniority in the ministerial cadre of Assistant Section Officer; Direct recruits; Promotee; Appointment; Recruitment year; Date of appointment; Year of recruitment; Initiation of recruitment; Determination of seniority; Retrospective seniority; Reserved category; Un-reserved category; Cadre; Calendar year; Gradation list.

Case Arising From

Final Gradation List of ASOs published on 11.06.2020 vide Letter No. 20286/OSS of Home Department.

Appearances for Parties

For Petitioners : Ms. Pami Rath, Sr. Adv. (W.P.(C) No.37471 of 2020)
 Mr. S.D. Das, Sr. Adv. (W.P.(C) No.17311 of 2020)
 Mr. S. Roy (W.P.(C) Nos.24191, 24192, 24193, 24194 & 26739 of 2020)
 Mr. B.B. Mohanty (W.P.(C) Nos.29089 & 36444 of 2020)
 Mr. G. Mishra, Sr. Adv. (W.P.(C) No.36496 of 2020)

For Opp. Parties : Mr. G. Tripathy, A.G.A. Mr. S.K. Das for private Opp. Parties (W.P.(C) No. 37471 of 2020)
 Mr. G. Tripathy, A.G.A., Mr. B. Routray, Sr. Adv. for intervenor (W.P.(C) No.17311 of 2020)
 Mr. G. Tripathy, A.G.A., Mr. B. Routray, Sr. Adv.,
 Mr. J.K. Rath, Sr. Adv. (W.P.(C) No.24191 of 2020)
 Mr. G. Tripathy, A.G.A., Mr. B. Routray, Sr. Adv. (W.P.(C) Nos. 24192, 24193 & 24194 of 2020)
 Mr. G. Tripathy, A.G.A., Mr. S.K. Das for private Opp. Parties (W.P.(C) No.26739 & 29089 of 2020)
 Mr. G. Tripathy, A.G.A (W.P.(C) No.36444 of 2020)

Mr. G. Tripathy, A.G.A., Mr. S.B. Jena for private Opp.
Parties (W.P.(C) No.36496 of 2020)

Judgment/Order

Judgment

B.P. ROUTRAY, J.

1. All the above 10 (ten) writ petitions are involving the same issue of *inter-se* seniority in the ministerial cadre of Assistant Section Officer (in short, “ASO”) in Odisha Secretariat Service. These writ petitions can be broadly divided into two categories. First category consisting of 7 (seven) writ petitions, i.e. W.P.(C) Nos.24191, 24192, 24193, 24194, 26739 and 36496 of 2020 involve the dispute of *inter-se* seniority among two batch of direct recruits, and Second category comprising 3(three) writ petitions, i.e. W.P.(C) Nos.17311, 29089 and 36444 of 2020 involve dispute of *inter-se* seniority between the promotees and inductee appointees versus direct recruits.

2. To deal with the first category, the facts described succinctly are that, two advertisements to fill up the posts of ASO were issued in the year 2012-13 and the year 2015-16. Advertisement No.08 dated 6.10.2012 was issued by the Odisha Public Service Commission (in short, ‘OPSC’) inviting applications to fill up 811 vacancies for the post of ASO through direct recruitment. Since some dispute arose relating to number of reserved posts leading to filing of judicial proceedings, a corrigendum was issued on 21.8.2014 modifying category-wise vacancies and extending the last date of application with stipulation that the candidates, who had already applied, are not required to reapply. Subsequently on 14.05.2015, Advertisement No.06 of 2015-16 was issued by the OPSC to conduct a recruitment drive for ST category candidates for 140 vacancies in total and all the posts were reserved for Scheduled Tribe candidates only.

The recruitment process pursuant to Advertisement No.08, dated 6.10.2012 could not be completed due to some unavoidable reasons including filing of judicial proceedings and in the meantime, the recruitment process in respect of Advertisement No.06, dated 14.5.2014 was completed with recommendation of 139 candidates by the OPSC on 22.12.2015. Amongst said recommendees, 136 candidates were issued with appointment order vide Home Department Order No.3148/OSS dated 27.1.2016. Subsequently on 10.9.2016, the OPSC sent the list of 810 select candidates in respect of the vacancies in Advertisement No.08 of 2012-13. Amongst those recommendees, 787 candidates were issued with appointment order on 5.10.2016 vide Home Department Order No.35258/OSS.

3. It is to be mentioned here that prior to 30.9.2008 “Junior Assistant” was the entry level post in the ministerial service cadre in Odisha State Secretariat in terms of the Odisha Secretariat Service (Method of Recruitment and Conditions of Service of Junior Assistants of Departments of Odisha Secretariat) Rules, 1951 (in short,

‘1951 Rules’). On 30.9.2008, the positions of “Junior Assistant” and “Senior Assistant” in Odisha Secretariat Service was merged into one base level cadre and re-designated as Assistant Section Officer (ASO). On 6.4.2010, the Odisha Secretariat Service (Method of Recruitment and Conditions of Service of Assistant Section Officers) Rules, 2010 (in short, “2010 Rules”) came into force repealing the earlier 1951 Rules. Again, the Odisha Secretariat Service (Method of Recruitment and Conditions of Service) Rules, 2016 (in short, “2016 Rules”) came into force on 11.1.2017 superseding 2010 Rules.

On 12.4.2018, the tentative Gradation List of ASOs as on 1.1.2018 was published inviting objections and consequent thereto, the final Gradation List of ASOs as on 1.1.2018 was published on 11.6.2020 vide Letter No.20286/OSS of Home Department. Said final Gradation List dated 11.6.2020 is the subject matter of challenge in all the writ petitions with regard to placement of different candidates *inter-se*.

4. The Petitioners in 7(seven) writ petitions (hereinabove stated as first category) are the candidates appointed on 27.1.2016 (on 18.5.2016 for one more candidate) selected pursuant to Advertisement No.06, dated 14.5.2016. It is their submission that, they being appointed prior to those direct recruits of ASOs selected pursuant to Advertisement No.08 of 2012-13, they should be placed above in the Gradation List in terms of their seniority in service. Their further case is that, their appointment being made under 2010 Rules, their seniority in service must be counted in terms of the provisions of 2010 Rules. Therefore, the placement of those direct recruits selected pursuant to Advertisement No.08 of 2012-13 and appointed on 5.10.2016 (on 9.11.2016, 13.12.2016 and 26.12.2016 in respect of 12 more candidates) above the candidates appointed earlier is completely illegal and against the prevalent provisions of 2010 Rules. Similar is the case of the promotes/inductees in other three writ petitions (hereinabove stated as second category) that, they being appointed much prior to the appointment of those direct recruits selected pursuant to the Advertisement No.08 of 2012-13 and 06 of 2015-16, they should be placed in higher position than those candidates.

5. The facts being complicated in nature are sorted chronologically below for better appreciation.

- On 30.9.2008 the erstwhile posts of Junior Assistant and Senior Assistant in Odisha Secretariat Service were merged into one base level cadre and re-designated as “ASO”.
- The Odisha Secretariat Service (Method of Recruitment and Conditions of Service of Assistant Section Officers) Rules, 2010 came into force on 07.04.2010 repealing earlier 1951 Rules.
- Requisitions for regular recruitment to 811 vacant posts of ASO was sent by the Home Department vide Letter No.41522/CC dated 26.9.2011 and Letter No.42011/CC dated 30.9.2011 to OPSC.

- The OPSC issued Advertisement No.08 of 2012-13 on 6.10.2012 inviting applications for direct recruitment to 811 vacant posts of ASOs.
- The Odisha Administrative Tribunal (OAT) issued a direction on 18.10.2012 in OA No.1417/2012 (Amar Chhatoi vs. State) not to exceed reserved category vacancies more than 50% in respect of Advertisement No.08 of 2012-13.
- The Home Department vide Letter No.13883/CC dated 6.4.2013 communicated revised category-wise vacancy of posts in respect of Advertisement No.08 of 2012-13. Further in another Letter No.13884/CC dated 6.4.2013 (on the same date) requested the OPSC to conduct another recruitment drive for Scheduled Tribe category candidates.
- The OAT in order dated 12.12.2013 while disposing of OA No.1417/2012 (Amar Chhatoi vs. State), quashed Notification dated 7.2.2009 of Odisha Government regarding the Odisha Reservation of Posts and Services Act, 2008 and directed the State and OPSC to modify Advertisement No.08 of 2012-13 to ensure total reservation for ST, SC and SEBC categories not exceeding 50% in total.
- The Government of Odisha issued Resolution bearing No.17025 on 24.5.2014 mentioning the reservation of posts and services in favour of SEBC to the extent of 11.25%.
- Pursuant to the request of Government in Home Department, the OPSC issued a corrigendum on 21.8.2014 modifying the category-wise vacancy for the posts of ASO in respect of Advertisement No.08 of 2012-13 while keeping all other conditions unaltered, but extending the last date of application with stipulation that the candidates already applied need not re-apply.
- The OPSC issued Advertisement No.06 of 2015-16 on 14.5.2015 to conduct recruitment drive for ST category of candidates only against 140 vacancies of ASO posts in total.
- The OPSC recommended the names of 139 ST candidates on 22.12.2015 selected pursuant to Advertisement No.06 of 2015-16.
- The Home Department issued appointment order in respect of 136 ST candidates on 27.1.2016 and in respect of another ST candidate subsequently.
- The OPSC recommended the names of 810 candidates on 10.9.2016 in respect of Advertisement No.08 of 2012-13.
- The State Government in Home Department issued appointment orders in respect of 787 candidates on 5.10.2015 selected pursuant to Advertisement No.08 of 2012-13 and further, issued three other appointment orders dated 9.11.2016, 13.12.2016 and 26.12.2016 in respect of one candidate, 10 candidates and one candidate respectively selected pursuant to the Advertisement No.08 of 2012-13.
- The Odisha Secretariat Service (Method of Recruitment and Conditions of Service) Rules, 2016 came into force on 11.1.2017 superseding the Odisha Secretariat Service (Method of Recruitment and Conditions of Service of Assistant Section Officers) Rules, 2010 saving in respect of things done or omitted to be done before such supersession.
- The tentative Gradation List of ASOs as on 1.1.2018 was published on 12.4.2018 inviting objections.

➤ The final Gradation List of ASOs as on 1.1.2018 was published on 11.6.2020.

6. In the conspectus of facts narrated above, the dispute relating *inter se* seniority in the cadre of ASO arose. Let us see first the provisions of 2010 Rules and 2017 Rules governing *inter-se* seniority among the employees in the cadre of ASO. The relevant provisions of both 2010 Rules and 2016 Rules are re-produced below.

2010 Rules

The 6th April 2010

No.15678-CC-G-03/10/CC.—In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Orissa is pleased to make the following rules regulating the method of recruitment and conditions of service of the persons appointed to the cadre of Assistant Section Officer in the Departments of Government, namely : --

PART – I PRELIMINARY

1. Short title and commencement

(1) These rules may be called the Orissa Secretariat Service (Method of Recruitment and Conditions of Service of Assistant Section Officers) Rules, 2010.

(2) They shall come into force on the date of their publication in the Orissa Gazettee.

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3. Constitution of Service

The service shall consist of the cadre of Assistant Section Officers in the Departments of Government.

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PART – II METHOD OF RECRUITMENT

5. Methods of recruitment

Subject to other provisions made in these rules recruitment to the cadre shall be made by following methods, namely :--

(a) by means of competitive examination to be held once in a year by the commission.

(b) by induction from among Senior Grade Typists, Senior Grade Diarists, Recorders and Senior Data Entry Operators of the Departments of Government by way of Promotion/Selection and

(c) by induction from among Group 'D' employees working in Departments of Government by way of Limited Departmental Examination.

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PART-IV PROMOTION

12. Promotion of Group 'C' employees

10% of vacancies arising in a year subject to a maximum of 10 posts in the cadre of Assistant Section Officer in the Departments of Government shall be filled up by

promotion/selection of Senior Grade Typist, Senior Grade Diarist, Recorders and Senior Data Entry Operators of the Departments of Government, provided they have rendered at least 10 years of continuous service inclusive of at least 3 years service in the respective rank and possess Bachelor's Degree in any discipline with adequate knowledge in Computer Application.

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PART-V

LIMITED DEPARTMENT EXAMINATION

15. *Limited Departmental Examination*

(1) 5% of the vacancies arising in a year subject to a maximum of five posts in the cadre of Assistant Section Officer in the Departments of Government in a particular year shall be filled up from among the Group 'D' employees working in different Departments of Government by way of Limited Departmental Examination.

(2) No Group 'D' employee shall be eligible for consideration for selection unless he has given willingness to that effect in writing and has put in at least 10 (ten) years of continuous service, possessed a Bachelor Degree in any discipline and has adequate knowledge in computer application.

(3) A Limited Departmental examination shall be conducted on the subjects specified in the Schedule by the committee constituted under rule 13.

(4) The minimum qualifying marks in each subject shall be 33%.

(5) The committee shall prepare a common list of successful candidates equal to the number of vacancies in order to merit.

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17. *Inter-se seniority*

(1) The *inter-se* seniority of the officers appointed to the service in a particular year shall be in the order in which their names appear in the select list.

(2) Those appointed by promotion/selection under clause(b) of rule-5 shall *en-bloc* be senior to those appointed by limited departmental examination under clause (c) of rule-5, who shall in turn *en-bloc* be senior to those appointed by direct recruitment under clause (a) of rule-5.

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19. *Other conditions of service*

The conditions of service in regard to matters not covered by these rules shall be the same as are or as may from time to time be prescribed by the Government.

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21. *Repeal and Savings*

(1) The Odisha Ministerial Service (Method of Recruitment and Conditions of Service of Junior Assistants in the Offices of Departments of Secretariat) Rules, 1951, regulations, instructions or orders in force immediately before the commencement of these rules in respect of matters relating to the service and covered by these rules are hereby repealed:

Provided that any order or appointment made, action taken or things done under the rules, regulations, instructions or orders so repealed shall be deemed to have been made, taken or done under these rules.

2016 Rules

The 9th January, 2017

No.1009-HOME-OSS-RULES-0001/2016/HD.—In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and in supersession of the Odisha Secretariat Service (Method of Recruitment and Conditions of Service of Assistant Section Officers) Rules, 2010, the Odisha Secretariat Service (Junior) Rules, 1981, the Odisha Secretariat Service (Group-B) Rules, 1986 and the Odisha Secretariat Service Rules, 1980 except as respect of things done or omitted to be done before such supersession, the Governor of Odisha hereby makes the following rules regulating the method of recruitment and conditions of service of the persons appointed to the Odisha Secretariat Service, namely : --

PART – I GENERAL

1. *Short title and commencement*

(1) These rules may be called the Odisha Secretariat Service (Method of Recruitment and Conditions of Service) Rules, 2016.

(2) They shall come into force on the date of their publication in the Odisha Gazettee.

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3. ***Constitution of the Service***:-The Service shall consist of the following posts, namely:--

- (a) Assistant Section Officer, Group-B;
- (b) Section Officer, Group-B;
- (c) Desk Officer, Group-B;
- (d) Under Secretary, Group-A (Junior Branch);
- (e) Deputy Secretary, Group-A (Senior Branch);
- (f) Joint Secretary (Supertime Scale) and
- (g) Additional Secretary (Superior Administrative Grade).

PART – II METHOD OF RECRUITMENT

4. ***Method of recruitment***:-Subject to other provisions made in these rules, recruitment to different grades in the service shall be made by the following methods, namely:-

- (a) in respect of the post of Assistant Section Officer in Group-B as specified in clause(a) of rule 3 –
 - (i) by means of competitive examination to be held at least once in a year by the Commission in accordance with rule 6;
 - (ii) by selection from among the Senior Grade Typists, Senior Grade Diarists, Recorders and Senior Data Entry Operators of the Departments of Government and
- (b) in respect of the other posts by way of promotion in accordance with these rules.

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PART-IV PROMOTION

11. **Criteria for Selection-**(1) 10% of vacancies arising in a year subject to a maximum of 10 posts of Assistant Section Officer in the Departments of Government shall be filled up by selection of eligible and willing Senior Grade Typist, Senior Grade Diarist, Recorders and Senior Data Entry Operators of the Departments of Government mentioned under clause (a)(ii) of rule 4, provided they have rendered at least 10 years of continuous service inclusive of at least 3 years service in the respective rank, are not above 45 years of age and possess Bachelor's Degree in any discipline with adequate knowledge in Computer Application as specified in the schedule.

(2) The willing candidates shall undergo a test in Computer Application as per the syllabus specified in the Schedule.

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PART-V OTHER CONDITIONS OF SERVICE

17. Inter-se Seniority:-

(1) The *inter-se* seniority of the Assistant Section Officers of the service in respect of a particular recruitment year shall be in the following manner, namely:-

(i) the promote officers shall be ranked *inter-se* in the order in which their names appear in the select list.

(ii) the direct Recruit officers shall be ranked *inter-se* in the order in which their names appear in the merit list prepared by the Commission.

(iii) the officers appointed by selection under sub-clause(ii) of clause (a) of rule-4 shall *en-bloc* be senior to those appointed by direct recruitment under sub-clause (i) of clause (a) of rule-4.

(2) The *inter-se* seniority of the officers in grades other than the Assistant Section Officer in the service shall be in the order in which their names appear in the approved select list formed under rule 16.

18. **Appointment to the Posts in the Service:-**(1) Appointment to the posts in the service by direct recruitment shall be made in the order in which the names of the persons appear in the merit list furnished by the Commission.

(2) Appointment to the posts in the service by promotion shall be made in accordance with the rules framed and procedure outlined by the Government from time to time.

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21. **Other Conditions of Service:-** The conditions of service in regard to matters not covered by these rules shall be the same as are or as may from time to time be prescribed by the Government.”

7. It is the contention of Petitioners, appointed pursuant to the selection in respect of Advertisement No.06 of 2015-16, that the Rules prevailing, i.e. 2010 Rules, on the date of their appointment has to be counted for determining their

seniority in service. They further rely on the principles propounded with regard to inter-se seniority in the case of **K. Meghachandra Singh and others vs. Ningam Siro and others, 2020 (5) SCC 689**. Similar contentions are also advanced by the promotee-Petitioners to place their seniority above the direct recruits in the Gradation List. Conversely, it is submitted on behalf of the direct recruits selected pursuant to the Advertisement No.08 of 2012-13 that, the provisions in 2010 Rules as well as 2017 Rules speak in their favour to determine their seniority above the promotes and direct recruits selected pursuant to Advertisement No.06 of 2015-16.

8. Before delving into the factual aspects vis-à-vis the rival contentions of the parties, it is required to see the principles propounded in different judgements of Apex court governing *inter-se* seniority among the employees in the same cadre.

9. In **Mervyn Coutindo and others vs. Collector of Customs, Bombay and others, 1966 SCC OnLine SC 13**, it is held by the Supreme Court as follows:-

“3. We shall first consider the question of Appraisers. As far back as 1936, an order was passed by the Board which laid down that recruitment to the Customs Appraisers' Service would be from two sources i.e. 50 per cent by promotion, 25 per cent directly from experts and 25 per cent by means of a competitive examination or selection by the Public Service Commission. It was also said in the said order that those percentages would be the maximum and the Collectors of Customs would not be bound to recruit up to the maximum particularly in the case of recruitment by promotion. In actual practice however this order has been acted upon as if it provides 50 per cent for promotees and 50 per cent for direct recruits, whether they are experts or come by competitive examination or selection by the Public Service Commission. In 1940, the Government of India issued a circular for the determination of relative seniority of candidates appointed by direct recruitment and by promotion. In that circular it was stated that “where in a department two permanent or quasi permanent vacancies occur, even simultaneously, and the first vacancy is in accordance with the rotation meant for a direct recruit, the direct recruit will rank in seniority above the promotee even though he joined his post after the promotee had been promoted and confirmed”. Reliance has been placed on behalf of the Union on this circular in the matter of fixation of seniority between direct recruits and promotees in a cadre in which rotational system prevails. The petitioners however rely in reply on a circular issued in June 1949. That circular dealt with the seniority of displaced government servants who had been absorbed temporarily in service under the Central Government. The occasion for that circular was the division of India, and the creation of Pakistan resulting in displacement of a large number of public servants from the area which went to Pakistan. That circular provided for a change in the system due to displaced government servants having in most cases lost all their property and having to migrate in difficult circumstances. It was therefore thought fit to give some weightage in the matter of seniority to such persons on compassionate grounds. It was therefore decided that the seniority of persons appointed on permanent or quasi permanent basis before January 1, 1944 should not be disturbed, but thereafter displaced persons should be given consideration and their seniority counted on the basis of length of service in the particular grade as well as service in an equivalent grade. “Service in an equivalent grade” was defined as service on a rate of pay higher

than the minimum of the time scale of the grade concerned. The principle of this circular was also applied to ex-government servants of Burma appointed under the Central Government and employees of the former Part B States taken over by the Centre as a result of federal financial integration. Naturally as this change could not be applied only to displaced persons etc. it was applied to the existing government servants of the Government of India also from January 1, 1944. But there is nothing in the circular to show that the seniority of the existing government servants inter se was to be disturbed on the basis of this circular. The real purpose of this circular appears to be to fix seniority for displaced persons etc. in accordance with it and for that purpose it applied the same principle to the existing central government servants from January 1, 1944.

4. It appears that by 1959, the circular of 1949 for absorption of displaced government servants etc., had worked itself out, therefore, on December 12, 1959, the Government of India issued another circular containing general principles for determining seniority of various categories of persons employed in central services. By this circular, the circular of 1949 and certain other circulars issued to deal with special types of recruitment like war service candidates were cancelled, and thereafter seniority was to be determined by the circular of 1959, which states that instructions contained in the said circulars had achieved their object and there was no longer any reason to apply those instructions in preference to the normal principles for determining seniority in future. For the future certain general principles were laid down for fixing the seniority in the circular of 1959. These principles were not to apply retrospectively but were given effect to from the date of their issue, subject to certain reservations with which we are not concerned.

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7. This brings us back to the circular of 1959, and the main question in that connection is the meaning to be assigned to the words “seniority determined accordingly”, in the explanation to principle 6 relating to relative seniority of direct recruits and promotees. As we read these words, their plain meaning is that seniority as between direct recruits and promotees should be determined in accordance with the roster, which has also been specified, namely, one promotee followed by one direct recruit and so on. Where therefore recruitment to a cadre is from two sources, namely, direct recruits and promotees and rotational system is in force, seniority has to be fixed as provided in the explanation by alternately fixing a promotee and a direct recruit in the seniority list. We do not see any violation of the principle of equality of opportunity enshrined in Article 16(1) by following the rotational system of fixing seniority in a cadre half of which consists of direct recruits and the other half of promotees, and the rotational system by itself working in this way cannot be said to deny equality of opportunity in government service. The anomalies which have been referred to in the petition arise not on account of there being anything opposed to equality of opportunity in government service by the use of the rotational system; they arise out of the fortuitous circumstance that in this particular service of Appraisers, for one reason or another, direct recruitment has fallen short of the quota fixed for it. It is merely because of this fortuitous circumstance that anomalies to which reference has been made in the petition have arisen. There is no doubt that if direct recruitment had kept pace with the quota fixed therefor there would have been no anomalies in fixing the seniority list. The question therefore narrows down to this : Can it be said that

there is denial of equality of opportunity which arises out of this fortuitous circumstance and which is not a vice inherent in the rotational system? We are not prepared to say that the rotational system of fixing seniority itself offends equality of opportunity in government service. Any anomalies which may have resulted on account of insufficient recruitment of direct recruits in the past cannot in our opinion be a ground for striking down the rotational system, which, as we have said, does not itself amount to denial of equality of opportunity in the matter of employment in government service. It is regrettable that some anomalies have appeared because of insufficient recruitment of direct recruits in the past in this particular service. But that in our opinion can be no reason for striking down the seniority list prepared in 1963 which is undoubtedly in strict accordance with the rotational system based on the fixed quotas for recruitment of direct recruits and promotees. The order of the Board of 1963 on the basis of which the impugned seniority list of Appraisers has been prepared clearly lays down that “the principle of determination of seniority of the direct recruits and the promotees inter se in the prescribed ratio of 1 : 1 should be worked out”. This order is in accordance with the circular of 1959 and as we have said already, there is no inherent vice in the principle of fixing seniority by rotation in a case where a service is composed in fixed proportion of direct recruits and promotees. Nor do we think that this system is on a par with the carry-forward Rule which was struck down by this Court in *T. Devadasan v. Union of India*¹ and on which strong reliance is placed on behalf of the petitioners. In the case of the carry forward Rule certain quota is fixed annually for a certain class of persons and it is carried forward from year to year. This is very different from a case where a service is divided into two parts and there are two sources of recruitment, one of promotion and the other by direct recruitment. In such a case, the whole cadre of a particular service is divided into two parts and there is no question of carrying anything forward from year to year in the matter of annual intake. The basis on which the carry-forward Rule was struck down by this Court does not therefore apply to a case where the whole cadre of a service is divided in certain fixed proportions between promotees and direct recruits. The petitioners therefore can get no assistance from *Devdasan’s* case. The petition must therefore fail so far as seniority of Appraisers is concerned.

8. This brings us to the question of Principal Appraisers. We are of opinion that the petitioners have a legitimate grievance in this respect. The source of recruitment of Principal Appraisers is one, namely, from the grade of Appraisers. There is therefore no question of any quota being reserved from two sources in their cases. The rotational system cannot therefore apply when there is only one source of recruitment and not two sources of recruitment. In a case therefore where there is only one source of recruitment, the normal Rule will apply, namely, that a person promoted to a higher grade gets his seniority in that grade according to the date of promotion subject always to his being found fit and being confirmed in the higher grade after the period of probation is over. In such a case it is continuous appointment in the higher grade which determines seniority for the source of recruitment is one. There is no question in such a case of reflecting in the higher grade the seniority of the grade from which promotion is made to the higher grade. Insofar therefore as the respondent is doing what it calls restoration of seniority of direct recruits in Appraisers' grade when they are promoted to the Principal Appraisers' grade, it is clearly denying equality of opportunity to Appraisers which is the only source of recruitment to the Principal

Appraisers' grade. There is only one source from which the Principal Appraisers are drawn, namely, Appraisers, the promotion being by selection and five years' experience as Appraiser is the minimum qualification. Subject to the above all Appraisers selected for the post of Principal Appraisers must be treated equally. That means they will rank in seniority from the date of their continuous acting in the Principal Appraisers' grade subject of course to the right of the Government to revert any of them who have not been found fit during the period of probation. But if they are found fit after the period of probation they rank in seniority from the date they have acted continuously as Principal Appraisers whether they are promotees or direct recruits. The present method by which the respondent puts a direct recruit from the grade of Appraiser, though he is promoted later, above a promotee who is promoted to the grade of Principal Appraiser on an earlier date clearly denies equality of opportunity where the grade of Principal Appraiser has only one source of recruitment, namely, from the grade of Appraisers. In such a case the seniority in the grade of Principal Appraisers must be determined according to the date of continuous appointment in that grade irrespective of whether the person promoted to that grade from the Appraisers' grade is a direct recruit or a promotee. This will as we have already said be subject to the Government's right to revert any one promoted as a Principal Appraiser if he is not found fit for the post during the period of probation. The petition therefore will have to be allowed with respect to the method by which seniority is fixed in the grade of Principal Appraisers. That method denies equality of opportunity of employment to the Appraisers who are the only source of recruitment to the grade of Principal Appraisers. What the impugned method seeks to do is to introduce a kind of reservation in respect of the two categories of Appraisers from which the promotions are made, and that cannot be done when the source of promotion is one."

10. In *Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others*, (1990) 2 SCC 715, it is held as follows:-

"47. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority."

11. In *Jagdish Ch. Patnaik and others vs. State of Orissa and others*, (1998) 4 SCC 456, it is held as follows:-

"2.This appeal is directed against the order dated 25-10-1994 of the Orissa Administrative Tribunal in Miscellaneous Petition No. 3229 of 1992, arising out of Original Application No. 73 of 1989. The appellants are graduates in civil engineering and had been recruited as Assistant Engineers in the Irrigation Wing in the Irrigation and Power Department in the State of Orissa after being duly selected by Orissa Public Service Commission in accordance with Orissa Service of Engineers Rule, 1941 (hereinafter referred to as "the Rules"). The respondents are promotees to the post of Assistant Engineers from amongst the Junior Engineers and Sub-Assistant

Engineers. OA No. 78 of 1979 had been filed by the direct recruited Assistant Engineers claiming inter alia that the appointments of such direct recruits having been made against vacancies of the year 1978 they should be treated as appointees of the year 1978 and consequently their seniority should be determined on that basis under the promotee Assistant Engineers of that year notwithstanding the fact that they were factually appointed as Assistant Engineers in the year 1980. The Tribunal allowed the said application by order dated 29-6-1992. It may be stated that the promotee Assistant Engineers of the years 1979 and 1980 had not been arrayed as party to the said proceedings. As the order of the Tribunal dated 29-6-1992 adversely affected the seniority of the promotee Assistant Engineers who had been promoted in the years 1979 and 1980 they filed a miscellaneous petition which was registered as Miscellaneous Petition No. 3229 of 1992 for reviewing the order dated 29-6-1992. They also filed a direct petition before the Tribunal which was registered as OA No. 2325 of 1992. The Tribunal disposed of both the original application as well as the miscellaneous petition by the impugned judgment and came to hold that the original application would not be maintainable since the question of inter se seniority has been decided in OA No. 73 of 1989 by order dated 29-6-1992. It, however, came to the conclusion that the review of the said order is maintainable particularly when the affected persons had not been arrayed as parties to the earlier decision. Thereafter by interpreting the rule of seniority, particularly Rule 26 of the Rules, it came to hold that the direct recruits cannot be held to be recruits of the year 1978 and on the other hand, must be held to be recruits of the year 1980 when the State Government by notification appointed those direct recruits as Assistant Engineers in March 1980. It further came to hold that such direct recruits, therefore, cannot be held to be senior to the promotees of the year 1979 and will be juniors to promotees of the year 1980. The aforesaid order of the Tribunal reviewing the earlier order dated 29-6-1992 is the subject-matter of challenge in this appeal. The promotees whose Original Application No. 2325 of 1992 was dismissed as not maintainable also filed a special leave petition by way of abundant caution and that special leave petition was also taken on board and was heard along with the present appeal.

3. The brief facts culminating in the impugned order of the Tribunal may be stated as hereunder:

That in the year 1978 forty vacancies were available in the post of Assistant Engineer in the Irrigation Wing of the Irrigation Department of the State of Orissa out of which 10 posts were to be filled up by direct recruitment in accordance with Rule 7 of the Rules. Orissa Public Service Commission issued an advertisement inviting applications from the candidates eligible for appointments to the service in the year 1979 and after completing the process of selection prepared a list of selected candidates in accordance with Rule 13 of the Rules and submitted the same to the State Government sometime in November 1979. The State Government finally made the final selection in accordance with Rule 15 and required the selected candidates to undergo medical examination and issued letters of appointment in March 1980. Thereafter the appointees joined as Assistant Engineers. The respondents who are Junior Engineers had been promoted as Assistant Engineers in accordance with Rules on different dates in 1979 and 1980, namely, 27-8-1979, 27-11-1979, 4-2-1980, 4-11-1980 and 27-12-1980. Jagdish Patnaik, Appellant 1, who was a direct recruit to the post of Assistant Engineer filed Original Application No. 78 of 1989 in the State

Administrative Tribunal seeking the relief that he should be given the seniority in the rank of Assistant Engineer below the promoted Assistant Engineers in the year 1978 since he has been recruited to the said post against a vacancy which has arisen for the year 1978 and for the delay caused by the department he should not be made to suffer. The Tribunal was persuaded to accept the said contention raised on behalf of Shri Patnaik and it came to hold that since he has been selected against a vacancy of the year 1978 his seniority in the cadre of Assistant Engineer should be determined treating him to be a recruit of the year 1978 notwithstanding the fact that he was appointed as an Assistant Engineer by notification dated 29-3-1980. The Tribunal, therefore directed the State Government to fix the seniority of the said Shri Patnaik below the promoted Assistant Engineers of the year 1978. It may be stated at this stage that under Rule 26 of the Rules which deals with the inter se seniority of the Assistant Engineers as between direct recruits and promotees, the promoted officers recruited during the year would be considered senior to the officers directly recruited during the year. Since the implementation of the aforesaid direction of the Tribunal adversely affected the seniority of the promotee Assistant Engineers who had been promoted during the year 1979-80 they approached the Tribunal both by filing an application for review and by filing an original application, as already stated, and the Tribunal disposed of the same by the impugned order.

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6. Mr Raju Ramachandran, learned counsel appearing for some of the interveners who are direct recruits, supported the submissions made by Mr Banerjee, learned Senior Counsel and contended that there is a distinction between the expressions “recruitment” and “appointment” in service jurisprudence. The expression “recruitment” signifies a stage prior to the issuance of an actual appointment order, therefore, when the seniority rule contained in Rule 26 uses the expression “direct recruitment” there is no justification to construe that it is the actual year of appointment that would govern the seniority and in this view of the matter the impugned order of the Tribunal is erroneous in law. According to Mr Ramachandran, learned Senior Counsel the expression “direct recruitment” in Rule 26 of the Rules refers to the commencement of the process of recruitment which is fixed and ascertainable and not the date of actual appointment which for several reasons can be indefinitely delayed in a given case and there is no justification for construing Rule 26 in that manner.

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8. Mr P.N. Mishra, learned counsel appearing for the State of Orissa, supported the submissions made by Mr Sanghi and contended that the actual year during which the appointment is made to the cadre of Assistant Engineer, be it on promotion or be it on the basis of direct recruitment is the governing factor for determination of inter se seniority as is apparent from the language used in Rule 26 of the Rules. Mr Mishra, learned counsel further contended that under the scheme of the Rule, it is the State Government who has the final power of selection both for an appointment under direct recruitment as well as appointment under promotion and until that power is exercised no person can claim to have been recruited to the service and that being the position the year in which the vacancies arose and against which the recruitment made is irrelevant for the purpose of determining the seniority. Mr Mishra, learned counsel

further submitted that Rule 5 which deals with recruitment to service is also indicative of the fact that a person can be said to be recruited only on being appointed to the rank of Assistant Engineer and therefore it is not possible to construe that for the purpose of determining the seniority any date anterior to the said appointment can at all be a germane consideration. Mr Mishra, learned counsel also submitted that the word “year” having been defined to mean a calendar year under Rule 3(f) of the Rules and Rule 26 being categorical to the effect that among the officers recruited by promotion and by direct recruitment during the same calendar year the promoted officers would be considered senior to the direct recruited officers, it is only logical to hold that when they are appointed to the post of Assistant Engineer which would be taken into account for the purpose of seniority and not otherwise.

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24. Rule 26 with which we are really concerned in the present case is the rule of seniority. It would be appropriate to extract the said Rule 26 in extenso:

“26. *Seniority.*—(1) When officers are recruited by promotion and by direct recruitment during the same year, the promoted officers shall be considered senior to the officers directly recruited irrespective of their dates of joining the appointment.

(2) Between the two groups of promoted officers, those promoted from the rank of Sub-Assistant Engineers shall en bloc be senior to those promoted from the rank of Junior Engineers.

(3) Subject to provision of sub-rules (1) and (2) seniority of officers shall be determined in accordance with the order in which their names appear in the lists prepared by the Commission.”

The very scheme of recruitment under the Rules, as indicated above, unequivocally indicates that in the case of direct recruits the final authority lies with the State Government who issues appointment orders from amongst the persons found eligible by the Public Service Commission and further who have been found medically fit by the Medical Board. Even such an appointee is also required to undergo probation for two years and thereafter he can be confirmed in the service. Under Rule 26, which is the Rule for determining inter se seniority between promotees and direct recruits when the expression used is “officers are recruited by promotion and by direct recruitment” necessarily it means that when they are appointed as Assistant Engineers by the State Government. To import something else into the Rule will neither be in the interest of justice nor is it necessary in any manner and it would tantamount to legislation by the Court. It is a well-known principle of construction of a statute that when the language used in the statute is unambiguous and on a plain grammatical meaning being given to the words in the statute, the end result is neither arbitrary, irrational or contrary to the object of the statute, then it is the duty of the court to give effect to the words used in the statute as the words declare the intention of the law-making authority best. In that view of the matter we do not see any justification to go into the question of quota meant for direct recruits and promotees nor is it necessary to find out as to the year in which the vacancy arose against which the recruitment is made. On an analysis of the scheme of the Rules, as narrated earlier, we are of the considered opinion that the expression “recruited” would mean appointed and the expression “during the same year” in Rule 26 would mean during the calendar year

and, therefore, direct recruits recruited during the calendar year would be junior to the promotee recruits recruited during the said calendar year.

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32. The next question for consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited? Mr Banerjee's contention on this score is that since the appellant was recruited to the cadre of Assistant Engineer in respect of the vacancies that arose in the year 1978 though in fact the letter of appointment was issued only in March 1980, he should be treated to be a recruit of the year 1978 and as such would be senior to the promotees of the years 1979 and 1980 and would be junior to the promotees of the year 1978. According to the learned counsel since the process of recruitment takes a fairly long period as the Public Service Commission invites application, interviews and finally selects them whereupon the Government takes the final decision, it would be illogical to ignore the year in which the vacancy arose and against which the recruitment has been made. There is no dispute that there will be some time lag between the year when the vacancy accrues and the year when the final recruitment is made for complying with the procedure prescribed but that would not give a handle to the Court to include something which is not there in the rules of seniority under Rule 26. Under Rule 26 the year in which vacancy arose and against which vacancy the recruitment has been made is not at all to be looked into for determination of the inter se seniority between direct recruits and the promotees. It merely states that during the calendar year direct recruits to the cadre of Assistant Engineer would be junior to the promotee recruits to the said cadre. It is not possible for the Court to import something which is not there in Rule 26 and thereby legislate a new rule of seniority. We are, therefore, not in a position to agree with the submission of Mr Banerjee, the learned Senior Counsel appearing for the appellants, on this score.”

12. In *M. Subba Reddy and others vs. A.P. State Road Transport Corporation and others*, (2004) 6 SCC 729, it is held as follows:-

“**38.** As regards Point 3, the Division Bench in *Suraj Parkash* [(2000) 7 SCC 561 : 2000 SCC (L&S) 977] took into consideration a large number of earlier decisions of this Court and held that services of ad hoc/stopgap service of promotees can be regularised. The Court noticing the decisions relating to the employees governed by the Service Regulations framed by the State of Andhra Pradesh (which are in pari materia with the rules in question) in no uncertain terms held that services of an employee can be regularised with retrospective effect. This Court while arriving at the said conclusion also relied upon a large number of decisions arising from other States which also support the legal principle that the regularisation of the promotees with retrospective effect is permissible in law. It was categorically held: (SCC p. 598, para 79)

“Service of the promotees which is regularised with retrospective effect from the date of vacancies within the quota counts for seniority.”

13. In *Pawan Pratap Singh and others vs. Reevan Singh and others*, (2011) 3 SCC 267, it is held as follows:-

“1. In this group of three appeals, by special leave, the question presented for consideration before this Court relates to determination of seniority between two groups of direct recruits to the posts of Deputy Jailor (Group C post), one appointed in 1991 through the selection made by the Uttar Pradesh Subordinate Services Selection Commission (for short “the Selection Commission”) and the other in 1994 by the Uttar Pradesh Public Service Commission (for short “U.P. PSC”).

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5. On 26-12-1987, U.P. PSC published an advertisement (No. A-5/E-4/87-88) for holding the Combined Lower Subordinate Services Examination, 1987. It was mentioned in the advertisement that the number of vacancies to be filled on the result of the examination is expected to be approximately 600 which included the vacancies in the cadre of Deputy Jailor. There is dispute of fact about actual number of vacancies in the cadre of Deputy Jailor notified by U.P. PSC in the above advertisement but the stand of the first respondent that 114 vacancies of Deputy Jailors were notified may be assumed as a fact for the purpose of these appeals.

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14. On 29-8-1995, a tentative seniority list of Deputy Jailors was notified by the Inspector General (Prisons), the appointing authority, and objections were called for from the officers concerned. In that list, the candidates appointed in 1991 were shown senior to the candidates appointed in 1994. The litigation between the two groups started with this list. The tentative seniority list dated 29-8-1995 came to be challenged before the Allahabad High Court in three writ petitions; one by Bholanath Mishra (Writ Petition No. 26560 of 1996), the other by Samar Bahadur Singh (Writ Petition No. 13138 of 2000) and the third by the first respondent herein Reevan Singh (Writ Petition No. 22919 of 2001). The writ petition filed by Samar Bahadur Singh was dismissed by the High Court on the ground of availability of alternative remedy before the State Service Tribunal. The writ petition filed by the first respondent herein was allowed on 2-12-2002 and the High Court directed the State of Uttar Pradesh and the Director General (Prisons), Lucknow to treat the appointees of 1994 senior to the 1991 appointees.

15. The contention raised by the writ petitioner (the first respondent herein) before the High Court was that in view of the second proviso to Rule 5 of the 1991 Rules, the Deputy Jailors who were selected in the selection which commenced in 1987 must be treated senior to those selected pursuant to the selection that commenced in 1990. The Division Bench agreed with this contention and held as follows:

“... In our opinion the correct interpretation of the proviso to Rule 5 of the U.P. Government Servants Seniority Rules, 1991 is that persons like the petitioner who were selected in the selection process which commenced in 1987 should be treated as senior to there (sic) selected in selection process which commenced in 1990.”

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33. Rule 4(h) defines “substantive appointment” as an appointment, not being an ad hoc appointment, on a post in the cadre of service, made after selection in accordance with the service rules relating to that service. It, thus, becomes abundantly clear that for determination of inter se seniority between the two rival groups (the 1991 and the 1994 appointees by direct recruitment) what is relevant is the date of the

order of their substantive appointment and since the substantive appointment of the 1991 appointees is much prior in point of time, they must rank senior to the 1994 appointees.

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37. In *Ram Janam Singh v. State of U.P.* [(1994) 2 SCC 622 : 1994 SCC (L&S) 716 : (1994) 27 ATC 166] this Court reiterated that the date of entry into a service is the safest rule to follow while determining the inter se seniority between one officer or the other or between one group of officers and the other recruited from different sources. It was observed that this is consistent with the requirement of Articles 14 and 16 of the Constitution. It was, however, observed that if the circumstances so require, a group of persons can be treated a class separate from the rest for any preferential or beneficial treatment while fixing their seniority, but, normally such classification should be by statutory rule or rules framed under Article 309.

38. A two-Judge Bench of this Court in *Jagdish Ch. Patnaik* [(1998) 4 SCC 456 : 1998 SCC (L&S) 1156] while construing the word “recruited” occurring in the Orissa Service of Engineers Rules, 1941, held that a direct recruit is recruited when formal appointment order is issued and not when recruitment process is initiated. This is what this Court said: (SCC p. 469, para 34)

“34. The only other contention which requires consideration is the one raised by Mr Raju Ramachandran, learned Senior Counsel appearing for the intervenors, to the effect that the expressions ‘recruitment’ and ‘appointment’ have two different concepts in the service jurisprudence and, therefore, when Rule 26 uses the expression ‘recruited’ it must be a stage earlier to the issuance of appointment letter and logically should mean when the selection process started and that appears to be the intendment of the rule-makers in Rule 26. We are, however, not persuaded to accept this contention since under the scheme of rules a person can be said to be recruited into service only on being appointed to the rank of Assistant Engineer, as would appear from Rule 5 and Rule 6. Then again in case of direct recruits though the process of recruitment starts when the Public Service Commission invites applications under Rule 10 but until and unless the Government makes the final selection under Rule 15 and issues appropriate orders after the selected candidates are examined by the Medical Board, it cannot be said that a person has been recruited to the service. That being the position it is difficult for us to hold that in the seniority rule the expression ‘recruited’ should be interpreted to mean when the selection process really started. That apart the said expression ‘recruited’ applies not only to the direct recruits but also to the promotees. In case of direct recruits the process of recruitment starts with the invitation of application by the Commission and in case of promotees it starts with the nomination made by the Chief Engineer under Rule 16. But both in the case of direct recruits as well as in the case of promotees the final selection vests with the State Government under Rules 15 and 18 respectively and until such final selection is made and appropriate orders passed thereon no person can be said to have been recruited to the service. In this view of the matter the only appropriate and logical construction that can be made of Rule 26 is the date of the order under which the persons are appointed to the post of Assistant Engineer, is the crucial date for determination of seniority under the said Rule.”

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40. In *Ajit Kumar Rath* [(1999) 9 SCC 596 : 2000 SCC (L&S) 192] this Court followed *Jagdish Ch. Patnaik* [(1998) 4 SCC 456 : 1998 SCC (L&S) 1156] and did not accept the contention that those who were appointed against the vacancies of the earlier years although, appointed later in point of time, must rank senior to the appointees of the vacancies of the subsequent years though appointed in prior point of time.

41. This Court emphasised in *Uttaranchal Forest Rangers' Assn.* [(2006) 10 SCC 346 : (2007) 1 SCC (L&S) 116] that no retrospective promotion can be granted nor can any seniority be given on retrospective basis from a date when an employee has not even been borne in the cadre. In this regard, the Court relied upon the earlier decisions of this Court in *State of Bihar v. Akhouri Sachindra Nath* [1991 Supp (1) SCC 334 : 1991 SCC (L&S) 1070 : (1991) 16 ATC 936] and *Jagdish Ch. Patnaik* [(1998) 4 SCC 456 : 1998 SCC (L&S) 1156] .

42. In *Dinesh Kumar Sharma* [(2007) 1 SCC 683 : (2007) 1 SCC (L&S) 594] this Court was concerned with the U.P. Agriculture Group B Service Rules, 1995 and the 1991 Rules. With reference to Rule 8 of the 1991 Rules, this Court held that seniority cannot be reckoned from the date of occurrence of the vacancy and should be reckoned only from the date of substantive appointment to the vacant post under the Rules and not retrospectively from the date of occurrence of vacancy.

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45. From the above, the legal position with regard to determination of seniority in service can be summarised as follows:

(i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

14. In *Union of India and others vs. N.R. Parmar and others*, (2012) 13 SCC 340, it is held as follows:-

“1. The present controversy is a dispute of inter se seniority between Income Tax Inspectors of the Income Tax Department. The direct recruits and promotees are pitted on opposite sides.

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22. During the course of hearing, the learned counsel for the rival parties agreed, that the seniority dispute between the promotee and direct recruit Income Tax Inspectors of the Income Tax Department was liable to be determined on the basis of Office Memoranda dated 7-2-1986 and 3-7-1986, read with the clarificatory office memoranda and office notes. It is important to notice, before embarking upon the claim of the rival parties, that none of the parties have assailed the vires of the Office Memoranda dated 7-2-1986 and 3-7-1986 (or for that matter, the clarificatory office memoranda/office notes). It is therefore apparent, that the dispute between the rival parties is nothing but, the true and correct interpretation of the Office Memoranda dated 7-2-1986 and 3-7-1986, read with clarificatory office memoranda and office notes. It is therefore, that the matter in hand is being examined in the light of the aforesaid office memoranda.

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24. The aforesaid prescription of the manner of determining inter se seniority between the direct recruits and promotees, determined through the OM dated 22-12-1959, was modified by an Office Memorandum dated 7-2-1986, issued by the Government of India, Department of Personnel and Training (hereinafter referred to as “the OM dated 7-2-1986”). The modification introduced through the OM dated 7-2-1986 was to redress a situation wherein, vacancies of one of the sources were kept (or remained) unfilled during the process of selection, and the unfilled vacancies, had to be filled up through “later” examinations or selections. For the determination of seniority, in the contingency wherein the process of recruitment resulted in filling the vacancies earmarked for the two sources of recruitment, the manner of determining inter se seniority between promotees and direct recruits, expressed in the OM dated 22-12-1959 remained unaltered. But where the vacancies could not be filled up, and unfilled vacancies had to be filled up “later” through a subsequent process of selection, the manner of determining inter se seniority between promotees and direct recruits, was modified.

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28.3. The unfilled direct recruitment quota vacancies for a recruitment year, would be carried forward to the corresponding direct recruitment vacancies of the next year (and to subsequent years, where necessary) and vice versa. In this behalf, it is necessary to understand two distinct phrases used in the OM dated 3-7-1986. Firstly, the phrase “in that year” which connotes the recruitment year for which specific vacancies are earmarked. And secondly, the phrase “in the subsequent year”, which connotes carried-forward vacancies, filled in addition to, vacancies earmarked for a subsequent recruitment year.

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34.2. The words “initiation of action for recruitment”, and the words “initiation of recruitment process”, were explained to mean, the date of sending the requisition to the recruiting authority.

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43. We shall now endeavour to examine the effect of OM dated 3-3-2008 on the subject of inter se seniority between direct recruits and promotees:

43.1. Would the OM dated 3-3-2008 supersede the earlier OMs dated 7-2-1986 and/or 3-7-1986?

43.2. And, would the OMs dated 7-2-1986 and 3-7-1986 negate the OM dated 3-3-2008, to the extent that the same is repugnant to the earlier OMs (dated 7-2-1986 and 3-7-1986)?

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50. The seniority rule applied in *Jagdish Ch. Patnaik case* [(1998) 4 SCC 456 : 1998 SCC (L&S) 1156] has been extracted in para 24 of the said judgment. The seniority rule in question, inter alia expressed, that seniority would be determined with reference to the date of recruitment. In *Suraj Parkash Gupta case* [(2000) 7 SCC 561 : 2000 SCC (L&S) 977], the relevant seniority rule was extracted in para 53 which provided, that seniority would be determined with reference to the date of first appointment. The rule itself expressed that the words “date of first appointment” would mean the date of first substantive appointment against a clear vacancy. In *Pawan Pratap Singh case* [(2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] the question which arose for consideration, related to determination of inter se seniority between two sets of direct recruits. The first set comprised of vacancies advertised in 1987 which came to be filled up in 1994, and the second set comprised of vacancies of the year 1990 which came to be filled up in the year 1991. The controversy in *Pawan Pratap Singh case* [(2011) 3 SCC 267: (2011) 1 SCC (L&S) 481] was conspicuously different from the controversy in hand. In view of the fact that the seniority rules, as also the factual matrix in the cases relied upon was substantially at variance with the relevant OMs dated 7-2-1986 and 3-7-1986 (which are the subject of interpretation insofar as the present case is concerned), as also the facts of the cases in hand, it is apparent, that the judgments relied upon by the learned counsel are inapplicable to determine the present controversy.

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52. Having interpreted the effect of the OMs dated 7-2-1986 and 3-7-1986 (in paras 25 to 29 hereinabove), we are satisfied, that not only the requisition but also the advertisement for direct recruitment was issued by SSC in the recruitment year in which direct recruit vacancies had arisen. The said factual position, as confirmed by the rival parties, is common in all matters being collectively disposed of. In all these cases the advertised vacancies were filled up in the original/first examination/selection conducted for the same. None of the direct recruit Income Tax Inspectors herein can be stated to be occupying carried-forward vacancies, or vacancies which came to be filled up by a “later” examination/selection process. The facts only reveal that the examination and the selection process of direct recruits could not be completed within the recruitment year itself. For this, the modification/amendment in the manner of determining the inter se seniority between the direct recruits and promotees, carried out through the OM dated 7-2-1986, and the compilation of the instructions pertaining to seniority in the OM dated 3-7-1986, leave no room for any doubt, that the “rotation of quotas” principle would be fully

applicable to the direct recruits in the present controversy. The direct recruits herein will therefore have to be interspaced with promotees of the same recruitment year.”

15. In *P. Sudhakar Rao and others vs. U. Govinda Rao and others*, (2013) 8 SCC 693, it is held as follows:-

“3. It appears to us that this question ought not to be answered in the narrow confines in which it is framed, nor should it be answered on the basis of the limited submission noted in the reference order relating to

“the validity of the rule by which retrospective seniority benefit was given to the Junior Engineers by GOMs No. 54 Irrigation (Service IV-2) dated 15-2-1983”. (*U. Govinda Rao case* [(2007) 12 SCC 148 : (2008) 2 SCC (L&S) 467] , SCC p. 150, para 2)

The question has larger implications and we propose to answer it keeping the broad canvas in mind. We also propose, in this light, to answer the question on merits of these appeals, namely, whether, on appointment as a Junior Engineer, weightage of service given to a Supervisor can be taken into account for fixing his seniority as a Junior Engineer, thereby effectively refixing the seniority with retrospective effect.

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44. As far as the impact of the retrospective operation of the executive instructions or statutory rules on the seniority of employees is concerned (including the Junior Engineers before us), this issue is now settled by a few recent decisions of this Court. There is no doubt that retrospective operation can be given to statutory rules such as the Andhra Pradesh Engineering Service Rules. But, the retroactivity must still meet the test of Article 14 and Article 16 of the Constitution and must not adversely trench upon the entitlement of seniority of others.

45. Without intending to multiply precedents on this subject, reference may be made to a decision rendered by this Court more than two decades ago. In *State of Bihar v. Akhouri Sachindra Nath* [1991 Supp (1) SCC 334 : 1991 SCC (L&S) 1070 : (1991) 16 ATC 936] it was held that retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre. So also, seniority cannot be given with retrospective effect so as to adversely affect others. Seniority amongst members of the same grade must be counted from the date of their initial entry into the grade. It was held: (SCC pp. 342-43, para 12)

“12. In the instant case, the promotee Respondents 6 to 23 were not born in the cadre of Assistant Engineer in the Bihar Engineering Service, Class II at the time when Respondents 1 to 5 were directly recruited to the post of Assistant Engineer and as such they cannot be given seniority in the service of Assistant Engineers over Respondents 1 to 5. It is well settled that no person can be promoted with retrospective effect from a date when he was not borne in the cadre so as to adversely affect others. It is well settled by several decisions of this Court that amongst members of the same grade seniority is reckoned from the date of their initial entry into the service. In other words, seniority inter se amongst the Assistant Engineers in Bihar Engineering Service, Class II will be considered from the date of the length of service rendered as Assistant Engineers. This being the position in law Respondents 6 to 23 cannot be made senior to Respondents 1 to 5 by the impugned government

orders as they entered into the said service by promotion after Respondents 1 to 5 were directly recruited in the quota of direct recruits. The judgment of the High Court quashing the impugned government orders made in Annexures 8, 9 and 10 is unexceptionable.”

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47. However, the mere existence of a vacancy is not enough to enable an employee to claim seniority. The date of actual appointment in accordance with the required procedure becomes important in such a case. This was so held in *State of Uttaranchal v. Dinesh Kumar Sharma* [(2007) 1 SCC 683 : (2007) 1 SCC (L&S) 594] (followed in *Nani Sha v. State of Arunachal Pradesh* [(2007) 15 SCC 406 : (2010) 1 SCC (L&S) 719] , SCC p. 414, para 15) wherein it was said: (SCC pp. 691-92, para 34)

“34. Another issue that deserves consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited. Here the respondent's contention is that since the vacancy arose in 1995-1996 he should be given promotion and seniority from that year and not from 1999, when his actual appointment letter was issued by the appellant. This cannot be allowed as no retrospective effect can be given to the order of appointment order under the Rules nor is such contention reasonable to normal parlance. This was the view taken by this Court in *Jagdish Ch. Patnaik v. State of Orissa* [(1998) 4 SCC 456 : 1998 SCC (L&S) 1156].”

48. More recently, and finally, in *Pawan Pratap Singh v. Reevan Singh* [(2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] all relevant precedents on the subject were considered, including the Constitution Bench decision in *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra* [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] and the legal position summarised (by Lodha, J.) as follows: (*Reevan Singh case* [(2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] , SCC pp. 281-82, para 45)

“(i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an

employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

49. In a separate but concurring opinion, Aftab Alam, J. reiterated the position but referred to some more precedents on the subject. It was then said: (*Reevan Singh case* [(2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] , SCC p. 286, para 63)

“63. To the decisions referred to on this point in the main judgment I may add just one more in *Suraj Parkash Gupta v. State of J&K* [(2000) 7 SCC 561 : 2000 SCC (L&S) 977] . The decision relates to a dispute of seniority between direct recruits and promotees but in that case the Court considered the question of antedating the date of recruitment on the ground that the vacancy against which the appointment was made had arisen long ago. In SCC para 18 of the decision the Court framed one of the points arising for consideration in the case as follows: (SCC p. 578)

‘18. ... (4) Whether the direct recruits could claim a retrospective date of recruitment from the date on which the post in direct recruitment was available, even though the direct recruit was not appointed by that date and was appointed long thereafter?’

This Court answered the question in the following terms: (*Suraj Parkash Gupta case* [(2000) 7 SCC 561 : 2000 SCC (L&S) 977] , SCC p. 599, paras 80-81)

‘Point 4

Direct recruits cannot claim appointment from the date of vacancy in quota before their selection

80. We have next to refer to one other contention raised by the respondent direct recruits. They claimed that the direct recruitment appointment can be antedated from the date of occurrence of a vacancy in the direct recruitment quota, even if on that date the said person was not directly recruited. It was submitted that if the promotees occupied the quota belonging to direct recruits they had to be pushed down, whenever direct recruitment was made. Once they were so pushed down, even if the direct recruit came later, he should be put in the direct recruit slot from the date on which such a slot was available under the direct recruitment quota.

81. This contention, in our view, cannot be accepted. The reason as to why this argument is wrong is that in service jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date when he was not borne in the service. This principle is well settled. In *N.K. Chauhan v. State of Gujarat* [(1977) 1 SCC 308 : 1977 SCC (L&S) 127] , Krishna Iyer, J. stated: (SCC p. 325, para 32)

Later direct recruit cannot claim deemed dates of appointment for seniority with effect from the time when direct recruitment vacancy arose. Seniority will depend upon length of service.

Again, in *A. Janardhana v. Union of India* [(1983) 3 SCC 601 : 1983 SCC (L&S) 467] it was held that a later direct recruit cannot claim seniority from a date before his birth in the service or when he was in school or college. Similarly it was pointed out in *A.N. Pathak v. Ministry of Defence* [1987 Supp SCC 763 : 1988 SCC (L&S) 370 : (1988) 6 ATC 626] that slots cannot be kept reserved for direct recruits for retrospective appointments.”

50. The facts of the appeals before us show that at least some of the Supervisors were given retrospective seniority on the date when they were not even eligible for appointment as Junior Engineers. The precedents referred to above show that this is impermissible. In addition as pointed out by the High Court, there is no indication of the vacancy position, that is, whether the Supervisors could be adjusted in the grade of Junior Engineers from the date on which they were given notional retrospective seniority. There is also no indication whether the quota of vacancies for Supervisors was adhered to as on the date on which they were given notional retrospective seniority. The case law suggests that this is an important factor to be considered. Finally, it is quite clear that the grant of retrospective seniority to the Supervisors has adversely impacted on the promotion chances of the Junior Engineers by bringing them down in seniority. This too is impermissible.

51. From the various decisions referred to and from the facts of the case, it is clear that to pass the scrutiny of Article 14 of the Constitution, the seniority of the Supervisors should be reckoned only from the date on which they satisfied all the real and objective procedural requirements of the Andhra Pradesh Engineering Service Rules and the law laid down by this Court. This has not happened in the present appeals creating a situation of unreasonableness and unfairness.”

16. In *Bhupendra Nath Hazarika and others vs. State of Assam and others*, (2013) 2 SCC 516, it is held as follows:-

“5. The facts, as further uncurtained, are that the determination of seniority came to the notice of the recruits of the regular batch at the time of their confirmation of service in the year 1999. Being dissatisfied with the action of the authorities, they immediately submitted a representation. When the representation was pending consideration, a provisional gradation list showing the inter se seniority as on 31-12-1992 was published on 12-3-1999. In the said provisional gradation list, the recruits of the special batch were shown as senior to the recruits of the regular batch. As warranted, the recruits belonging to the regular batch filed their objections to the fixation of seniority on 24-9-1999, but without publishing the final gradation list, Respondent 3, namely, the Secretary in the Department of Home, promoted 14 officers belonging to the special batch and 16 officers belonging to the regular batch to the Senior Scale of APS (Grade II). In the promotional order, the officers belonging to the regular batch were shown below the officers belonging to the special batch. Because of the aforesaid situation, the direct recruits invoked the jurisdiction of the Tribunal for the apposite determination of seniority claiming to be senior to Respondents 6 to 24.

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55. The aforesaid authorities clearly lay down the principle that when there is violation of the recruitment rules, the recruitment is unsustainable. Whether any active part is played by a selectee or not has nothing to do with the appointment made in contravention of the rules. In the case at hand, the special batch recruits have encroached into the quota of the direct recruits. The whole selection process is in violation of the rules and, therefore, we are inclined to concur with the opinion expressed by the learned Single Judge that the selection was made de hors the rules. The Division Bench was not justified in stating that the selection could not be said to be de hors the rules. However, we accept the conclusion of the Tribunal as well as the

High Court that as there had been long delay in challenging the selection of the special batch recruits and some of them have already retired, it would not be apposite to annul their appointments.

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57. The two facets which emerge from the scanning of the aforesaid Rule are that the seniority of a member of the service is to be determined on the basis of the date of appointment to the service and the seniority has to follow a particular order as has been stipulated therein. The other significant aspect is that power has been conferred on the Governor to consider the previous service of an incumbent and fix a deemed date of appointment for the purpose of seniority by adopting a specific method. As far as the first part is concerned, the Tribunal as well as the High Court have not accepted the stipulation that in the present case the seniority should be determined on the basis of the date of appointment as the same has been made in flagrant violation of the rules and we have already concurred with the same. As far as the computation of the previous service is concerned, the learned Single Judge as well as the Division Bench, after adequate ratiocination, have expressed the view that the appointments had been made in contravention of the rules, the question of conferment of the benefit under the second proviso to Rule 18(1) did not arise. In our considered view, the said conclusion is absolutely defensible for the simon-pure reason that when the infrastructure is founded on total illegal edifice, the endeavour to put forth a claim for counting the previous service to build a pyramid is bound to founder.

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59. As has been observed by the learned Single Judge which has been accepted by the Division Bench, there was no decision to relax the rules in favour of the special batch recruits. That apart, whenever there has to be relaxation about the operation of any of the rules, regard has to be given to the test of causation of undue hardship in any particular case. That apart, the authority is required to record satisfaction while dispensing or relaxing the requirements of any rule to such an extent and subject to such conditions as he may consider necessary for dealing with the case in a just and equitable manner. The language of the Rule really casts a number of conditions. It provides guidance. It cannot be exercised in an arbitrary manner so as to dispense with the procedure of selection in entirety in respect of a particular class, for it has to be strictly construed and there has to be apposite foundation for exercise of such power. It is to be borne in mind that if a particular rule empowers the authority to throw all the rules overboard in all possibility, it may not withstand close scrutiny of Article 14 of the Constitution. Be that it may, no decision was taken to relax the rules and, the concept of deemed relaxation is not attracted and, therefore, the relief claimed by the special batch recruits has no legs to stand upon.

60. From the aforesaid analysis, there can be no scintilla of doubt that the selection of the special batch recruits was totally dehors the Rules; that there was a maladroit effort to go for a special drive when there was no need for the same by the State which is supposed to be a model employer; that neither the concept of relaxation nor the conception of benefit of Rule 18 would be attracted for grant on conferring any privilege to the special batch recruits; that their seniority has to be pushed down and, hence, the directions given by the Tribunal and the High Court in that regard are absolutely flawless; and that regard being had to the delayed challenge and long

rendering of service in the posts and further promotions having been effected, it would be inapposite to quash their appointments.”

17. In *Ganga Vishan Gujrati and others vs. State of Rajasthan and others*, (2019) 16 SCC 28, it is held as follows:-

“45. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra* [*Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra*, (1990) 2 SCC 715 : 1990 SCC (L&S) 339] . The principle was reiterated by this Court in *State of Bihar v. Akhouri Sachindra Nath* [*State of Bihar v. Akhouri Sachindra Nath*, 1991 Supp (1) SCC 334 : 1991 SCC (L&S) 1070] and *State of Uttaranchal v. Dinesh Kumar Sharma* [*State of Uttaranchal v. Dinesh Kumar Sharma*, (2007) 1 SCC 683 : (2007) 1 SCC (L&S) 594] . In *Pawan Pratap Singh v. Reevan Singh* [*Pawan Pratap Singh v. Reevan Singh*, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] , this Court revisited the precedents on the subject and observed : (SCC pp. 281-82, para 45)

“45. ... (i) The effective date of selection has to be understood in the context of the Service Rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the Service Rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant Service Rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

This view has been re-affirmed by a Bench of three Judges of this Court in *P. Sudhakar Rao v. U. Govinda Rao* [*P. Sudhakar Rao v. U. Govinda Rao*, (2013) 8 SCC 693 : (2014) 1 SCC (L&S) 690]”.

18. In *K. Meghachandra Singh and others vs. Ningam Siro and others*, (2020) 5 SCC 689, it is held as follows:-

“28. Before proceeding to deal with the contention of the appellants' counsel vis-à-vis the judgment in *N.R. Parmar* [*Union of India v. N.R. Parmar*, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] , it is necessary to observe that the law is fairly well settled

in a series of cases, that a person is disentitled to claim seniority from a date he was not borne in service. For example, in *Jagdish Ch. Patnaik* [*Jagdish Ch. Patnaik v. State of Orissa*, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] the Court considered the question whether the year in which the vacancy accrues can have any bearing for the purpose of determining the seniority irrespective of the fact when the person is actually recruited. The Court observed that there could be time-lag between the year when the vacancy accrues and the year when the final recruitment is made. Referring to the word “*recruited*” occurring in the Orissa Service of Engineers Rules, 1941 the Supreme Court held in *Jagdish Ch. Patnaik* [*Jagdish Ch. Patnaik v. State of Orissa*, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] that person cannot be said to have been recruited to the service only on the basis of initiation of process of recruitment but he is borne in the post only when, formal appointment order is issued.

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30. We may also benefit by referring to the judgment in *State of U.P. v. Ashok Kumar Srivastava* [*State of U.P. v. Ashok Kumar Srivastava*, (2014) 14 SCC 720 : (2015) 3 SCC (L&S) 536] . This judgment is significant since this is rendered after the *N.R. Parmar* [*Union of India v. N.R. Parmar*, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] decision. Here the Court approved the ratio in *Pawan Pratap Singh v. Reevan Singh* [*Pawan Pratap Singh v. Reevan Singh*, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] , and concurred with the view that seniority should not be reckoned retrospectively unless it is so expressly provided by the relevant Service Rules. The Supreme Court held that seniority cannot be given to an employee who is yet to be borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime. The law so declared in *Ashok Kumar Srivastava* [*State of U.P. v. Ashok Kumar Srivastava*, (2014) 14 SCC 720 : (2015) 3 SCC (L&S) 536] being the one appealing to us, is profitably extracted as follows : (SCC p. 730, para 24)

“24. The learned Senior Counsel for the appellants has drawn inspiration from the recent authority in *Pawan Pratap Singh v. Reevan Singh* [*Pawan Pratap Singh v. Reevan Singh*, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] where the Court after referring to earlier authorities in the field has culled out certain principles out of which the following being the relevant are produced below : (SCC pp. 281-82, para 45)

‘45. (ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

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(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.’ ”

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32. As can be seen from the above, the MPS Rules, 1965 never provided that seniority should be counted from the date of vacancy. For those covered by the MPS Rules, 1965 the seniority for them will be reckoned only from the date of appointment and not from the stage when requisition for appointment was given.

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34. The judgment in *N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711]* is now to be considered in some detail as this is heavily relied on by the appellants' counsel. At the outset, it must however be cleared that the cited case had nothing to do with the MPS Rules, 1965 and that litigation related to the Income Tax Inspectors who were claiming benefits of various Central Government OMs (dated 22-12-1959, 7-2-1986, 3-7-1986 and 3-3-2008). The judgment was rendered in respect of the Central Government employees having their own Service Rules. The applicable Rules for the litigants in the present case however provide that the seniority in the service shall be determined by the order in which appointments are made to the service. Therefore, the memorandums concerned referred to in *N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711]* which deal with general principles for determination of seniority of persons in the Central Government service, should not according to us, have any overriding effect for the police officers serving in the State of Manipur.

35. After the judgment in *N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711]* was delivered, the Union of India issued the Office Memorandum on 4-3-2014 defining the recruitment year to be the year of initiating the recruitment process against the vacancy year and that the rotation of quota, would continue to operate for determination of inter se seniority between direct recruits and promotees. This Memo was not made applicable to the State of Manipur till the issuance of the OM dated 21-12-2017, adopting the OM dated 4-3-2014 prospectively with effect from 1-1-2018. Significantly, the said OM specifically provided that “... *appointments/promotions made before the issue of this OM will not be covered by this OM. The seniority already fixed as per existing rules followed earlier in the State prior to the issue of this OM may not be reopened.*” It was also specifically stated therein that “*this OM will come into effect from 1-1-2018 with the publication in the Gazette....*”

36. From the above, it is not only apparent that the above OM was only to be given prospective effect from 1-1-2018 but it contains an express acknowledgment that this was not the position prior to the issuance of the OM and that a different rule was followed earlier in the State. The conclusion is, therefore, inevitable that at least prior to 1-1-2018, direct recruits cannot claim that their seniority should be reckoned from the date of initiation of recruitment proceedings and not from the date of actual appointment.

37. When we carefully read the judgment in *N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711]*, it appears to us that the referred OMs (dated 7-2-1986 and 3-7-1986) were not properly construed in the judgment. Contrary to the eventual finding, the said two OMs had made it clear that seniority of the direct recruits be declared only from the date of appointment and not from the date of initiation of recruitment process. But surprisingly, the judgment

while referring to the illustration given in the OM in fact overlooks the effect of the said illustration. According to us, the illustration extracted in *N.R. Parmar* [*Union of India v. N.R. Parmar*, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] itself, makes it clear that the vacancies which were intended for direct recruitment in a particular year (1986) which were filled in the next year (1987) could be taken into consideration only in the subsequent year's seniority list but not in the seniority list of 1986. In fact, this was indicated in the two OM's dated 7-2-1986 and 3-7-1986 and that is why the Government issued the subsequent OM on 3-3-2008 by way of clarification of the two earlier OM's.

38. At this stage, we must also emphasise that the Court in *N.R. Parmar* [*Union of India v. N.R. Parmar*, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] need not have observed that the selected candidate cannot be blamed for administrative delay and the gap between initiation of process and appointment. Such observation is fallacious inasmuch as none can be identified as being a selected candidate on the date when the process of recruitment had commenced. On that day, a body of persons aspiring to be appointed to the vacancy intended for direct recruits was not in existence. The persons who might respond to an advertisement cannot have any service-related rights, not to talk of right to have their seniority counted from the date of the advertisement. In other words, only on completion of the process, the applicant morphs into a selected candidate and, therefore, unnecessary observation was made in *N.R. Parmar* [*Union of India v. N.R. Parmar*, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] to the effect that the selected candidate cannot be blamed for the administrative delay. In the same context, we may usefully refer to the ratio in *Shankarsan Dash v. Union of India* [*Shankarsan Dash v. Union of India*, (1991) 3 SCC 47 : 1991 SCC (L&S) 800], where it was held that even upon empanelment, an appointee does not acquire any right.

39. The judgment in *N.R. Parmar* [*Union of India v. N.R. Parmar*, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State Police Officers, governed by the MPS Rules, 1965. We also feel that *N.R. Parmar* [*Union of India v. N.R. Parmar*, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] had incorrectly distinguished the long-standing seniority determination principles propounded in, inter alia, *Jagdish Ch. Patnaik* [*Jagdish Ch. Patnaik v. State of Orissa*, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156], *Suraj Parkash Gupta v. State of J&K* [*Suraj Parkash Gupta v. State of J&K*, (2000) 7 SCC 561 : 2000 SCC (L&S) 977] and *Pawan Pratap Singh v. Reevan Singh* [*Pawan Pratap Singh v. Reevan Singh*, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481]. These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under service jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in *Jagdish Ch. Patnaik* [*Jagdish Ch. Patnaik v. State of Orissa*, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] and consequently we disapprove the norms on assessment of inter se seniority, suggested in *N.R. Parmar* [*Union of India v. N.R. Parmar*, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711]. Accordingly, the decision in *N.R. Parmar* [*Union of India v. N.R. Parmar*, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] is overruled. However, it is made clear that this decision will not affect the inter se seniority already based on *N.R. Parmar* [*Union of India v. N.R. Parmar*,

(2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant rules from the date of vacancy/the date of advertisement.”

19. In *State of Bihar and others vs. Arbind Jee*, 2021 SCC OnLine SC 821, it is held as follows:-

“7. The issue to be answered here is whether the respondent is entitled to claim seniority in service from a retrospective date i.e. 20.11.1985 as was ordered by the High Court or whether he is entitled for seniority from the date he entered service.

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10. As earlier noted, the respondent entered service only on 10.2.1996 and yet under the impugned judgment, the High Court directed counting of his seniority from 20.11.1985 when he was not borne in service. The jurisprudence in the field of service law would advise us that retrospective seniority cannot be claimed from a date when an employee is not even borne in service. It is also necessary to bear in mind that retrospective seniority unless directed by court or expressly provided by the applicable Rules, should not be allowed, as in so doing, others who had earlier entered service, will be impacted.

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12. The principles enunciated in *Shitla Prasad Shukla* (supra) are applicable to the case at hand. The compassionate appointment of the respondent is not being questioned here but importantly he is claiming seniority benefit for 10 years without working for a single day during that period. In other words, precedence is being claimed over other regular employees who have entered service between 1985 to 1996. In this situation, the seniority balance cannot be tilted against those who entered service much before the respondent. Seniority benefit can accrue only after a person joins service and to say that benefits can be earned retrospectively would be erroneous. Such view was expressed in many cases and most recently in *Ganga Vishan Gujrati v. State of Rajasthan*, (2019) 16 SCC 28, Justice Dr. D.Y. Chandrachud speaking for the Court opined as under:-

“45. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra*, (1990) 2 SCC 715. The principle was reiterated by this Court in *State of Bihar v. Akhouri Sachindra Nath*, 1991 Supp (1) SCC 334 and *State of Uttaranchal v. Dinesh Kumar Sharma*, (2007) 1 SCC 683.”

20. In *Ajay Kumar Shukla vs. Arvind Rai*, (2022) 12 SCC 579, it is held as follows:-

“19.2. As the challenge was to the decision-making process in making the seniority list contrary to the 1991 Seniority Rules and the 2009 Rules, it was submitted that it was not necessary to implead all the affected Engineers. In fact 18 of such affected Engineers were already impleaded in the writ petition and therefore, for all the affected Junior Engineers, their interests were already represented.

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45. The other ground taken by the High Court for non-suited the appellants were that they had not impleaded all the affected Junior Engineers. For the said proposition, the Division Bench [*Rajesh Kumar Singh v. Rajeev Nain Upadhyay*, 2019 SCC OnLine All 4782] of the High Court has placed reliance upon the judgment of this Court in *Ranjan Kumar v. State of Bihar* [*Ranjan Kumar v. State of Bihar*, (2014) 16 SCC 187 : (2015) 2 SCC (L&S) 532] . The above case was in respect of selection and appointment on the ground that the same had been made only on the basis of interview without holding any written test. The High Court had quashed [*Vinay Kumar v. State of Bihar*, 2003 SCC OnLine Pat 960] such selection and appointments even of those appointees who were not even parties to the petition. It was in these circumstances that this Court held that the appointments of non-parties could not be quashed. Facts of the said case are clearly distinguishable.

46. The Division Bench of the High Court also relied upon another judgment of this Court in *Prabodh Verma v. State of U.P.* [*Prabodh Verma v. State of U.P.*, (1984) 4 SCC 251 : 1984 SCC (L&S) 704] This case again related to challenge to appointments and in the said case there was no impleadment even in the representative capacity. In such circumstances, this Court said that the petition was liable to be dismissed for non-joinder of necessary parties. In fact, this judgment helps the appellants. Para 50 thereof is reproduced below : (SCC pp. 288-89)

“50. ... (1) A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as the respondents *or at least some of them being before it as the respondents in a representative capacity* if their number is too large to join them as the respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.”

(emphasis supplied)

47. The third case relied upon by the Division Bench for the above proposition, namely, *State of Uttaranchal v. Madan Mohan Joshi* [*State of Uttaranchal v. Madan Mohan Joshi*, (2008) 6 SCC 797 : (2008) 2 SCC (L&S) 197] was again a case where none of the affected parties were impleaded not even in the representative capacity. In such circumstances, this Court remanded the matter to the High Court leaving it open to the original petitioners therein to move an appropriate application for impleading some of the affected teachers in their representative capacity.

48. The fourth case relied upon by the Division Bench on the above proposition is *Indu Shekhar Singh v. State of U.P.* [*Indu Shekhar Singh v. State of U.P.*, (2006) 8 SCC 129 : 2006 SCC (L&S) 1916] In this case also, the affected parties were not impleaded and this Court relied upon the judgment of this Court in *Prabodh Verma* [*Prabodh Verma v. State of U.P.*, (1984) 4 SCC 251 : 1984 SCC (L&S) 704] .

49. In *Tridip Kumar Dingal v. State of W.B.* [*Tridip Kumar Dingal v. State of W.B.*, (2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119] , C.K. Thakker, J., held that the case falls within the ambit of non-joinder of necessary parties as none of the 66 candidates against whom the complaint was made, were made parties. It further held that some of the respondents should have been arrayed in representative capacity. Para 41 is reproduced below : (SCC p. 780)

“41. Regarding protection granted to 66 candidates, from the record it is clear that their names were sponsored by the employment exchange and they were selected and appointed in 1998-1999. The candidates who were unable to get themselves selected and who raised a grievance and made a complaint before the Tribunal by filing applications ought to have joined them (selected candidates) as the respondents in the original application, which was not done. *In any case, some of them ought to have been arrayed as the respondents in a “representative capacity”.* That was also not done. The Tribunal was, therefore, wholly right in holding that in absence of selected and appointed candidates and without affording opportunity of hearing to them, their selection could not be set aside.” (emphasis supplied)

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51. The present case is a case of preparation of seniority list and that too in a situation where the appellants (original writ petitioners) did not even know the marks obtained by them or their proficiency in the examination conducted by the Commission. The challenge was on the ground that the Rules on the preparation of seniority list had not been followed. There were 18 private respondents arrayed to the writ petition. The original petitioners could not have known who all would be affected. They had thus broadly impleaded 18 of such Junior Engineers who could be adversely affected. In matters relating to service jurisprudence, time and again it has been held that it is not essential to implead each and every one who could be affected but if a section of such affected employees is impleaded then the interest of all is represented and protected. In view of the above, it is well settled that impleadment of a few of the affected employees would be sufficient compliance of the principle of joinder of parties and they could defend the interest of all affected persons in their representative capacity. Non-joining of all the parties cannot be held to be fatal.

52. The Division Bench has also dealt with an issue which according to us was totally irrelevant and alien to the adjudication of the present appeals. In para 45 of the judgment [*Rajesh Kumar Singh v. Rajeev Nain Upadhyay*, 2019 SCC OnLine All 4782] of the Division Bench there is a reference to an issue where a party takes calculated chances of participating in selection/appointment process and later turns around after being unsuccessful would be hit by doctrine of estoppel. For the said proposition, the Division Bench made detailed discussions in paras 46, 47, 48 and 49 of the judgment [*Rajesh Kumar Singh v. Rajeev Nain Upadhyay*, 2019 SCC OnLine All 4782] and relied upon a number of case laws. In our considered view, this issue was not at all relevant. The said issue does not arise in the present case. The appellants/original writ petitioners had never challenged the selection process. The challenge was only to preparation of the seniority list. As such, this discussion by the Division Bench is totally irrelevant.”

21. In *Hariharan and others vs. Harsh Vardhan Singh Rao and others*, (2022) SCC OnLine SC 1717, it is held as follows:-

“3. Few factual details will have to be noted. The dispute is a typical dispute between promotees and direct appointees over inter-se-seniority. Here, the dispute is about the posts of Inspectors in the Income Tax Department in the State of Gujarat. On 7th February 1986 and 3rd July 1986, Office Memoranda (for short, ‘OM’) were issued by the Ministry of Personnel, Public Grievances and Pension. Both the OMs record that the principle of rotation of quota will be followed for determining the inter-se-

seniority of promotees and direct recruits. It is mentioned therein that when direct recruits are not available, the promotees would be bunched together at the bottom of the seniority list below the last position up to which it is possible to determine seniority on the basis of rotation of quota with reference to the actual number of direct recruits who become available. It is provided therein that the unfilled direct recruitment quota vacancies would be carried forward and added to the corresponding direct recruitment vacancies of the next year. It is also provided that these additional direct recruits selected against the carried forward vacancies of the previous year, should be placed en bloc below the last promotee or direct recruit, as the case may be, in the seniority list based on the rotation of quota for that year. Prior to these two OM's, there was an OM dated 22nd November 1959, which provided for fixing the seniority of direct recruits and promotees based on the rotation of quota.

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19. We have carefully considered the submissions. The first issue which arises for consideration is whether the decision of this Court in *K. Meghachandra's case*² is *per incuriam* or in the alternative, whether it requires reconsideration being in conflict with the decision of the Constitution Bench in the case of *Mervyn Coutindo*³ and the decision of a Bench of three Hon'ble Judges in the case of *M. Subba Reddy v. A.P. State Road Transport Corporation*⁶. The next issue will be assuming that the decision of this Court in *N.R. Parmar's case*¹ stands overruled, in view of its prospective overruling, whether the inter-se-seniority of the direct recruits and the promotees in the facts of this case could be determined as per the decision in *N.R. Parmar's case*¹. This is in the context of the fact that the seniority was fixed after the decision in the case of *N.R. Parmar*¹ and before 19th November 2019 i.e. when the decision in *K. Meghachandra's case*² was rendered. The third issue to be decided is whether the recruitment year is a financial year or a calendar year. Lastly, a factual issue will have to be decided whether, in the facts of this case, the process of recruitment of direct recruits commenced in the very recruitment year in which the vacancies arose.

20. In the facts of the case, there is no dispute that as far as the posts of Income Tax Inspectors are concerned, the principle of rota and quota or rotation of quota will apply. The posts of Income Tax Inspectors are being filled in by direct recruits and promotees in the proportion already fixed. Therefore, a roster will apply where the points will be for direct recruits and promotees as per the proportion fixed. Before we go into various legal issues, which we have flagged above, it will be appropriate if we discuss the factual issues first. For the decision on the factual issues, it is necessary to decide whether the recruitment/requisition/vacancy year is the same as the financial year. The appellants have tried to contend that a recruitment year will be a calendar year. We must note here that no such case has been made out in the Civil Appeal arising out of Special Leave Petition (C) No. 16161 of 2018. In the synopsis on pages F and G, the appellants themselves have referred to the financial year while referring to the vacancies available in a particular year. The appellants made a representation dated 25th November 2016 in which they described the recruitment years as the financial years i.e 2009-2010 and 2010-2011. The letter dated 3rd August 2016 addressed by the Directorate of Income Tax, New Delhi to the Principal Chief Commissioner of Income Tax, Ahmedabad treats a recruitment year as a financial year. In fact, it incorporates a clarification issued by ITGOA which in turn, refers to the recruitment year on the footing that it is a financial year. The appellants have

annexed as 'Annexure P-12' to reply affidavit in I.A. No. 161060 of 2019, a clarification dated 7th November 2014 issued by the CBDT to All Principal Chief Commissioners of Income Tax, which refers to vacancy years as financial years right from 1986-1987 till 2013-2014. Along with the letter dated 3rd August 2010, the Office of the Chief Commissioner of Income Tax forwarded to the CBDT, the details of the confirmed vacancies in the post of Income Tax Inspectors as on 31st March 2011 in the prescribed proforma. In the prescribed proforma, under the column 'year' (year of vacancies), financial years 2009-2010 and 2011-2012 have been mentioned. 35 vacancies of Income Tax Inspectors have been shown against the year 2009-2010. In the counter affidavit of private respondents, reliance has been placed on the OM dated 8th May 2017 issued by the DoPT. Paragraph 5 of the said OM specifically records that in partial modification of the OMs issued on 10th April 1989, 16th June 2000 and 20th May 2014, the vacancy year may be shifted to a calendar year from the year 2018, wherever the vacancy year based on financial year was being followed. The documents on record clearly show that as far as the posts of Income Tax Inspectors are concerned, the vacancy or recruitment year was always reckoned as the financial year.

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28. With the greatest respect to the Hon'ble Bench which dealt with K.Meghachandra's case², we find that the attention of the Bench was not invited to the binding decision of the Coordinate Bench in the case of M. Subba Reddy⁶. This decision was rendered by a Bench of three Hon'ble Judges. This Court in the case of M. Subba Reddy⁶ dealt with the issue of the fitment of the promotees to the posts of Assistant Traffic Manager and Assistant Mechanical Engineer in the integrated seniority list. The majority judgment refers to the relevant Service Regulations which provide that seniority is reckonable from the date of appointment to service or grade. Paragraphs 6 and 7 of the said decision read thus:

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30. The argument made before us is that the decision in the case of K. Meghachandra will have to be ignored on the ground that it is per incuriam as the attention of the Bench which decided the case was not invited to the binding decisions of the Constitution Bench in the case of Mervyn Coutindo and a Coordinate Bench in the case of M. Subba Reddy. Prima facie, we find substance in the argument that the attention of the Bench which decided the case of K. Meghachandra was not invited to the aforesaid binding precedents. Therefore, we are of the view that the appropriate course of action will be to refer the question to a larger Bench. We are dealing with a case where the 'rotation of quota' or rota and quota system is being followed. If the promotees are recruited in the relevant recruitment year, but the process of recruitment of the direct recruits which commenced in the same recruitment year could not be completed in the same year, the direct recruits appointed subsequently will have to be interspaced between the promotees of the same recruitment year. In such a case, it cannot be said that direct recruits were not available during the recruitment year. Their appointment could not be made during the same year, though the process of appointment commenced in the same year. But, if the process of recruitment of the direct recruits is completed in the same recruitment year but an adequate number of candidates could not be selected, the shortfall should be carried forward to the next recruitment year. In such cases, the candidates who are selected

against shortfall vacancies will have to be bunched below the promotees of the earlier years. Unless such a procedure is followed, the rotation of quota system will be defeated.

31. Coming to the facts of the case, though process of recruitment of direct recruits to the post of Income Tax Inspectors commenced in the recruitment year 2009-10, the same could not be completed in the same recruitment year. This is not a case where an adequate number of direct recruits could not be recruited even though the recruitment was done in the recruitment year itself. In this case, those who were eligible for direct recruitment were deprived of the opportunity as the process of recruitment could not be completed during the same recruitment year 2009-10 due to no fault on their part. The documents annexed to the counter affidavit show that the segregation of vacancies for 2009-10 and 2010-11 has been properly made.

32. In any event, the decision in the case of K. Meghachandra has a prospective operation. The seniority list of 7th September 2016 was made in terms of the decision in the case of N. R. Parmar¹. Hence, the same could not have been altered on 13th February 2018 when [the said decision](#) was in force.

33. Thus, our conclusion can be summarised as under:

i. The decision in the case of K. Meghachandra requires reconsideration by a larger Bench in view of the fact that the binding decision of a Constitution Bench in the case of Mervyn Coutindo and another binding decision of a Coordinate Bench in the case of M. Subba Reddy were not placed for consideration before the Bench which decided the case of K. Meghachandra ;

ii. Even assuming that the case of K. Meghachandra was correctly decided, paragraph 39 of the decision shows that the decision in the case of N.R. Parmar has been prospectively overruled by observing that the decision will not affect the inter-se-seniority already fixed on the basis of the case of N.R. Parmar and the same was protected. It is also held that the decision will apply prospectively except where seniority is to be fixed under the relevant Rules from the date of vacancy / the date of advertisement. In this case, as on the date when the case of N.R. Parmar was decided, there was no rule which required that the inter-se-seniority of direct recruits and promotees to the post of Income Tax Inspectors should be fixed from the date on which a person is born in the cadre. In the facts of the case, the seniority list was correctly published on 7th September 2016 in terms of the decision in the case of N.R. Parmar by interspersing those direct recruits who were eligible in the recruitment year 2009-10 and were appointed against the vacancies of the said year with 53 promotees who were promoted vide DPC dated 29th June 2009. The seniority list was later on modified on 13th February 2018 without giving an opportunity of being heard to the affected direct recruits.

34. At this stage, we may note here the factual aspects stated in the affidavit dated 12th October 2022 filed by Shri Anurag Chandra, Deputy Commissioner of Income Tax in the Office of the Principal Chief Commissioner of Income Tax, Gujarat. The affidavit refers to the interim order dated 13th July 2018 in the Civil Appeal arising out of S.L.P. (C) No.16161 of 2018, by which status quo as of that date with respect to the posts held, was ordered to be maintained. The affidavit notes that as a result of the interim order, the promotion to the cadre of Income Tax Officers from the cadre of Income Tax Inspectors could not take place. As a result, 33.33% of posts in the cadre

of Income Tax Officers are vacant as the same cannot be filled in. As noted earlier, the decision in the case of K.Meghachandra applies prospectively i.e. from 19th November 2019. Prima facie, the seniority fixed based on the decision in the case of N.R. Parmar has to be given effect. Therefore, while we are recommending a reference to a larger Bench, interim relief will have to be vacated and seniority will have to be fixed on the basis of the impugned judgment, subject to the final outcome of the appeal or the decision of the larger Bench, as the case may be.

35. Hence, we pass the following order:

i. We are of the considered view that the following questions need to be decided by a larger Bench of five Hon'ble Judges:

a. Whether the decision in the case of K. Meghachandra can be said to be a binding precedent in the light of the law laid down by the Constitution Bench in the case of Mervyn Coutindo³ and the law laid down by a Coordinate Bench in the case of M. Subba Reddy?

b. In absence of specific statutory rules to the contrary, when the 'rotation of quota' rule is applicable, whether the seniority of direct recruits who were recruited in the recruitment process which commenced in the relevant recruitment year but ended thereafter, can be fixed by following 'rotation of quota' by interspersing them with the direct recruits of the same recruitment year who were promoted earlier during the same year?

ii. We direct the Registry to place this petition before Hon'ble the Chief Justice of India for appropriate orders.

iii. The interim relief granted on 13th July 2018 stands vacated. Effect shall be given to the impugned judgment subject to the final outcome of this appeal or reference, as the case may be. We also clarify that the seniority of promotees and direct recruits who may be appointed hereafter will be subject to the final outcome of the decision of this appeal or the decision in reference, as the case may be. Accordingly, concerned persons shall be informed in writing by the Income Tax Department."

22. In **Amit Singh vs. Ravindra Nath Pandey and others**, (2022) 20 SCC 559, it is held as follows:-

"19. It will also be relevant to note that, in the 1991 Rules, the term recruitment/selection year is not defined.

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27. This Court in *Pawan Pratap Singh case* [*Pawan Pratap Singh v. Reevan Singh*, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] held that the effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be. This Court further held that the *inter se* seniority in a particular service has to be determined as per the service rules. It held that the date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority *inter se* between one officer or the other or between one group of officers and the other recruited from different sources. It further held that any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent

with the requirements of Articles 14 and 16 of the Constitution of India. It further held that the seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It held that the seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.

28. A Bench of three learned Judges of this Court in *P. Sudhakar Rao v. U. Govinda Rao* [*P. Sudhakar Rao v. U. Govinda Rao*, (2013) 8 SCC 693 : (2014) 1 SCC (L&S) 690] has approved the law as laid down by this Court in *Pawan Pratap Singh* [*Pawan Pratap Singh v. Reevan Singh*, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481]”

23. In *Bihar State Electricity Board and others vs. Dharamdeo Das*, AIR 2024 SC 4609, it is held as follows:-

“23. The view that seniority can neither be reckoned from the date when a vacancy arises, nor can it be granted retrospectively unless the service rules specifically provide for such a situation, is fortified by the decision of this Court in *K.K. Vadara* (supra) which has emphasised in no uncertain terms the settled position in law that promotion to a post should only be granted from the date of the promotion and not from the date on which a vacancy may have arisen. In *Ganga Vishan Gujarati vs State of Rajasthan*, this Court had reiterated the principle that retrospective seniority cannot be granted to an employee from the date when she was not even borne on the cadre. This principle has been built upon by a line of precedents starting with the decision of the Constitution Bench of this Court in *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra*, followed in *Akhouri Sachindra Nath* (supra), *Dinesh Kumar Sharma* (supra) and several other cases.”

24. As seen from the aforesaid rulings, the picture still leaves with some grey spots particularly when the decision in *K. Meghachandra Singh and others* (supra) has been referred to a larger Bench in *Hariharan and others* (supra). However it is found settled, without further quarrel, that in the matters of *inter-se* seniority the provisions of concerned service rules are to be looked into first. What is there in the service rule fixing seniority *inter-se* the employees in the cadre has to be followed scrupulously. In this regard, looking to the relevant rule for the cases at hand, there are two sets of rules, one 2010 Rules and the other, 2016 Rules superseding 2010 Rules. It is also the submission of the State in Home Department that the impugned Gradation List dated 11.6.2020 has been prepared in terms of the provisions contained in 2016 Rules. It is the specific stand of State-Opposite Parties, common in all the cases, that by conjoint reading of Rule 2(1)(m), Rule 6(2) and Rule 17 of 2016 Rules as well as the principles decided by the apex Court in the case of *N.R. Parmar and others* (supra), the *inter-se* seniority have been determined with reference to the recruitment years 2011 and 2015. But the thing does not stand as simple as answered by the State-Opposite Parties.

25. It is the accepted principle that for determining *inter-se* seniority in the cadre, the relevant provisions of the concerned service rule will hold the field. In the instance case, as stated earlier, 2010 Rules came into force w.e.f. 07.04.2010 and

continued to govern the field till 10.01.2017. 2016 Rules was brought in supersession of 2010 Rules w.e.f. 11.01.2017. All the parties were appointed prior to coming into force of 2016 Rules. Here the specific case of all the Petitioners is that, their service seniority is governed under the provisions of 2016 Rules that was in force on the date of their appointments and they further contend that, the cadre Rule came into force after their appointments cannot be made applicable to determine their service seniority retrospectively. So it becomes imperative to answer the applicability of respective rules at the first instance.

26. Seniority in service has to be reckoned from the date of first appointment. An employee gains his seniority by the length of service he renders. Therefore, the Rule prevailing on the date of initial appointment of an employee is relevant to count his seniority in service and not that the Rule that come in force from a prospective date than the initial appointment date because by gaining every date in service an employee stocks each date of seniority in his favour to reckon for. Undoubtedly in the present cases, every party has already gained service seniority by the date of coming into force of 2016 Rules on 11.1.2017. So the action of State-Opposite Parties to count the service seniority of the parties as on 1.1.2018 in terms of the provisions of 2016 Rules that was in force on 1.1.2018, by ignoring the provisions of 2010 Rules which was prevalent on the date of initial appointment of each party, is completely on faulty side. So in my humble opinion, the relevant rules applicable to determine service seniority of each ASO appointed prior to 11.1.2017 and after 7.4.2010 has to be reckoned in terms of the provisions contained in 2010 Rules.

27. Next is to see the relevant provisions under 2010 Rules relating to *inter-se* seniority of ASOs. Rule 17 of 2010 Rules, as quoted above, prescribes that the *inter-se* seniority of the officers appointed to the service in a particular year shall be in the order in which their names appear in the select list, and those appointed by promotion/selection under clause (b) of rule-5 shall be *en-bloc* senior to those appointed by limited departmental examination under clause (c) of rule-5, who shall in turn *en-bloc* be senior to those appointed by direct recruitment under clause (a) of rule-5. Here the relevant words are ‘appointed to service in a particular year’ and “year” means a calendar year (as per the definition in Section 2(1)(j)). The difference in the meaning of word ‘recruitment’ and ‘appointment’ has been explained in ***Prafulla Kumar Swain vs. Prakash Chandra Misra and others, (1993) Suppl 3 SCC 181***, as recruitment is not the actual appointment. It is held as follows:-

“28. At this stage, we will proceed to decide as to the meaning and effect of the words “recruitment” and “appointment”. The term “recruitment” connotes and clearly signifies enlistments, acceptance, selection or approval for appointment. Certainly, this is not actual appointment or posting in service. In contradistinction the word “appointment” means an actual act of posting a person to a particular office.

29. Recruitment is just an initial process. That may lead to eventual appointment in the service. But, that cannot tantamount to an appointment. No doubt, Rule 5 talks of recruitment to Class II service. We consider these are two sources of recruitment. Nowhere in the Recruitment Rules of 1959 it is specified that the services of a direct

recruit under the Government shall be reckoned from the date of selection in the competitive examination. On the contrary, Regulation 12(c) is very clear that the period of training is not to be reckoned as Government service. It is admitted before us that after the successful completion of training when the appointment order is issued the direct recruits are put on probation. Similar is in the case of the promotes. Both of them undergo probation. Therefore, in the light of these provisions it is not possible for us to accept the contention advanced on behalf of the direct recruits that their seniority must be reckoned from the date of their recruitment.”

Further, in *In K. Narayanan and others vs. State of Karnataka and others, 1994 Supp (1) SCC 44*, it is stated that :-

“6. Article 309 of the Constitution empowers the appropriate Legislature to frame rules to regulate recruitment to public services and the post. ‘Recruitment’ according to the dictionary means ‘enlist’. It is a comprehensive term and includes any method provided for inducting a person in public service. Appointment, selections, promotion, deputation are all well-known methods of recruitment. Even appointment by transfer is not unknown. But any rule framed is subject to other provisions of the Constitution. Therefore it has to be tested on rule of equality. ... xx .. xx.”

So all the Petitioners in second category of cases, i.e. W.P.(C) Nos.17311, 29089 and 36444 of 2020, who were appointed by promotion/induction in terms of clause (b)(c) of rule-5 shall be treated *en-bloc* senior to those appointed by direct recruitment. Therefore, the case of those Petitioners in second category is as simple as it is in Rule 17 to treat them senior over the direct recruits for being they (promotees/inductees) were appointed earlier to the direct recruits. As such, the Petitioners in three writ petitions, i.e. W.P.(C) No. 17311, 29089 and 36444 of 2020 are treated senior to the direct recruits appointed subsequently to their appointments and their seniority in the Gradation List are required to be modified accordingly.

28. So far as the dispute of *inter-se* seniority between the Petitioners in other seven writ petitions *inter-se* with those other direct recruits are concerned, the provisions of Rule 17 are not as much clear as in respect of promotees/inductees vis-à-vis direct recruits. Here is the case of *inter-se* seniority between two batches of direct recruits. It is stated by the State in their reply that the appointees selected pursuant to the Advertisement No.6 of 2015-16 are Special Drive recruits and the appointees selected pursuant to the Advertisement No.08 of 2012-13 are General Recruits. It is of course for the reason that, Advertisement No.6 of 2015-16 was meant for recruitment of ST category candidates only, whereas the Advertisement No.08 of 2012-13 was meant for all categories of candidates, i.e. both un-reserved and reserved categories. But it is never stated in the reply of the State that the vacancies notified for the Advertisement No.6 of 2015-16 are all such vacancies fall after the vacancies notified for the Advertisement No.08 of 2012-13. However, I am not the said aspect of date of vacancies. What is mentioned in Rule 17 of 2010 Rules is that, ‘appointed to the service in a particular year’ where “year” means a calendar year. The provisions of Rule 17 of 2010 Rules is restated here that *inter-se* seniority of the officers appointed to the service in a particular year shall be in the order in which their names appear in the select list. Of course here are two select lists

prevailing for two sets of direct recruits. Here is a case where two select lists are there and the question is which select list is to be treated first in order ? The answer would be, in my humble opinion, the select list first came into existence. In other words, the select list which was acted first has to be reckoned first in order and in the instant case it is the select list dated 22.12.2015 of the OPSC pursuant to which the appointment orders dated 27.1.2016 was issued first. The select list pursuant to the Advertisement No.08 of 2012-13 is dated 10.9.2016 based on which the appointment orders dated 5.10.2016 was issued.

29. It is true that, the principles in *K. Meghachandra Singh and others* (supra) has not been unsettled in *Hariharan and others* (supra) despite the matter is referred for adjudication to a larger Bench. Nonetheless, the question is of two sets of employees in the same cadre when appointed in the same calendar year, their merit has to be ascertained in order of their appointments made in the same year. So the conclusion is whoever saw the light of day earlier came into existence early than the other who came later and accordingly, the persons appointed earlier are treated as senior to those appointed later. The submissions of private Opposite Parties to stretch the meaning of the word ‘year’ as a ‘recruitment year’ other than the meaning defined in Section 2(1)(j) of the Rules is not found acceptable. So the seniority of the persons appointed to the cadre earlier on 27.1.2016 and 18.5.2016 are treated to be senior to the persons appointed subsequently in the same year. Thus the impugned Gradation List dated 11.6.2020, which is the subject matter of challenge in all the writ petitions, needs to be revised accordingly.

30. In terms of the observations stated above, all the writ petitions are thus allowed and the seniority of all such Petitioners are to be re-fixed in the Gradation List above the private Opposite Parties in the order that the Promotees/Inductees be placed *en-bloc* senior to the direct recruits of the particular year and among the direct recruits, the Petitioners appointed on 27.1.2016 and 18.5.2016 are to be placed above the persons appointed subsequently.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

All Writ Petitions allowed.

2025 (II) ILR-CUT-449

**ANAND SINGH
V.
STATE OF ODISHA & ORS.**

[W.P.(C) NO. 28802 OF 2024]

28 MARCH 2025

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

Issues for Consideration

Non-registration of vehicles – Authority of NOC lacking – Whether, in the above circumstances, petitioner's case merits consideration.

Headnotes

MOTOR VEHICLES ACT, 1988 – Sections 47, 47(2), 44(2) r/w Rules 54, 54(2) of Central Motor Vehicles Rules, 1989 – Petitioner, a businessman, initially operated in Lakshadweep – Later he relocated his business at Jharsuguda, Odisha and sought to register his goods carrier vehicles in Odisha but the RTO, Jharsuguda refused to register the vehicles in question due to unavailability of NOC on the online portal issued by the RTO, Chetla – Verification process has revealed that the confirmation email produced by the petitioner is fabricated – Inspection conducted by Opposite Party Nos. 2 & 3 conclusively established that neither the vehicles nor the garage existed at the specified location – Whether, in the above circumstances, petitioner's case merits consideration.

Held: No – A serious and compelling doubt arises regarding the authenticity of the NOC as well as the very existence of the vehicles purportedly presented before the Registering Authority – Accordingly, this Court is not inclined to direct the RTO, Jharsuguda, to proceed with the registration of the Petitioner's vehicles. (Para 16)

Citations Reference

Babulal Nagar v. Shree Synthetics Ltd., **1984 Supp SCC 128** – referred to.

List of Acts

Motor Vehicle, Act, 1988; Central Motor Vehicles Rules, 1989.

Keywords

NOC; Refused to register; Re-registration and reassessment; Certificate of registration; Verification; Penalty.

Case Arising From

Refusal of re-registration of the vehicles of the petition by the Regional Transport Officer (RTO), Jharsuguda due to unavailability of the NOC on the online portal issued by the RTO, Chetla.

Appearances for Parties

For Petitioner : Mr. Sidhartha Das

For Opposite Party(s) : Mr. Pravakar Behera, SC for Transport Department

Judgment/Order**Judgment**

Dr. S.K. PANIGRAHI, J.

1. In this Writ Petition, the Petitioner challenges the refusal of the RTO, Jharsuguda, to re-register his vehicles bearing Registration Nos.LD07GK-4473 and LD07-GK-8434, in Odisha due to the unavailability of the NOC issued by the RTO, Chetla, on the online portal.

2. The Petitioner further seeks a direction from this Court to the RTO, Jharsuguda, to register his vehicles in Odisha by accepting the physical copy of the NOC submitted along with the prescribed application under the Motor Vehicles Act, 1988.

I. FACTUAL MATRIX OF THE CASE:

3. The brief facts of the case are as follows:

(i) The Petitioner, a businessman who initially operated in Lakshadweep, later relocated his business to Jharsuguda district, Odisha, for professional growth. Consequently, he sought to register his goods carrier vehicles in Odisha.

(ii) The Petitioner's goods carrier vehicles were registered with the RTO of the Union Territory of Lakshadweep under Registration Nos. LD07GK-4473 and LD07-GK-8434, on 11.03.2022.

(iii) To commence his business afresh, the Petitioner approached the RTO, Jharsuguda, on 04.11.2024, seeking re-registration and reassessment of his vehicles.

(iv) However, the RTO, Jharsuguda, refused to register the Petitioner's vehicles, citing the inability to verify the NOC issued by non-Vahan states online. Additionally, the authorities required the Petitioner to present the vehicles for physical verification.

(v) Finding no alternative or efficacious remedy, the Petitioner has approached this Court by filing the present Writ Petition.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

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

(i) The Petitioner submitted that the NOC for his goods carrier vehicles bearing Registration Nos. LD07-GK-4473 and LD07-GK-8434, issued by the RTO, Chetla, is unavailable for verification on the Vahan Portal of the Ministry of Road Transport & Highways due to the Union Territory of Lakshadweep's reliance on an outdated version of Vahan and the absence of an online registration system.

(ii) The Petitioner contended that the NOC for the vehicles has already been verified by the RTO, Jharsuguda, through an official email communication dated 26.11.2024. The concerned authorities have received confirmation that the Transport Officer, Chetla, Lakshadweep, duly issued the NOC.

(iii) The Petitioner submitted that, under Section 47 of the Motor Vehicles Act, 1988, a vehicle that remains in another state for more than 12 months must be re-registered in that state. The owner is required to apply for reassessment of the vehicle by obtaining an NOC from the previous registering authority or submitting a receipt from the same. Furthermore, under Section 47(2) of the Motor Vehicles Act, 1988, upon verification of documents, the registering authority shall issue a new registration certificate for the concerned state. There is no statutory provision requiring physical verification of the vehicle at the time of reassignment of the registration mark.

(iv) The Petitioner contended that, as per Section 44(2) of the Motor Vehicles Act, 1988, the production of the vehicle at the time of registration is not mandatory. The provision explicitly states that once a certificate of registration is issued, the owner is not required to produce the vehicle before the registering authority for verification, subject to conditions prescribed by the State Government.

(v) The Petitioner submitted that, under Rule 54 of the Central Motor Vehicles Rules, 1989, which prescribes the procedure for assignment of a new registration mark, Rule 54(2) provides that upon receipt of an application for registration, the registering authority shall assign a registration mark in accordance with Section 44 of the Motor Vehicles Act, 1988.

(vi) The Petitioner contended that if the RTO, Jharsuguda, fails to register the vehicle within the prescribed time period, an automatic penalty of 200% per day would be levied on the MV Portal. This would impose an irrecoverable financial burden on the Petitioner due to the arbitrary actions and inaction of the Opposite Party authorities.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

5. The Learned Counsel for the Opposite Parties earnestly made the following submissions in support of his contentions:

(i) The verification of NOC issued by the District Transport Officer, Chetlat, Lakshadweep, is currently under process. Upon verification, it has been ascertained that the confirmation email relied upon by the Petitioner is fabricated.

(ii) This Court, vide order dated 07.01.2025, directed the Petitioner to file an affidavit specifying the whereabouts of the vehicles. In compliance, the Petitioner filed an affidavit, stating that the vehicles are presently parked at Rashid Motor Garage, Main

Road, near Durga Mandap, Belpahar, District-Jharsuguda, Odisha. However, an inspection conducted by the Opposite Party Nos. 2 and 3 revealed that neither the said vehicles nor the aforementioned garage exist at the specified location. This casts serious doubt on the authenticity of the NOC and the very existence of the vehicles purportedly presented before the Registering Authority.

(iii) The Superintendent of Police, Jharsuguda, conducted an inquiry and submitted a report dated 18.01.2025, to the Transport Commissioner, Odisha. The report conclusively states that no vehicles were found parked at Durga Mandap, Belpahar, nor does any garage named 'Rashid Motor Garage' exist at the specified location.

(iv) As per Section 47 of the Motor Vehicles Act, 1988, a new registration mark is assigned when a vehicle is removed to another state. Subsection (2) of Section 47 states that the Registering Authority, upon receiving an application under Sub-section (1), shall conduct such verification as it deems fit before assigning a new registration mark. While physical inspection is not explicitly mandated, the statutory provision grants the Registering Authority discretionary power to verify the legitimacy of the documents submitted.

(v) The phrase "as it thinks fit", as used in Sub-section (2) of Section 47 of the Motor Vehicles Act, 1988 confers wide discretion upon the Registering Authority. This discretion is not confined to mere document verification but extends to any necessary inquiries to ensure the authenticity of the claim. The Supreme Court, in **Babulal Nagar v. Shree Synthetics Ltd.**¹, held that the phrase "as it thinks fit" must be interpreted to grant broad discretionary powers to the competent authority to adopt an appropriate approach based on the facts and circumstances of each case.

(vi) Section 44 of the Motor Vehicles Act, 1988 was substituted by Act 32 of 2019 w.e.f. 01.04.2021. Prior to this substitution, the physical production of the vehicle at the time of registration was mandatory. The purpose of eliminating this requirement was to facilitate online registration of new motor vehicles at the dealer's point, in accordance with Section 41 of the Motor Vehicles Act, 1988. However, in the present case, the vehicles in question were not registered online with the District Transport Officer, Chetlat, as the Union Territory of Lakshadweep does not have an operational Vahan application system. This renders the Petitioner's reliance on Section 44 misplaced and inapplicable to the facts of the case.

(vii) Furthermore, despite this Court's order dated 04.02.2025, the Petitioner has failed to furnish any credible evidence establishing the transfer of the vehicles from Lakshadweep to Odisha. The Petitioner has thus approached this Court with unclean hands and has committed fraud upon the Court. In light of material misrepresentation and suppression of facts, the Petitioner is not entitled to any relief, and the present Writ Petition is liable to be dismissed with costs.

IV. COURT'S REASONING AND ANALYSIS:

6. Heard Learned Counsel for the parties and perused the documents placed before this Court.

7. The present Writ Petition has been filed seeking a direction to the Opposite Parties to issue a fresh registration certificate for the Petitioner's goods carrier vehicles in accordance with the provisions of the Motor Vehicles Act, 1988.

8. At the outset, it is pertinent to note that, under Section 47 of the Motor Vehicles Act, 1988, a vehicle relocated to another state for a period exceeding twelve months must be re-registered in the new state.

9. The material on record indicates that while the re-registration process in most states is conducted online through the Vahan portal, the Union Territory of Lakshadweep continues to rely on an outdated version of the system and lacks an online registration mechanism. A communication from the Office of the District Transport Officer, Chetlat, confirms this and requests other states to accept the physical NOC along with the prescribed documents, subject to verification of the registration certificate and the authenticity of the NOC, in accordance with Section 47 of the Motor Vehicles Act, 1988.

10. Section 44 of the Motor Vehicles Act, 1988, stipulates that the production of a vehicle at the time of registration is not mandatory, subject to conditions prescribed by the Central or State Government. However, Section 47 of the Act confers discretionary power upon the Registering Authority to conduct necessary verification before assigning a new registration mark.

11. In the instant matter, the Petitioner submitted an application for the issuance of a fresh registration certificate, relying upon an NOC purportedly issued by the Transport Authority at Lakshadweep, along with other requisite documents in terms of Section 47 of the Motor Vehicles Act, 1988.

12. The Office of the District Transport Officer, Chetlat, has provided an official email ID for the verification of documents, including the NOC and the registration certificate, in view of growing concerns regarding the registration of vehicles based on forged documents.

13. Upon scrutiny of the records, it is evident that the Opposite Parties initiated an inquiry into the veracity of the NOC relied upon by the Petitioner. The verification process has revealed that the confirmation email produced by the Petitioner is fabricated.

14. Furthermore, this Court, vide order dated 07.01.2025, directed the Petitioner to file an affidavit specifying the present location of the vehicles. In compliance, the Petitioner submitted an affidavit stating that the vehicles were parked at Rashid Motor Garage, Main Road, near Durga Mandap, Belpahar, District-Jharsuguda,

Odisha. However, an inspection conducted by Opposite Party Nos. 2 and 3 conclusively established that neither the said vehicles nor the aforementioned garage existed at the specified location.

15. Additionally, the Superintendent of Police, Jharsuguda, conducted an independent inquiry and submitted a report dated 18.01.2025, submitted to the Transport Commissioner, Odisha. The report categorically confirmed that the alleged vehicles were not found at the given location, and further, that no establishment under the name 'Rashid Motor Garage' was in existence at the stated address.

16. In light of these findings, a serious and compelling doubt arises regarding the authenticity of the NOC as well as the very existence of the vehicles purportedly presented before the Registering Authority. Accordingly, this Court is not inclined to direct the RTO, Jharsuguda, to proceed with the registration of the Petitioner's vehicles.

17. However, the Petitioner shall be at liberty to approach the RTO, Jharsuguda, afresh with a duly supported application for registration, accompanied by a genuine and verifiable NOC issued by the Transport Authority at Lakshadweep, along with all necessary and authenticated documents, in accordance with the provisions of Section 47 of the Motor Vehicles Act, 1988. If such an application is submitted, the competent authority shall consider it in accordance with law and render a decision expeditiously.

V. CONCLUSION:

18. In light of the foregoing discussions and the suspicious nature of the documents relied upon by the Petitioner and the lack of substantiation regarding the existence of the vehicles, this Court finds no merit in the present Writ Petition.

19. Accordingly, this Writ Petition is hereby dismissed.

20. Interim order, if any, passed earlier stands vacated.

Headnotes prepared by:
Shri Pravakar Ganthia, Editor-in-Chief
ILR-Cuttack Series

Result of the case:
Writ Petition dismissed.

2025 (II) ILR-CUT-455

**M/s. HOTEL SEA POINT PVT. LTD., PURI
V.
M/s. BLUELINE RESORTS PVT. LTD., BHUBANESWAR**

[W.P.(C) NO. 32426 OF 2022]

11 APRIL 2025

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

Issue for Consideration

Whether the Court can exercise its writ jurisdiction to interfere with the impugned order dated 01.08.2022 passed by the sole arbitrator.

Headnotes

ARBITRATION AND CONCILIATION ACT, 1996 – Sections 5,8,11, 11(6-A) and 29 A r/w Sections 35, 36, 42, 42(2) of the Indian Stamp Act, 1899 r/w Order 23, Rule 1 of the Code of Civil Procedure, 1908 r/w provisions of the Indian Contract Act, 1872 r/w provisions of the Constitution of India, 1950 – Parties entered into an agreement on 01.05.2012 in respect of the hotel premises on lease valid for 10 years and extendable for another 10 years – Lease Agreement was unstamped and unregistered – Dispute arose due to non-payment of monthly rent as parties agreed upon – Ultimately, the matter was referred to the Arbitrator who passed the impugned order – Whether the Court can exercise its writ jurisdiction to interfere with the impugned order dated 01.08.2022 passed by the sole arbitrator.

Held: Yes – This Court believes that the present matter comes within the meaning of “exceptional” and writ jurisdiction ought to be exercised in the face of such patent illegality, which necessitates interference. (Para 61)

The impugned Order/Award is set aside – The Arbitral Tribunal having impounded the instrument, which is not duly stamped as per the provisions of the Indian Stamp Act, 1899, shall forward it to the Collector, if the same has not already been done – The Collector then, shall, direct the collection of the appropriate stamp duty and levy penalty – In this regard, it is clarified that the stamp duty and any penalty thereupon shall be borne by the Parties in the manner stipulated in the Agreement – Upon payment, the Collector shall endorse that the proper stamp duty has been paid under Section 42 of the Indian Stamp Act, 1899 – This endorsed instrument shall be returned to the Ld. Sole Arbitrator, after which the proceedings shall be conducted and concluded expeditiously – Till such time, the arbitration proceedings shall remain in abeyance. (Para 63)

Citations Reference

SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd., **(2011) 14 SCC 66**; Deep Industries Ltd. v. Oil and Natural Gas Corporation Ltd., **2019 SCC OnLine SC 1602**; Bhaven Construction through Authorised Signatory Premjibhai K. Shah v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd., **(2022) 1 SCC 75**; Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., **(2011) 8 SCC 333**; Food Corpn. of India v. Indian Council of Arbitration, **(2003) 6 SCC 564**; Union of India v. Popular Construction Co., **(2001) 8 SCC 470**; P. Anand Gajapathi Raju v. P.V.G. Raju, **(2000) 4 SCC 539**; Swiss Timing Ltd. v. Commonwealth Games 2010 Organising Committee, **(2014) 6 SCC 677**; State of Bihar v. Bihar Rajya M.S.E.S.K.K. Mahasangh, **(2005) 9 SCC 129**; Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, **(1986) 4 SCC 447**; ICICI Bank Ltd. v. Sidco Leathers Ltd., **(2006) 10 SCC 452**; Union of India v. R. Gandhi, President Madras Bar Association, **(2010) 11 SCC 1**; Srei Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd., **(2018) 11 SCC 470**; S.B.P. & Company v. Patel Engineering Ltd., **(2005) 8 SCC 618**; Estralla Rubber v. Dass Estate (P) Ltd., **(2001) 8 SCC 97**; N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd., **(2023) 7 SCC 1**; Hindustan Steel Ltd. v. Dilip Construction Co., **(1969) 1 SCC 597**; Interplay Between Arbitration Agreements under Arbitration, 1996 and Stamp Act, 1899, In re, **(2024) 6 SCC 1 – referred to.**

List of Acts

Arbitration and Conciliation Act, 1996; Indian Stamp Act, 1899; Code of Civil Procedure, 1908; Indian Contract Act, 1872; Constitution of India, 1950.

Keywords

Agreement; Breach of agreement; Award; Arbitral Tribunal; Mesne profits; Specific performance of contract; Non-payment of rent; Impound of Agreement; Recovery of possession; Arbitration; Reference.

Case Arising From

Order dated 01.08.2022 passed by the learned sole Arbitrator directing the petitioner to pay a sum of ₹4,31,94,711/- along with cost for breach of the lease Agreement dated 01.05.2022.

Appearances for Parties

For Petitioner : Mr. Surendra Routray

For Opp. Parties : Mr. D.P. Nanda, Sr. Adv. and Mr. Avijit Pal

Judgment/Order**Judgment**

Dr. S.K. PANIGRAHI, J.

1. This Writ Petition is preferred by the Petitioner against order dated 1.8.2022 passed by the Ld. Sole Arbitrator purporting the same to be an award wherein the Petitioner was directed to pay a sum of Rs.4,31,94,711/- along with cost of Rs.15,00,00/- within two months from the date of the award to the Respondent on the basis of breach of the Lease Agreement dated 01.05.2012.

I. FACTUAL MATRIX OF THE CASE:

2. The Petitioner is a company which has taken on lease the land from one, Mr. Durga Charan Rautray on which the hotel premises are located. The Opposite Party was desirous of taking the hotel premises on lease and therefore, Lease Agreement dated 1.5.2012 was entered into between the Petitioner and the Opposite Party. The Agreement dated 1.5.2012 was valid for a period of 10 years, further extendable by 10 years which would commence from 1.5.2012. Accordingly, monthly rental was provided for in the Agreement dated 1.5.2012 itself which was payable during the entire duration of the lease period. It is pertinent to mention here that the Lease Agreement was signed by the parties on a Rs.100 stamp paper, and was not registered.

3. Disputes arose over non-payment of the rent as prescribed in the Agreement and therefore, the Petitioner approached this Court for appointment of an Arbitrator u/s 11 of the Arbitration and Conciliation Act.

4. During the pendency of the Section 11 application, the Opposite Party filed C.S No. 598/2015 before the Civil Judge at Puri claiming specific performance and damages with respect to alleged breach of Agreement dated 1.5.2012.

5. Meanwhile, vide order dated 5.11.2015, this Court was pleased to appoint the Ld. Sole Arbitrator for adjudication of the dispute between the parties. Accordingly, the parties appeared before the Ld. Arbitrator and filed their respective claim and counter claim.

6. At this juncture, the Petitioner filed an application before the Ld. Arbitrator praying for impound of the Agreement dated 1.5.2012 and abeyance of proceedings as the said Agreement was not sufficiently stamped nor registered as required in law.

7. The Ld. Arbitrator vide order dated 13.4.2017, rejected the prayer of impounding the Agreement as prayed for by the Petitioner. Aggrieved, the Petitioner approached this Court in W.P.(C) No. 7893/2017 challenging the refusal order of the Ld. Arbitrator. This Court vide order dated 8.5.2017 in W.P.(C) No. 7893/2017 was pleased to direct the Ld. Arbitrator to impound the Agreement in line with the

Supreme Court's judgment in ***SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.***¹.

8. In compliance with this Court's order dated 8.5.2017 in W.P.(C) No. 7893/2017, the Ld. Arbitrator vide order dated 20.7.2017 was pleased to impound the Agreement. However, the order was passed ex-parte without hearing the Petitioner and the onus of payment of the deficit stamp duty was placed on the Petitioner. This was challenged by the Petitioner before this Court, where it was prayed that the onus be shifted to the Respondent who was liable to bear the same in terms of the Agreement.

9. Here, now, the litigation gets even more chequered. The Opposite Party did not bring the orders of this Court with regards to the impounding to the attention of this Court and managed to secure an order directing the Ld. Arbitrator to conclude the arbitration proceedings within 3 months. This was then challenged by the Petitioner, and the same was stayed vide this Court's order dated 11.8.2017.

10. In the meanwhile, it is pertinent to note that the Petitioner had filed C.S. No. 462/2017 seeking recovery of possession, *mesne* profits and damages from the Respondent alleging breach of the Agreement dated 1.5.2012.

11. While the arbitration proceeding had hit a pause, the Parties were pursuing their respective Civil Suits. Then, the Respondent filed an application under Section 8 of the A&C Act for reference of the matter to the arbitrator even though its own Civil Suit was pending on 20.11.2017. Thereafter, the Respondent sought to withdraw its C.S. No. 598/2018 seeking pursuing the arbitration under Order 23 Rule 1 CPC on 16.2.2018.

12. Pursuant to the order dated 15.1.2018, both the Civil Suits are directed to be heard analogously by the Ld. Civil Judge, Sr. Div., Puri with the consent of both Parties. The application under Section 8 of the A&C Act is rejected by the Ld. Civil Judge, Sr. Div., Puri vide its order dated 17.5.2018.

13. Aggrieved, the Opposite Party approached this Court in W.P.(C) No.13136/2018 challenging the rejection of its application under Section 8 of the A&C Act.

14. On 5.12.2019, the Opposite Party was permitted to withdraw its Civil Suit upon payment of cost of Rs.500/- to the Petitioner.

15. In all this, the Opposite Party has consistently approached either this Court or the Ld. District Judge seeking extension of time for passing an award in favour of the Ld. Sole Arbitrator. These efforts culminated finally in the Opposite Party's application under Section 29A of the A&C Act in ARBP No.123/2017 which was rejected by the Ld. District Judge, Puri for suppression of facts and forum hunting vide order dated 27.12.2021.

¹ (2011) 14 SCC 66

16. The same was challenged by the Opposite Party in W.P.(C) No. 3203/2022 before this Court. However, this Court deemed it appropriate to decline to allow the application under Section 29A of the A&C Act, it appears vide order dated 6.7.2022, this Court directed the Ld. Arbitrator to continue the arbitration expeditiously.

17. Thereafter, the Ld. Arbitrator passed the impugned order purported to be an Award on 1.8.2022.

18. Aggrieved by the Impugned Order, the instant Petition has been preferred. As the facts leading up to the instant Petition 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 writ jurisdiction.

II. PETITIONER'S SUBMISSIONS:

19. The Ld. Counsel for the Petitioner Mr. Surendra Routray contends that there has been a complete failure by the Ld. Sole Arbitrator in rendering the impugned order as the Lease Agreement on the basis of which the impugned order was passed, or the arbitration was kick-started still remained unstamped and unregistered despite this Court's direction. Not to mention that the Ld. Arbitrator had himself impounded the Agreement for being insufficiently stamped, and without the defect being cured, had surprisingly proceeded to pass the Impugned Order. Insofar as the maintainability of the petition is concerned, it is urged by him that the provisions of the Act cannot oust the jurisdiction of the High Courts and under Article 226 and 227. While the said power ought to be exercised sparingly, the jurisdiction of High Courts can not to be ousted especially when there is a manifest error by the Arbitral Tribunal in which case, the High Courts ought to exercise jurisdiction under Article 227.

20. Ld. Counsel for the Petitioner Mr. Routray referred to the judgments in *Deep Industries Ltd. v. Oil and Natural Gas Corporation Ltd.*² and *Bhaven Construction through Authorised Signatory Premjibhai K. Shah v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd.*³ Relying upon the judgment in *Deep Industries* (supra) his submission was that in the said case, also, the Supreme Court categorically held that the jurisdiction of the writ court under Article 227 cannot be ousted.

III. OPPOSITE PARTY'S SUBMISSIONS:

21. On the other hand, Ld. Sr. Counsel Mr. D.P. Nanda appearing for the Opposite Party, submits that the orders of an Arbitral Tribunal are not amenable to writ jurisdiction. It is further submitted that if the parties have entered into an agreement to arbitrate their disputes, the court must decline to exercise its extraordinary jurisdiction under the Constitution and leave the parties to avail the

² 2019 SCC OnLine SC 1602

³ (2022) 1 SCC 75

remedies under the special enactment which in itself is a self-contained code. The object of minimal judicial intervention under the 1996 Act, will be defeated at the High Court exercises its jurisdiction under Article 226 or 227 with any orders of the arbitral tribunal.

IV. ISSUES FOR CONSIDERATION:

22. Having heard the parties and perused the materials available on record, this Court has identified herein the following issues to be determined:

A. Whether this Court can exercise its writ jurisdiction to interfere with the Impugned Order passed by the Ld. Sole Arbitrator?

B. Whether this Court ought to interfere with the Impugned Order?

V. ISSUE A: WHETHER THIS COURT CAN EXERCISE ITS' WRIT JURISDICTION TO INTERFERE WITH THE IMPUGNED ORDER PASSED BY THE LD. SOLE ARBITRATOR?

23. In India, the maintainability of writ petitions in respect of arbitration matters presents a nuanced legal challenge, requiring the balancing of the extraordinary powers of High Courts under Articles 226 and 227 of the Constitution of India with the objectives of the Arbitration and Conciliation Act, 1996 (Arbitration Act). Section 5 of the Arbitration Act minimises judicial interference in arbitral proceedings, confining intervention strictly to the circumstances outlined within the statute. However, courts have frequently grappled with situations where exercising the writ powers was deemed necessary to preserve the purity the writ jurisdiction of High Courts remains intact despite Section 5 of the Arbitration Act; and (ii) its exercise must be limited to rare and exceptional cases, such as those involving a manifest lack of jurisdiction, bad faith, or violations of natural justice principles.

24. This question assumes greater importance as arbitration continues to gain prominence as an alternative dispute resolution mechanism in India. While Arbitral Tribunals are afforded significant autonomy to adjudicate disputes, judicial scrutiny is sometimes required to prevent the misuse of arbitration proceedings or a miscarriage of justice. Recent rulings of the Apex Court have further clarified the contours of this balance, emphasising that writ petitions should be entertained sparingly and in line with the objective of the Arbitration Act and its quest for an efficient and independent dispute resolution.

25. The extraordinary jurisdiction of High Courts in India, enshrined in Articles 226 and 227 of the Constitution, serves as a foundation for protecting fundamental rights and administering justice. Article 226 empowers High Courts to issue writs for the enforcement of fundamental rights, offering a remedy against both legislative and executive actions. Article 227, on the other hand, confers every High Court with supervisory powers over all courts and tribunals within the jurisdiction of such High Court. Together, these articles establish a robust framework for judicial review, reinforcing the rule of law and providing a mechanism to check the misuse of power.

26. The Arbitration Act establishes a robust legal framework designed to facilitate efficient dispute resolution mechanism through arbitration. This landmark legislation was crafted to minimise judicial intervention and enhance party autonomy, thereby aligning Indian arbitration practices with international norms and expectations. Section 5 of the Arbitration Act embodies a fundamental principle: courts are expressly prohibited from interfering in matters governed by the Arbitration Act, except as explicitly stipulated within its framework. Through this provision, the legislature aims to preserve the integrity of arbitration as a preferred dispute resolution mechanism, ensuring that Arbitral Tribunals operate with the requisite independence to deliver fair and impartial awards. In addition to defining the limits of judicial oversight, the Act encompasses provisions that further reinforce the principle of minimal intervention. It grants arbitrators substantial discretion to determine procedural issues and the scope of their jurisdiction.

27. In *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*⁴, the Supreme Court of India characterised the Arbitration Act as a comprehensive and specialised law designed to facilitate quick and efficient dispute resolution through arbitration while reducing judicial interference.

28. One of the main objectives of the Arbitration Act is to minimise the supervisory role of Courts in the arbitral process. Party autonomy and settlement of disputes by an Arbitral Tribunal are the hallmarks of arbitration law. Section 5 gives effect to the true intention of the parties to have their disputes resolved through arbitration in a quick, efficient and effective manner by minimising judicial interference in the arbitral proceedings⁵. Parliament enacted Section 5 to minimise the supervisory role of Courts in the arbitral process to the bare minimum, and only to the extent “so provided” under the Part I of the Arbitration Act. In doing so, the legislature did not altogether exclude the role of Courts or judicial authorities in arbitral proceedings, but limited it to circumstances where the support of judicial authorities is required for the successful implementation and enforcement of the arbitral process.⁶⁷ The Arbitration Act in fact, envisages the role of Courts to “support arbitration process”⁸ by providing necessary aid and assistance when required by law in certain situations.

29. Section 5 begins with the expression “*notwithstanding anything contained in any other law for the time being in force.*” The non obstante clause is Parliament’s addition to Article 5 of the Model Law. This is of a wide amplitude and sets forth the legislative intent of limiting judicial intervention during the arbitral process. In the context of Section 5, this means that the provisions contained in Part I of the

⁴ (2011) 8 SCC 333

⁵ Food Corpn. of India v. Indian Council of Arbitration, (2003) 6 SCC 564.

⁶ Union of India v. Popular Construction Co., (2001) 8 SCC 470

⁷ P. Anand Gajapathi Raju v. P.V.G. Raju, (2000) 4 SCC 539

⁸ Swiss Timing Ltd. v. Commonwealth Games 2010 Organising Committee, (2014) 6 SCC 677

Arbitration Act ought to be given full effect and operation irrespective of any other law for the time being in force. It is now an established proposition of law that the legislature uses non obstante clauses to remove all obstructions which might arise out of the provisions of any other law, which stand in the way of the operation of the legislation which incorporates the non obstante clause.⁹

30. In **Chandavarkar Sita Ratna Rao v. Ashalata S. Guram**¹⁰, Sabyasachi Mukharji, J. explained the purport of non obstante clause in the following terms :

“67. A clause beginning with the expression “notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract” is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment.”

31. Although a non obstante clause must be allowed to operate with full vigour, its effect is limited to the extent intended by the legislature. In **ICICI Bank Ltd. v. Sidco Leathers Ltd**¹¹, the Court held that a non obstante clause must be interpreted by confining it to the legislative policy. Thus, even if a non obstante clause has wide amplitude, the extent of its impact has to be measured in view of the legislative intention and legislative policy. In view of this settled legal position, the issue that arises for our consideration is the scope of the *non obstante* clause contained in Section 5 of the Arbitration Act.

32. Section 5 has two facets — positive and negative. The positive facet vests judicial authorities with jurisdiction over arbitral proceedings in matters expressly allowed in or dealt with under Part I of the Arbitration Act. The flip side to this approach is that judicial authorities are prohibited from intervening in arbitral proceedings in situations where the Arbitral Tribunal has been bestowed with exclusive jurisdiction. This is the negative facet of Section 5. The *non obstante* clause limits the extent of judicial intervention in respect of matters expressly provided under the Arbitration Act. In **Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.** (supra), the Apex Court observed that the:

“12. ... non obstante clause is provided to uphold the intention of the legislature as provided in the Preamble to adopt Uncitral Model Law and Rules, to reduce excessive judicial interference which is not contemplated under the Arbitration Act.”

33. The interplay between the legislative framework under the Arbitration Act and the constitutional powers of the High Courts under Articles 226 and 227 of the

⁹ State of Bihar v. Bihar Rajya M.S.E.S.K.K. Mahasangh, (2005) 9 SCC 129

¹⁰ (1986) 4 SCC 447

¹¹ (2006) 10 SCC 452

Constitution has been discussed in several cases. These rulings have not only elucidated the parameters within which High Courts may exercise their writ powers but have also reinforced the fundamental principles underlining the Arbitration Act.

34. In **Union of India v. R. Gandhi, President Madras Bar Association**¹² the Supreme Court observed on the question as to what constitutes ‘Courts’ and ‘Tribunals’ as under:

“38. The term ‘Courts’ refers to places where justice is administered or refers to Judges who exercise judicial functions. Courts are established by the state for administration of justice that is for exercise of the judicial power of the state to maintain and uphold the rights, to punish wrongs and to adjudicate upon disputes. Tribunals on the other hand are special alternative institutional mechanisms, usually brought into existence by or under a statute to decide disputes arising with reference to that particular statute, or to determine controversies arising out of any administrative law. Courts refer to Civil Courts, Criminal Courts and High Courts. Tribunals can be either private Tribunals (Arbitral Tribunals), or Tribunals constituted under the Constitution (Speaker or the Chairman acting under Para 6(1) of the Tenth Schedule) or Tribunals authorized by the Constitution (Administrative Tribunals under Article 323A and Tribunals for other matters under Article 323B) or Statutory Tribunals which are created under a statute (Motor Accident Claims Tribunal, Debt Recovery Tribunals and consumer fora). Some Tribunals are manned exclusively by Judicial Officers (Rent Tribunals, Motor Accidents Claims Tribunal, Labour Courts and Industrial Tribunals). Other statutory Tribunals have Judicial and Technical Members (Administrative Tribunals, TDSAT, Competition Appellate Tribunal, Consumer fora, Cyber Appellate Tribunal, etc).” (emphasis is ours)

35. Similar observations were made by the Supreme Court in **Srei Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd**¹³, as under:

“14. Arbitration is a quasi judicial proceeding, equitable in nature or character which differs from a litigation in a Court. The power and functions of arbitral tribunal are statutorily regulated. The tribunals are special arbitration with institutional mechanism brought into existence by or under statute to decide dispute arising with reference to that particular statute or to determine controversy referred to it. The tribunal may be a statutory tribunal or tribunal constituted under the provisions of the Constitution of India. Section 9 of the Civil Procedure Code vests into the Civil Court jurisdiction to entertain and determine any civil dispute. The constitution of tribunals has been with intent and purpose to take out different categories of litigation into the special tribunal for speedy and effective determination of disputes in the interest of the society. Whenever, by a legislative enactment jurisdiction exercised by ordinary civil court is transferred or entrusted to tribunals such tribunals are entrusted with statutory power. The arbitral tribunals in the statute of 1996 are no different, they decide the lis between the parties, follows Rules and procedure conforming to the principle of natural justice, the adjudication has finality subject to remedy provided under the 1996 Act. Section 8 of the 1996 Act obliges a judicial authority in a matter which is a subject of an agreement to refer the parties to arbitration. The reference to arbitral tribunal thus can be made by judicial authority or an arbitrator can be appointed in accordance with the arbitration agreement under Section 11 of the 1996 Act.” (emphasis is ours)

¹² (2010) 11 SCC 1

¹³ (2018) 11 SCC 470

36. Thus, the Supreme Court has time and again held that arbitral tribunals are private tribunals unlike those tribunals set up under the statute or specialized tribunals under the Constitution of India. Thus, a Petition under Article 227 challenging orders of an Arbitral Tribunal would be maintainable.

Scope and extent of interference

37. Coming now to the question as to what would be the scope of interference under Article 226/227 against orders passed by the Arbitral Tribunals, though, a number of judgments have been cited by both parties, recent decisions of the Supreme Court and of this Court have settled the issue.

38. In 2019, a Three Judge Bench of the Supreme Court in a judgement authored by Justice R.F Nariman in the case of **M/S Deep Industries Ltd. v Oil And Natural Gas Corporation** (supra) held that it is possible to challenge such a dismissal order through a writ at a High Court under Articles 226 and 227 of the Constitution of India, but the same laid down some stringent terms to challenge a Section 16 dismissal order.

39. In **Deep Industries** (supra) decided on 28th November, 2019, the Supreme Court considered **S.B.P. & Company v. Patel Engineering Ltd.**¹⁴ and **Fuerst Day Lawson Limited v. Jindal Exports Limited**¹⁵ and observed as under:

“15. Given the aforesaid statutory provision and given the fact that the 1996 Act repealed three previous enactments in order that there be speedy disposal of all matters covered by it, it is clear that the statutory policy of the Act is that not only are time limits set down for disposal of the arbitral proceedings themselves but time limits have also been set down for Section 34 references to be decided. Equally, in Union of India v. Varindera Const. Ltd., dated 17.09.2018, disposing of SLP (C) No. 23155/2013, this Court has imposed the self-same limitation on first appeals Under Section 37 so that there be a timely resolution of all matters which are covered by arbitration awards.

16. Most significant of all is the non-obstante Clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed (See Section 37(2) of the Act).

17. This being the case, there is no doubt whatsoever that if petitions were to be filed Under Articles 226/227 of the Constitution against orders passed in appeals Under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non-obstante Clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed Under Article 227 against judgments allowing or dismissing first appeals Under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the

¹⁴ (2005) 8 SCC 618

¹⁵ (2011) 8 SCC 333

same, taking into account the statutory policy as adumbrated by us herein above so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.” (emphasis is ours)

40. It is, therefore, prudent for a Judge not to exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear ‘bad faith’ shown by one of the parties or in case which allowed to go unchecked would result in a situation of patent illegality being perpetuated. This high standard set by the Apex Court is in terms of the legislative intention to make the arbitration fair and efficient.

41. In this context, a reference may be made to **Deep Industries** (supra) wherein interplay of Section 5 of the Arbitration Act and Article 227 of the Constitution was analyzed very succinctly:

“15. Most significant of all is the nonobstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed (See Section 37(2) of the Act)

*16. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non-obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the **High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us herein above so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.”***

42. Furthermore, the Apex Court in **Estralla Rubber v. Dass Estate (P) Ltd.**¹⁶, has observed that:

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a

¹⁶ (2001) 8 SCC 97

grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.

7. This Court in *Ahmedabad Mfg. & Calico Ptg. Co.Ltd. v. Ram Tahel Ramnand* [(1972) 1 SCC 898 : AIR 1972 SC 1598] in AIR para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case *Waryam Singh v. Amarnath* [AIR 1954 SC 215 : 1954 SCR 565] . This Court in *Bathutmal Raichand Oswal v. Laxmibai R. Tarte* [(1975) 1 SCC 858 : AIR 1975 SC 1297] has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order.”

43. A perusal of the above-mentioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Article 226/227 in challenges to orders by an arbitral tribunal including orders passed under Section 16 of the Act:

- (i) An arbitral tribunal is a tribunal against which a petition under Article 226/227 would be maintainable;
- (ii) The *non-obstante* clause in section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a Constitutional provision;
- (iii) For interference under Article 226/227, there have to be ‘*exceptional circumstances*’;
- (iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere;
- (v) Interference is permissible only if the order is completely perverse i.e., that the perversity must stare in the face;
- (vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process;
- (vii) Excessive judicial interference in the arbitral process is not encouraged;
- (viii) It is prudent not to exercise jurisdiction under Article 226/227;
- (ix) The power should be exercised in ‘*exceptional rarity*’ or if there is ‘*bad faith*’ which is shown;
- (x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided.

44. The Supreme Court, while acknowledging that the hierarchy in our legal framework mandates that a legislative enactment cannot curtail a Constitutional right and has observed that it is settled law that when a statutory forum is created by law for redressal of grievances, a Writ Petition would not ‘ordinarily’ be entertained ignoring the statutory dispensation. This power needs to be exercised in exceptional rarity, wherein the illegality or perversity in the order of the Ld. Sole Arbitrator stares one in the face.

45. Furthermore, it is also well settled that availability of an alternative remedy does not prohibit the High Courts from entertaining a writ petition in an appropriate case. The High Courts may entertain a writ petition, notwithstanding the availability of an alternative remedy, particularly (i) where the writ petition seeks enforcement of a fundamental right, (ii) where there is failure of principles of natural justice, (iii) where the impugned orders or proceedings are wholly without jurisdiction or (iv) the vires of an act is under challenge.

46. This Court concludes that the High Court “can” exercise its powers under writ jurisdiction in spite of Section 5 of the A&C Act, but whether it “ought” to exercise in this present case remains to be seen.

VI. ISSUE B: WHETHER THIS COURT OUGHT TO INTERFERE WITH THE IMPUGNED ORDER?

47. The majority judgment of the Apex Court in *N.N. Global (2)*¹⁷ summed up its holding in the following terms:

“109. ... An agreement which is unstamped or insufficiently stamped is not enforceable, as long as it remains in the said condition. Such an instrument would be void as being not enforceable [see Section 2(g) of the Contract Act].”

The above observation conflates the distinction between enforceability and admissibility.

48. Section 35 of the Stamp Act is unambiguous. It stipulates, “No instrument chargeable with duty shall be *admitted in evidence*...” The term “admitted in evidence” refers to the admissibility of the instrument. Sub-section (2) of Section 42, too, states that an instrument in respect of which stamp duty is paid and which is endorsed as such will be “admissible in evidence”. The effect of not paying duty or paying an inadequate amount renders an instrument inadmissible and not void. Non-stamping or improper stamping does not result in the instrument becoming invalid. The Stamp Act does not render such an instrument void. The non-payment of stamp duty is accurately characterised as a curable defect. The Stamp Act itself provides for the manner in which the defect may be cured and sets out a detailed procedure for it. It bears mentioning that there is no procedure by which a void agreement can be “cured”.

¹⁷ *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.*, (2023) 7 SCC 1

49. In *N.N. Global (2)* (supra), the Apex Court has held that the failure to stamp an arbitration agreement is not a “curable defect”. Relying on the provisions of the Contract Act as well as Section 11(6-A) of the Arbitration Act, it has held that an unstamped arbitration agreement is void. The relevant paragraphs of the judgment of the majority are extracted below :

“103. ... It may not be apposite to merely describe an unstamped arbitration agreement as a “curable defect”. As long it remains an unstamped instrument, it cannot be taken notice of for any purpose, as contemplated in Section 35 of the Stamp Act. It remains unenforceable. ... It is “not enforceable in law”. In the said sense, it also cannot exist in law. It would be void. Our view in this regard that voidness is conflated to unenforceability receives fortification from Section 2(j) of the Contract Act which renders a contract which ceases to be enforceable void.”

50. However, the above observation of the Apex Court in *N.N. Global (2)* was held to be incorrect by the Apex Court in *Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re (supra)*.

51. The Stamp Act is a fiscal legislation which is intended to raise revenue for the Government. It is a mandatory statute. In *Hindustan Steel Ltd. v. Dilip Construction Co.*¹⁸, Supreme Court dealt with the import of Sections 35, 36 and 42 of the Stamp Act very succinctly. One of the parties relied on the difference in the phraseology between Sections 35 and 36 to argue that an instrument which was insufficiently stamped or not stamped could be admitted in evidence upon the payment of duty and a penalty (if any) but that it could not be acted upon, once admitted. It was argued that Section 35 operates as a bar in two respects, namely, the admission of an instrument into evidence as well as acting upon that instrument. It was argued that Section 36, in contrast to Section 35, removed the bar in one respect alone — the admissibility of the instrument into evidence. The Supreme Court rejected this argument and has held that the provisions of the Stamp Act clearly provide that an instrument could be admitted into evidence as well as it can be acted upon once the appropriate duty has been paid and the instrument is endorsed. The Apex Court held that:

“6. ... The argument ignores the true import of Section 36. By that section an instrument once admitted in evidence shall not be called in question at any stage of the same suit or proceeding on the ground that it has not been duly stamped. Section 36 does not prohibit a challenge against an instrument that it shall not be acted upon because it is not duly stamped, but on that account there is no bar against an instrument not duly stamped being acted upon after payment of the stamp duty and penalty according to the procedure prescribed by the Act. The doubt, if any, is removed by the terms of Section 42(2) which enact, in terms unmistakable, that every instrument endorsed by the Collector under Section 42(1) shall be admissible in evidence and may be acted upon as if it has been duly stamped.”

52. In so holding, the Supreme Court made a significant observation about the purpose of the Stamp Act and the manner in which it is to be interpreted by courts when it observed that the Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments. It is not enacted to arm a litigant with a weapon of

¹⁸ (1969) 1 SCC 597

technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of the initial defect in the instrument.

53. The Stamp Act is a legislation which is enacted in the interest of the revenue. The statute must be interpreted with due regard to its purpose.

54. Now this Court refers to the Agreement in question. The Agreement as produced before us is signed by the Parties on Rs.100 stamp paper. Clause 19 of the Agreement reads as follows:

“19. Registration and Payment of Stamp Duty – The Lessee shall have the present lease duly registered at its own cost and pay the stamp duty applicable for the same. It shall be open to the Lessor to pay the stamp duty or the deficiency of the same and recover the same from the Lessee.”

It is very apparent that the Parties were aware that their Lease Agreement was insufficiently stamped and that stamp duty would be payable on the same. In fact, the Parties had also gone so far in order to ascribe who would bear the cost of the same, the answer to which is –the present Opposite Party.

55. The Petitioner filed an application before the Ld. Arbitrator praying for impound of the Agreement dated 1.5.2012 and abeyance of proceedings as the said Agreement was not sufficiently stamped nor registered as required in law. The Ld. Arbitrator vide order dated 13.4.2017, rejected the prayer of impounding the Agreement as prayed for by the Petitioner. Aggrieved, the Petitioner approached this Court in W.P.(C) No. 7893/2017 challenging the refusal order of the Ld. Arbitrator. This Court vide order dated 8.5.2017 in W.P.(C) No. 7893/2017 was pleased to direct the Ld. Arbitrator to impound the Agreement in line with the Apex Court’s judgment in **SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.**¹⁹

56. In compliance with this Court’s order dated 8.5.2017 in W.P.(C) No. 7893/2017, the Ld. Arbitrator vide order dated 20.7.2017 was pleased to impound the Agreement. However, the order was passed ex-parte without hearing the Petitioner and the onus of payment of the deficit stamp duty was placed on the Petitioner which is in direct contravention of the terms of the Agreement itself.

57. In any case, the Ld. Arbitrator itself held that *“since it is found that the said lease deed in serial number 1 is compulsory, registerable requiring stamp duty and has not been properly stamped nor registered, the said lease deed is liable to be impounded”*. Without any Court’s order altering this status, how could the Ld. Arbitrator proceed to deliver an ‘award’ when the status of the Agreement was impounded.

58. It shocks the conscience of this Court, that this material fact was not brought to the conscious attention of this Court in W.P.(C) No. 3203 of 2022. Suppression or concealment of material facts is not advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative

¹⁹ (2011) 14 SCC 66

jurisdiction. If the Parties do not disclose all the material facts fairly and truly but state them in a distorted manner and mislead the court to obtain relief, the same tantamounts to an egregious abuse of process of this Court.

59. This Court is not a laboratory where parties come to experiment. Where the litigants will mix one document with one fact and wait with bated breath praying that the Court does not ask too many questions. This Court generally will never suspect things to be amiss, because this court would like to believe that “satya” & “dharma” are a society’s guiding principles, but it is also equally true that time is changing. Apart from doing justice to the parties, Courts will have to remain on guard that justice is being done to this Court by those present before us.

60. Casting such disappointment aside, it is pertinent to note that in view of the law enunciated by the 7 Judge Bench of the Supreme Court in *Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re*²⁰, the Ld. Sole Arbitrator did not have jurisdiction to pass any award till the time the “existence and validity” of the Lease Agreement has been revived by the payment of appropriate stamp duty. This Court and the Ld. Sole Arbitrator is bound by the law declared by the Supreme Court.

61. Given this Court’s conclusion in Issue A and the reasons discussed above, this Court believes that the present matter comes within the meaning of “exceptional” and writ jurisdiction ought to be exercised in the face of such patent illegality, which necessitates interference.

VII. CONCLUSION:

62. Therefore, 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 impugned order merits interference.

63. The Impugned Order/Award is set aside. The Arbitral Tribunal having impounded the instrument, which is not duly stamped as per the provisions of the Indian Stamp Act, 1899, shall forward it to the Collector, if the same has not already been done. The Collector then, shall, direct the collection of the appropriate stamp duty and levy penalty. In this regard, it is clarified that the stamp duty and any penalty thereupon shall be borne by the Parties in the manner stipulated in the Agreement. Upon payment, the Collector shall endorse that the proper stamp duty has been paid under Section 42 of the Indian Stamp Act, 1899. This endorsed instrument shall be returned to the Ld. Sole Arbitrator, after which the proceedings shall be conducted and concluded expeditiously. Till such time, the arbitration proceedings shall remain in abeyance.

64. Ordered accordingly. No order as to costs.

Headnotes prepared by:
Shri Pravakar Ganthia, Editor-in-Chief
ILR-Cuttack Series

Result of the case:
Writ Petition is ordered accordingly.

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²⁰ (2024) 6 SCC 1

2025 (II) ILR-CUT-471

**ASHWINI KUMAR PRADHAN@ ASWANI KUMAR PRADHAN
V.****STATE OF ODISHA & ORS.**

[CRLMC NO. 1498 OF 2025]

15 MAY 2025

[MISS SAVITRI RATHO, J.]**Issue for Consideration**

Whether the criminal proceeding pending before the learned JMFC should be quashed on the ground of amicable settlement of the matter between the petitioner and the victim.

Headnotes

BHARATIYA NYAYA SANHITA, 2023 – Section 528 – Criminal Proceeding has been initiated against the petitioner and G.R. Case is pending in the Court of learned SDJM, Nabarangpur for commission of offences punishable U/s. 115(2) & 296 of the Bharatiya Nyaya Sanhita, 2023 and Section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015 – Matter has been settled between the petitioner and opposite party for which petitioner filed the present application for quashing the criminal proceeding – Whether the criminal proceeding pending before the learned JMFC should be quashed on the ground of amicable settlement of the matter between the petitioner and the victim.

Held: Yes – In view of the settlement between the parties, even though I am prima facie satisfied that the petitioner had beaten the child, but as the complainant does not want to proceed against the petitioner, I am of the view that no useful purpose will be served by keeping the proceeding pending as it will be an exercise in futility and the valuable time of the Court will be unnecessarily wasted. (Para 17)

List of Acts

Bharatiya Nyaya Sanhita, 2023; Juvenile Justice (Care and Protection of Children) Act, 2015; Protection of Children from Sexual Offences Act, 2012; Prohibition of Child Marriage Act, 2006; Child Labour (Prohibition and Regulation) Act, 1986; Right of Children to Free and Compulsory Education Act, 2009.

Keywords

Quashing of Criminal Proceeding; Amicable settlement between the parties; Protection of the rights and welfare of children.

Case Arising From

G.R. Case No. 412 of 2025 pending in the Court of the learned SDJM, Nabarangpur.

Appearances for Parties

For Petitioner : Mr. B.R. Mohanty, Mr. Satyabrata Jena
For Opp. Parties : Mr. Raj Bhusan Dash, A.S.C.(for O.P. No.1)
Mr. Sudarsan Behera (for O.P. Nos. 2 and 3)

Judgment/Order

Judgment

MISS SAVITRI RATHO, J.

“Spare the rod and spoil the child.” This maxim no longer holds good today.

2. Not so long ago ,no eyebrows were raised at a slap, or a box on the ears, a rap on the knuckles , or even a spanking by parents or teachers meted out to an unruly or naughty child. Now the same is anathema, as what was earlier considered to be necessary to discipline an unruly or disobedient child, is now an offence.

3. On 11.12.1992 , India has ratified the Convention on the Rights of the Child (in short “Child Rights Convention”) adopted on 20.11.1989 by the United Nations General Assembly , Article 19 of which , provides that all measures would be taken to protect the child from all forms of physical or mental violence , injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child .

4. For protection of the rights and welfare of children, apart from the Indian Penal Code (replaced by the Bharitya Nyaya Sanhita in 2023, in short” BNS”), the following legislation have been enacted-

- i) Juvenile Justice (care and Protection) Act 2015 (in short “JJ Act”)
- ii) The Prohibition of Child Marriage Act 2006 ,
- iii) The Protection of Children from Sexual Offences Act 2012 , (in short “ the POCSO Act”)
- iv) The Child Labour (Prohibition and Regulation) Act , 1986; and
- v) The Right of Children to Free and Compulsory Education Act 2009(in short RCFCE Act”) has also been enacted keeping the rights and welfare of a child .

5. This CRLMC has been filed for quashing the criminal proceeding vide Nabarangpur P.S. Case No.124 of 2025 corresponding to G.R. Case No.412 of 2025 pending in the Court of the learned S.D.J.M., Nabarangpur, registered for commission of offences punishable under Sections 115(2) and Section 296 of the Bharitiya Nyaya Sanhita 2023 (in short “BNS”) and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, (in short “JJ Act”), on the ground that false allegations had been made against the petitioner and the matter has been

amicable settled between the petitioner and opposite parties No.2 and 3 (parents of the child) and the child has not sustained any injury and is pursuing his normal activities.

BACKGROUND

6. On the allegation that the petitioner, who is a teacher had assaulted a student (son of opposite parties No. 2 and 3) repeatedly on his ear, resulting in pain and temporary loss of hearing in that ear, an FIR had been lodged by his father - opposite party No 2 on 26.03.2025 , leading to registration of Nabarangpur P.S. Case No.124 of 2025 corresponding to G.R. Case No.412 of 2025, in the Court of the learned S.D.J.M, Nabarangpur , for commission of offences under registered for commission of offences punishable under Sections 115(2) / 296 of the BNS and Section 75 of the JJ Act , 2015, against him.

RELEVANT PROVISIONS

7. Article of the Child Rights Convention , Section 17 of the RCFCE Act and Section 75 of the JJ Act are extracted below : -

“Article 19. 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

“Section–17 Prohibition of physical punishment and mental harassment to child.—(1) No child shall be subjected to physical punishment or mental harassment. (2) Whoever contravenes the provisions of sub-section (1) shall be liable to disciplinary action under the service rules applicable to such person.”

“Section 75. Punishment for cruelty to child.—Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both.”

SUBMISSIONS

8. Mr. Satyabrata Jena, learned counsel for the petitioner submits that a false FIR has been lodged against the petitioner on account of school politics on the instruction of the Headmaster and the child is hale and hearty and the matter has been settled between the petitioner and the parents of the child who are opposite parties no 2 and 3 in this CRLMC and they have filed affidavits that their child is fine and they do not want to proceed against the petitioner.

9. Mr. Sudarsan Behera, learned counsel has appeared on behalf of Opposite Parties Nos.2 and 3 (parents of the student) submits that the child has not suffered any permanent injury and as the matter has been settled between them, they do not want to proceed against the petitioner and they have filed separate affidavits, which are at Flags-A and B.

10. In the affidavit filed by the Opposite Party No.2 (father of the child), it is stated that his son was examined by the doctor at CHC, Nandahandi and no external or internal injury was detected as well as with normal health and this matter has been settled and he does not want to proceed against the petitioner. No medical certificate has been annexed with the affidavit.

11. Affidavit has been filed by Opposite Party No.3 mother of the boy stating that the matter has been settled and they do not want to proceed in the matter.

12. Mr Raj Bhusan Dash, learned Additional Standing Counsel has produced the case diary and instructions dated 01.05.2025 of the I.I.C., Nabarangpur Police Station. . He submits that as per his instructions the matter has been settled between the parties. He also submits that the child may not have suffered any permanent injury but on account of the beating, he has suffered physical and mental trauma which make out the offences alleged against him.

DISCUSSION AND CONCLUSION

13. Not satisfied with the affidavits of the parents or the medical documents filed on behalf of the petitioner relating to the injuries sustained by the child and the treatment given to him, the Secretary, District Legal Service Authority, Nabarangpur had been requested to go to the village of the opposite parties no. 2 and 3, meet the child and submit a report .The report dated 09.05.2025 has been submitted alongwith photographs of the child. It is stated in the report as follows:-

“In compliance to the instructions imparted by the Hon'ble High Court of Orissa, Cuttack, I along with my two staffs visited the house of Lachhman Harijan situated at village B-Maliguda under Nabarangpur Police Station on 08.05.2025 at around 07:30 AM. The House was identified by one Para Legal Volunteer. During the visit it is found that the house was locked and on being asked the nearby relatives of Lachhman Harijan told that all the family members had been to nearby village to sell fancy items on the eve of Bali Yatra. They were told to call upon the family members of Lachhman Harijan on next date i.e. 09.05.2025.

On 09.05.2025, again I with my staff members proceeded to the house of the Lachhman Harijan at around 07:00 AM. Lachhman Harijan and his wife & his four children's were present. I called upon the victim Kunal Harijan and asked him about any incident happend to him. He denied to have any incident. He was asked to show both of his ears. His parents told that on 21.03.2025 he had been to School for appearing for exam and returned home complaining of pain on left side ear. The Victim's Mother told us that he was suffering from toothache leading to pain in both of his ears. The Victim is found to be in good health and found no external injury mark on both side of his ears. The victim found to be reciprocating us while interaction which seems he is able to hear everything. The family members was asked to produce any medical documents and X-ray report of

ear. They denied to have gone for any X-ray of victim's ear but told us he was taking some medicine. No permanent or serious injury was alleged by the victim but he complained to have pain in his ears on account of toothache. The victim was told to open his mouth and the entire mouth found to be having cavity.

Further, some photographs of said visit and xerox copy of medical prescription is attached in a separate sheet for favour of kind perusal."

14. The IIC has stated in his report that that he has enquired into the present health condition of the victim-Kunal Harijan that he is doing his normal work and hearing properly in both the ears.

15. In the report of the Secretary DLSA, it is stated that the child appeared healthy, is able to hear normally, there was no noticeable injury on his ear but he has cavities in his teeth and both he and his mother stated that he is suffering pain in the ear due to toothache.

16. The case diary produced by Mr. Jena, learned Additional Government Advocate indicates that the incident occurred on 21.03.2025 and FIR was registered on 26.03.2025 and the child was under treatment at his house. The allegation being that he was assaulted by the petitioner, his class teacher, on his ear, for two days he was unable to hear. On police requisition, the child had been sent for medical examination and has been examined on 27.03.2025 by the Medical Officer, CHC, Nandahandi and in the report it has been noted that no visible injury marked on the body and patient obeys command of usual voice. In the prescription attached, it is noted that the patient has been advised to undergo X-ray of the mastoid. Notice under Section 35(3) of the BNSS has been issued to the petitioner.

17. In view of the settlement between the parties, even though I am prima facie satisfied that the petitioner had beaten the child, but as the complainant does not want to proceed against the petitioner, I am of the view that no useful purpose will be served by keeping the proceeding pending as it will be an exercise in futility and the valuable time of the Court will be unnecessarily wasted.

18. That apart, the child has not suffered any permanent injury and his hearing has not been affected. I am therefore satisfied that the proceeding against the petitioner should be quashed in the interest of justice.

19. The proceeding in G.R. Case No.412 of 2025 pending in the Court of the learned S.D.J.M., Nabarangpur, which arises out of Nabarangpur P.S. Case No.124 of 2025 stand quashed.

20. The petitioner should abide by Section 17 of the Right of Children to Free and Compulsory Education Act, so that further re not received against him, that he is beating any student.

21. The CRLMC is accordingly disposed of.

Headnotes prepared by :

Smt. Madhumita Panda, Law Reporter

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

Result of the case :

CRLMC disposed of.

2025 (II) ILR-CUT-476

**RAMESH CHANDRA PATRA & ORS.
V.
SPECIAL L.A.O., ANGUL-DUBURI-SUKINDA ROAD,
NEW BROAD GAUGE RAIL LINK PROJECT**

[LAA NO. 33 OF 2014]

05 MAY 2025

[M.S. SAHOO, J.]

Issue for Consideration

Whether the East Coast Railways and the Angul-Sukinda Railway Company who are project proponents/beneficiary should be impleaded as necessary parties being the persons interested before the referral Court.

Headnotes

LAND ACQUISITION ACT, 1894 – Sections 18, 3(b), 50 (2) r/w Order 1, Rule 10 of the CODE OF CIVIL PROCEDURE, 1908 – The appellant filed the present appeal being dissatisfied by the determination of the compensation amount as held by the referral Court – The East Coast Railway and/or Angul-Sukinda Railway Company are the project proponents/ beneficiary – Neither the beneficiary company nor the East Coast Railway were made party before the Referral Court – Whether the East Coast Railways and the Angul-Sukinda Railway company who are project proponents/beneficiary should be impleaded as necessary parties being the persons interested before the referral Court.

Held: Yes – The beneficiary who undoubtedly bears the burden of compensation is an interested person within the meaning of Section 3(b) of the Act and is also a proper party if not a necessary party under Order 1, Rule 10 of CPC – It would be error of law if it is held that a beneficiary Company is not a person interested. (Para 34.ix)

As a result of the above discussions the award dated 04.07.2014 in L.A. Misc. Case No.126 of 2013 decided by the learned Civil Judge (Senior Division), Kamakhyanagar is set aside and quashed – The L.A. Misc. Case No. 126 of 2013 is restored to file for adjudication afresh – The parties in the present case i.e. the appellants and the intervenors shall appear before the learned court of jurisdiction i.e. the learned Civil Judge (Senior Division), Kamakhyanagar or any other court that could be assigned the matter – The learned Court shall act upon production of the website copy of this order.

(Para 40)

Citations Reference

Satish Kumar Gupta and others v. State of Haryana and others, **(2017) 4 SCC 760**; Gregory Patrao v. Mangalore Refinery and Petrochemicals Ltd.,

(2022) 10 SCC 461; U.P. Awas Evam Vikash Parishad v. Gyan Devi, **AIR 1995 SC 724: (1995) 2 SCC 326**; Pitambar Sahoo v. Angul-Sukinda Railway Limited, **2016 (II) ILR-CUTT 212 : 2016 (II) OLR 27**; Neyvely Lignite Corporation Ltd. v. Special Tahsildar (Land Acquisition), Neyvely, **(1995) 1 SCC 221 : AIR 1995 SC 1004**; Union of India v. Special Tehsildar (ZA), **1996 (2) SCC 332**; Delhi Development Authority vs. Bhola Nath Sharma (Dead) by L.Rs. and others, **(2011) 2 SCC 54 : AIR 2011 SC 428**; Vidarbha Irrigation Development Corporation v. Santosh Janba Warghane and another, **(2019)12 SCC 650 – referred to.**

List of Acts

Land Acquisition Act, 1894 ; Code of Civil Procedure, 1908; Constitution of India, 1950.

Keywords

Land Acquisition; Persons interested; Post acquisition beneficiary; Necessary party; Determination of compensation; Reference.

Case Arising From

Award dated 04.07.2014 passed by the learned Civil Judge (Senior Division), Kamakshyanagar in L.A. Misc. Case No.126 of 2013.

Appearances for Parties

For Appellants : Mr. Niranjan Panda-1

For Respondent : Mr. Sanjib Swain, AGA

Mr. S.K. Dash, Sr. Adv. & Mr. P. Dash (for Intervenor)

Judgment/Order

Judgment

M.S. SAHOO, J.

Present LAA is listed and taken up along with LAA Nos.34 and 35 of 2014. All the parties to the respective appeals are represented by the same learned counsel. The facts of the appeals are identical. They arise from one land acquisition process that is for construction of Angul-Duburi-Sukinda Road, New Broad Gauge Railway Line. Issues are also similar and identical. The question of law is also the same to be decided by this Court. LAA No.33 of 2014 was heard as the lead case. For effective utilization of available time all the appeals were taken up and heard together. The learned counsel for the parties who represented the parties in all the cases were heard at length. This appeal is disposed of by noting the contentions and arguments urged in all the appeals taken together.

1. The appeal U/s.54 of the Land Acquisition Act, 1894 has been filed by the appellants challenging judgment dated 04.07.2014 passed by learned Civil Judge (Sr. Division), Kamakshyanagar in L.A. Misc. Case No. 126 of 2013. Appellants were claimant-petitioners before the Court below in a reference that was made by

the Special Land Acquisition Officer U/s.18 of the Land Acquisition Act, 1894, as dispute arose regarding the actual market price of the acquired land for determination of compensation. The Court, learned Civil Judge (Sr. Division), Kamakshyanagar answered the reference by judgment dated 04.07.2014.

2. The land acquisition proceeding was pursuant to notification dated 07.07.2010 published in the Gazette on 05.08.2011. Land of the appellants of an area Ac. 0.55 decimals, pertaining to Plot No.1893 of 'Sarada-I kisam' Mouza-Kamakshyanagar, District- Dhenkanal was acquired for the Angul-Duburi-Sukinda Road, New Broad Gauge (B.G.) Rail Link Project, Dhenkanal. The Land Acquisition Officer determined the compensation amount at ₹25,00,000/- per acre i.e. ₹25,000/- per decimal.

3. Before the referral Court the awarded compensation amount ₹22,30,966/- as intimated to the appellants by notice U/s. 12(2) of L.A. Act was disputed by the appellants stating that their land should be valued at a higher rate. The appellants had objected before the L.A. Collector by written objection and they received with protest compensation amount. Their written objection was forwarded by the Special Land Acquisition Officer leading to adjudication by the learned Civil Judge (Sr. Division). The referral Court enhanced the compensation amount, to be determined at Rs.56,41,905/- (Rupees fiftysix lakh fortyone thousand nine hundred five) per acre. The appellants still dissatisfied have approached this Court in the present appeal.

4. It is noticed by this Court that the proceeding u/s.18 of the Act before the Court of the learned Civil Judge (Senior Division) has some peculiar features as far as impletion of parties. Certified copy of the judgment has been enclosed and is also available in the lower court records which indicates that the Special LAO, Angul-Duburi-Sukinda Road, New B.G. Rail Link Project forwarded the claim of appellants and was the only opposite party to answer the claim of enhancement of compensation amount. What is more peculiar is that the learned Civil Judge (Sr. Division) has neither framed any issue nor answered as to who were the Project Proponents, who had deposited/paid the amount of compensation as determined by the LA Collector in the first instance and would pay/deposit the enhanced amount as directed by the learned Civil Judge (Sr. Division). The learned Court has not at all gone to the issue how the enhanced amount awarded will be satisfied i.e. whether opp. Party in the lis is to pay the amount or any one else will pay it.

5. The issues framed by the learned court below is reflected in paragraph-5 of the judgment which is reproduced below :

"5. The point that needs for determination is :

Whether the petitioners are entitled to have an amount of higher compensation than the amount settled by the O.P. ?"

6. The “order” of the learned Civil Judge (Sr. Division) indicates the following:

“The reference U/s.18 of L.A. Act is answered as follows:-

The market price of acquired land is determined at Rs.56,41,905/- (fifty six lacs forty one thousand nine hundred and five) per acre, as on the date of notification. The petitioners are entitled to get compensation at such higher rate for the acquired land. The Special Land Acquisition Officer, Angul-Duburi-Sukinda Road New B.G. Rail Link Project, Dhenkanal is directed to re-assess the compensation at such higher rate for the acquired land measuring Ac.0.55 dec bearing plot no. 1893 under khata no.375/81 and to pay the same to the petitioners after deducting the amount which has already been paid to him. The petitioners are also entitled to all the statutory benefits on such enhanced compensation as admissible under the L.A. Act. The petitioners are also at liberty to put-forth their grievance for proper rehabilitation and resettlement before the competent authority as per the provisions of Orissa Resettlement and Rehabilitation Policy, 2006.”

7. By the above order the amount of compensation awarded in the L.A. proceeding, ₹22,30,966/- (Rupees twenty two lakh thirty thousand nine hundred sixty six) was enhanced by the learned court to be calculated at ₹56,41,905/- (Rupees fifty six lakh forty-one thousand nine hundred five) per acre as on the date of notification. The Special LAO, Angul-Duburi-Sukinda Road, New B.G. Rail link Project was directed to re-assess and pay the same to the petitioners after deducting the amount which has already been paid to him.

8. Somehow, the judgment in its ordering portion or any of its paragraphs does not refer to who will deposit the enhanced amount before the LAO Collector. The list of witnesses examined on behalf of petitioners indicates that no witness was examined on behalf of opposite parties Special LAO nor any written statement was filed on behalf of the Special LAO. Working sheet of the acquired land was produced on behalf of Opp. Paty-L.A. Collector marked as Ext.A. Apparently, contest to the enhanced amount claimed or any contest to the basis of determination of enhanced amount has not been disclosed in the judgment.

9. Being dissatisfied by the determination of the compensation amount ₹56,41,905/- per acre of land on the date of notification as held by the referral Court the appellants have challenged the same by filing the present appeal for further enhancement. By order dated 29.06.2015 payment of court fee was exempted in Misc. Case No.185 of 2013. The matter was then referred to the National Lok Adalat held by this Court. By order dated 09.12.2017 it is observed by the learned Judge, Lok Adalat that *“It is submitted by learned counsel for the appellant that in view of the dispute involved in this case, this matter cannot be settle in the Lok Adalat.”*

10. As indicated above Misc. Case No.139 of 2016 has been filed by the Company for intervention. The said I.A. has been contested to the hilt as the matter is kept pending before this Court. The I.A. is contested by the appellant without any

further progress in the adjudication of appeal. The respondent, Special LAO represented in the present appeal through the learned AGA also objects the intervention application. On consent of the parties the matter is taken up for hearing and disposal. The Misc. Case seeking intervention is also taken up and disposed of by the order recorded below along with the judgment.

Misc. Case No.139 of 2016

11. Petitioner Angul-Sukinda Railway Company has filed the application under sub-section (2) of Section 50 of the LA Act, 1894 read with Order I Rule 10 of the Code of Civil Procedure, 1908 for intervention. It is contended that no notice was issued either to the East Coast Railway (Project Proponent) on whose behalf the land was acquired or to the intending-intervenor Company by entering into a concession agreement with the Govt. of India, Ministry of Railways, has undertaken the liability to pay the compensation amount in respect of the land acquired for the project. Though the award has not been challenged separately in any connected land acquisition appeal but it is contended in the I.A. that in absence of statutory notice to East Coast Railway or the intervenor-Company the award has to be held as a nullity as it suffers from gross violation of the principle of natural justice, i.e. the affected party must be heard by the adjudicating Court.

12. In the background facts as noted above and in view of the procedure adopted in the proceedings before the Special LAO as well as in the reference U/s.18 that was decided by the learned Civil Judge (Sr. Division), Kamakshyanagar, the contention that neither the East Coast Railway nor the Company were made parties or were heard remains un-rebutted.

Further, no material is brought to the notice of this Court by appellants or the respondent-opposite party LAO to show that East Coast Railway and the Company were made parties or were heard in the proceeding u/s.18 of the Act before the Court below. It is also neither pleaded nor demonstrated before this Court if impletion of East Coast Railway and/or the intending intervenor Company in the proceeding u/s18 would have prejudiced the appellants or the O.P.-Spl. Land Acquisition Officer in any manner. The Special Land Acquisition Officer opposing the intervention by the intervenor company is rather baffling as the Special LAO is not an affected party who would pay the compensation if it is enhanced.

13. The learned counsel appearing for the appellants Mr. Panda was heard at length. There is serious opposition on behalf of the appellants to the intervention application but on the face of the records it is fairly conceded that neither the East Coast Railway nor the intervenor-Company were made parties or heard before the referral Court. Obviously there is no reference to any written statement or any other response from Railways or the intending intervenor in the LA case before the referral Court.

14. Order dated 21.04.2025 was passed earlier after hearing the learned counsel for appellants. Said order is reproduced herein :

Misc. Case No.139 of 2016

“1. The matter has been listed for orders. I.A. has been filed for intervention by the intending intervener-petitioner stating at Paragraphs-2 and 3 the following.

“2. That it transpires from the impugned Award that no notice was issued to either the East Coast Railways, on whose behalf the land was acquired or the Intervener-Company who has undertaken the liability to pay the compensation amount in respect of the land acquired for the project, by virtue of an agreement or MoU with the Ministry of Railways. It is submitted that in absence of the statutory notice as aforesaid, the Award has always been held as a nullity.

3. That due to want of notice, the Intervenor-Company did not have any opportunity to adduce evidence before the Court and that the compensation amount has been enhanced by the Court at the instance of the appellants alone. There has been a clear-cut violation of the principles of natural justice. Intervener- Company is likely to be saddled with the liability to pay the compensation amount at a higher rate without an opportunity of hearing. Therefore, the impugned Award cannot be allowed to stand.”

2. Learned counsel for the appellants submits that the appellants-opposite parties have filed objection to the petition for intervention.

3. Learned counsel for the appellants on being asked whether the appellants have stated in the objection that the intending intervener is neither a necessary nor a proper party for adjudication of the matter, submits that in absence of his learned senior the matter may be adjourned.

4. Perusal of the objection filed by the land oustee-appellants does not show any response to the specific averments made in paragraphs-2 and 3 of the petition as indicated above.

5. As prayed for, list on 05.05.2025. Liberty to mention for listing before the assigned Bench.

LAA No.33 of 2014

6. List on 05.05.2025.”

15. Learned counsel Mr. Niranjan Panda appearing on behalf of appellants in response to the above order dated 21.4.2025 makes his submissions:

In response to observations made in paragraphs 3 & 4 of the order he submits that the objection dated 30th September, 2022 filed by the appellants through the appellant no.3 paragraph-2 is the answer to the issues raised in paragraphs 3 and 4. Paragraphs-2 and 10 of the objection are relied upon and are quoted herein :

“2. That the Misc. Case is not tenable in the eyes of law and fact as the intervener is neither a necessary nor a proper party. The land in question was acquired for East Coast Railway on requisition for public purpose u/section-4(1) of L.A. Act, 1894. The

land in question was never acquired for Company-ASR Ltd for which the Intervener never appeared in below.

10. That the law is well settled that only the beneficiary/person interested for whose purpose the land is required may be heard under Section 50(2) of L.A. Act if the beneficiary so likes. In the present case at the time of reference, the copy of reference application has been forwarded to the East Coast Railway as is available in the case record. But the petitioner is in no way concerned in the matter in the garb of agreement with Railway Department for Execution of the project work under PPP mode."

16. Having gone through the paragraphs 2 & 10 of the objection, it was pointed out to the learned counsel that the appellants admit that the acquisition was as per requisition of the Ministry of Railways who have entered into concession agreement with the intending-intervener company. Learned counsel does not dispute that the East Coast Railway has not been arrayed as party in the petition. The authority i.e. Special Land Acquisition Officer, Angul-Duburi-Sukinda Road, New B.G. Rail Link Project has been made the only opposite party who was neither authorized in his official capacity nor he could have represented East Coast Railway/Ministry of Railway Union of India/Company.

17. It is noticed that the judgment in the opening paragraph refers to the Special LAO referring the matter u/s. 18 as indicated herein :

"This is a reference U/s.18 of the Land Acquisition Act made by the Special Land Acquisition Officer, Angul-Duburi-Sukinda Road New B.G. Rail Link Project, Dhenkanal for determination of the actual market price of the acquired land."

Further, it is submitted by learned counsel for the appellants that the decretal dues have been paid by the East Coast Railway though they are not parties in the reference i.e. LA Misc. Case No. 126 of 2013.

The affidavit of the appellants dated 30.09.2022 (objection to the intervention) does not state whether any amount was deposited/paid towards enhancement. The affidavit does not disclose the reasons for an authority who is not a party to a reference u/s. 18 of the Land Acquisition Act would satisfy the decree. No indication is there when the amount, if any, was deposited. The direction of the learned Civil Judge (Sr. Division) was to the Special Land Acquisition Officer to reassess the compensation, as such there is no direction to any other entity to deposit and/or for payment of such compensation so that the Special Land Acquisition Officer can release the enhanced amount in favour of the appellants.

18. Learned counsel for the appellants submits that though not made party the referral court issued notice to the East Coast Railway. On being asked by which order the said notice was issued by the learned Civil Judge (Senior Division), Kamakshyanagar in L.A. Misc. Case No.126 of 2013, the learned counsel submits that the Special LAO while referring the matter under section 18 of the Land Acquisition Act, by letter intimated the East Coast Railway.

Such submission is also contrary to the materials on record i.e. the record of the lower Court (LCR). The judgment as well as the reference on the face of it does not indicate that the requisitioning authority-East Coast Railway was ever made a party much less noticed by the learned Civil Judge (Senior Division), Kamakhyanagar as is being suggested by the learned counsel for the Appellants.

19. Assuming that the opposite party in the L.A. case, Spl. LAO issued letter to another authority which is not made party, proposition that such letter has to be treated as notice issued by the court is beyond scope of law. When the Special LAO himself was the opposite party in the adjudication he could not have issued letter to another authority to be treated as notice to appear before the Court. The LAO was not competent in his official capacity to place before the referral Court the version of the Railways or the Company.

20. Relying on the decisions rendered by the Supreme Court in **Satish Kumar Gupta and others v. State of Haryana and others: (2017) 4 SCC 760** and **Gregory Patrao v. Mangalore Refinery and Petrochemicals Ltd.: (2022) 10 SCC 461**, it is submitted by the learned counsel, Mr. Panda for the appellants that the intending intervenors are neither necessary nor proper parties to be impleaded before the LA referral court and they have no locus standi in view of the notification dated 07.07.2010 issued under S.4(1) of the LA Act, annexed to the objection marked as Annexure-1/1. It is further submitted that Ministry of Railways is not a necessary party.

Such submission of the learned counsel is on the face of the fact that the requisitioning authority is Union of India through Ministry of Railways as per the orders of the Excellency the President of India under Article 256(1) of the Constitution of India.

21. Mr. Swain, learned Additional Government Advocate referring to the judgment in **Satish Kumar Gupta (supra)** and **Gregory Patrao (supra)** submits that in view of the MoU having been subsequently executed between the Ministry of Railways and the Special Purpose Vehicle Angul-Sukinda Railways Company Limited (ASRL Ltd.), they are not necessary or proper parties in the proceeding before the LAO or the referral Court U/s.18 of the LA Act. But the learned AGA again submits that the East Coast Railway, the Project Proponent was not made a party or heard in any manner in the reference. He submits that if the matter is restored back to the referral Court, East Coast Railway should be made a party and heard.

22. Learned Senior Counsel for the intending intervenor Mr. S.K. Dash appearing along with Mr. P. Dash, learned counsel, to substantiate his arguments relies on the decision rendered by the Constitution Bench of Supreme Court in **U.P. Awas Evam Vikash Parishad v. Gyan Devi: AIR 1995 SC 724: (1995) 2 SCC 326**

particularly paragraphs 48 to 56 of SCC where the Supreme Court has given its conclusions.

It is submitted that the facts and the issue involved in **Gregory Patrao** (*supra*) and **Satish Kumar Sharma** (*supra*) are different and distinguishable as far as their applicability to the present case is concerned. In those cases the subsequent purchaser/beneficiary of the land acquisition wanted to be parties in the LA proceeding or the reference before the Civil Court. Answering that question it was held in **Satish Kumar Sharma** (*supra*) and in **Gregory Patrao** (*supra*) that post acquisition beneficiaries are not necessary or required to be made party in the LA proceeding or the reference.

23. The learned Senior Counsel relies on the decision of this Court rendered by a coordinate Bench in **Pitambar Sahoo v. Angul-Sukinda Railway Limited : 2016(II) ILR-CUTT 212 : 2016(II) OLR 27** (Manupatra print). Referring to the said decision it is submitted that after the authoritative determination by this Court in **Pitambar Sahoo** (*supra*) it is no more *res integra* that Angul-Sukinda Railway Company Limited, a Company incorporated under the Companies Act is a person interested as defined U/s.3(b) of the Act and appeal/petition for intervention filed by the said Company U/s.54 of the Act or petition U/s. 50(2) of the Act read with Order I Rule 10 of the CPC is maintainable.

Learned Senior Counsel relies on paragraphs-11 and 12 of **Pitamber Sahoo** (*supra*), which are quoted herein:

*“11. From a conjoint reading of the aforesaid terms and conditions of the agreement it is manifest that the compensation for land acquisition has to be paid by the opposite party. Neither the Ministry of Railways nor the East Coast Railways for whose benefit the land has been acquired has shouldered any liability for the same. In view of the above, the submission of Mr. Panda to the effect that the opposite party was only a lessee under the lease agreement and has no say in the matter of determination of the compensation, cannot be accepted. The lease agreement was executed between the parties to work out the terms and conditions of the Concession Agreement. Thus, the opposite party has a right more than that of a lessee or a contractor as alleged by Mr. Panda. In view of the above, it necessitates the Court to have a close reading of the case of P.H. Harijan (*supra*). In the said case, the land was acquired under the provisions of KIAD Act. The land was acquired by the State Government at the instance of KIADB under Section 28(1) of the Act, 1966. The said provision is *pari materia* to Section 4(1) of the L.A. Act. Section 30 of the said Act provides that the provision of L.A. Act shall *mutatis mutandis* apply in respect of holding enquiry and to pass award determining the compensation for acquisition of land by the Deputy Commissioner. In paragraph-33 of the P.H. Harijan (*supra*), Hon’ble Supreme Court held as under:*

“33..... In view of the above statutory provisions of the KIAD Act, the provisions of Sections 11, 18 and 30 of the LA Act are applicable for the purpose of determination of just and reasonable compensation of the acquired land payable to the landowners either by the Deputy Commissioner or Reference Court.”

12. ... Thus, the status of the opposite party in the instant case cannot be equated with that of the lessee (M/s. Rajshree Cement) as the opposite party is under obligation liable to raise funds, execute the project work, pay the compensation to the land owners and to execute all other things as agreed upon by it in the Concession Agreement...”

[Underlined to supply emphasis]

24. Having heard in detail the learned counsel and in view of the above discussions and by applying the law laid down by the Supreme Court and this High Court as noted above, the petition seeking leave to intervene is allowed and disposed of.

Leave granted.

The petitioners shall be heard in the appeal.

LAA No. 33 of 2014.

25. The LAA has been kept pending for the last 11 years. After issuance of notice, application for intervention was filed in the year 2016, which has been allowed by the above order. The intervention application was contested all through without delving into the merits of the appeal. 26. Heard learned counsel Mr. Niranjana Panda for the appellants, learned Additional Government Advocate Mr. Swain for the respondents and Mr. Dash, learned Senior Counsel for the intervenor.

The learned counsel reiterate their respective submissions as noted above.

27. Learned AGA further submits that the present respondent i.e. Special LAO has limited role. As the Land Acquisition Act provides he is an authority under the statute which undertakes the process of acquisition, at the most he can facilitate deposit and disbursement of such compensation as determined under the statute and also any amount awarded by the referral court. The compensation/enhanced amount has to be deposited by the project proponent/beneficiary with the LA authority to be disbursed to the appellants-claimants.

28. The learned Senior Counsel appearing for the intervenor submits that as far as the prayer for enhancement is concerned the order passed by the referral Court shows that the contentions of the project proponent-Railway or the Special Purpose Vehicle which entered into MoU/concession agreement with Ministry of Railways were not considered as they were not made parties. After the pronouncement in ***Pitambar Sahoo*** (*supra*) the SPV is a person interested under Section 3(b) of the Land Acquisition Act, 1894. The referral court has to hear the railway and/or the SPV for arriving at a decision whether to enhance the award.

29. In ***U.P. Awasthi v. Vikash Parishad v. Gyan Devi***: AIR 1995 SC 724: (1995) 2 SCC 326, Constitution Bench of five Hon'ble Judges of the Supreme Court held as quoted herein (at paragraphs-48 to 56 of SCC) :

“48. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the

reference court and adduce evidence for the purpose of determining the amount of compensation.

49. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending on the date on which the matter of determination of compensation will be taken up.

50. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act.

51. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

52. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

53. The local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

54. In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the court.

55. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference court the local authority should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.

56. Since a company for whom land is being acquired has the same right as a local authority under Section 50(2), whatever has been said with regard to a local authority would apply to a company too. [Underlined to supply emphasis]

30. In *Neyveli Lignite Corporation Ltd. v. Special Tahsildar (Land Acquisition)*, *Neyveli* : (1995) 1 SCC 221 : AIR 1995 SC 1004 a Bench of three Hon'ble Judges of the Supreme Court had the occasion to decide and lay down who can be 'persons interested' in terms of section 3(b) of the Land Acquisition Act, 1894 and also in the context of the sections 18, 26, 50(2) and 54 of the Act. Upon discussing the law as laid down in the earlier decisions rendered by the Supreme Court it was held (SCC-paragraphs 11, 12, 13, 14 and 15) :

"11. Shri Sanghi placed a strong reliance on Santosh Kumar v. Central Warehousing Corpn. [(1986) 2 SCC 343 : (1986) 1 SCR 603] The facts therein were that the award made under Section 11 was challenged in the writ petition contending that the Corporation is the affected person by determination of the compensation and without impleading it, the award made was illegal. The High Court exercising its jurisdiction under Article 226 of the Constitution reduced the compensation. On an appeal, this Court had held that when the acquisition was made on behalf of the Corporation, the

Collector had acted as an agent on behalf of the Government. The award is only an offer. When the Government itself cannot seek a reference under Section 18, the beneficiary also cannot seek a reference. In those circumstances, it was held that the award made by the Collector could not be questioned except when the award was vitiated by fraud, corruption or collusion. The ratio is clearly consistent with the view taken by this Court in *Harish Chandra v. Dy. Land Acquisition Officer* [(1962) 1 SCR 676 : AIR 1961 SC 1500] . It is well settled law laid in *Ezra v. Secretary of State for India in Council* [ILR 32 Cal 605 : 32 IA 93 (PC)] and catena of precedents that the award made by the Collector is only an offer made on behalf of the State and that, therefore, the State is bound by the offer made by the Collector. If the owner accepts it without protest no further proceedings were required to be pursued. But if the owner received it under protest and made a valid application for reference, the amount determined by the civil court under Section 26 binds the parties and concludes the proceedings subject to appeal. In that view, there is no inconsistency with the view taken in *Himalayan Tiles case* [(1980) 3 SCC 223 : (1980) 3 SCR 235] with the view in *Santosh Kumar case* [(1986) 2 SCC 343 : (1986) 1 SCR 603] . The facts therein do not touch the controversy now in this case. Under these circumstances, the ratio in *Santosh Kumar case* [(1986) 2 SCC 343 : (1986) 1 SCR 603] renders little assistance to the respondents. However, the *Ahmedabad Municipal Corpn. case* [(1971) 3 SCC 821] is not a good law. In this view it is hardly necessary to burden the order with copious citations of contra view in plethora of precedents of the High Courts.

12. It is true that Section 50(2) of the Act gives to the local authority or the company right to adduce evidence before the Collector or in the reference under Section 18 as it was specifically stated that in any proceedings held before the Collector or the Court, the local authority or the company may appear and adduce evidence for the purpose of determining the amount of compensation. However, it has no right to seek reference. Based thereon, the contention is that the limited right of adduction of evidence for the purpose of determining the compensation does not carry with it the right to participate in the proceedings or right to be heard or to file an appeal under Section 54. We cannot limit the operation of Section 3(b) in conjunction with sub-section (2) of Section 50 of the Act within a narrow compass. The right given under sub-section (2) of Section 50 is in addition to and not in substitution of or in derogation to all the incidental, logical and consequential rights flowing from the concept of fair and just procedure consistent with the principles of natural justice. The consistent thread that runs through all the decisions of this Court starting from *Himalayan Tiles case* [(1980) 3 SCC 223 : (1980) 3 SCR 235] is that the beneficiary, i.e., local authority or company, a cooperative society registered under the relevant State law, or statutory authority is a person interested to determine just and proper compensation for the acquired land and is an aggrieved person. It flows from it that the beneficiary has the right to be heard by the Collector or the Court. If the compensation is enhanced it is entitled to canvass its correctness by filing an appeal or defend the award of the Collector. If it is not made a party, it is entitled to seek leave of the court and file the appeal against the enhanced award and decree of the Civil Court under Section 26 or of the judgment and decree under Section 54 or is entitled to

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Moreover in the language of Order 1 Rule 10 CPC, in the absence of the beneficiary who ultimately is to bear the higher compensation, no complete and effectual determination of binding just and proper compensation to the acquired land would be

made. So it is concomitantly a proper party if not a necessary party to the proceedings under Order 1 Rule 10 CPC. The denial of the right to a person interested is in negation of fair and just procedure offending Article 14 of the Constitution.

13. The reasons are not far to seek. It is notorious that though the stakes involved are heavy, the Government plead or the instructing officer do not generally adduce, much less proper and relevant, evidence to rebut the claims for higher compensation. Even the cross-examination will be formal, halting and ineffective. Generally, if not invariably the governmental agencies involved in the process take their own time and many a time in collusion, file the appeals after abnormal or inordinate delay. They remain insensitive even if the States (sic Stakes) involved run into several crores of public money. The courts insist upon proper explanation of every day's delay. In this attitudinal situation it would be difficult to meet strict standards to fill the unbridgeable gaps of the delay in filing the appeals and generally entails dismissal of the appeals at the threshold without adverting to the merits of the hike in the compensation. On other hand if the notice is issued to the local authority etc. it/they would participate in the award proceedings under Sections 11 and 18, adduce necessary and relevant evidence and be heard before the Collector and the court before determining compensation. For instance that without considering the evidence in the proper perspective, the court determined the compensation.

14. If there is no right of hearing or appeal given to the beneficiary and if the State does not file the appeal or if filed with delay and it was dismissed, is it not the beneficiary who undoubtedly bears the burden of the compensation, who would be the affected person? Is it not interested to see that the appellate court would reassess the evidence and fix the proper and just compensation as per law? For instance the reference court determined market value at Rs 1,00,000 while the prevailing market value of the land is only Rs 10,000. Who is to bear the burden? Suppose State appeal was dismissed due to refusal to condone the delay, is it not an unjust and illegal award? Many an instance can be multiplied. But suffice it to state that when the beneficiary for whose benefit the land is acquired is served with the notice and brought on record at the stage of enquiry by the Collector and reference court under Section 18 or in an appeal under Section 54, it/they would be interested to defend the award under Section 11 or Section 26 or would file an appeal independently under Section 54 etc. against the enhanced compensation. As a necessary or proper party affected by the determination of higher compensation, the beneficiary must have a right to challenge the correctness of the award made by the reference court under Section 18 or in appeal under Section 54 etc. Considered from this perspective we are of the considered view that the appellant-Company is an interested person within the meaning of Section 3(b) of the Act and is also a proper party, if not a necessary party under Order 1 Rule 10 of the CPC. The High Court had committed manifest error of law in holding that the appellant is not a person interested. The orders of the High Court are accordingly set aside.

15. Since the writ petitions filed by the appellants were dismissed, we set aside the orders and direct the High Court to treat them as appeals properly filed under Section 54 of the Act and be dealt with along with the appeals filed by the State pending disposal in the High Court. In the pending references under Section 18, in the Court of the Subordinate Judge, Cuddalore, it is directed to order impleading the appellant as a party-respondent and would give reasonable opportunity to cross-examine the witness examined by the claimants and to examine witnesses on its behalf to rebut the evidence

for higher compensation, the appellant is entitled to be heard in support of the determination of just and proper compensation. In this view, the need to implead the appellant as a party-respondent in the pending appeals in the High Court does not arise.” [Underlined to supply emphasis]

31. The principles enunciated in **Nevely Lignite** (*supra*) have been reiterated in the subsequent decisions as would be indicated herein.

In **Union of India v. Special Tehsildar (ZA) : 1996(2) SCC 332** the Supreme Court allowed the prayer of the beneficiary to be impleaded as a party in the regular First Appeals pending before the High Court following **U.P. Awas Evam Vikash Parishad** (*supra*) (paras 10 and 11 of the SCC).

“10. It is an admitted case that the appeals are pending against the order passed by the subordinate court on reference having been made under Section 18 of the Act. The appellants wanted to be impleaded as a party in the said appeals. The proper and the only course which should have been adopted was to have applied to the appellate court for being impleaded as a party. Instead of doing this, writ petitions for writs of certiorari under Article 226 of the Constitution of India were filed. Presumably, it must have been contended that the appellants should have been impleaded as respondents as they were interested parties because the acquisition was being effected at their expenses and for their benefits. Further, no effective relief could, possibly, have been sought by the appellants against the respondents. What was, in fact, desired by the appellants was an order of the Court for being impleaded in the appeals which were pending before the High Court. The collateral proceedings under Article 226 of the Constitution of India could not have been instituted and as already observed, the only remedy which was available to the appellants was to apply, in the pending appeals, to be impleaded as a party by moving an appropriate interim application. The High Court unnecessarily entertained writ petitions and gave a detailed judgment on the question which, in fact, it could not consider when dealing with a petition under Article 226 of the Constitution of India. This question should have been considered only if the proper application was filed in the pending appeals for being impleaded as a party. We may here observe that while dealing with merits of the case, the High Court did not have the benefit of the judgment of this Court in U.P. Awas Evam Vikas Parishad case [(1995) 2 SCC 326] and the other judgments referred to therein.

11. For the reason that the writ petition for being impleaded as a party in regular first appeals, which were pending, was not a proper remedy, the said writ petitions filed by the appellants have to be dismissed. Such dismissal will not be regarded as affecting the rights of the appellants in applying to the High Court by moving proper applications in the pending appeals for being impleaded as a party. Such applications may, if the appellants desire, be filed within two months and in case, the same are filed, they will be considered and disposed of by the High Court in accordance with law, keeping in view the law laid down by this Court in U.P. Awas Evam Vikas Parishad case [(1995) 2 SCC 326] and the other decisions which had been relied upon therein.

[Underlined to supply emphasis]

32. In **Delhi Development Authority vs. Bhola Nath Sharma (Dead) by L.Rs. and others : (2011) 2 SCC 54 : AIR 2011 SC 428** both **U.P. Awas Evam Vikash Parishad** (*supra*) and **Nevely** (*supra*) were followed and applied holding that Delhi

Development Authority was a person interested within meaning of S.3(b) therefore, entitled to participate in proceedings before Land Acquisition Collector as well as before High Court in the subsequent appellate proceeding when the High Court enhanced the compensation at the instance of land owners. It was observed that the High Court erred in enhancing compensation without directing the land owners to implead Delhi Development Authority to enable it to contest the case, (Paragraphs 25, 29, 32 and 42 to 44 of SCC) :

“25. The definition of the expressions “local authority” and “person interested” are inclusive and not exhaustive. The difference between exhaustive and inclusive definitions has been explained in P. Kasilingam v. P.S.G. College of Technology [1995 Supp (2) SCC 348] in the following words : (SCC p. 356, para 19)

“19. ... A particular expression is often defined by the legislature by using the word ‘means’ or the word ‘includes’. Sometimes the words ‘means and includes’ are used. The use of the word ‘means’ indicates that ‘definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition’. (See Gough v. Gough [(1891) 2 QB 665 (CA)] ; Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court [(1990) 3 SCC 682 : 1991 SCC (L&S) 71] , SCC p. 717, para 72.) The word ‘includes’ when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words ‘means and includes’, on the other hand, indicate ‘an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions’. [See Dilworth v. Commr. of Stamps [1899 AC 99 : (1895- 99) All ER Rep Ext 1576] (Lord Watson); Mahalakshmi Oil Mills v. State of A.P. [(1989) 1 SCC 164 : 1989 SCC (Tax) 56] , SCC p. 170, para 11.] The use of the words ‘means and includes’ in Rule 2(b) would, therefore, suggest that the definition of ‘college’ is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time.”

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29. Undisputedly, DDA is an authority constituted under Section 3 of the 1957 Act for promoting and securing development of Delhi according to plan and for this purpose it has the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewage, etc. Therefore, it is clearly covered by the definition of the expression “local authority”.

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32. Section 50(2) represents statutory embodiment of one of the facets of the rules of natural justice. The object underlying this section is to afford an opportunity to the local authority or company to participate in the proceedings held before the Collector or the court for determining the amount of compensation and to show that claim made by the landowner for payment of compensation is legally untenable or unjustified. This is

possible only if the Collector or the court concerned gives notice to the local authority or the company concerned. If notice is not given, the local authority or the company cannot avail the opportunity envisaged in Section 50(2) to adduce evidence for the purpose of determining the amount of compensation. Therefore, even though the plain language of that section does not, in terms, cast a duty on the Collector or the court to issue notice to the local authority or the company to appear and adduce evidence, the said requirement has to be read as implicit in the provision, else the same will become illusory.

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42. In view of the above discussion, we hold that:

(i) DDA falls within the definition of the expressions “local authority” [Section 3(aa)] and “person interested” [Section 3(b)] of the Act;

(ii) DDA was entitled to participate in the proceedings held before the Land Acquisition Collector;

(iii) the failure of the Land Acquisition Collector to issue notice to DDA and give an opportunity to it to adduce evidence for the purpose of determining the amount of compensation payable to the landowners was fatal to the award passed by him;

(iv) DDA was entitled to notice and opportunity to adduce evidence before the Reference Court could enhance market value of the acquired land entitling the respondents to claim higher compensation and, as no notice or opportunity was given to DDA by the Reference Court, the judgments rendered by it are liable to be treated as nullity;

(v) the Division Bench of the High Court also committed serious error by further enhancing the amount of compensation payable to the contesting respondents without requiring them to implead DDA as party-respondent so as to enable it to contest their prayer for grant of higher compensation.

43. In the result, the appeals are allowed. The impugned judgment of the Division Bench of the High Court as also the judgments of the Reference Court are set aside and the matters are remitted to the Reference Court for deciding the two references afresh after giving opportunity of hearing to the parties, which shall necessarily include opportunity to adduce evidence for the purpose of determining the amount of compensation. The Reference Court shall decide the matter without being influenced by the observations contained in the judgment of the High Court and this judgment.

44. In view of the above conclusions, the cross-objections filed on behalf of the Union of India and the Land Acquisition Collector in CAs Nos. 6564 and 6565 of 2001 are disposed of as infructuous. However, as the judgments of the Reference Court and the High Court have been set aside and a direction has been given for fresh determination of the amount of compensation payable to the respondents, the Union of India and the Land Acquisition Collector shall be free to participate in the proceedings before the Reference Court.”

[Underlined to supply emphasis]

33. In **Vidarbha Irrigation Development Corporation v. Santosh Janba Warghane and another** : (2019)12 SCC 650, the principles laid down in **Nevely Lignite** (supra) were reiterated and were applied to hold that the petitioner Vidarbha Irrigation Development Corporation being beneficiary of land acquisition is a necessary party and could file an appeal against award passed by reference court.

The contrary decision of the High Court was reversed as the High Court had refused to grant leave to appeal to the Corporation against the award passed by the reference court.

34. The principles emanating from the judgments rendered by the Supreme Court indicated and discussed above can be summed up as follows :

(i) The right conferred by Section 50(2) of the L.A. Act, 1894 carries with it the right to be given adequate notice by the L.A. Collector as well as the reference Court before whom the acquisition proceedings are pending.

(ii) The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the L.A. Collector or by the reference Court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act.

(iii) Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

(iv) The local authority is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the L.A. Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

(v) In the event of enhancement of amount of compensation by the reference Court if the Government does not file an appeal the local authority can file an appeal, against the award in the High Court after obtaining leave of the Court.

(vi) In an appeal in the High Court as well as in the Supreme Court filed by a person having an interest in land seeking enhancement of the amount of compensation awarded by the reference Court the local authority should be impleaded as a party and is entitled to be served notice of the said appeal.

(vii) A Company for whom land is being acquired has the same right as a local authority under Section 50(2) the principles applicable to a local authority as noted above would also apply to a Company.

(viii) The operation of Section 3(b) in conjunction with sub-section(2) of Section 50 of the L.A. Act cannot be limited within a narrow compass. The right given under sub-section (2) of Section 50 is in addition to and not in substitution of or in derogation to all the incidental, logical and consequential rights flowing from the concept of fair and just procedure consistent with the principles of natural justice.

(ix) The beneficiary who undoubtedly bears the burden of compensation is an interested person within the meaning of Section 3(b) of the Act and is also a proper party if not a necessary party under Order 1 Rule 10 of CPC.

It would be error of law if it is held that a beneficiary Company is not a person interested.

(x) The definition of expression “local authority” and “person interested” are inclusive and not exhaustive. Inclusive definition used in a statute enlarge the

meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares they shall include.

(xi) Denial of the right to be impleaded as a party and to be heard as a person interested is in negation of fair and just procedure offending Article 14 of the Constitution of India.

(xii) Section 50(2) represents statutory embodiment of one of the facets of the rules of natural justice. The object underlying this section is to afford an opportunity to the local authority or company to participate in the proceedings held before the L.A. Collector or the court for determining the amount of compensation and to show that claim made by the landowner for payment of compensation is legally untenable or unjustified.

35. The intervenors rely on the decision rendered by a coordinate Bench in ***Pitambar Sahoo v. Angul-Sukinda Railway Limited : 2016 (2) ILR Cut. 212, 2016(II) OLR 27***, wherein the coordinate Bench has dealt with the memorandum of understanding/concession agreement in *extenso* to hold that by the agreement entered between the East coast Railway and the intervenors was liable to indemnify all actions, suits, claims, demands and proceedings.

It was held that the one who is under obligation or liable to indemnify against all actions, suits, claims, demands and proceedings has a right to be heard in it which has become more expedient when neither Ministry of Railway, Govt. of India nor the East coast Railways have been impleaded as a party to the reference. The decision of the coordinate Bench has attained finality as it has not been challenged/alterd by any subsequent decision.

Therefore, this Court is not required to go again into the said issues as in the elaborate order the coordinate Bench considered the MoU/concession agreement entered into between the Railways and the petitioner-Company the scope and interpretation of various clauses of the MoU/concession agreement. The fact remains that ***Pitambar Sahoo*** (*supra*) has dealt with the self-same land acquisition process i.e. the notification for acquisition of land U/s.4(1) of the LA. Act, 1894 vide Notification No.26720 dated 07.07.2010 for acquisition of land of the Angul-Duburi-Sukinda New B.G. Rail Link Project for East Coast Railways.

36. The reliance of the appellants on ***Gregory Patrao v. Mangalore Refinery and Petrochemicals Ltd.: (2022) 10 SCC 461*** is of no avail. In ***Gregory Patrao*** (*supra*) it was held that the allottee of land by the beneficiary for whom the land was acquired cannot be a person interested. In the case at hand Eastcoast Railway and/or the Angul-Sukinda Railway Company are themselves the beneficiaries/project proponents. They are not subsequent allottees of the land that was acquired.

37. In the present case East coast Railway and/or the Angul-Sukinda Railway Company are the project proponents/beneficiary. To oppose the participation of the Company in the proceeding before the referral Court the only argument made by the

appellant is that AngulSukinda Railway Company entered into a memorandum of understanding with the East coast Railway regarding execution of the project. It is not the case of the appellants that Angul-Sukinda Railway Company and/or East Coast Railway are post-acquisition allottee of land to apply the principle of **Gregory Patrao** (*supra*).

38. In considered view of this Court the argument of the appellants to apply **Gregory Patrao** (*supra*) or **Satish Kumar Gupta and others v. State of Haryana and others: (2017) 4 SCC 760** fails in view of the fact that East coast Railway and/or Angul-Sukinda Railway Company are not post acquisition allottees of land. They are the immediate beneficiaries of land acquisition, they are the project proponents/requisitioning authority.

Significantly, it has also to be noted that the learned counsel for the appellants and the learned AGA for the Special LAO did not point out how by impleading the project proponent East Coast Railway and/or the S.A. Rly Company (ASLR Ltd) the appellants-land losers or the Special Land Acquisition Officer would have been prejudiced/will be prejudiced in any manner in the proceeding before the Court below.

The stand taken by the State representing the Special LAO opposing participation by the Railway/S.A. Rly. Company defies logic, as a Special LAO can not have any interest apart from disbursing the amount of compensation determined or enhanced to be paid as compensation.

39. It has to be noticed that **U.P. Awas Evam Vikash Parishad** (*supra*) is a constitution Bench decision rendered by five Hon'ble Judges and **Neyvely Lignite Corporation Ltd.** (*supra*) rendered by three Hon'ble Judges, still hold the field. The decisions in **Gregory Patrao** and **Satish Kumar Gupta** (*supra*) rendered by Bench of two Hon'ble Judges did not differ from earlier decisions of the constitution Bench or three Judge Bench and only held that earlier decisions are not applicable to post acquisition allottees.

It has also to be noticed that the coordinate Bench in **Pitambar Sahoo** (*supra*) has applied the principles laid in **U.P. Awas Evam Vikash Parishad** (*supra*), **Neyvely Lignite Corporation Ltd.** (*supra*) and also considered **Gregory Patrao**(*supra*) and **Satish Kumar Gupta** (*supra*).

Learned AGA though argued regarding applicability of **Gregory Patrao**(*supra*) but it was also not disputed that East coast Railway being the beneficiary/project proponent/requisitioning authority was not made a party before the referral court under section 18 of the L.A. Act.

40. As a result of the above discussions the award dated 04.07.2014 in L.A. Misc. Case No.126 of 2013 decided by the learned Civil Judge (Senior Division), Kamakhyanagar is set aside and quashed. The L.A. Misc. Case No. 126 of 2013 is restored to file for adjudication afresh. The parties in the present case i.e. the appellants and the intervenors shall appear before the learned court of jurisdiction i.e. the learned Civil Judge (Senior Division), Kamakhyanagar or any other court

that could be assigned the matter. The learned Court shall act upon production of the website copy of this order.

41. The intervenors shall file application for impletion as necessary party before the learned court that would be in seisin of the matter. The learned Court shall allow application to enable the intervener to participate in the proceeding. The appellants can appear through their learned counsel immediately on restoration.

As the matter is remanded to the learned referral court for adjudication afresh the Court shall afford an opportunity to the intervenor and/or the railways to file their written statement regarding enhancement of the award and shall also allow them to adduce evidence and produce witness in accordance with law.

42. The learned court shall also issue notice to the present appellants if they do not appear. The learned Senior Counsel for intervener refers to the Order 41 Rule 23-A of CPC to submit that date may be fixed before the learned court below.

It is directed the parties shall appear before the court on 01.07.2025. The court shall fix a date for further hearing of the matter. The matter shall proceed on each date without granting any unnecessary adjournments. It is also directed that all the parties i.e. appellants, intervenors, SPV and Railway shall cooperate in the proceeding in achieving an early disposal.

43. It is submitted by Mr. Panda that the amount as directed to be enhanced in the judgment dated 04.07.2014 has been deposited by the railways on 29.06.2015. Learned Senior Advocate appearing for the intervenors disputes the same. He brings to the notice of this Court that the said fact is not on record as part of the pleadings in the appeal nor indicated in the affidavit dated 30.09.2022 filed by the appellants. In such view of the matter it can not be held that the Railways have deposited any amount towards the enhancement of award. However, as alleged, if at all any amount towards enhanced compensation has been deposited, the necessary legal consequences shall follow. In such scenario the learned of Civil Judge (Senior Division), Kamakhyanagar/the learned Court that would take up the matter on restoration would do the needful in accordance with law and as would be expedient, just and proper restoration.

44. It is further clarified that no part of this judgment and order remanding the matter for adjudication upon participation of all the parties shall be treated in any manner to be expression of any opinion on the merits of the respective claims and contentions of the parties.

45. The appeal is disposed of accordingly with the aforesaid directions. In the facts and circumstances of the case 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:

Appeal disposed of.

2025 (II) ILR-CUT-496

**SHREE SHREE RADHA KRUSHNA
RAGHUNATHJEW THAKUR & ORS.****V.****KAMALA NAYAK & ORS.**[I.A. NO. 318 OF 2025]

(C.M.P. NO. 188 OF 2025)

23 MAY 2025

[R.K. PATTANAIK, J.]**Issue for Consideration**

Whether allowing application of the petitioner by directing to conclude the construction of half built house situated over the suit schedule property violates the essential ingredients of Order 39, Rules 1 and 2 of C.P.C., 1908.

Headnotes

CODE OF CIVIL PROCEDURE, 1908 – Order 39 Rules 1 & 2 – The petitioner filed the CMP assailing the correctness of the impugned judgment passed in FAO No. 32 of 2024 by learned District Judge, Kendrapada where the order of status quo given by Trial Court was modified with a restriction vis-à-vis any such construction to be taken up over the suit land – This court by order dated 13th February 2025 modified the impugned decision in FAO 32 of 2024 allowing the petitioners to conclude the construction of the half built house situated over the suit schedule property, title over which, shall be subject to the result in the suit – The Opp. Parties 1 to 3 & 8 filed the I.A. seeking recall of the order dated 13.01.2025 – Whether allowing application of the petitioner by directing to conclude the construction of half built house situated over the suit schedule property violates the essential ingredients of Order 39, Rules 1 and 2 of C.P.C.

Held: No – The inconvenience would be more for the petitioners, if they are prevented from making construction besides the loss and damage, in case status quo is allowed to remain – Law is rather well settled that any such construction, if it has already undertaken and progressed extensively, the same should be allowed to complete pending decision in the suit as the party making it having invested is likely to suffer immensely besides the pecuniary loss and damage on account of any such order of injunction. (Para 7)

Citations Reference

K.M. Pratap Vrs. K.M. Gourish and another, **(2017) 11 SCC 103**; Evans Vrs. Bartlam (1937) A.C. 473; Wander Limited Vrs. Antox India Private Limited **1990 (Supp.) SCC 727**; S.P. Chengalvaraya Naidu Vrs. Jagannath (dead) and others **(1993) Supp. 3 S.C.R. 422**; State of Kerala Vrs. Union of India **(2024) 4 S.C.R 13**; Mohd. Hussain and others Vrs. Occhavlal and others **(2008) 3 SCC 233 – referred to.**

List of Acts

Code of Civil Procedure, 1908.

Keywords

Injunction; Status quo; Permission to complete half built construction; Pecuniary loss and damage.

Case Arising From

Order dated 13th Feb. 2025 passed by the Hon'ble Court in CMP No. 188 of 2025.

Appearances for Parties

For Petitioners : Mr. G. Mishra, Sr. Adv.

For Opp. Parties : Mr. S. Dash, (O.P. Nos. 1,2,3 & 8)

Judgment/Order

Judgment

R.K. PATTANAIK, J.

1. Instant petition is filed by opposite party Nos.1 to 3 and 8 seeking recall of the Court's order dated 13th February, 2025 in CMP No.188 of 2025 and to direct the parties to the lis to maintain status quo over the suit schedule property with a further direction to the learned Additional Senior Civil Judge, Kendrapara to dispose of the suit in C.S. No.114 of 2011 at the earliest and within a stipulated period necessary for the ends of justice.

2. Heard Mr. Dash, learned counsel for opposite party Nos.1 to 3 and 8 and Mr. Mishra, learned Senior Advocate for the petitioners.

3. In fact, the petitioners filed the CMP assailing the correctness of the impugned judgment dated 13th January, 2025 in F.A.O No. 32 of 2024 by learned District Judge, Kendrapara and also to set aside the order in I.A. No.58 of 2014 arising out of the suit in C.S. No.114 of 2011 on the grounds stated. This Court by order dated 13th February, 2025 disposed of the C.M.P. modifying the impugned

decision in F.A.O. No. 32 of 2024 allowing the petitioners to conclude the construction of the half built house situate over the suit schedule property, title over which, shall be subject to the result in the suit. Such disposal was at the stage of admission in presence of opposite party No.4 without any notices issued to opposite party Nos.1 to 3 and 8 and other opposite parties. By alleging that the source of title claimed in favour of petitioner No.1 represented by petitioner No.2 as a Marfatdar on the strength of a gift deed is a fraudulent one, hence, the same is under challenge in the suit and in such view of the matter, the submission of Mr. Dash, learned counsel for opposite party Nos.1 to 3 and 8 is that both the sides should be directed to maintain status quo in respect of the suit schedule property, since the order in F.A.O. No. 32 of 2024 stands modified in C.M.P. No.188 of 2025, the petitioners taking advantage of the same have commenced construction over the case land, which should not be permitted as the opposite parties have advanced a rival claim and title over the same, a question, which is to be adjudicated upon in the suit. Mr. Dash, learned counsel submits that the decision of the learned District Judge, Kendrapara in F.A.O. No.32 of 2024 should be restored with the order of C.M.P. No.188 of 2025 being recalled as the same is necessary keeping in view the interest of the parties involved. The further contention is that the decision referred to from the side of the petitioners in **K.M. Pratap Vrs. K.M. Gourish and another (2017) 11 SCC 103** is inapplicable to the present set of facts and nature of dispute inter se parties and therefore, having regard to the fact that the construction over the suit land is to commence in view of the order in C.M.P. No.188 of 2025, the same deserves to be recalled. A written note of submission is filed and received by the Court, referring to which, Mr. Dash, learned counsel would submit that any such further construction over the suit land should be avoided. While advancing such an argument, Mr. Dash, learned counsel refers to the decision in **Evans Vrs. Bartlam (1937) A.C. 473** and of the Apex Court in **Wander Limited Vrs. Antox India Private Limited 1990 (Supp.) SCC 727** to conclude that this Court could not have interfered with the judgment of learned District Judge, Kendrapara in F.A.O. No.32 of 2024 ignoring the settled principle of law regulating grant or refusal of injunction. Two more decisions have also been placed reliance on by Mr. Dash, learned counsel, which are, namely, **S.P. Chengalvaraya Naidu Vrs. Jagannath (dead) and others (1993) Supp. 3 S.C.R. 422** and **State of Kerala Vrs. Union of India (2024) 4 S.C.R 13**.

4. On the other hand, Mr. Mishra, learned Senior Advocate appearing for the petitioners submits that there is no need for any recall of the Court's order dated 13th February, 2025 in CMP No.188 of 2025 as such a course of action allowing the petitioners to conclude the construction keeping in view the decision in **K.M. Pratap** (supra) is perfectly justified and in accordance with law, since the same has been permitted without claiming any equity over the same in future. It is submitted that opposite party No.4 as a caveator contested the claim of the petitioners and the matter was disposed of on merit. It is contended by Mr. Mishra, learned Senior

Advocate that opposite party No.1 to 3 and 8 are similarly situated like opposite party No.4 to challenge the claim of the petitioners on a common ground and therefore, the order dated 13th February, 2025 in CMP No.188 of 2025 should not be recalled as any such order would result in review. Referring to a decision of the Apex Court in **Mohd. Hussain and others Vrs. Occhavilal and others (2008) 3 SCC 233**, it is further contended that the order in the CMP neither to affect nor prejudice opposite party Nos.1 to 3 and 8 and the petitioners would rather suffer substantial loss, if they are not allowed to complete the partially constructed building, all the more when, the plea of the opposite parties shall be subject to final verification during trial upon receiving evidence from both the sides. The contention is that this Court rightly, therefore, allowed the construction to take place modifying the order in F.A.O No.32 of 2024, hence, the same should not be recalled.

5. The Court of first instance directed the parties to maintain status quo in respect of the suit schedule property and it has been followed by the decision of the learned District Judge in F.A.O No.32 of 2024, wherein, it has been concluded that the petitioner to be in possession of the suit land but restrained them from raising any construction thereon or changing, altering its nature and character in any manner, till disposal of the suit in C.S. No.114 of 2011, even though having taken cognizance of the fact that the construction has been made over the same to a considerable extent. The bone of contention between the parties is with regard to the registered gift deed executed in favour of petitioner No.1, a deity represented by the Marfatdar, namely, petitioner No.2. It is alleged by the opposite parties that the said deed was not executed by their predecessor, namely, Laxmi Dei. The claim of the petitioners is that petitioner No.2 and opposite party No.2 are the descendants of the common ancestor and as the successor of one Jagabandhu, said Laxmi Dei allegedly executed the gift deed dated 5th July, 1997, whereafter, the suit land was mutated in the name of petitioner No.1. On the other hand, the opposite parties claimed that the vendor of petitioner No.1 is a granddaughter of one Daitary Das. The claim is that said Laxmi Dei is only the legal heir of late Jagabandhu, the recorded co-owner in respect of suit Khata No.379 and she died unmarried in 1998. In fact, learned Court below reached at a conclusion that the materials on record lend support to the case of petitioners to the effect that Laxmi Dei, who is projected as the donor of the suit land in favour of petitioner No.1 died in the year, 1998 but still held that it would be too early to jump to any such conclusion either way as the same requires factual determination, which is possible at the time of conclusion of trial and at the same time found the alleged gift deed executed in 1997 and mutated in the name of petitioner No.1. Though the deed is claimed by the opposite parties to have been executed through a fictitious person, it is also concluded by learned Court below that such a claim about a fraudulent gift deed to have been managed does not appeal to conscience for reason that had there been any such intent, petitioner No.2 would have recorded the suit land and settled it with him instead of petitioner No.1, but as

an abundant caution, also held that the dispute needs determination of facts in course of hearing of the suit concluding that the petitioners to be in physical possession of the same. Under such circumstances, having regard to the nature of dispute, which revolves around the alleged gift deed executed in favour of petitioner No.1 claims to be genuine and denied by the opposite parties alleging it to be a fraudulent one and in view of the fact that substantial construction having already taken place in the meantime and it has been carried out by petitioner No.2 as the Marfatdar of the deity, the Court reached at a conclusion that further construction should be allowed and title over which is to be determined at the end with a rider that the petitioners shall not claim equity over the same later on due to the fact that the loss would be extensive for the petitioners and not to the other side, whose claim over the suit land would be depending on the final result in the suit on the question of title.

6. The decision in **K.M. Pratap** (supra) is sought to be distinguished by Mr. Dash, learned counsel for opposite party Nos.1 to 3 and 8. No doubt, the suit therein was for partition and shares of the respective parties had not been demarcated and construction of a structure over the disputed property was allowed to be carried out at the risk of the party making it but with a condition that no third party interest shall be created over the same with such other conditions including the one that if ultimately the property does not fall in the share of the respondents, no equity in respect of any such construction shall be claimed by them and instead shall remove the entire construction at their own cost. This Court is not inclined to vary the decision and to substitute the order of status quo for the reason that the RoR stands in the name of petitioner No.1 and the construction has been undertaken over the suit land at the instance of petitioner No.2 being the Marfatdar and as it is revealed from the order in F.A.O. No.32 of 2024, such construction to have progressed to a considerable extent. Having regard to the fact that the gift deed is of the year, 1997 and the same to be a registered one purportedly executed in favour of petitioner No.1 by the donor, namely, Laxmi Dei, whose line of succession and status is in question and in the meantime, the suit land being in the possession of the petitioners and them having made the construction, which has reached almost up to the roof level of the ground floor, at this juncture, any such order of status quo is certainly to prejudice them and not the opposite parties. The inconvenience would be more for the petitioners than any of the opposite parties if the construction is stopped with an order of status quo. Not only that the damage and loss would be substantial for the petitioners, who are taking up the constructions at their own peril, fully knowing the imposed condition that they shall not claim equity over such construction in future.

7. The essential ingredients of Order 39 Rules 1 and 2 CPC, such as, a prima facie case, balance of convenience and irreparable loss and injury are to be duly taken cognizance of, while considering a plea for injunction. In view of the gift deed in favour of petitioner No.1 and possession, as has been found by learned Courts below in F.A.O. No.32 of 2024, a prima facie case is in favour of the petitioners and

for the fact that petitioner No.1 to be the owner of the suit land having been issued with the mutation RoR. Furthermore, the inconvenience would be more for the petitioners, if they are prevented from making construction besides the loss and damage, in case status quo is allowed to remain. Though the decision in **Evans** (supra) is referred to by Mr. Dash, learned counsel for opposite party Nos.1 to 2 and 8, there is no quarrel over the legal position with regard to the ratio decided therein that a Court in appeal is not to lightly interfere with the discretion of an inferior Court, unless such exercise of discretion is grossly erroneous. In the present case, the Trial Court directed the parties to maintain status quo and it was modified by learned District Judge, Kendrapara in F.A.O. No. 32 of 2024 with a restriction vis-à-vis any such construction to be taken up over the suit land. If learned Court below reached at a conclusion that the construction of the suit land is to a considerable extent and the petitioners do have a prima facie case to make such construction, the question is, whether, it was justified to prevent them from raising the construction with a conclusion that it would change the nature and character of the subject involved. Law is rather well settled that any such construction, if it has already undertaken and progressed extensively, the same should be allowed to complete pending decision in the suit as the party making it having invested is likely to suffer immensely besides the pecuniary loss and damage on account of any such order of injunction.

8. Considering the likely prejudice to be caused to a party, the Apex Court in **K.M. Pratap** (Supra) in a suit for partition allowed the construction to be completed with certain restrictions imposed like not to create 3rd party interest and to use it without express permission of the Court etc. In the present set of facts and though the title of the suit land is claimed by the opposite parties denying any such gift deed to have been executed in favour of petitioner No.1, which is of the year,1997 and over the suit land, there is already a construction having progressed to a considerable extent and the same has not been denied by any of the opposite parties, rather, supported by a photograph produced by Mr. Dash, learned counsel for opposite party Nos.1 to 3 and 8 in course of hearing, the Court, regard being had to the settled position of law with reference to the citations relied upon, is of the humble view that the order in CMP No.188 of 2025 is not required to be recalled.

9. Accordingly, it is ordered

10. In the result, the I.A. stands dismissed.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

I.A. dismissed.

2025 (II) ILR-CUT-502

ORISSA RASHTRABHASA PARISHAD, PURI & ORS.

V.

GOURA GOPAL DAS & ORS.

[C.M.P NO. 1446 OF 2024]

23 MAY 2025

[R.K. PATTANAİK, J.]

Issues for Consideration

1. Whether an application under Order 18, Rule 17 of the Code of Civil Procedure, 1908 can be allowed after a delay of seven years.
2. Whether absence of pleading can be a ground for denying recall of defendant no.10 for further cross-examination.

Headnotes

(A) CODE OF CIVIL PROCEDURE, 1908 – Order 18, Rule 17 – The Petitioner filed an application U/o. 18, Rule 17 C.P.C. to recall for further cross-examination of Defendant 10 as D.W. 2 for confrontation of Ext. 21 – The copy of plaint filed in another suit has been marked as Ext. 21 in the year 2023 – D.W. 2 was examined in September 2017 and the application for his recall was received by learned Court below in November 2024 which was nearly after expiry of seven years – Whether an application U/o. 18, Rule 17 of C.P.C. can be allowed after a delay of seven years.

Held: Yes – Notwithstanding such delay, recall for further cross-examination of defendant no.10 could have been allowed with cost. (Para 10)

(B) CODE OF CIVIL PROCEDURE, 1908 – Order 18, Rule 17 r/w Section 145 of the Evidence Act, 1872 – The Petitioner filed the application to recall Defendant No. 10 for confrontation of Ext. 21 – Whether absence of pleading in the present suit can be a ground for denying recall of Defendant No. 10 for further cross-examination.

Held: No – Such a witness should have been allowed to be further cross-examined for being confronted to Ext. 21 as the same is permissible in view of Section 145 of the Evidence Act – Absence of pleading in the present suit cannot be a ground denying recall of defendant No.10 – It is not that the reason for recall is to patch up any lacunae or introduce fresh facts but with regard to the earlier suit instituted by opposite party No.12 along with others and to confront about the same since the plea is that there is an admission

ORISSA RASHTRABHASA PARISHAD V. GOURA GOPAL DAS [R.K.PATTANAIK, J]

by him, which is necessarily to be brought on record to fortify the claim of the petitioners and the same ought to have been allowed. (Para 10)

List of Acts

Code of Civil Procedure, 1908; Indian Evidence Act, 1872.

Keywords

Recall of witness; Delay in filing recall petition; Further cross-examination.

Case Arising From

Order dated 8th November, 2024 passed by learned Senior Civil Judge, Puri in C.S. No.457 of 2011.

Appearances for Parties

For Petitioner : Mr. B. Bhuyan, Sr. Adv.

For Opp. Parties : Mr.S.K. Mishra, Sr. Adv. (O.P.12)

Judgment/Order

Judgment

R.K. PATTANAIK, J.

1. Instant petition is filed by the petitioners assailing the impugned order dated 8th November, 2024 as at Annexure-7 passed in connection with C.S. No.457 of 2011 by learned Senior Civil Judge, Puri, whereby, an application under Order 18 Rule 17 C.P.C. to recall and further cross-examination of defendant No.10 was rejected.

2. The petitioners as plaintiffs instituted the suit in C.S. No.457 of 2011 before the learned Court below to declare the defendants having no interest and authority to meddle with the affairs of petitioner No.1 with such other consequential reliefs including permanent injunction.

3. As per the case of the petitioners, petitioner No.1 is a registered society under the Society Registration Act, whereas, petitioner Nos.2 to 10 are its elected members of the Executive Body and in so far as the opposite parties are concerned, they are creating troubles in the function of petitioner No.1. It is pleaded that the opposite parties claiming themselves as the members of the Executive Body of petitioner No.1 filed a suit in the year 1995 against the then President and other office bearers of petitioner No.1 with reliefs including declaring the Body with its members to be valid and in accordance with law. It is further pleaded that the opposite parties claimed a compromise and manufactured a document fabricating the signatures of the defendants therein but the same was not accepted by the Court, as a result of which, the suit was withdrawn without any liberty being granted to file

a fresh one imposing cost on them but neither the cost was deposited nor the suit was pursued and in fact, it was abandoned and even after such abandonment of the said suit, some of the plaintiffs with others in the office of petitioner No.1 continued to commit mischief from time to time and in order to make illegal gain, they sold the property of the organization to a 3rd party though having no such authority or power to do so and sale it, therefore, naturally the possession could not be delivered. Since, the opposite parties created trouble in running the day to day business of petitioner No.1, the petitioners instituted the suit in C.S. No.457 of 2011. In the suit, the opposite parties filed the W.S. and claimed it not to be maintainable at the instance of plaintiff Nos. 2 to 10 as them having no relation with petitioner No.1, namely, plaintiff No.1 and denied all the averments of the plaint at Annexure-1. It is pleaded therein that petitioner No.1 was managed by a Governing Body and after expiry of period of three years, the General Body held its meeting on 30th August, 2011 and elected a new Body for the administration and management of the organization, hence, the Body was reconstituted with the opposite parties elected as the office bearers as members of the Executive Body and with such pleading on record, the opposite parties demanded dismissal of the suit.

4. While the matter was subjudice before the learned Court below, the petitioners filed an application for marking certified copy of the plaint in T.S. No.445 of 1996 as an exhibit as the said suit was instituted by defendant No.10 and opposite party No.12 but it was rejected, against which, CMP No.77 of 2018 was filed and this Court by order dated 17th March, 2023 permitted the same and as a result, the document was marked as Ext.21. It is also pleaded that consequent upon disposal of CMP No. 77 of 2018, the opposite parties exhibited two documents and the same was allowed by the learned Court below on 12th July, 2023, assailing which, the petitioners filed CMP No.785 of 2023 and it was allowed vide order dated 8th December, 2023 and as a result, the documents were precluded from being exhibited. Against the aforesaid backdrop, the petitioners moved the application seeking recall of defendant No.10 (D.W.2) for the purpose of confronting him, a copy of the plaint in T.S. No.445 of 1996 i.e. Ext.21, with a plea that in that plaint, the plaintiffs including the defendant claimed themselves to be the employees under petitioner No.1 and all were seeking a declaration as the employees of the organization but in the present suit, he claims to be the elected Secretary of petitioner No.1 and while under cross-examination, denied about the suit in T.S. No.445 of 1996, to which, defendant No.10 filed an objection on the ground that no such averment is pleaded on record and the application is filed to prolong the litigation and therefore, it should be dismissed. A copy of the objection is at Annexure-6. But according to the petitioners, such a request for further cross-examination of defendant No.10 was denied for the reason that it was not accompanied with any questionnaire. Since the certified copy of the plaint is to be confronted and it had not been marked as exhibit by the time when D.W.2 was examined and discharged, therefore, the application as per Annexure-4 was moved seeking his recall but it has been followed by the impugned order i.e. Annexure-7,

which, in absence of any reasons assigned by the learned Court below, is liable to be interfered with followed by directions issued in that regard.

5. Heard Mr. Bhuyan, learned Senior Advocate for the petitioners and Mr. Mishra, learned Senior Advocate appearing for opposite party No.12. Notices to other opposite parties have not been issued

6. Perused the objection of the opposite parties at Annexure-6 to the application of the petitioners seeking recall of D.W.2. It is submitted by Mr. Bhuyan, learned Senior Advocate of the petitioners that learned Court below lost sight of the fact that the suit has been instituted concerning the affairs of petitioner No.1 and since defendant No.10 and others had filed T.S. No.445 of 1996, wherein, there was an admission by them and it was not confronted earlier, since by then, the copy of the plaint of that suit had not been marked as an exhibit, for the said purpose, recall of defendant No.10 was necessary and the same is permissible in view of Section 145 of the Indian Evidence Act to confront him his previous statement in writing, which may be used either for contradiction or corroboration but learned Court below failed to appreciate the same and rejected the application i.e. Annexure-4. The contention is that there was no such occasion to confront Ext.21 to defendant No.10 by the time he was examined and discharged, the fact, which was not duly taken judicial notice of by learned Court below, hence, the impugned decision by order at Annexure-7 deserves to be set aside.

7. Mr. Mishra, learned Senior Advocate for opposite party No.12 justifies the impugned order i.e. Annexure-7 and contends that the exhibit of the copy of the plaint of the other suit in T.S. No.445 of 1996 is not relevant. So as to confront it to opposite party No.12, the further contention is that there is no pleading on record to admit any such confrontation of the document i.e. Ext.21 and in view of the delay that apart, learned Court below was perfectly justified in rejecting the request of the petitioners for recall and further cross-examination of D.W.2, hence, the impugned order at Annexure-7 is not to be disturbed.

8. The copy of the plaint in the suit at the behest of opposite party No.12 and others as at Annexure-3 is perused and therein, the plaintiffs sought for a declaration that they are the employees of defendant No.1, namely, petitioner No.1 with a direction to the defendants to pay them the salary with such other consequential reliefs including injunction to restrain their ouster from services by engaging others. It is made to reveal from the record that the copy of the plaint in T.S. No.445 of 1996 is already marked as Ext.21 pursuant to this Court's order in CMP No.77 of 2018 dated 17th March, 2023. The application for recall under Order 18 Rule 17 CPC at the behest of the petitioner is for seeking recall of D.W.2, namely, opposite party No.12 to confront Ext.21. It is not in denial that D.W.2 was examined, cross-examined and discharged on 7th September, 2017. The plaint copy marked as Ext.21 arrived much later to the examination of D.W.2. The application for recall is filed in 2024 almost after seven years from the time of defendant No.10 examined. But

then, the document is marked as exhibit only after the order in CMP No.77 of 2018. In fact, a copy of the plaint in T.S. No.445 of 1996 was exhibited in the year, 2023, whereafter, the application under Order 18 Rule 17 CPC has been moved. If one looks at Annexure-4, it would reveal that the said application was filed on 6th November, 2024, after more than one and half years from being exhibited. No doubt, delay has taken place in seeking recall of defendant No.10 for further cross-examination. The objection of opposite parties and in particular, opposite party No.12 is that the application as per Annexure-4 is moved to harass them and to protract the litigation. According to learned Court below, the witness, namely, D.W.2 was cross-examined on 7th September, 2017 after obtaining the certified copy of the plaint in T.S. No.445 of 1996 and hence, the petitioners had ample opportunity to confront him with the same, though, it had not been exhibited by then and besides that, there was no questionnaire furnished.

9. As per the application under Order 18 Rule 17 CPC, a Court may at any stage of a suit recall any witness, who has been examined and may put such questions to him as it considers fit. In fact, Section 165 of the Evidence Act deals with discretionary of the Court to put any such questions to a witness recalled for the purpose of further examination. Moreover, the application under Order 18 Rule 17 CPC reserves the right of the Court to recall a witness for the said purpose. Such right to recall, however, is not restricted to a Court on its own motion but may be exercised at the instance of a party too. The Court has also inherent power to recall a witness for examination, who was cross-examined. Law is well settled that if cogent reasons exist for recalling a witness, the same can be allowed and in so far as the Code is concerned, it does not lay down any prohibition in such matters. Even recalling a witness is permissible in a given set of facts after the case is closed and the judgment is reserved, since because, such recall and examination of a witness from either of the side may be considered by a Court may be at any time during the pendency of the suit. In certain circumstances, there may be restrictions to recall a witness. In either way, a Court shall have to offer convincing reasons while dealing with an application under Order 18 Rule 17 C.P.C.

10. In the case at hand, briefly stated, the plaint copy in the other suit has been marked as Ext. 21 and as earlier discussed, it was later to the Court's order in C.M.P. No.77 of 2018 dated 17th March, 2023. It may be that the petitioners had a certified copy of the said plaint with them at the time of the examination of D.W.2. and thereafter, the application under Order 18 Rule 17 C.P.C. has been moved. Of course, D.W.2 was examined in September, 2017 and the application for his recall received by learned Court below in November, 2024 which is nearly seven years after. The Court is of the view that even though the delay has taken place, but since, the document was marked as an exhibit in 2023 and such an application under Order 18 Rule 17 C.P.C was pressed into service towards the end of 2024, notwithstanding such delay, recall for his further cross-examination could have been allowed with cost. The Court is in agreement with Mr. Bhuyan, learned Senior Advocate for the

ORISSA RASHTRABHASA PARISHAD V. GOURA GOPAL DAS [R.K.PATTANAIAK, J]

petitioners that such a witness, namely, D.W.2 should have been allowed to be further cross-examined for being confronted to Ext. 21 as the same is permissible in view of Section 145 of the evidence Act. Absence of pleading in the present suit cannot be a ground denying recall of defendant No.10, hence, the Court is not inclined to accept any such the contention advanced. The plaint copy of the other suit having been admitted in evidence, the application under Order 18 Rule 17 C.P.C, since filed by the petitioners even with delay and at the fag end of the suit, the Court reiterates its view that learned Court below should have allowed the same imposing cost to compensate the opposite parties and particularly, opposite party No.12. It is not that the reason for recall is to patch up any lacunae or introduce fresh facts but with regard to the earlier suit instituted by opposite party No.12 along with others and to confront about the same since the plea is that there is an admission by him, which is necessarily to be brought on record to fortify the claim of the petitioners and the same ought to have been allowed.

11. Hence, it is ordered.

12. In the result, the petition stands allowed with a direction to learned Senior Civil Judge, Puri to summon defendant No.10 examined as D.W.2 for further cross-examination by the petitioners limited to the extent discussed herein before in connection with C.S. No.457 of 2011 and thereafter, to proceed to deal with suit as per and in accordance with law. It is further directed that the above order shall be given effect to subject to payment of cost of Rs.1000/- to be received by opposite party No.12 only.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Petition allowed.

2025 (II) ILR-CUT-508

**NALINIPRAVA MOHANTY
V.
STATE OF ODISHA & ORS.**

[W.P.(C) NO. 12483 OF 2024]

11 APRIL 2025

[SASHIKANTA MISHRA, J.]**Issue for Consideration**

Whether the contractual employees appointed as per executive instructions to meet administrative exigencies can claim regularization as per the resolution dated 17.09.2013, after completion of six years of their contractual service.

Headnotes

SERVICE JURISPRUDENCE – Regularization – The petitioner was appointed as Lady Supervisor on 25.08.2009 on contractual basis – Petitioner has rendered 17 years of continuous service – Whether the contractual employees appointed as per executive instructions to meet administrative exigencies can claim regularization as per the resolution dated 17.09.2013, after completion of six years of their contractual service.

Held: Yes – There is no dispute that the petitioner has rendered 17 years of continuous service – She having been appointed on contractual basis w.e.f. 25.08.2009 can lay a valid claim for being regularized six years thereafter i.e. from 25.08.2015 – Even reckoning six years from the date of publication of the resolution dated 17.09.2013, she can lay a valid claim after six years from said date, i.e. 17.09.2019. (Para 16)

Citations Reference

Ratnamani Mahanta vs. State of Odisha & Ors and batch, **WPC(OAC) No. 286 of 2015**; Smt. Kausalya Pradhan vs. State of Odisha, **W.P.(C) No. 3321 of 2011**; Patitapaban Dutta Dash and Others vs. State of Odisha & Others, **Order dated 09.09.2021 in W.P.(C) No.19951 of 2020 – referred to.**

List of Acts

Constitution of India, 1950; Orissa Children's Women's Welfare Service Rules, 1989

Keywords

Regularization; Executive instruction; Administrative exigency; Contractual appointment; Continuous service of six years; Gradation list.

Case Arising From

Non-regularization of the service of the petitioner.

Appearances for Parties

For Petitioner : M/s. Manoj Kumar Mohanty, T. Pradhan & A. Mohanty.
For Opp. Parties : Mr. S.N. Pattnaik, A.G.A.

Judgment/Order**Judgment****SASHIKANTA MISHRA, J.**

The petitioner in the present writ application seeks a direction to the opposite parties to regularize her service as Lady Supervisor from 20.10.2020 with all consequential financial and service benefits.

2. The petitioner was initially engaged as Anganwadi Worker w.e.f. 05.01.1993 in Tangarpalsa Anganwadi Center in the district of Keonjhar. She belongs to the unreserved category with B.A. qualification.

3. Though Orissa Children's Women's Welfare Service Rules, 1989 (in short, '1989 Rules') had come into force on 24.04.1989 with its amendment on 08.02.2007, the Government in the Department of Women and Child Development Department, vide letter dated 04.04.2008 created 237 posts of Supervisor on contractual basis on abolition of equal posts carrying scale of pay of Rs.4750-7500/- to be filled up through direct recruitment. It was also decided that only graduate Anganwadi Workers having minimum five years of service would be eligible for such appointment.

4. By clarification issued on 29.07.2009, the Government reiterated that the posts so created shall be filled up from amongst graduate Anganwadi Workers having experience of more than five years and giving option for the same. It was specifically clarified that the filling up of the posts was not as per the provisions of the 1989 Rules.

5. Pursuant to such direction, 22 Anganwadi Workers were engaged as Supervisors on contractual basis on consolidated pay of Rs.4750/- per month on 25.08.2009. The petitioner and three others were appointed as Lady Supervisors vide order dated 20.10.2010 of the Collector, Keonjhar on contractual basis on consolidated pay of Rs.9,300/- per month. The petitioner was posted in Keonjhar ICDS project.

6. It is stated that even though the Anganwadi Workers belonged to the same cadre, two different gradation lists were prepared on the basis of qualification, i.e., one for matriculation and the other, for graduation. Some Anganwadi Workers having matriculation qualification were promoted in the year 2010 on regular basis in terms of 1989 Rules but the graduate Anganwadi Workers were not considered against the 30% vacancies despite having 10 years' experience.

7. By office order dated 22.12.2014 the Government in W & CD Department wrote to all the Collectors laying down the conditions of service of 557 graduate Anganwadi Workers engaged as Supervisor on contractual basis. It was stated that

the engagement of these Supervisors could be terminated at any time. It was also provided that those who are under 45 years of age and have completed at least one year of continuous contractual service, shall be allowed relaxation of upper age limit for entry into Government service in case they take part in any future recruitment for ICDS Supervisors or any other Group-C posts subject to satisfaction of all other eligibility criteria. Further weightage of marks was also to be granted to each year completed service subject to maximum of 15%.

8. Said office order was challenged by some contractual supervisors initially before the erstwhile Odisha Administrative Tribunal, which was subsequently transferred to this Court and registered as WPC(OAC) No. 286 of 2015 (Ratnamani Mahanta vs. State of Odisha & Ors) and batch. A Coordinate Bench of this Court, by judgment dated 13.07.2022 disapproved the action of the authorities in not absorbing the petitioners therein in regular establishment as against 40% of the total sanctioned strength and directed the authorities to make necessary provision in the 1989 Rules for absorption of graduate Anganwadi Workers having five years of experience as Supervisor or alternatively to absorb the petitioners in the said post on the basis of G.A. Department resolution dated 17.09.2013.

9. The petitioner claims to be standing exactly on the same footing as the petitioners in the aforesaid cases. It is further contended that the petitioner having B.A. qualification had completed 10 of service as on 05.03.2003 as Anganwadi Worker but in view of the provisions of the Rules confining promotion to the post of Supervisor from amongst Anganwadi Workers having matriculation qualification, her case for regular promotion has not been considered. In the meantime, the petitioner has completed more than 17 years of service as Anganwadi Worker and Supervisor taken together.

10. The stand of the State is that the engagement of the petitioner was not as per the provisions of the 1989 Rules but as per executive instructions to meet administrative exigencies. The judgment passed by the Coordinate Bench (referred above) has been challenged in an intra-Court appeal being W.A. No. 366 of 2024, which is pending. In the meantime, another Bench of this Court in W.P.(C) No. 3321 of 2011 (Smt. Kausalya Pradhan vs. State of Odisha) categorically held that when the post itself is created on contractual basis, the persons cannot be engaged on regular basis. The order has since been confirmed by a Division Bench of this Court in W.A. No. 559 of 2016 vide order dated 13.10.2022. Therefore, the petitioner having been appointed purely on contractual basis cannot claim to be regularized.

11. The petitioner has filed a rejoinder refuting the averments made in the counter affidavit. It is stated that the judgment passed in Kausalya Pradhan's (supra) case is not applicable to the facts of the case inasmuch as the petitioner therein had prayed for promotion to the post of Supervisor and not regularization. Moreover, the Government order dated 22.12.2014 has not been challenged therein. On the contrary, the judgment passed in Ratnamani Mahanta's (supra) case has been implemented by the Government by regularizing the services of contractual

Supervisors as per resolution dated 25.09.2024. There is therefore, no reason why the petitioner, who stands exactly on the same footing, shall be deprived of the benefit of regularization.

12. Heard Mr. M.K. Mohanty, learned counsel for the petitioner and Mr. S.N. Pattnaik, learned Addl. Government Advocate.

13. Mr. Mohanty would argue that despite existence of specific Rules, the Government's decision to engage Lady Supervisor on contractual basis *de hors* said Rules is entirely unjustified. Though the petitioner and others were engaged on signing of agreement, the same cannot act as estoppel as they had no other option in the matter. In any event, the judgment passed in *Ratnamani Mahanta* (supra) having been implemented in the meantime by the Government by deciding to regularize the services of contractual Supervisors, there is nothing left to adjudicate save and except that the said decision ought to operate retrospectively i.e., from the date when these persons were first engaged as Supervisor on contractual basis.

14. Mr. S.N. Pattnaik, learned State Counsel, on the other hand, would argue that notwithstanding the existence of Rules, the State Government was competent to engage Supervisors on contractual basis to meet administrative exigencies. The decision of the Government as per letter dated 04.02.2008 of the Commissioner-cum-Secretary in W & C.D. department followed by the clarification issued on 29.07.2009 has not been challenged so far. Further, the petitioner and the other similarly placed persons were specifically given option before accepting the offer of engagement on contractual basis. They cannot now turn around to question such decision. Mr. Pattnaik further argues that notwithstanding the above, the Government as a matter of policy decided to regularize the services of contractual Supervisors, who were selected from amongst Anganwadi Workers having five years of experience with graduate qualification w.e.f. 25.09.2024. Said resolution has not been specifically challenged by the petitioner.

15. Though much has been pleaded and argued with regard to manner of engagement of the petitioner and the persons like her as Lady Supervisor, the same does not require to be gone into in detail as in the meantime the Government has itself taken a decision to regularize the services of persons like the petitioner. The only rider is, same shall be with effect from the date of coming into force of the resolution i.e. 25.09.2024. As argued by Mr. Pattnaik, learned State Counsel, said resolution has not been challenged by the petitioner. In absence of any challenge there is no gainsaying that the correctness or otherwise of the resolution cannot be gone into by this Court. However, fact remains that this Court in *Ratnamani Mahanta* (supra) has disposed of the writ application by directing the authorities to either make necessary provision in the Rules for absorption of graduate Anganwadi Workers or alternatively to absorb them basing on G.A. Department Resolution dated 17.09.2013 as also taking note of the judgment passed by this Court in an earlier writ application being *Patitapaban Dutta Dash and Others vs. State of Odisha & Others* (Order dated 09.09.2021 in W.P.(C) No.19951 of 2020). In order to appreciate the contention raised in this regard it would be useful to

refer to G.A. Department Resolution dated 17.09.2013. The introduction of the Resolution is reproduced below:

“The policy regarding regular appointment of following categories of contractual Group ‘C’ and Group ‘D’ employees appointed under the State Government was under active consideration of Government for some time past.

Contractual appointments/engagements made against contractual posts created with the concurrence of Finance Department on abolition of the corresponding regular posts or contractual appointments/engagements made against contractual posts created with the concurrence of Finance Department without abolition of any corresponding regular post in case of new offices or for strengthening of the existing offices/services, following the recruitment procedure prescribed for the corresponding regular posts and the principle of reservation of Posts and services for different categories of persons decided by the state Government from time to time.

Government after careful consideration and in supersession of the Resolutions/ Orders/ Instructions issued by different Departments of Government to that effect; except as respects things done or omitted to be done before such supersession, have been pleased to decide as follows:-” [Emphasis added]

16. After coming into force of the resolution dated 17.09.2013, the previous orders dated 04.10.2008 and 29.07.2009 get automatically superseded. Such being the situation, the other provisions of the scheme which provide for regular appointment of the contractual employees on the date of completion of six years of service or from the date of publication of the resolution, whichever is later, also applies. It is obvious that keeping the provisions of the resolution in mind, the coordinate Bench had directed the State Authorities to consider absorption of the petitioners basing thereon. There is no dispute that the petitioner stands on the same footing as the petitioners of the said case. There is no dispute that the petitioner has rendered 17 years of continuous service. She having been appointed on contractual basis w.e.f. 25.08.2009 can lay a valid claim for being regularized six years thereafter i.e. from 25.08.2015. Even reckoning six years from the date of publication of the resolution dated 17.09.2013, she can lay a valid claim after six years from said date, i.e. 17.09.2019.

17. However, as already stated, in the absence of specific challenge to the resolution dated 25.09.2024, this Court cannot issue a mandamus directing the authorities to regularize the services of the petitioner from the dates mentioned above. Nevertheless, having regard to the fact that as on 17.09.2019 the resolution dated 17.09.2013 was still in operation, the authorities concerned should re-visit the issue of regularization with retrospective effect keeping in view not only this judgment but also the earlier judgments of this Court rendered in Patitapaban Dutta Dash (supra) and Ratnamani Mahanta (supra). Let a decision be taken by the opposite party authorities in this regard within three months from today.

18. The writ application is disposed of accordingly.

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 (II) ILR-CUT-513

PRAMOD RANJAN DASH & ORS.

V.

STATE OF ODISHA & ORS.

[W.P.(C) NO. 10985 OF 2013]

WITH

SUKADEV PRUSTY & ORS. V. UNION OF INDIA & ORS.

[W.P.(C) NO. 11195 OF 2013]

AND

HAREKRUSHNA MISHRA & ANR. V. UNION OF INDIA & ORS.

[W.P.(C) NO. 17295 OF 2013]

25 APRIL 2025

[SASHIKANTA MISHRA, J.]

Issue for Consideration

Whether creation of a class within a class is permissible in law.

Headnotes

CONSTITUTION OF INDIA, 1950 – Article 14, 16(1) – Creation of class within a class – The Central Government has sanctioned creation of 120 posts pursuant to which the State Government created 118 posts under the INSAT Scheme at different times in between 1983 to 1984 – The petitioners were recruited by a duly constituted selection committee through open advertisement against the said substantive post after 01.01.1990 – The Government treated 63 employees who are recruited by 31.12.1989 as Government employees and the employees who were engaged after 1.1.1990 were treated as autonomous employees as their engagement was temporary and subject to continuance of the scheme – Whether creation of a class within a class is permissible in law.

Held: No – From a conspectus of the analysis of facts and law and the contentions advanced, this Court holds that the Petitioners having been appointed against substantive posts created by the Government prior to 1.1.1990 and continuing in service for more than two decades, cannot be disengaged by treating them differently than the employees appointed prior to 1.1.1990 – The attempt of the State to distinguish the Petitioners from the 63 employees, if permitted, would entail creation of a class within a class, which cannot be countenanced in law. (Para 17)

Citations Reference

State of Punjab vs. Indersingh, **1997 (8) SCC 372**; D.S. Nakara vs. Union of India, **1983 (1) SCC 305** – referred to.

List of Acts

Constitution of India, 1950; Odisha Service Code.

Keywords

Deputation; Discrimination; Creation of class within class; Parent department; Temporary status; Autonomous employee; Homogeneous class

Case Arising From

Orders of disengagement with effect from 29.04.2013

Appearances for Parties

For Petitioner : Mr. J. Pattanik, Sr. Adv., Mr. S.S. Das, Sr. Adv.,
Ms. S. Pattnaik. [In WP(C) 10985 of 2013]
Mr. J. Pattanik, Sr. Adv, Ms. S.Pattnaik. [In WP(C) 11195/13]
Mr. J. Pattanik, Sr. Adv., Mr. B.Mohanty. [In WP(C) 17295/13]

For Opp. Parties : Mr. S. N. Pattnaik, A.G.A. [In WP(C) 10985 of 2013]
Mr. S. N. Pattnaik, A.G.A.,
Mr. P.K. Parhi, DSGI, Mr. S. Patro, CGC for (O.P. 1 & 4),
Mr. A. Saa, CGC for (O.P. 1 & 4). [In WP(C) 11195/13]
Mr. S. N. Pattnaik, A.G.A.
Mr. Bhaktilata Bal, Mr. Bimbisar Dash, CGC (O.P. No. 1)
[In WP(C) 17295/13]

Judgment/Order

Judgment

SASHIKANTA MISHRA, J.

All these Writ Petitions involve common facts and law and being heard together, are disposed of by this common judgment.

2. The petitioners in all these Writ Petitions have challenged the orders of disengagement w.e.f. 29.4.2013 of their services from different posts held by them in the State Institute of Educational Technology (SIET).

Facts.

3. The Government, with a view to promote primary and secondary level education through audio visual educational programmes initiated the Educational Television Programme in the year 1980, commonly known as ETV. Said programme was under direct control of State Council for Educational Research and Training (SCERT). The Central Government, in its department of Human Resource Development suggested grant of autonomy to the said ETV in the year 1990. Consequently, the State Government renamed the organization as SIET and conferred it with autonomous status w.e.f. 1.1.1990. Prior to coming into being of SIET, the Central Government had sanctioned creation of 120 posts pursuant to which the State Government created 118 posts under the INSAT Scheme at different times in between 1983 to 1984. The petitioners were recruited by a duly

constituted selection committee through open advertisement against the said substantive posts. By resolution dtd.10.1.90, the State Government converted SIET into an autonomous organization w.e.f. 1.1.1990 being registered under the Registration of Societies Act, 1860. It was provided that the erstwhile Education and Youth Services Department shall be the administrative department of the Institute.

4. Be it noted that by a Notification dtd.15.5.1992, the Government of India suggested that the regulations of the State Government governing the conditions of service applicable to the employees of the SIET immediately before the conversion will continue to be applicable unless specifically modified by the Managing Committee. As such, the Governing Body of SIET, in its 3rd meeting dtd.9.7.1992, resolved to adopt the aforesaid recommendation and that till finalization of the Rules to govern the SIET, the Rules of the Government of Odisha as followed prior to grant of autonomy would continue to govern the service conditions of the employees. On 21.4.1995, the Executive Committee of SIET, inter alia, resolved to continue following the State Rules. Several other decisions relating to post-to-post parity etc. were also taken including extension of benefits of GPF as well as pension to the employees.

5. While the matter stood thus, some employees approached this Court in W.P.(C) No.4971/2008 for a direction to the authorities to frame separate rules and for grant of service benefits such as GPF and pension. However, the State Government having declared SIET to be defunct/closed w.e.f. 29.4.2013, said Writ Petition became infructuous. Upon such abrupt closure of SIET, the petitioners were informed that they have been disengaged w.e.f. 29.4.2013. The orders of disengagement are impugned in these Writ Petitions. According to the Petitioners, such action of the authorities is highly discriminatory since several other employees of SIET were relocated in various departments of the Government by treating them as deputationists.

Stand of the State.

6. While admitting that the Government of India had sanctioned 120 posts between 1983-84 to 1984-85 and the creation of 118 posts in between 1983-84 to 1987-1988, it was stated that only 63 employees were duly recruited by the State Government by 31.12.1989. These employees were treated as Government employees being recruited vide Government Order No.6923/EYS dated 14.2.1986 by the erstwhile Education and Youth Services Department. The employees who were engaged after 1.1.90 were treated as autonomous employees as their engagement was temporary and subject to continuance of the scheme. Therefore, there is no question of any discrimination.

7. As regards the 63 employees, they having been appointed against sanctioned posts were repatriated and accommodated in different posts under Departments as their continuance was not dependent on the central scheme. Rather, they were

appointed against posts created and sanctioned prior to grant of autonomous status of SIET w.e.f. 1.1.90. Further, deputation of these 63 employees was sanctioned from 01.1.90 to 31.12.1999 vide Government letter dtd.19.7.2002 and subsequently, the Government sanctioned their deputation individually for the period from 1.1.2000 to 31.3.2012 in the year 2020. Therefore, the Petitioners cannot claim any parity with these 63 employees.

Appearance.

8. Heard Mr. Jagannath Pattnaik, learned Senior counsel with Ms. S. Pattnaik and Mr.S.S.Das, learned counsel appearing for all the Petitioners and Mr. S.N. Patnaik, learned Addl. Government Advocate for the State.

Submissions

9. Mr. Pattnaik, learned Senior counsel, leading the arguments on behalf of all the Petitioners, would argue that the Petitioners having been appointed against posts sanctioned and created prior to 01.1.90 cannot be treated differently only because they were appointed after 1.1.1990 though the status of the institute changed, the source of appointment of the Petitioners did not undergo any change inasmuch as they were appointed against posts already in existence prior to 1.1.1990. Furthermore, the petitioners were appointed after successfully undergoing a selection process. Only because the Director of SCERT issued appointment orders in favour of 63 employees cannot make them any more Government employees than the petitioners. Mr. Pattnaik further argues that the Petitioners were recruited against the posts created on 30.4.1984, 14.2.1986 and 23.2.1988 by the erstwhile Education and Youth Services Department specifically for the SIET under the INSAT scheme. Since it had no independent structure, SIET functioned under the control of SCERT with its Director being the functional authority of SIET. The post of Director was created on 24.8.1991 after the institute was granted functional autonomy. Nevertheless, Education and Youth Services Department continued to be the Administrative Department of the Institute. Mr. S.S.Das, while adopting the argument of learned Senior counsel Mr. Pattnaik adds that some of the Petitioners were appointed prior to 01.1.1990 namely, Petitioner Nos.2 and 8 in W.P.(C) No.11195/2013, in spite of which they were treated as staff of the autonomous organization. Referring to the letter dtd.19.7.2002, Mr. Das would argue that the so-called deputationists were absorbed in SIET permanently from 1.1.2000 and it was specifically provided that under no circumstances the period of deputation will be extended after 31.12.1999. As such, in the absence of any further order, said 63 employees must also be deemed to have been finally absorbed in SIET w.e.f. 01.1.2000, thus becoming similarly placed as the Petitioners. The Government cannot create a class within a class by treating 63 employees as deputationists and the remaining 24 employees as belonging to the autonomous organization. The orders of appointment, scale of pay and other service conditions of these two sets of employees are same. Mr. Das also questions the correctness of the decision of the

Government to close down the Institute for want of financial assistance by submitting that as per information received under the R.T.I. Act, the State Government had received Rs.44 crores towards implementation of ICT @ School Scheme from the Ministry of Human Resource Development, Government of India.

10. Per contra, Mr. S.N. Patnaik, learned Addl. Government Advocate, would argue that there is a clear-cut demarcation as regards status of SIET before 01.1.1990 and after it, inasmuch as it used to function under the SCERT, but after 1.1.1990, it became autonomous. The status of the Institute having undergone wholesale transformation, the claim of the Petitioners, all of whom were appointed after 1.1.1990 cannot be considered with reference to the previous period. Though 118 posts were created, State Government had directly recruited only 63 employees as on 31.12.1989. According to Mr. Pattnaik therefore, only these person can be treated as Government employees. On the other hand, those who were engaged after 01.1.1990 are to be treated as autonomous employees as their engagement was temporary and specifically subject to continuance of the scheme. There is, therefore, no discrimination in the treatment of the Petitioners by the Government. The 63 employees, who were appointed prior to 1.1.1990 were treated as deputationists with their deputation being sanctioned by the Government from 1.1.1990 to 31.12.1999 and 1.1.2000 to 31.3.2012. As per the decision taken on 15.4.2009 under the chairmanship of Development Commissioner-cum-Addl. Chief Secretary, the deputed staff were called upon to give option if they want to continue in the autonomous body of SIET or to revert back to the State Government. An in house committee was formed to look into the details of reversion of the deputed staffs, who exercised their option. Since adequate posts were not available under the S & M.E. Department, other line Departments were requested and accordingly, the 63 employees were adjusted in different posts under different departments. Mr. Pattnaik further argues that the continuance of the 63 employees after 01.1.1990 was never dependent on the central scheme rather they were appointed against posts created and sanctioned prior to 01.1.1990. Since the Central Government did not provide funds to the State Government for providing the same directly into SIET, the Government decided to close down the institution. Accordingly, the petitioners were disengaged along with other autonomous staffs.

11. Analysis and findings.

This Court has given its anxious consideration to the contentions raised. The facts, as pleaded, are not disputed inasmuch the petitioners (except Petitioner Nos.2 and 8 in W.P.(C) No.11195/2013) were appointed after 1.1.1990 SIET became an autonomous organization w.e.f. 1.1.1990 being entirely funded by the Central Government. It would be profitable to first consider the nature of appointment of the 63 employees appointed prior to 01.1.1990. The State in its counter has referred to the Government Order No.6923/EYS dtd.14.2.1986 of the Education Youth Services Department, whereby posts were created against which the 63 employees were

appointed at different times. Some of the appointment orders have been enclosed to the counter as Annexure-C/1. Perusal of the appointment orders reveal that the specific Government order regarding creation of posts have been referred to therein. In contrast, the order of appointment issued in respect of the Petitioners, copies of which are enclosed as Annexure-D/1, reveals that the same makes no reference to any Government order regarding creation of the post and on the other hand, mentions that the appointment is temporary subject to continuance of the Scheme. As already indicated, the State has harped upon this difference to segregate the 63 employees appointed prior to 1.1.1990 with the Petitioners, appointed after 1.1.1990.

12. Notwithstanding the fact that the appointment orders issued in favour of the Petitioners contains no reference to the corresponding Government order regarding creation of posts, there is no gainsaying the fact that such appointment could not have been made against a non-existing post. The specific contention raised by the Petitioners that, they too were appointed against posts created by the State Government prior to 1.1.1990 has not been specifically disputed or denied by the State Government. Further, SIET, though become an autonomous organization, yet the unfilled posts out of 118 posts created earlier were not abolished nor any such posts were specifically created for SIET to be filled up after 1.1.1990. It can therefore be reasonably accepted that even the persons who were appointed after 1.1.1990 were so appointed against the posts already in existence being created by the Government prior to 1.1.1990. According to the State, the 63 employees who were in place as on 1.1.1990 were treated as deputations. What is the meaning of deputationists? Odisha Service Code deals with deputation under Chapter VIII covering Rules 212 to 231.

In the case of **State of Punjab vs. Indersingh**; 1997 (8) SCC 372, the Supreme Court explained the concept of 'deputation' in the following words;

"Deputation has a different connotation in service law and the dictionary meaning of the word 'deputation' is of no help. In simple words 'deputation' means service outside the cadre or outside the parent department, Deputation is deputing or transferring an employee to a post outside his cadre that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The necessity for sending on deputation arises in public interest to meet the exigencies of public service, e.g, an unexpected and natural calamity of floods might necessitate employees from other departments to be deputed to the Irrigation department for a particular period. In the State of Mysore vs. MH Bellary the Supreme Court explained that the service of an officer on deputation in the department to which he is deputed is equivalent to service in the parent department."

13. Thus, ordinarily understood, 'deputation' means a person appointed originally in a particular department is assigned to work in another institution/ organization etc.

After end of such assignment (deputation), the employee is repatriated to his 'parent department'.

14. Coming to the case at hand, admittedly the 63 employees appointed prior to 01.1.1990 by SCERT were against substantive posts. By way of a legal fiction they were treated to be on deputation to SIET after the latter became an autonomous organization. This Court, prima facie, finds nothing wrong in the decision of the Government to treat the said employees as deputationists, but then, in the absence of any change occurring in the source of the posts against which both the 63 employees as well as petitioners namely, the different Government orders regarding creation of posts between 1983 to 1988, there cannot really be any distinction between these two sets of employees as is being sought to be projected by the State. As already stated, if the nature of SIET underwent a change from 01.1.1990 thereby severing its connection with its previous identity, then as a natural corollary, separate posts should have been created for its employees. On the contrary, persons were appointed against substantive posts created when the same organization was in existence, albeit in a different form. The State has not been able to satisfactorily explain as to against which posts, the Petitioners were appointed, if not, against the posts already in existence prior to 01.1.1990. This, in the considered view of this Court, is the crux of the issue and lends considerable weight to the contentions advanced on behalf of the Petitioners that they have been treated differently than the 63 employees.

15. This also has resulted in creation of a class within a class which is impermissible in law. As long as the source of appointment remains the same, i.e. the substantive posts created by the Government, it would be iniquitous to treat different employees differently, as it would result in discrimination. The discrimination is also all the more evident from the fact that there is wholesale identity otherwise between these two set of employees as regards their scale of pay, service conditions etc. The only difference is that the appointment of the Petitioners was made co-terminus with the scheme. This Court is not concerned with the correctness or otherwise of the decision of the Government in closing down SIET as it falls within the domain of its policy. But then, it is settled law that the question of discrimination arises when by law or executive action a classification is made within a class whereby two or more classes born out of such classification are treated unequal without any justifiable reason. Specification of a cut-off date, dividing the employees into two classes will be violative of Articles 14 and 16 (1) of the Constitution if the division is of a homogeneous class and without any discernable reason or if no reason is disclosed. Reference may be had in this regard to the oft-quoted judgment of the Supreme Court in the case of **D.S. Nakara vs. Union of India**; 1983 (1) SCC 305.

16. In the instant case, change in the nature of organization is cited as the reason. Ordinarily, this could be treated as a plausible reason justifying the treatment of two sets of employees differently. But then, as already noted, if, despite change in the nature of the organization, appointments are continued to be made against posts created for the same organization in its previous avatar, the thread of continuity, though slender, can be hardly denied. As such, this Court is of the considered view that notwithstanding the

language employed in the appointment orders issued in favour of the Petitioners, there is essentially no distinction between them and the 63 employees appointed earlier. What the State appears to have done is to treat the 63 employees differently while shutting its eyes in respect of the petitioners. The fact that the abrupt closure of the institute resulting in disengagement of the petitioners would result in loss of their livelihood does not appear to have been considered in the least before issuing the orders of disengagement. While 63 employees have been adjusted against vacancies in different departments, the petitioners have been shown the door. From what has been narrated above, this Court is convinced that these petitioners have been unfairly dealt with. To recapitulate, the action of the State would have been justified had proper steps been taken for creation of posts specifically for SIET at the relevant time that is, on and from 1.1.1990 when it became autonomous. If the Government, in its wisdom decided to continue with the same arrangement as regards the posts, it cannot obviously turn around later and wash its hands off the subsequent appointees. It would be akin to the State questioning its own action.

Summation

17. From a conspectus of the analysis of facts and law and the contentions advanced, this Court holds that the Petitioners having been appointed against substantive posts created by the Government prior to 1.1.1990 and continuing in service for more than two decades, cannot be disengaged by treating them differently than the employees appointed prior to 1.1.1990. The attempt of the State to distinguish the Petitioners from the 63 employees, if permitted, would entail creation of a class within a class, which cannot be countenanced in law. The petitioners and the 63 employees stand on the same footing except for the condition of their appointment being co-terminus with the scheme. If the 63 employees were adjusted against different posts by applying the legal fiction of deputation, there is no reason why the petitioners should also not be appointed in similar fashion.

Conclusion.

18. In the result, the Writ Petitions succeed and are therefore, allowed. The impugned orders of disengagement are hereby set aside. The Opp. Parties authorities are directed to adjust the Petitioners against available vacancies in any Department/Directorate of the State Government granting them continuity of service and other service benefits. Necessary orders in this regard should be passed within three months from the date of communication of this judgment or production of certified copy thereof.

19. With these observations, the Writ Petitions are disposed of.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Writ Petitions allowed.

2025 (II) ILR-CUT-521

**DHARITRI MOHANTY
V.
STATE OF ODISHA & ORS.**

[W.P.(C) NO. 2201 OF 2025]

25 APRIL 2025

[SASHIKANTA MISHRA, J.]

Issues for Consideration

There is a conflict between the advertisement and guidelines – In such a situation, which will prevail.

Headnotes

SERVICE JURISPRUDENCE – Validity of resident certificate – An advertisement for engagement of Aganwadi Worker was floated on 18.07.2023 specifically providing that the applicant must upload copy of resident certificate which must have been issued within five years from the date of advertisement – Petitioner uploaded a resident certificate which was issued on 05.10.2015 which is obviously issued before five years of the date of application – The guidelines issued by the Government in Women and Child Development Department on 15.03.2023 reveals that there is no such stipulation requiring the candidate to submit such a certificate – In such a situation, when there is a conflict between the advertisement and guidelines, which will prevail.

Held: It is the settled position of law that in such situation, the guidelines will prevail. (Para 13)

This Court holds that there being no requirement in the relevant guidelines for submission of resident certificate issued within five years before the date of advertisement, such stipulation in the advertisement cannot be utilized to reject the certificate submitted by the petitioner along with her application. (Para 17)

Direction given to the concerned authorities to issue specific guidelines to be uniformly followed by all competent authorities across the State regarding the requirement of producing residential certificates by the applicants. (Para 19)

Citations Reference

Smita Panda vs. State of Odisha and Others, **OLR 2020 (I) 171**; The Employees' State Insurance Corporation v. Union of India & Ors., **(2022) 1 SCR 373 – referred to.**

Keywords

conflict between the advertisement and guidelines; Engagement of Anganwadi Worker; Resident certificate; Selection Committee; Stipulated cut-off date for submission of resident certificate; Guidelines regarding validity of resident certificate of Anganwadi Worker.

Case Arising From

Order dated 07.11.2024 passed by the Additional District Magistrate, Jagatsinghpur in Anganwadi 1st Appeal No. 2 of 2024.

Appearances for Parties

For Petitioner : M/s. Raghunath Biswal, S.K. Mohanty, A. Biswal,
S. Sahoo & D. Parida

For Opp. Parties : Mr. S. Behera, AGA
M/s. Akshaya Ku. Jena, S.S. Mohapatra, R.N. Swain,
A.P. Rath, P. Sinha, A. Biswal, S.K. Behura, (O.P.No. 6)

Judgment/Order**Judgment**

SASHIKANTA MISHRA, J.

The petitioner in the present writ application challenges the order dated 07.11.2024 passed by the Additional District Magistrate (ADM), Jagatsinghpur in Anganwadi 1st Appeal No.2/2024.

2. The facts of the case, briefly stated, are that an advertisement was issued by the C.D.P.O., Balikuda inviting applications for engagement of Anganwadi Worker in Rayarpura Anganwadi Center. The last date of receipt of applications was 03.08.2023. The petitioner, private opposite party No.6 and other candidates submitted their applications. In the selection process, the petitioner was found to have secured the highest marks and was thus selected. She was subsequently issued with order of engagement on 28.08.2023, pursuant to which she joined as Anganwadi Worker. Her selection was challenged by private opposite party No.6 before this Court in W.P.(C) No. 28402 of 2023, but said writ application was disposed of by order dated 21.06.2024 granting liberty to her to prefer appeal. As such, the opposite party No.6 preferred the above mentioned appeal before the ADM. After hearing the parties and on verification of relevant documents, the appellate authority held that the selection committee had not acted as per the guidelines issued by the Government as also the stipulation in the advertisement for

which the selection and engagement of the petitioner was not just and proper. Accordingly, the selection of the petitioner was set aside. Be it noted that the appeal was filed on two grounds- (i) that the petitioner was not a resident of the service area of the Anganwadi Center and (ii) she had not submitted a valid resident certificate within the stipulated date. The petitioner's response was that she was a resident of the service area and the resident certificate submitted by her had been issued prior to five years, for which she applied for a fresh certificate and submitted an undertaking before the selection committee to produce the same within seven days, which she did.

3. Counter affidavit has been filed by the State opposite parties (opposite party Nos. 2 & 5). It is stated that the petitioner, pursuant to the advertisement, had applied online and submitted all required certificates including residential certificate issued by the Tahasildar, Balikuda but the same was more than five years old. The same was therefore, treated as invalid by the selection committee. However, she submitted a fresh resident certificate, which was accepted and as she had secured highest marks, she was selected. The appellate authority rightly set aside her engagement.

4. Counter affidavit has also been filed by opposite party No.6 stating that the petitioner had failed to submit resident certificate issued by the Tahasildar within a period of five years as stipulated in the advertisement. As such, she was not eligible for being considered for selection. The certificate submitted by her was not valid as per the advertisement, but the same was wrongly considered by the selection committee. Despite endorsing the remark that the certificate was not valid the selection committee went ahead and selected her. As per the settled position of law, the petitioner had not submitted a valid resident certificate by the last date and hence, was ineligible.

5. The petitioner has filed a rejoinder seeking to refute the averments made in the counter affidavit. It is stated that the list of candidates was published by the selection committee on 25.08.2023 in the website and the notice board of the office inviting objections within seven days. No objection was received within the stipulated period, for which the petitioner having secured the highest marks was selected. The resident certificate uploaded by the petitioner along with the online application was issued on 05.10.2015 but on local enquiry, the selection committee found that she is a native of village Rairangpur and also a resident of the service area of the Anganwadi Center. As she could not find sufficient time to obtain fresh resident certificate from the Tahasildar, she uploaded the old certificate and submitted an undertaking to produce the fresh certificate within seven days. She also submitted the fresh certificate on 08.08.2023. The counter affidavit filed by the State Authorities in the writ application filed by the opposite party No.6 is also enclosed to the rejoinder, wherein the above fact has been mentioned.

6. Heard Mr. R. Biswal, learned counsel for the petitioner, Mr. S. Behera, learned Addl. Government Advocate for the State and Mr. S.S. Mohapatra, learned counsel for opposite party No.6.

7. Mr. Biswal would argue that it is nobody's case that the petitioner had produced any false or fabricated documents rather, she had produced a resident certificate which was issued before five years, but as required in the advertisement, she submitted an undertaking to submit a fresh certificate, which she did on 08.08.2023. Even though seven days' time was granted by the selection committee to all concerned to submit objection, the opposite party No.6 never raised any such objection. The appellate authority has not taken into consideration the fact that the petitioner is a resident of the service area.

8. Mr. Behera, learned State Counsel would submit that as per the settled position of law, all documents are required to be submitted by candidates by the cut-off date, which cannot be extended under any circumstances. The selection committee must therefore, be held to have erred in law by accepting the resident certificate submitted by the petitioner five days after the cut-off date. The selection and engagement of the petitioner was therefore, rightly held to be illegal by the appellate authority.

9. Mr. Mohapatra, learned counsel for the private opposite party would argue that as per the advertisement, a resident certificate issued within five years before the date of advertisement should be filed. Admittedly, the certificate filed by the petitioner was issued much prior to the said period and was therefore, not valid. Further, there is no provision for accepting any undertaking in this regard. The selection committee committed an illegality in accepting such undertaking but also the fresh resident certificate issued by the petitioner after the cut-off date. In view of the position of law, as settled by this Court in the case of **Smita Panda vs. State of Odisha and others**¹, the above action was entirely bad in law, for which the appellate authority rightly set aside the engagement of the petitioner.

10. Be it noted at the outset that the revised guidelines issued by the Government in Women & Child Development Department on 15.03.2023 provides the remedy of second appeal against the order passed by the ADM as the First Appellate Authority. Notwithstanding the above, this Court has entertained the writ application as at the time of admission it was contended on behalf of the petitioner and accepted by this Court that the matter involves no disputed questions of fact but is solely confined to interpretation of the guidelines issued by the Government.

11. The advertisement dated 18.07.2023 specifically provided that the applicant must be a permanent resident of the service area of the Anganwadi Center and for such purpose, only eligible persons included in the survey list of the area could apply. The advertisement further provides that the applicants shall upload copy of the resident certificate which must have been issued within five years from the date of advertisement. It is admitted that the petitioner uploaded a resident certificate issued on 05.10.2015, which is obviously issued before five years of the date of application, but then reference to the guidelines dated 15.03.2023 reveals that there is no such stipulation therein requiring the candidates to submit such a certificate. The only requirement as is evident

¹ OLR 2020 (I) 171

from Clause-1 of the advertisement, which is reproduced below, is that the applicant must be a person residing in the said village/Anganwadi Center area:

“1. Application for selection of volunteers to work as Anganwadi Workers will be invited for each village/Anganwadi Center area from women residing in the said village /Anganwadi Center area. However, if eligible candidates from within the AWC area are not available, candidates from same village area may be taken. If eligible candidate from village area not available, then candidates from adjacent village within G.P area may be considered for selection of Anganwadi Workers.”

12. As regards submission of certificates, Clause-8(b) is relevant and reads as follows:

“8(b).. 15 days' time will be given to the candidates to apply to the CDPO along with the documents in support of nativity, educational qualification, caste and any other. The receipt of the application shall be acknowledged by the CDPO.”

13. Therefore, there is an apparent conflict between the advertisement and the guidelines issued by the Government. It is the settled position of law that in such situation, the guidelines will prevail. Reference in this regard may be had to ***The Employees' State Insurance Corporation v. Union of India & Ors.***,², wherein the apex Court held as follows:-

“20. The advertisements issued by the appellant mentioned that the DACP Scheme would be applicable for its recruits. However, it is a settled principle of service jurisprudence that in the event of a conflict between a statement in an advertisement and service regulations, the latter shall prevail. In Malik Mazhar Sultan v. U.P. Public Service Commission a two-judge Bench of this Court clarified that an erroneous advertisement would not create a right in favour of applicants who act on such representation. The Court considered the eligibility criteria for the post of Civil Judge (Junior Division) under the U.P. Judicial Service Rules, 2001 against an erroneous advertisement issued by the U.P. Public Service Commission and held:

"21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules."

21. In Ashish Kumar v. State of Uttar Pradesh a twojudge Bench of this Court followed the decision in Mazhar Sultan (supra) in interpreting an advertisement issued by the Director, Social Welfare Department, Uttar Pradesh for the position of a psychologist. This Court declined to give precedence to the erroneous qualifications prescribed in the advertisement against the relevant recruitment rules and held:

² (2022) 1 SCR 373

"27. Any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription. Thus, looking to the qualification prescribed in the statutory rules, the appellant fulfills the qualification and after being selected for the post denying appointment to him is arbitrary and illegal. It is well settled that when there is variance in the advertisement and in the statutory rules, it is the statutory rules which take precedence....."

Be it noted that in the absence of any statutory rules, executive instructions issued in the form of revised guidelines dated 02.05.2007 shall have binding force. As such, the principle enunciated in the cited judgment would be applicable.

14. Be that as it may, the petitioner submitted an undertaking to produce a fresh certificate which she had applied on 03.08.2023. In fact, she did produce the fresh certificate issued in her favour on 07.08.2023. The selection committee though noted that the resident certificate originally submitted was not valid yet, went on to select her. As already stated, the opposite party no.6 challenged the selection of the petitioner on the ground that she was not a resident of the service area without saying anything more. This is obviously not an acceptable stand for the reason that it was incumbent upon her to say as to which place the petitioner was a resident of, if not the area in question. In any case, this is contrary to the resident certificate which clearly shows the petitioner to be a resident of the Rayarpur village. Interestingly, in the counter affidavit filed by the CDPO on behalf of the State opposite parties in the earlier writ application (W.P.(C) No. 28402 of 2023), the following has been stated in paragraph-7.

"7. xxxxxxxxxxxx As regards to the validity of residence certificate produced by the Opp.PartyNo.6 selected candidate, it is to submit that the Residence certificate as uploaded in the online application is found to have been issued on 5.10.2015 which is more than 5 years old. But, from local inquiry it is ascertained that the Opp.Party No.6 is a native of village Rayarpur and residing within the jurisdiction of Anganwadi Centre thereby she is eligible for this post. In order to applying for this post she could not find sufficient time to obtain the fresh resident certificate from local Tahasildar and hence she uploaded the old certificate she had. During scrutiny Opp.Party No.6 filed an undertaking to produce the fresh certificate within 7 days and accordingly she also submitted the same in time i.e. on 08.08.2023. Copies of the undertaking alongwith the receipt showing application for fresh residential certificate & Residential certificate of Opp.Party No.6 are annexed herewith as Annexures A/5 and B/5 respectively.

15. Needless to mention, this is contrary to the stand taken by the same CDPO in the counter affidavit filed in the present writ application. This also goes against the finding of the appellate authority that a detailed field enquiry had not been done for which a doubt arises whether the petitioner belongs to the service area or not. Since the CDPO has stated on affidavit that the petitioner is residing within jurisdiction of the Anganwadi Center and it has not been demonstrated that such statement is factually wrong, there is no reason to not accept the same. So, even if the undertaking and the fresh residence certificate are ignored still, the fact of the petitioner being a resident of the service area stands valid.

16. In the case of **Smita Panda** (supra) cited by learned counsel for opposite party No.6, the applicant therein had not submitted disability certificate before the last date of

submission of application. The present case stands on a different footing inasmuch as the petitioner had submitted a resident certificate, which this Court referring to the guidelines dated 15.03.2023 has held to be valid. So this is not a case where no certificate had been submitted. The said judgment is therefore, not applicable.

17. From a conspectus of the discussion made hereinbefore, this Court holds that there being no requirement in the relevant guidelines for submission of resident certificate issued within five years before the date of advertisement, such stipulation in the advertisement cannot be utilized to reject the certificate submitted by the petitioner along with her application. That apart, there being no specific evidence led either before the appellate authority or before this Court to show that the petitioner is not a resident of the service area of the center and on the contrary the CDPO having certified on affidavit before this Court in the previous writ application that from local enquiry it was ascertained that the petitioner is a resident of the service area, the finding of the ADM to the contrary cannot be sustained.

18. For the foregoing reasons therefore, the writ application is allowed. The impugned order passed by the ADM is hereby quashed. The opposite party authorities are directed to reinstate the petitioner, if she is found to have been disengaged consequent upon passing of the impugned order as early as possible.

19. Before parting, this Court would observe that in view of the multiple litigations before this Court arising out of the interpretation of the conditions imposed in the advertisements issued by the competent authorities at different places in the State, it is seen that there is no uniformity regarding the requirement of furnishing valid residential certificates by the candidates. For instance, the advertisement in the present case requires the candidates to produce residential certificates issued within five years prior to the date of the advertisement. However, this Court, while dealing with similar matters, has come across advertisements, wherein the requirement is for furnishing residential certificates issued within six months prior to the date of the advertisement. As already noted in the judgment, the guidelines do not prescribe any such period for the issuance of the residential certificate. This is definitely a grey area which leads to lack of uniformity across the State. This Court, therefore, feels it proper to observe that the concerned authorities should consider issuing specific guidelines to be uniformly followed by all competent authorities across the State regarding the requirement of producing residential certificates by the applicants.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Writ Petition allowed.

2025 (II) ILR-CUT-528

**DUSMANTA SAMAL
V.
STATE OF ORISSA & ORS.**

[W.P.(C) NO. 14548 OF 2016]

16 APRIL 2025

[A.K. MOHAPATRA, J.]

Issues for Consideration

1. Whether the Hon'ble Court has jurisdiction to pass the order/award compensation while entertaining an application under Article 226 of the Constitution of India.
2. Whether the electricity distribution companies/Opp. Parties can escape from their liability by merely stating that they were not negligent in maintaining the apparatuses used for supply and distribution of electricity.

Headnotes

(A) CONSTITUTION OF INDIA, 1950 – Articles 226 & 21 – Electrocutation death – Compensation – Maintainability – Petitioner's 17 years old son, accidentally came in contact with a charged electric pole – The passers by attempted to rescue him using sticks and took him to Khajuria Kata CHC for treatment, but he was later declared as dead – Petitioner approached the Court seeking adequate compensation – Whether the Hon'ble Court has jurisdiction to pass the order/award compensation while entertaining an application under Article 226 of the Constitution of India.

Held: Yes – In light of different Judicial pronouncements and progression of the constitutional law for protection of constitutional rights and payment of compensation for damage caused to the citizens, the constitutional courts can comfortably assume the power to award compensation, in a scenario when the undisputed facts reveal that the death of a person was due to electrocution and such fact is established by prima facie evidence, otherwise failure to do so would ultimately amount to infringement of fundamental Right to Life guaranteed under Article- 21 of the Constitution of India, 1950.

(Para 21)

(B) LAW OF TORTS – Principle of strict liability – Petitioner's 17 years old son accidentally came into contact with charged electric pole, and subsequently expired in Hospital – The plea of Opp. Party that they did not act negligently or carelessly and were not responsible

for death caused to the petitioner's son – Whether the electricity distribution companies/ Opp. Parties can escape from their liability by merely stating that they were not negligent in maintaining the apparatuses used for supply and distribution of electricity.

Held: No – With the advent of the doctrine of strict liability and acceptance thereof as a sound legal principle, the electricity distribution companies cannot escape from their liabilities – Doctrine of strict liability explained with reference to case laws. (Paras 15-17)

Citations Reference

SDO, GRID Corporation of Orissa Ltd. and Others v. Timudu Oram, **(2005) 6 SCC 156**; Ranjita Palai & Another v. State of Odisha & Others, **W.P. (C) No. 14065 of 2005 decided in 07.09.2017**; Abhimanyu Muduli & Others v. CESU, **W.P. (C) 4654 of 2004 decided on 10.11.2006**; Minati Panigrahi v. CESU and others, **W.A. No. 111/2007**; Suna Dei v. State of Orissa and others, **W.P. (C) No. 2784 of 2015 decided on 23.08.2022**; Chairman, GRIDCO and others v. Sukamani Das and another, **AIR 1999 SC 3412**; Executive Engineer CESU Ltd. Cuttack Electrical Division v. Hema Sethy, **2011 (II) OLR 708**; Rama Santa & others v. Chairman cum M.D. GRIDCO Orissa and others, **2014 (II) ILR CUT 328**; Bhagaban Rout & Anr. v. Executive Engineer, CESCO, Salipur, **2023 (I) OLR- 188**; CEO, CESU, Bhubaneswar and Another v. Anjana Prusty, **2017 (II) OLR- 112**; Bharat Nath and others v. CESCO, represented by the Chief Executive Officer, IDCO Tower, Bhubaneswar, **2007 (Supp-1) OLR-315**; Bibekanada Dash and another v. C.E.O., NESCO (Electrical), Balesore and others, **W.P. (C) No. 18039 of 2008 decided on 10.08.2016**; Ryland v. Fletcher, **1868 Law Reports (3) HL 330**; Charan Lal Sahu v. Union of India, **AIR 1990 SC 1480**; Gujarat Road Transport Corpn. V. Ramanbhai Prabhatbhai, **AIR 1987 SC 1690**; M.P. Electricity Board v. Shail Kumari and others, **(2002) 2 SCC 162**; State of Madras v. V.G. Row, **AIR 1952 SC 196**; T. Bimala v. Cuttack Municipal Corporation, Cuttack and others, **2015 (I) OLR-637**; M.S. Grewal v. Deep Chand Sood, **(2001) 8 SCC 151**; Ramesh Singh Pawar v. Madhya Pradesh Electricity Board and others, **AIR 2005 MP 2 – referred to.**

List of Acts

Constitution of India, 1950; OERC (Compensation to Victims of Electrical Accidents) Regulations, 2020; Indian Penal Code, 1860

Keywords

Electrocution death; Compensation; Negligence; Maintainability of writ petition; Doctrine/Principle of strict liability; Act of God; Act of stranger; Plaintiff's own fault; Civil liability; Law of tort; Injury; Harm.

Case Arising From

Death of petitioner's son due to electrocution.

Appearances for Parties

For Petitioner : Mr. S.K. Dwibedy

For Opp. Parties : Mr. S.C. Dash, A.G.A,
Mr. Bibhudendra Dash (O.P. 3)

Judgment/Order**Judgment**

A.K. MOHAPATRA, J.

1. The hapless father who lost his son due to electrocution has approached this court by invoking the writ jurisdiction under Article- 226 of the Constitution of India. The Petitioner has stated that, it was the negligence and inaction of the opposite parties in taking proper care of the electric pole meant for public use, that has made him and his entire family go through this immeasurable agony and sorrow. The grieving family which has lost a young member has alleged violation of fundamental right as guaranteed under Article- 21 of the Constitution of India and have also prayed for adequate compensation from the opposite parties for loss of life, as would be deemed appropriate by this court.

FACTS OF THE CASE

2. Short facts involved herein, as pleaded by the Petitioner, is that the petitioner's 17-year-old son, Sidhanta Samal, was a +2 Science student at Janata College, Satamaeithi, Dhenkanal. On February 16, 2016, around 2:00 PM to 3:00 PM, on his way to the nearby shop, he accidentally came in contact with a charged electric pole. The passers- by attempted to rescue him using sticks and took him to Khajuria Kata CHC for treatment, but he was later declared dead at Hindol SDH. A U.D. Case was registered, and the inquest report as well as the post-mortem confirmed electrocution as the cause of death. Subsequently, on 8.01.15, an FIR was filed by the uncle of the deceased, against the Junior Engineer and S.D.O. of ENZEN Company under Sections 285, 304A, and 34 of Indian Penal Code, 1860. After a thorough investigation by the I.O., chargesheet was submitted before the learned SDJM, Hindol. The Petitioner has now approached this court, seeking adequate compensation for the tragic and untimely loss of life of his son due to electrocution.

SUBMISSION OF THE PETITIONER

3. Learned Counsel for the Petitioner, vehemently argued that, it is the statutory duty of the opposite parties to maintain all electrical apparatus including electric poles used for the purpose of distribution of electricity, in such a way that, it doesn't lead to loss of life or limb or cause any damage. However, in this case, the opposite parties have acted negligently and carelessly, which has led to the death of

the Petitioner's son by coming in contact with a charged electric pole. Therefore, he stated that, though the loss of life of the son of the petitioner cannot be compensated or undone, however, the Petitioner can avail some respite in the form of monetary compensation, for which the Petitioner has approached this court.

SUBMISSION OF THE OPPOSITE PARTIES

4. Learned counsel for the opposite parties, on the other hand, by referring to the counter affidavit, at the outset, denied any allegation of negligence and inaction on their behalf. Both the counsels appearing for the opposite parties made an attempt to convince this court by referring to documents that, the deceased had interfered with the installations in the electric pole to repair the domestic connection which was disconnected due to rain and wind. He took such a step, without any information to the Opposite party or its agent. While doing this, he came in contact with the live service wire and died due to electrical shock. To support this claim he placed reliance on the post mortem report, and pointed out that, injuries other than burn injuries were found on the body of the deceased. Therefore, he argued that the death of the deceased was caused due to his own fault and not due to negligence or inaction of the Opposite Parties.

5. He further stated that the Petitioner and the Opposite Parties are putting forth different versions for the circumstances that lead to the death of the Petitioner's son. In such factual background, it was further contended that, the case involves disputed facts, therefore, the court doesn't have jurisdiction to entertain this petition under Article- 226 of the Constitution of India. He supported this contention by placing reliance on decisions such as ***SDO, GRID Corporation of Orissa Ltd. and Others v. Timudu Oram*, (2005) 6 scc 156, *Ranjita Palai & Another v. State of Odisha & Others*, W.P. (C) No. 14065 of 2005 decided on 07.09.2017; *Abhimanyu Muduli & Others v. CESU*, W.P. (C) 4654 of 2004 decided on 10.11.2006; *Minati Panigrahi v. CESU and others*, W.A. No. 111/2007 and *Suna Dei v. State of Orissa and others*, W.P. (C) No. 2784 of 2015 decided on 23.08.2022**. It is his case that, civil court is the appropriate forum to approach, as evidences need to be adduced to prove the facts due to which the electrocution occurred.

REPLY BY PETITIONER

6. Per Contra, learned counsel for the Petitioner, strenuously opposed the stance taken by the opposite parties. He argued that, the opposite parties have failed to produce any material on record to support their contention with regard to the deceased's own fault in happening of his death. Therefore, he claims that in absence of any material on record, the claim becomes unsustainable. He further stated that, the contention of the opposite parties that as it involves disputed facts, the writ petition is not maintainable, is also unsustainable. On the question of maintainability of the writ petition, he placed reliance on the decision of the Supreme Court in ***Chairman, GRIDCO and others v. Sukamani Das and another* reported in AIR 1999 SC 3412**, and some decisions of this Court in the cases of ***Executive Engineer***

CESU Ltd. Cuttack Electrical Division v. Hema Sethy reported in 2011 (II) OLR 708; Rama Santa & others v. Chairman cum M.D. GRIDCO Orissa and others reported in 2014 (II) ILR CUT 328; Bhagaban Rout & Anr. v. Executive Engineer, CESCO, Salipur reported in 2023 (I) OLR- 188; CEO, CESU, Bhubaneswar and Another v. Anjana Prusty reported in 2017 (II) OLR- 112; Bharat Nath and others v. CESCO, represented by the Chief Executive Officer, IDCO Tower, Bhubaneswar reported in 2007 (Supp-1) OLR-315.

7. Referring to the above noted judgments, he finally stated that in all those cases, court has allowed the compensation in the favor of claimants on the undisputed fact of death due to electrocution when materials on record like that police papers and post mortem report supported the fact that the death of the deceased is due to electrocution. Therefore, he pleads that on basis of investigation done so far by the I.O. and the post mortem report under Annexure-1 to the writ petition; the inquest report under Annexure- 2 to the writ petition; final form/ chargesheet submitted by the I.O Balimi P.S.; and the cognizance order of SDM Hindol dated 07.09.2015 against the Opposite Parties, the fact of electrocution death prima facie stand proved and thus the writ petition is maintainable and compensation can very well be awarded in favor of the Petitioner by this court. This is more so, keeping in view the principle envisaged in Article- 21 of the Constitution of India with regard to protection of life and liberty of every citizen of this nation.

ANALYSIS OF THE COURT

8. Heard counsels for the respective parties, evaluated the documents submitted and perused the precedents cited.

9. For being compensated monetarily, the Petitioner is required to prima facie establish that due to the negligence of the opposite party- electricity distribution company and its agents, be it intentional or unintentional, loss, harm or injury has been caused to one party by the other and ultimately such negligence gives rise to a civil liability under “law of tort”. The terminology “injury” or “harm” under the law of tort has been given a very wide interpretation by various judicial pronouncements. Having said that, this court is required to analyze the factual background of the case as well as its power to award compensation, before coming to the definite conclusion with regard to the act of negligence and consequential civil liability under the law of tort.

UNDISPUTED FACTS PRESENT BEFORE THE COURT

10. In order to address the rival contention made by the opposite parties, that when the case involves disputed facts, the writ petition is not maintainable, the court finds it necessary to enumerate the observation made in few cases cited by the Petitioner.

In ***Bhagaban Rout & Anr. v. Executive Engineer, CESCO, Salipur reported in 2023 (I) OLR- 188***; the court held that the writ petition is maintainable

and awarded compensation in favor of the Petitioner for the death of his son due to electrocution, on basis of undisputed fact of death due to electrocution proven by the postmortem report, inquest report and charge sheet. The court in the aforesaid case observed that,

"5. Considering the rival contentions of the Parties, this Court finds, undisputedly there is death of the son of the parents appearing as the Petitioner Nos. 1 & 2 on 13.08.2006. It is clear from the inquest report as well as the post mortem report, the death of the deceased caused due to electrocution, final form also supports the case of the Petitioners no doubt the case could not be further investigated for there is no ascertainment of involvement of any person however all the documents such as inquest report, post mortem report as well as the final form are all in one direction undisputedly suggesting there is death of the deceased on account of electrocution coming in contact of line wire undisputedly belonging to the CESCO. There should not be also any dispute that the wire or the poll came in contact with the body of the deceased. It is at this stage coming to consider the stand of the department, the Opposite Parties, this Court finds, the Opposite Parties contest herein simply on the basis of disclosures vide document at Annexure-A which reads as follows:-

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6. Coming to the argument of counsel for the department questioning the maintainability of the Petition for there involvement of disputed question of fact, this Court first of all finds, the F.I.R, inquest report, post mortem report and final form all supports the case of the Petitioner so far their claim on the death of their son on electrocution, whereas the department even though attempted to lodge an FIR on allegation of attempt for stealing energy against the deceased there is neither any following up action for undertaking a legal exercise involving their allegation involves Annexure-A nor there is even any internal report produced either in counter or additional affidavit bringing in some material to at least making out a case involving a theft attempt. This Court here finds, the case of the Petitioner rather gets support of a decision of the Hon'ble Apex Court in the case of Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and others vrs. Sukamani Das and another reported in AIR 1999 SC 3412. This Court here also finds support of a decision of this Court on the entertainability of Writ Petition through judgment of this Court in the case of Executive Engineer, Central Electricity Supply Utility Ltd., Cuttack Electrical Division, Jobra, Cuttack vrs. Hema Sethy reported in 2011 (II) OLR- 708.

Through AIR 2001 SC 485 vide paragraph-12 therein, the Hon'ble Apex Court came to hold as follows:-

12. Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident? This question depends upon how far the Rule in Rylands v. Fletcher (1861-73 All ER (Reprint)1) (supra) can apply in motor accident cases. The said Rule is summarized by Blackburn J. thus:

The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."

This decision also supports the case of the Petitioner here.

7. At this stage taking into consideration the decision taken support by the opponent, this Court finds the claim of the Petitioner though based on a reporting in the inquest report as well as F.I.R. and further final form observations involving the F.I.R. at the instance of the parties in loss but however there is no material establishing the case contrary to the existence in all these records. Further in spite of involvement of such serious issue, department failed in undertaking the minimum an enquiry at least coming to a finding by its own people that there is in fact, an attempt for stealing energy by cutting AB cable.

8. It is in the above background, this Court finds, there is no disputed fact involved herein. In the circumstance this Court finds, the Petitioners for the undisputed loss of their son at the age of twenty four years observes, there is great loss to the parents not only on account of death of their son but there is also loss of mental agony as well as love and affection and Petitioners deserved appropriate compensation.”

11. Similarly, in **CEO, CESU, Bhubaneswar and Another v. Anjana Prusty reported in 2017 (II) OLR- 112**, the division bench of this court approved the decision of the single judge bench wherein compensation was awarded to the petitioner in case of death due to electrocution, with the following observation-

“3. Learned Single Judge, taking into consideration the rival contentions of the parties and case laws reported in 2015 (I) OLR 637 (T. Bimala Vs. Cuttack Municipal Corporation, Cuttack and others): AIR 2005 MP 2 (Ramesh Singh Pawar Vs. Madhya Pradesh Electricity Board and others): AIR 2002 SC 551 (M.P. Electricity Board Vs. Shail Kumar and others), and 1968 Law Reports (3) HL 330 (Ryland Vs. Fletcher) held that the opposite parties cannot shirk from their responsibility on trivial grounds. For the lackadaisical attitude exhibited by the opposite parties, a valuable life was lost. Keeping in view the age and avocation of the deceased, learned Single Judge directed the appellants (opposite parties in the writ petition) to pay interim compensation of Rs. 1,00,000/- within two months, and further permitted the Petitioner to work out her remedies in the common law forum for higher compensation.

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8. In view of the discussions made above, more particularly applying the doctrine of ‘strict liability’, we do not find any infirmity in the impugned judgement. Thus, the writ appeal being devoid of merit, is accordingly dismissed.”

12. Similar observation was made by this court in the case of **Bharat Nath and others v. CESCO, represented by the Chief Executive Officer, IDCO Tower, Bhubaneswar reported in 2007 (Supp-1) OLR-315**,

“4. In the light of the rival contentions, it is clear that late Urmila Nath died due to electrocution coming in contact with bare conductor (live line) which was lying on the agricultural field in village Andhala which is an undisputed fact. The death due to electrocution being the undisputed fact, the only question that remains to be decided in this writ application is that whether the CESCO-licensee can shift its responsibility or liability by raising that unfortunate occurrence has occurred due to theft of electric conductors by the culprits who have left the (bare conductor) live line at the site.

The opposite parties have stated that their authorities have lodged F.I.R. in the local Police Station. While the fact is admitted in the counter affidavit, if there is any negligence on the part of the police authorities in not taking any action on the F.I.R. lodged by the licensee, it is open to the licensee to take appropriate steps available to them in law to eliminate the inaction of the police authorities. But, by merely lodging an F.I.R. against the alleged

culprits, cannot in law absolve the licensee of their responsibility to the general public to maintain their transmission system in the manner so as not to endanger the public safety.

5. There being no other disputed question of facts in this case, following the ratio of the decision of this Court in the case of *Nirmala Nayak and Ors. v. Chairman-cum-Managing Director, Grid Corporation of Orissa Ltd. and Anr.* OJC No. 6339 of 1997, disposed of on 13.4.2005, we are of the view that the ends of justice would be better served if a compensation of Rs. 1,50,000/- (Rupees one lakh fifty thousand) is awarded in favour of the Petitioners and we order accordingly. The said compensation shall be paid to the Petitioners with simple interest at the rate of 6% per annum from the date of death of the deceased till the date of actual payment. This Court further directs the Opp. Party to make such calculation and deposit the said amount either in cash or by way of cheque with the Registrar (Judl.) of the Court within a period of four weeks from today. The Registrar (Judl.) thereupon shall send notice to Petitioner No. 4. The Petitioner No. 4 must produce some material or evidence to show that he is the husband of the deceased-Urmila Nath. After being satisfied about the relationship between the deceased and the Petitioners, the Registrar (Judl.) shall disburse the amount to Petitioner No. 4 on proper identification.”

13. In addition to the above cases cited by the Petitioner, the case of ***Bibekanada Dash and another v. C.E.O., NESCO (Electrical), Balesore and others, W.P. (C) No. 18039 of 2008 decided on 10.08.2016***, also involved similar factual background and similar objection as the present case in hand, was put forth by the opposite parties. However, the court decided the case in favour of the Petitioner by granting compensation by making the following observation-

“7. On the anvil of the decisions cited supra, the case of the Petitioners may be examined. Immediately after the occurrence, the matter was reported to the Jajpur Police Station. Thereafter Jajpur P.S.U.D. Case No.50/97 was registered. After enquiry, the police submitted the report stating that the cause of death was due to electric shock. The postmortem report reveals that the deceased was 22 years and the cause of death was due to electric shock. In view of the clinching material on record, the conclusion is irresistible that the son of the Petitioners died due to electrocution. As held above, a person undertaking an activity involving hazardous or risky exposure to human life is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps. The opposite parties have taken an evasive plea to exonerate from liability. The opposite parties cannot shirk their responsibility on trivial grounds. For the lackadaisical attitude exhibited by the opposite parties, a valuable life was lost. The deceased was a young man of 22 years at the time of accident. He was the only earning member of the family. Keeping in view the age of the deceased, this Court directs the opposite parties to pay interim compensation of Rs.2,00,000/-(Two lakhs) to the Petitioners within two months leaving the Petitioners to work out their remedies in the common law forum for higher compensation.”

14. Therefore, in the light of above cited precedents and the factual matrix as admitted, the undisputed facts before this court are that, the Opposite Parties no. 4- 6 i.e. Enzen Global Solutions Pvt. Ltd, was responsible for maintenance of the LT supply Line in the jurisdiction where the electrocution occurred. The Post Mortem under report dated 16.02.2014 under Annexure-1 to the writ petition, unambiguously discloses the cause of death to be ante- mortem electrocution. The inquest report

under Annexure- 2 to the writ petition, prepared on the day of the death, also reveal that the cause of death was electric shock and there is no suspicion of any foul play. The chargesheet/final report C.S. No. 42 dated 28.06.2015 submitted by investigating officer of Balimi P.S., Dhenkanal, pursuant to Balimi PS Case no.- 06 of 2015, states that a prima facie evidence is made out against Mr. Anshu Kumar, J.E.- cum- Junior Manager, Enzen Global Solutions Pvt. Ltd. and Mr. Amiya Prasad Mallik, EDO- cum- Deputy Manager, Enzen Global Solutions Pvt. Ltd, for the commission of offence under Section- 285/304A/34 of Indian Penal Code, 1840. Pursuant to this, SDJM Hindol by its order dated 07.09.2015, has found that a prima facie case under Section- 285/304A/34 of Indian Penal Code, 1840, is made out against the accused persons and cognizance has been taken and summons of appearance has also been issued against the accused.

APPLICATION OF THE PRINCIPLE STRICT LIABILITY

15. The counsels for the opposite parties have strenuously argued that, they did not act negligently or carelessly and were not responsible for the death caused to the Petitioner's son. In this context and upon perusal of the case, the court finds it profitable to discuss the principle of strict liability under the "law of tort". There are many activities which are so hazardous that they constitute constant danger to person and property of other. The rule of strict liability was propounded by the English Common Law courts in the celebrated case of **Ryland v. Fletcher, reported in 1868 Law Reports (3) HL 330**, where Justice Blackburn had observed thus:

"The rule of law is that the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does so he is prima facie answerable for all the damage which is the natural consequence of its escape."

16. The doctrine of strict liability is based on the fundamental fact that the undertakers of the hazardous activities have to compensate for the damages caused, irrespective of any carelessness on their part. The basis of liability is the foreseeable risk inherent in the very nature of the activities. In this aspect, the principle of strict liability resembles negligence which is also based on foreseeable harm. But the difference is that, the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precaution and so if the defendant did all that which could be done for avoiding the harm, he cannot be held liable. Such a consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions. The rationale behind strict liability is that the activities coming within its fold are those entailing extraordinary risk to others, either in the seriousness or the frequency of the harm threatened.

17. There are seven exceptions formulated through judicial pronouncements to the said doctrine such as Act of God, act of stranger, plaintiff's own fault, etc. The rule of strict liability has been approved and adopted in various decisions of the Supreme Court of India such as **Charan Lal Sahu v. Union of India, reported in**

AIR 1990 SC 1480 and Gujarat Road Transport Corpn. V. Ramanbhai Prabhatbhai, reported in AIR 1987 SC 1690. Similarly, Supreme Court has extended the principle of strict liability on the electricity companies engaged in supply and distribution of electricity and has granted compensation to the victim of electrocution. In the case of **M.P. Electricity Board v. Shail Kumari and others, reported in (2002) 2 SCC 162**, by applying the aforesaid principle, Apex Court awarded compensation to the widow and dependents of the deceased, who died due to electrocution by coming in contact with a snapped live electric wire lying on the road. The court made the following observation thus,

“7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the lookout of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as “strict liability”. It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.”

Therefore, with the advent of the doctrine of strict liability and acceptance thereof as a sound legal principle, the electricity distribution companies cannot escape their liability by merely stating that they weren't negligent in maintaining the apparatuses used for supply and distribution of electricity.

COURT'S POWER TO AWARD COMPENSATION

18. With regard to the power of court to award compensation in the cases of infringement of fundamental rights of the citizens, it is necessary to discuss that, one of the most remarkable features of the Constitution is that it provides an enforceable

guarantee of the protection of fundamental rights incorporated in Part III of the Constitution. The jurisprudence on fundamental rights has evolved tremendously during the life of the Constitution and the constitutional courts have not looked away when the peculiar needs of a case necessitated a deviation from the traditional understanding of the principles. It would be apposite to take note of the pertinent observations of the Supreme Court, made way back in 1952 in ***State of Madras v. V.G. Row reported in AIR 1952 SC 196***, wherein the court recognised itself as the sentinel on the *qui vive* i.e. a watchful guardian of fundamental rights. If any fundamental right, especially Right to life and personal liberty under Article- 21 is infringed, court has inherent and extraordinary power to see that justice is done.

19. At this juncture, court would like to reflect on the observations made in few judicial pronouncements, which have discussed the power of the constitutional courts to award compensation, when there is infringement of fundamental rights.

In ***T. Bimala v. Cuttack Municipal Corporation, Cuttack and others, reported in 2015(I) OLR-637***, it was observed that,

“9. The language of Article 226 of the Constitution does not admit of any limitation on the powers of the High Court for the exercise of jurisdiction thereunder. The power conferred upon the High Courts under Article 226 of the Constitution is wide enough to reach injustice wherever it is found. The apex Court in catena of the decisions laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction. Those guidelines cannot be mandatory in all circumstances. When a citizen approaches the High Court in writ petition that a wrong is caused, the High Court will step into protect him, whether that wrong was done by the State or an instrumentality of the State. The High Court cannot pull down the shutters.”

20. In ***M.S. Grewal v. Deep Chand Sood, reported in (2001) 8 SCC 151***, the Apex Court observed as under:

“Next is the issue of “maintainability of the writ petition” before the High Court under Article 226 of the Constitution. The appellants though initially very strongly contended that while the negligence aspect has been dealt with under penal laws already, the claim for compensation cannot but be left to be adjudicated by the civil laws and thus the Civil Court’s jurisdiction ought to have been invoked rather than by way of a writ petition under Article 226 of the Constitution. This plea of non- maintainability of the writ petition though advanced at the initial stage of the submissions but subsequently the same was not pressed and as such we need not detain ourselves on that score, excepting however recording that the law Courts exist for the society and they have an obligation to meet the social aspirations of citizens since law Courts must also respond to the needs of the people. In this context, reference may be made to two decisions of this Court: the first in line is the decision in Nilabati Behera v. State of Orissa, (AIR 1993 SC 1960) wherein this Court relying upon the decision in Rudal Sah (Rudal Sah v. State of Bihar), (AIR 1983 SC 1086) decried the illegality and impropriety in awarding compensation in a proceeding in which the Court’s power under Articles 32 and 226 of the Constitution stands involved and thus observed that it was a clear case for award of compensation to the Petitioner for custodial death of her son. It is undoubtedly true, however, that in the present context, there is no infringement of the State’s obligation, unless of course the State can also be termed to be joint tort feisor, but since the case of the parties stands

restricted and without imparting any liability on the State, we do not deem it expedient to deal with the issue any further except noting the two decisions of this Court as above and without expression of any opinion in regard thereto.”

21. In **Ramesh Singh Pawar v. Madhya Pradesh Electricity Board and others, reported in AIR 2005 MP 2**, Apex Court observed that:

“Currently judicial attitude has taken a shift from the old doctrine concept and the traditional jurisprudential system – affection of the people has been taken note of rather serious and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the Civil Court’s obligation to award damages. As a matter of fact the decision in D.K. Basu has not only dealt with the issue in a manner apposite to the social need of the “Country but the learned Judge with his usual felicity of expression firmly established the current trend of justice-oriented approach”. Law Courts will lose their efficacy if they cannot possibly respond to the need of the society – technicalities their might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice.”

In light of the aforesaid judicial pronouncements and progression of the constitutional law for protection of constitutional rights and payment of compensation for damage caused to the citizens, the constitutional courts can comfortably assume the power to award compensation, in a scenario when the undisputed facts reveal that the death of a person was due to electrocution and such fact is established by prima facie evidence, otherwise failure to do so would ultimately amount to infringement of fundamental Right to Life guaranteed under Article- 21 of the Constitution of India, 1950.

OBSERVATION OF THIS COURT

22. It is the finding of this court that, the fact that death of the deceased was caused due to electrocution, is well established by the charge sheet, post mortem report and inquest report which are part of the investigation carried by the I.O. in this case. In addition to this, the final report and the cognizance order, indicate towards existence of a prima facie case and the culpability of the Opposite Parties. Moreover, with regard to the contention of the Opposite Parties that the post mortem supports their stance, this Court finds that such ground is hypothetical and based solely on the claim of the Opposite Parties to exonerate themselves of any liability.

23. Keeping in view the precedents cited above, the materials placed on record and the observation made, the court is of the considered view that, the prayer made by the Petitioner is sustainable. The opposite parties are engaged in a hazardous activity, and they will be strictly liable for the loss of life that had occurred due to their undertaken activity. The judiciary as the guardian of the Constitution and the protector of fundamental rights, has never shied away from trying to make good of what is lost in monetary terms. It is universal truth that loss of human life can never be compensated by bringing back a dead young man to life, however, the bereaved

family can be compensated in monetary terms for the loss of income sustained by such family due to untimely death of a young member of the family.

24. On a close scrutiny of the factual background of the petitioner's case, it is observed that after the mishap occurred, the matter was reported to the local police. An investigation was conducted by registering a P.S. Case. In course of investigation, the inquest report prepared, post mortem done, statement of witnesses recorded and finally charge sheet was filed implicating the accused person's names in the charge sheet for commission of a cognizable case. The matter did not stop there. In the meanwhile, cognizance has also been taken by the jurisdictional magistrate. All the aforesaid materials clearly establish electrocution. The accused persons were now required to face trial to establish the fact that the deceased died not due to their negligence and to avoid their conviction under the Indian Penal Code, 1860. On the contrary, nothing has been brought on record to establish that the death was not due to electrocution. In the aforesaid factual backdrop, this court has no hesitation to hold that the death was due to electrocution. Moreover, the doctrine of strict liability under the law of tort could very well be applied to the facts of the present case as the Opposite Parties also were carrying on activities which were hazardous, harmful and risky to human life. Therefore, they are liable to compensate the petitioner for untimely death of his young son.

CONCLUSION

25. Therefore, in the light of the above observation, this court holds that the Opposite Parties No. 4-6, who is in-charge of upkeep, maintenance, etc. of the electric lines, is squarely liable to pay an interim compensation. So far as the quantum of the compensation is concerned, the 'OERC (Compensation to Victims of Electrical Accidents) Regulations, 2020', which came into force on 30.05.2020, has been brought to the notice of this court. As per regulation 5 of the aforesaid regulations, the quantum of compensation payable in the event of a loss of human life has been fixed to the tune of Rs.4,00,000/- (Rupees Four Lakhs) per person. As such, keeping in view the aforesaid regulation, this Court deems it proper to direct the Opposite Party No.3 to pay an interim compensation of Rs.4,00,000/- (Rupees Four lakhs) to the Petitioner within a period of two months from the date of this judgement, with a right to recover the same from Opposite Party No. 4 to 6. Further, liberty is granted to the Petitioner to pursue other suitable remedies in the common law forum for higher compensation, if so advised.

26. Writ petition stands disposed of in favour of the Petitioner. 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 (II) ILR-CUT-541

**SARASWATI ROUTRAY @ RAUTRAY & ORS.
V.
SUSANTA KUMAR SAHOO & ANR.**

[MACA NO. 1202 OF 2017]

AND

NATIONAL INSURANCE CO. LTD. V.
SARASWATI ROUTRAY @ RAUTRAY & ORS.
[MACA 322 OF 2018]

11 APRIL 2025

[V. NARASINGH, J.]

Issue for Consideration

Whether while disposing of the claim application, strict rules of evidence are applicable.

Headnotes

MOTOR ACCIDENT – Just Compensation – The claimants’ plea is that while quantifying the compensation, the amount spent on account of hospitalization was not taken into account – The claimants are entitled to higher compensation as there is no dispute regarding the accident – The contention of Respondent/ insurance company is that since the medical bills were not independently proved, the same ought not to be taken into account – Whether while disposing of the claim application, strict rules of evidence are applicable.

Held: No – While disposing of the claim application strict rules of evidence are not applicable and the proceeding is summary in nature and the legislation is a benevolent one. (Para 8-B)

The fixation of the amount is always based on the doctrine of just compensation and in doing so one can break free from the shackles of pleadings of the parties – Rather the impelling grounds are one of equity and awarding compensation which is just and cannot be treated as a wind fall or bonanza. (Para 8-C)

Citations Reference

National Insurance Co. Ltd. vrs. Pranay Sethi, **2017 (16) SCC 680**; **Sriram G.I Co. vrs. Bhagat Singh Rawat & another, 2023 Vol.2 TAC – 713 – referred to.**

List of Acts

Motor Vehicles Act, 1988

Keywords

Motor accident; Just compensation; Summary proceeding; Applicability of strict rule of evidence; Quantification of medical bills; Benevolent legislation.

Case Arising From

Award dated 23.09.2017 passed by learned District Judge-cum-1st M.A.C.T., Jagatsinghpur in Motor Accident Claim Case No.157 of 2013 (1060/14) arising out of Olatpur P.S.Case No.36 of 2013.

Appearances for Parties

For Appellants : Mr. P.K. Mishra

For Respondent No. 2 : Mr. S.R. Pattnaik

Judgment/Order**Judgment**

V. NARASINGH, J.

I.A No. 1130 of 2023

1. Heard learned counsel for the Petitioners and learned counsel for the Opposite Parties.
2. It is submitted by the learned counsel for the Petitioners/Appellants that for just adjudication the medical documents filed before the learned Tribunal ought to have been taken into account which ex facie establish that the deceased underwent prolonged treatment in Sparsh Hospital and it would have a direct bearing on the amount of compensation being claimed.
3. Such submission is opposed by the learned counsel for the Opposite Parties/Respondents in this application for enhancement of compensation.
4. Taking into account the rival contentions since this Court is of the considered view that taking document on record is essential for just adjudication, the I.A is allowed. The documents at Annexure-1 save and except the death certificate is marked as Ext.10 on behalf of the Claimants. Registry to do the needful.
5. I.A is accordingly disposed of.

MACA Nos.1202 of 2017 and 322 of 2018

1. Since both MACAs relate to the award dated 23.09.2017 passed by the learned District Judge-cum-1st M.A.C.T., Jagatsinghpur in Motor Accident Claim

Case No.157/2013 (1060/14) arising out of Olatpur P.S. Case No.36 of 2013, they are taken up together and disposed of by this common judgment.

2. MACA No.1202 of 2017 has been filed by the Claimants seeking enhancement of compensation, inter alia, on account of non-consideration of future prospects, medical bills and also claiming interest component should be enhanced from 7.5% to 12% per annum.

Insurance Company has filed MACA No.322 of 2018 assailing the award of compensation, inter alia, on the ground of contributory negligence and non-establishment of the nexus between the injuries and the death admittedly in the absence of post-mortem report and that the quantum thereof being the result of patently arbitrary exercise of power.

3. Motor Accident Claim Case No.157/2013 (1060/14) in the court of learned District Judge-cum-1st M.A.C.T., Jagatsinghpur was filed by the wife and children claiming a compensation of Rs.20,00,000/- because of the death of Ajaya @ Ajay Kumar Routray @ Rautray, while coming on 1.5.2013 in a motor cycle bearing registration number OR-02-BS-8732, was on account of rash and negligent driving of the offending truck bearing registration number OR-02-AT-3329.

4. To substantiate their claim, appellant No.1 as the widow of the deceased examined herself as P.W.1 and one Dusmanta Pradhan was also examined as a witness on behalf of the Claimants as P.W.2.

It is apt to note here that the deceased was initially treated in Sparsh Hospital, thereafter at KIMS Hospital and Kalinga Hospital in different spells and ultimately died on 19.01.2014 while being shifted to Adaspur Hospital. On the ground that the deceased was getting Rs.9,206/- as an Ex-Service Personnel, compensation to the tune of Rs.20 lakhs was claimed. The owner of the offending truck was arrayed as Opposite Party No.1. Since in spite of due service of notice he did not appear, he was set ex parte. The Insurance Company-Opposite Party No.2 appeared and filed its written statement, inter alia, taking a ground that even if it is held that the Claimants are entitled to get compensation, the Opposite Party No.1 who is the owner is responsible to pay.

4-A. On the pleadings of the parties, the Claims Tribunal framed the following issues:

- “1. Whether the MAC case is maintainable or not ?
2. Whether due to rash and negligent driving of the driver of the offending truck bearing registration No.OR02-AT-3329 the accident took place ?
3. Whether due to that accident Ajaya @ Ajay Ku. Routray @ Rautray succumbed to the injuries ?

4. Whether the O.Ps or any of the O.Ps is liable to pay the compensation and what would be its extent ?

5. To what other relief or reliefs the petitioner is entitled to?

6. To what other relief or reliefs, the petitioners are entitled to ?

4-B. To fortify her stand, the widow- Claimant No.1 examined herself as P.W.1 and P.W.2 was examined to corroborate the evidence of P.W.1 and 9 exhibits were admitted into evidence at the behest of the Claimants. Neither oral nor documentary evidence was adduced on behalf of the Opposite Party No.2-Insurance Company.

On analyzing the evidence on record, regarding the issues so framed, learned Tribunal came to the finding regarding accident and quantified the compensation at Rs.12,77,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition i.e. 8.7.2013 which is assailed at the instance of both the Claimants as well as the Insurance Company on different counts.

4-C. It is apt to note here that this Court had already allowed the prayer of the Claimants under Order 41 Rule 27 CPC for additional evidence, by order of the even date and the medical documents have been admitted into evidence and marked as Ext.10.

5. It is submitted by the learned counsel for the Claimants in MACA No.1202 of 2017, Mr. Mishra that since admittedly while quantifying the compensation the amount spent on account of hospitalization was not taken into account the Claimants are entitled to higher compensation as there is no dispute regarding accident and that the same is on account of rash and negligent driving of the offending vehicle.

It is his further submission that while awarding compensation future prospects has not been taken into account and on the said count also the impugned award is liable to be interfered with.

6. Learned counsel for the Insurance Company Mr. S.R. Pattnaik, opposes the prayer, inter alia, on the ground that the compensation as awarded itself is on the higher side in the absence of post-mortem report which would have indicated conclusively that the death is on account of the accident. As such, the MACA for enhancement of compensation is liable to be rejected. It is his further submission that bills in Ext.10 should not be taken into account.

7. In MACA No.322 of 2018, learned counsel for the Insurance Company submitted that the assessment on account of loss of consortium, loss of estate, funeral expenses and transportation of dead body has been held to be Rs.2,00,000/-.

It is stated that as per the settled position of law in terms of the dictum of the Apex Court in the case of **National Insurance Co. Ltd. vrs. Pranay Sethi**, 2017 (16) SCC 680 compensation on the said heads has to be quantified at Rs.70,000/- and the award has to be modified accordingly.

It is pertinent to note the said judgment of Pranay Sethi was also reiterated in the case of **Sriram G.I Co. vrs. Bhagat Singh Rawat & another 2023 Vol.2 TAC – 713.**

It is further submitted that the award of interest is ex facie on the higher side and the same is also liable to be reduced.

8. So far as future prospects are concerned, on a bare perusal of the award it is seen that evidently the learned Tribunal has not awarded any compensation on account of future prospects which is against the settled law. If 30% of the future prospects is added, loss of income will come to Rs.14,01,131/-.

8-A. Loss of consortium, loss of estate, funeral expenses and transportation of dead body in terms of the dictum of the Apex Court has to be reduced to Rs.70,000/-
Re : **Pranay Sethi (supra).**

8-B. On a bare perusal of Ext.10 (Medical Bills) it is seen that an amount of Rs.1,06,835/- has been shown as expenses on account of medicine.

It is the contention of the learned counsel for the Insurance Company Mr. S.R. Pattnaik that since the said bills were not independently proved the same ought not to be taken into account.

It is trite that while disposing of the claim application strict rules of evidence are not applicable and the proceeding is summary in nature and the legislation is a benevolent one.

8-C. On a bare perusal of the medicine bills it is seen that the same relate to Bed No.C-203. The said bed number is reflected in the discharge summary. As such there is no rationale not to award such amount towards compensation.

It is no longer *res integra* that while assessing compensation Courts are not bound by the amount claimed. The fixation of the amount is always based on the doctrine of just compensation and in doing so one can break free from the shackles of pleadings of the parties. Rather the impelling grounds are one of equity and awarding compensation which is just and cannot be treated as a wind fall or bonanza.

Hence applying the doctrine of just compensation and the principles as discussed above, taking into account the period the deceased was admitted in the hospital, on a conservative assessment a further sum of Rs.30,000/- is awarded towards expenses incidental to the hospitalization on account of attendant expenses etc.

Hence, the total compensation on account of hospitalization is assessed at Rs.1,06,835/- + Rs.30,000/- = Rs.1,36,835/-

8-D. The total compensation is thus quantified as under:

Rs. 14,01,131/- (Including future prospects)

Rs. 70,000/- (loss of consortium, estate, funeral expenses)

Rs. 1,36,835/- (medical bills and other incidental expenses)

Rs. 16,07,966/- (rounded off to Rs.16,00,000/-)

9. So far as interest component is concerned, on the basis of the submission of the learned counsel for the Insurance Company, this Court is persuaded to hold that reducing it from 7.5% to 6% would subserve the ends of justice.

10. The Insurance Company is directed to deposit the modified amount of compensation of Rs.16,00,000/- along with interest @ 6% per annum in terms of the award passed by the learned Tribunal and disburse the same amongst the Claimants proportionately as per the award within a period of eight weeks from the date of receipt/production of a copy of this order.

Court fees shall be payable by the Claimants as per Rules.

11. Within six weeks of documentary proof evidencing deposit of the modified amount before the Tribunal being submitted, the statutory deposit along with accrued interest be refunded to the Insurance Company on proper application in MACA No.322 of 2018.

12. Both MACA No.1202 of 2017 at the instance of the Claimants and MACA No.322 of 2018 at the instance of the Insurance Company are accordingly disposed of. No costs.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

MACA disposed of.

2025 (II) ILR-CUT-547

**UDHAB DIGAL & ORS.
V.
STATE OF ODISHA**

[ABLAPL NO. 1768 OF 2025]

WITH

SHYAMESWAR DIGAL V. STATE OF ODISHA

[ABLAPL NO. 1067 OF 2025]

AND

TAPESWAR DIGAL V. STATE OF ODISHA

[ABLAPL NO. 1069 OF 2025]

01 MAY 2025

[V. NARASINGH, J.]

Issue for Consideration

Whether the petitioners are entitled to pre-arrest bail when the co-accused has been acquitted on the ground of violation of mandatory provisions U/ss. 42(2) and 57 of Narcotic Drugs and Psychotropic Substances Act, 1985.

Headnotes

(A) CODE OF CRIMINAL PROCEDURE, 1973 – Section 438, r/w Section 37 (1) (b) (ii) of the NDPS Act – Pre-arrest bail for commission of an offence punishable under Section 20(b) (ii) (C) of the NDPS Act – The allegation against the petitioners is that they were involved in the transportation of contraband article with other co-accused persons – It is stated that the implication of the petitioners is on account of co-accused's statement and since the co-accused has been acquitted by the Special Judge on the ground of violation of the mandatory provisions of the Act, the petitioners who do not have any criminal proclivity may be protected by pre-arrest bail – Whether the petitioners are entitled to pre-arrest bail when the co-accused has been acquitted on the ground of violation of mandatory provisions U/ss. 42(2) and 57 of NDPS Act.

Held:– Yes – Given the circumstances under which the Petitioners have been cited as accused solely basing on co-accused statement and violations of mandatory provisions of section 42(2) and 57 of NDPS Act in the context of seizure being a joint one, this Court is persuaded to hold that merely because warrants have been issued in the light of the manner in which the investigation has been done as noted by the learned Special Judge, the Petitioners are entitled to be released on pre-arrest bail. (Para 16)

(B) CRIMINAL ANTECEDENTS – Necessary direction given to concerned authority to furnish the criminal antecedents to the learned court in seisin, wherever it is so directed, within three days from the date of such order/judgment. (Para 18)

The Principal Secretary (Home), State of Odisha is requested to issue necessary directions relating to furnishing of details of criminal antecedent in tune with the direction as contained in paragraph-18, to the UPDs and the Police Districts through the concerned D.C.Ps and S.Ps, in the interest of ensuring transparency in dispensation of justice in criminal cases. (Para 19)

Citations Reference

Satender Kumar Antil Vrs. Central Bureau of Investigation, **2023 SCC Online SC 452**, Satender Kumar Antil Vrs. Central Bureau of Investigation, **(2022) 10 SCC 51**; Serious Fraud Investigation Office Vrs. Aditya Sarda, **2025 SCC Online SC 764**; State by the Inspector of Police Vs. B. Ramu, **2024 SCC Online SC 4073**; State of Madhya Pradesh vs. Kajad, **(2001) 7 SCC 673**; Tofan Singh vrs. State of Tamil Nadu, **(2021) 4 SCC 1**; State of Haryana vrs. Samarth Kumar, **2022 SCC Online SC 2087 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Narcotic Drugs and Psychotropic Substances Act, 1985

Keywords

Pre-arrest bail; Acquittal of co-accused; Violation of mandatory provisions; Criminal antecedents.

Case Arising From

C.T. Case No.35-A of 2020 pending in the Court of Special Judge, Phulbani arising out of Gochhapada P.S. Case No. 35 of 2020.

Appearances for Parties

For Petitioners : Mr. S. Dwibedi (ABLAPL No. 1768 of 2025)
Mr. A. Tripathy (ABLAPL Nos. 1067 & 1069 of 2025)

For Opp. Parties : Mr. S.K. Lenka, A.S.C.

Judgment/Order

Judgment

V. NARASINGH, J.

1. It is apt to note here that ABLAPL No.1067 and 1069 of 2025 are posted to 07.05.2025. And, since all the matters arise out of Gochhapada P.S. Case No.35 of

2020, they are heard together and disposed of by this common judgment on the consent of the parties.

2. Heard learned counsel for the Petitioners and learned counsel for the State.

3. The Petitioners are seeking pre-arrest bail in connection with C.T. Case No.35-A of 2020 pending in the Court of learned Special Judge, Phulbani, arising out of Gochhapada P.S. Case No.35 of 2020 for commission of offence punishable under Sections 20(b)(ii)C of the NDPS Act. The allegation against the Petitioners is that they along with the co-accused who faced trial are involved in the transportation of contraband (Ganja) to the tune of 2020kgs.

4. It is submitted by the learned counsel Mr. Tripathy and Mr. Dubey for their respective clients that the implication of the Petitioners are on account of co-accused statement and since the co-accused who have since been acquitted by judgment dated 13.05.2024 by the Special Judge, Kandhamal, Phulbani, in CrI. Trial No.35 of 2020, inter alia, on the ground of violation of the mandatory provisions of Sections 42(2) as well as 57 of NDPS Act, the Petitioners, who do not have any criminal proclivity, may be protected by prearrest bail.

4A. For convenience of ready reference Sections 42(2) and 57 of NDPS Act are extracted hereunder;

xxx xxx xxx

42. Power of entry, search, seizure and arrest without warrant or authorisation.—

(1) xxx

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

xxx xxx xxx

57. Report of arrest and seizure.—

Whenever any person makes any arrest or seizure under this Act, he shall, within fortyeight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

xxx xxx xxx”

5. In this context, learned counsel for the Petitioners place on record the copy of the judgment of acquittal of the co-accused. The finding regarding the violation of the mandatory provisions as stated by the learned Special Judge is extracted hereunder:

“xxx xxx xxx

Such aspects discussed here-in-above has resulted in allowing this Court to come to a conclusion that the mandatory provision about compliance of Section 42 (2) of the NDPS Act has not been proved by the prosecution to the hilt.

xxx xxx xxx”

5A. So far as violation of the Section 57 of the NDPS Act is concerned, the learned Special Judge after quoting the said section observed thus;

“xxx xxx xxx

From a bare reading, it is abundantly clear that it is the Officer (person) who makes any arrest or seizure under the Act shall have to make a full report of all the particulars of such arrest or seizure to his immediate official superior. Therefore, such a report complying the requirements of Section 57 of the Act had to be submitted by P.W.10, the informant and not by the I.O., P.W.11 only. Therefore, the requirement of Section 57 of the Act has not been complied with.

xxx xxx xxx”

6. Referring to such finding of the learned Special Judge, it is submitted by the learned counsel for the Petitioners that in view of the same, since the seizure in question is a joint seizure, custodial interrogation of the Petitioners is not warranted and they ought not to be remanded to custody.

7. Such submission is opposed by the learned counsel for the State Mr. Lenka, inter alia, on the ground that the charge sheet is filed on 26.04.2022, under Sections 20(b)(ii)C and 29 of NDPS Act. The Petitioners have been cited as accused and their status have been shown as absconders and so far as the trial is concerned it is trite that the evidence on record is qua the accused, who faced trial and as such, the same ought not to enure to the benefit of the accused like the Petitioners who are absconders. Hence, seeks dismissal of the ABLAPL. He also relies on the bars under Section 37(1)(b)(ii) of the NDPS Act to resist the prayer of the Petitioners.

8. In the recent pronouncement of the Apex Court in the case of **Satender Kumar Antil Vrs. Central Bureau of Investigation** and another, reported in, **2023 SCC Online SC 452**, adopting the course of continuing Mandamus it has been clarified that the principles as set out in the case of **Satender Kumar Antil Vrs. Central Bureau of Investigation** and another, reported in, **(2022) 10 SCC 51** shall apply in equal measure to application for anticipatory bail.

The said finding of the Apex Court is extracted hereunder for convenience of ready reference:

“xxx xxx xxx

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.

xxx xxx xxx”

9. The submissions of the learned counsel for the Petitioners have to be evaluated on the basis of clarificatory observation of the Apex Court extracted hereinabove.

10. The observation of the learned Special Judge on the basis of evidence on record regarding the perfunctory manner in which investigation has been done to establish the prima facie complicity of the Petitioners cannot be lost sight of. The same has a bearing in the case at hand in evaluating the stand of the Petitioners, considering the background relating to the Petitioners' involvement.

11. It is no doubt true that so far as the anticipatory bail is concerned, the same is an exceptional remedy and cannot be claimed as a matter of right.

12. There is no cavil about the proposition of law as stated by the learned Additional Standing Counsel that the evidence on record is in respect of the accused persons who faced trial and that ordinarily an order of anticipatory bail which is admittedly an exceptional remedy ought not to be entertained in case of the co-accused more so warrantees.

12A. But as has been clarified by the Apex Court in the recent case of **Serious Fraud Investigation Office Vrs. Aditya Sarda**, reported in, **2025 SCC Online SC 764** that there cannot be any strait jacket formula for appreciation of a anticipatory bail and each case has to be dealt with taking into account the peculiar facts and circumstances of the case at hand.

For convenience of ready reference the relevant portion of the judgment is quoted hereunder;

“xxx xxx xxx

There cannot be a strait jacket formula, as sought to be submitted by the learned advocates for the Respondents that the Court must first issue a summons even in case of a warrant case, irrespective of the gravity or seriousness of the offence. As well settled by now, whether the attendance of the accused can be best secured by issuing a bailable warrant or non-bailable warrant, would be a matter, which entirely rests at the discretion of the concerned Court.

xxx xxx xxx”

13. This Court is conscious of the fact that filing of the charge sheet shows that there is a prima facie case, as has been held by the Apex Court in the case of **State by the Inspector of Police Vs. B. Ramu**, reported in **2024 SCC Online SC 4073** as well as in the case of **State of Madhya Pradesh vs. Kajad**, reported in **(2001) 7 SCC 673** stating no uncertain terms in an accusation in a NDPS Case, grant of bail is an exception, as opposed to the general doctrine of bail being the rule in view of the bar under Section 37(1)(b)(ii) of the NDPS Act. For convenience of ready reference Section 37(1)(b)(ii) of the NDPS Act is extracted here under;

“xxx xxx xxx

37. Offences to be cognizable and non-bailable. -- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) xxx

(b) no person accused of an offence punishable for 1[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

xxx xxx xxx”

14. But, this Court cannot be oblivious of the observations of learned Special Judge on the basis of evidence on record, that there has been a violation of mandatory provisions of the NDPS Act and coupled with the same, the learned Special Judge has also further opined regarding the conduct of the Investigating Agency in not taking any steps to nab the present accused persons, which runs thus;

“xxx xxx xxx

Furthermore, a disturbing feature in the investigation has come to light in course of trial as no step was taken by the Investigating Officer and the prosecuting agency to place any report as against 12 other persons who were alleged to have managed to escape from the spot. Though the names of those persons appear in the F.I.R. marked as Ext.P-21 and the Investigating Officer presented the Final Form keeping the investigation open, but for the reasons best known to the Investigating Officer no step in respect of those alleged persons alleged to have been escaped from the spot has been taken for more than 03 years and 06 months leading to a reasonable doubt as regards any such assemblage of 14 persons at any such spot and the recovery of contraband articles from the spot.

From the evidences discussed in the foregoing paragraphs, **this Court entertains a reasonable doubt as to whether there was any detection of any contraband article, i.e. ganja made by the police officers at the spot and so also about the factum of detection and seizure of contraband ganja from the possession of the accused persons vide Seizure List Ext.P-7/3.**

xxx xxx xxx”

15. In the backdrop of such finding of the learned Trial Court, this Court is persuaded to hold keeping in view the judgment of the Apex Court in the case of **Tofan Singh vs. State of Tamil Nadu**, reported in (2021) 4 SCC 1 as well as the case of the **State of Haryana vs. Samarth Kumar** reported in 2022 SCC Online SC 2087 and in the light of the latest dictum of the Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation** and another, reported in, 2023 SCC Online SC 452 clarifying that the principles which weigh with the Court while considering the application of accused in custody shall apply in equal measure in the case of anticipatory bail.

16. Given the circumstances under which the Petitioners have been cited as accused solely basing on co-accused statement and violations of mandatory provisions of section 42(2) and 57 of NDPS Act in the context of seizure being a

joint one, this Court is persuaded to hold that merely because warrants have been issued in the light of the manner in which the investigation has been done as noted by the learned Special Judge, the Petitioners are entitled to be released on pre-arrest bail.

16A. It is thus directed that on surrendering in the case at hand, the Petitioners shall be released on bail by the learned Court in seisin fixing such terms and conditions, deemed just and proper, subject to verification of criminal antecedent of any nature.

17. Before parting with the case, this Court feels it obligatory to address the concern expressed at the bar regarding the hardships faced by the accused persons because of the manner of submission of the criminal antecedents in the Jurisdictional Court.

17A. It is stated that because of non-furnishing of such criminal antecedents, the accused are facing difficulties while pursuing their motions before the learned Court in seisin in terms of the order passed by this Court where it is stipulated that the release shall be subject to verification of criminal antecedents.

18. Taking note of such grievance across the Board, this Court is persuaded to direct that details of the criminal antecedents shall be furnished to the learned Court in seisin, wherever it is so directed, within three days from the date of such order/judgment.

And, such antecedents shall be simultaneously shared with the DIB of the concerned police district so that correct details of the antecedents and the status thereof, can be brought to the notice of the court, which in turn would ensure that no prejudice is caused to either the prosecution or the accused.

Learned counsel for the State is requested to impart necessary instruction in this regard.

19. Copy of this judgment be communicated to the Principal Secretary (Home), State of Odisha who is requested to issue necessary directions relating to furnishing of details of criminal antecedent in tune with the direction as contained in paragraph-18 above, to the UPDs and the Police Districts through the concerned D.C.Ps and S.Ps, in the interest of ensuring transparency in dispensation of justice in criminal cases. Registry is requested to do the needful.

20. Accordingly, the ABLAPL stands disposed of.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

ABLAPL disposed of.

2025 (II) ILR-CUT-554

**BHASKAR ROUT
V.
STATE OF ODISHA & ORS.**

[W.P.(C) NO. 35944 OF 2021]

26 MARCH 2025

[BIRAJA PRASANNA SATAPATHY, J.]**Issue for Consideration**

Whether the petitioner is eligible to get the tenement when the enquiry made by the Assistant Labour Commissioner found that the petitioner was not in possession of the tenement since January 1985 and permission was given to Opp. Party No. 5 to deposit the rent.

Headnotes

ORISSA INDUSTRIAL HOUSING ACT, 1966 – Section 6(c) r/w Orissa Industrial Housing Rules, 1969 – Rule 12(5) (p) – Allotment of tenement – The tenement in question was allotted in favour of the petitioner on the ground that the petitioner at the relevant point of time was an industrial worker, having been employed in Orissa Textiles and Steels Ltd. – Government in the Housing and Urban Development Department issued resolution dated 24.06.1987 for the purpose of transfer of the tenements constructed under integrated subsidized Housing Scheme for industrial workers and economically weaker sections of the community – One of the conditions prescribed in the scheme was that the person should be in continuous possession of the tenement allotted to him – The Assistant Labour Officer made an enquiry and found that Opp. Party No. 5 was in possession – Basing on such report made by the Assistant Labour Officer the tenement made in favour of petitioner was cancelled and the tenement was allotted in favour of Opp. Part No. 5 – The cancellation was challenged in previous Writ Application – The Hon'ble Court set aside the cancellation order and remitted the matter for fresh decision by the tenement committee – The Committee in its proceeding dated 05.07.2002 once again decided to cancel the allotment for the reason that the petitioner already ceased to be an industrial worker and he is not in continuous possession of the tenement on the date of publication of the resolution dated 24.06.1987 – Whether the petitioner is eligible to get the tenement when the enquiry made by the Assistant Labour Commissioner found that the petitioner was not in possession of the tenement since January 1985 and permission was given to Opp. Party No. 5 to deposit the rent.

Held: No – In view of such inaction on the part of the Petitioner in not assailing the report submitted by the Asst. Labour Officer under Annexure-B/5 and the permission accorded to Opp. Party No.5 to deposit the rent for the period from January 1985 to July 1987, the stand taken by the Tenement Committee that Petitioner is not in occupation of the tenement and accordingly he is not entitled to get the benefit of Resolution dated 24.06.1987 cannot be found fault with. (Para 7.8)

Not only that, in view of the provisions contained under Section 5(6) of the Act and Rule 12(5)(p) of the Rules, since Petitioner ceases to be an Industrial Worker because of closure of the company w.e.f. 16.08.1984 as found from Annexure-5, no fault also can be found with regard to such stand of the Tenement Committee. (Para 7.9)

List of Acts

Orissa Industrial Housing Act, 1966; Orissa Industrial Housing Rules, 1969

Keywords

Allotment of tenement; Decision of the Tenement Committee; Cessation of Industrial Labour; Cancellation of tenement; Continuous possession of tenement; Deposit of rent.

Case Arising From

Decision of Tenement Committee dated 14.12.2020 communicated by Opp. Party No. 1 vide letter dated 30.06.2021.

Appearances for Parties

For Petitioner : Mr. P.K. Satapathy

For Opp. Parties : Mr. P.K. Panda, ASC, Ms. D. Mohapatra (O.P. 5)

Judgment/Order

Judgment

BIRAJA PRASANNA SATAPATHY, J.

1. The present Writ Petition has been filed inter alia challenging the decision of the Tenement Committee dated 14.12.2020 so communicated by the Government-Opp. Party No.1 vide its letter dt.30.06.2021 under Annexure-1 and with a further prayer to direct Opp. Parties to transfer the ownership of the tenement (Z/4, Khapuria Labour Colony) in favour of the Petitioner as per Government Resolution dated 24.06.1987.

2. It is the case of the Petitioner that Petitioner while working under the Management of M/s. Orissa Textiles and Steels Limited, Naya Bazar, Cuttack as an Industrial Worker, he was allotted with Industrial Tenement No.Z/4 in Nuapada Labour Colony by the Labour Commissioner, Orissa communicated vide letter

dt.24.09.1977. Such allotment of the quarter was made under the provisions of Orissa Industrial Housing Act, 1966 and Orissa Industrial Housing Rules, 1969. Such provisional allotment made on 24.09.1977 under Annexure-2, was made final vide allotment Order No.17320 dt.21.12.1977 under Annexure3. Petitioner accordingly was handed over the possession of the tenement in terms of letter dt.28.12.1977 under Page 2 of 39 Annexure-4.

2.1. It is contended that while continuing in possession over the tenement in question, Government in the Department of Housing and Urban Development vide its resolution dt.24.06.1987 under Annexure-10, decided to transfer the ownership of such tenements free of cost to eligible and bonafide occupants subject to the following terms and conditions, morefully described under Para-3.

3. Government, after careful consideration, have been pleased to decide to transfer the ownership of the tenements free of cost to eligible and bona fide occupants subject to the following terms and conditions.

(a) The ownership of the tenements shall be transferred to the Industrial labourers free of cost subject to payment of all outstanding arrear rent by the occupants.

(i) Such ownership of tenements will be transferred even to those who were industrial labourers at the time of original allotment but have subsequently been promoted in the same or any other industrial organization and do not come in the category of industrial labourer at any other industrial organization and do not come in the category of industrial labourers at the time of transfer of ownership, provided further that such a period should be in continuous possession of the tenement allotted to him.

(ii) In case eviction proceedings are initiated any any occupant, the merits of each case will be examined by the Committee so formulated by this resolution for recommendation to Government.

(iii) The case of legal heirs of the original occupants will be considered on merit by the Committee subject to payment of arrear rent and continuous possession by the legal heirs.

(iv) If an eligible industrial worker has retired from active service his case will be considered for transfer of ownership by the Committee on merit.

(b) For transfer of ownership a committee will be formed to recommend the names of eligible Industrial Labourers or their legal heirs, as the case may be, to the Government for final decision.

(i) The Committee will consist of Labour Commissioner, as Chairman the concerned Collector of District under whose jurisdiction the tenements are located, or he, is nominated representative as member and the Director, Housing-cum-Deputy Secretary to Government, Housing and Urban Development Department as member-convenor.

(c) The annual rent. Will be paid by the transferee. Government will not undertake any repairs etc. of the tenements henceforward.

(d) The land on which the tenements are located shall be transferred on lease to the transferee on 99 years lease basis under the provisions of Rule 8(I) of Orissa Government Land Settlement Rules, 1983 free of cost.

(e) The land including the area of tenements, share in public bath place and lavatory shall not be more than Ac.0.04 for each transferee.

- (f) Bath Place lavatory and other general public utility places which are used jointly by the occupant of the tenement will be recorded jointly in the record of rights.*
- (g) Where double storeyed tenements are constructed and their ownership will be transferred to two different persons, the land on which this building stands will be recorded jointly in the favour of the two transferees in the record or rights.*
- (h) The actual transfer of ownership will be reckoned from the date on which a person takes over possession of the tenement after formal transfer of the ownership in his favour.*
- (i) No transferee can sell or otherwise transfer the tenement for ten years from the date of actual possession as prescribed at (h) above. However, after the expiry of ten years the transferee can sell or otherwise transfer the tenement with prior approval of Government in Housing & Urban Development Department.*
- (j) Common places like community centres, roads, parks, shopping complexes or shops will be under the control of local Municipality/NAC and or Development Authority. These lands will be handed over to these Authorities under the prevailing provisions of law.*
- (k) The stamp duty and registration fees will be paid by transferee and no concession will be granted in this regard.*
- (l) The transfer of ownership in case of illegal occupants of the tenements will be decided with due regard to the provisions of this resolution by the Committee so appointed by this Resolution subject to approval of the Government in Housing & Urban Development Department.*
- (m) Housing & Urban Development Department will inform Revenue Department or General Administration Department as the case may be the names and address of transferees with all other details to facilitate these Departments to enter into agreement with the transferees to hand over the Pattas etc.*
- (n) The illegal occupants of the tenements will be evicted under the provisions of Orissa Industrial Housing Rules, 1969.*
- (o) The concerned Collectors, under whose jurisdiction such tenements are located will be declared Commissioner under Section 4 of Orissa Industrial Housing Act, 1966 to initiate action against the illegal occupants.*
- (p) This resolution will come into force from the date of publication in the Orissa Gazette."*

2.2. It is contended that since by the time resolution under Annexure-10 was issued on 24.06.1987, Petitioner in terms of the final allotment order issued under Annexure-3 and the possession handed over in terms of letter dt.28.12.1977 under Annexure-4 was the owner of the tenement in question and was in possession, in terms of the provisions contained in the resolution dt.24.06.1987, Petitioner became eligible and entitled to get the benefit of transfer of the tenement in his favour free of cost. However, when the allotment made in favour of the Petitioner was cancelled in the year 1977 was cancelled vide order dt.05.01.1990 of the Assistant Housing Commissioner, Cuttack and vide another order of the same date, the tenement was allotted in favour of the private Opp. Party No.5, Petitioner challenging such action of the Opp. Parties approached this Court in OJC No.5862 of 1991.

2.3. It is contended that this Court vide order dt.12.05.1995 disposed of the Writ Petition inter alia with the following direction.

“Recording such submissions, we cancel the order of allotment made in favour of Opposite Party No.4 in terms of Annexure-5. Possession of the tenement should be restored to the Petitioner thereafter, after opposite party no.4 vacate by the end of October, 1995. It is made clear, that this order will not prevent the authorities concerned to initiate proper proceeding for cancellation for any act committed by the Petitioner after the possession is restored to him. The Petitioner after the possession is restored to him. The Péton is disposed of accordingly. No costs. It is made further clear that both the Petitioner and opposite Party No.4 will appear before the Commissioner, Housing-cum-Labour Commissioner on 11th of October, 1995 to avoid issue of fresh notice.

2.4. It is contended that in terms of the order passed by this Court on 12.05.1995, Petitioner was again handed over with the possession of the tenement on 03.04.1996 as reflected from Annexure-12 series.

2.5. It is contended that after restoring back possession in favour of the Petitioner and while complying the direction of this Court so passed on 12.05.1995, Petitioner was issued with a notice by the Addl. District Magistrate, Cuttack on 14.03.2002 under Annexure-13, inter alia to appear on 23.03.2002 in the office chamber of Collector, Cuttack to solve the issue in question.

2.6. It is contended that in terms of the notice issued on 14.03.2002 under Annexure-13, Petitioner duly appeared before the Committee and submitted his representation on 26.03.2002.

2.7. It is contended that the Committee after hearing the Petitioner and Opp. Party No.5, when took a decision to cancel the allotment made in favour of the Petitioner and to allot the same in favour of Opp. Party No.5 vide order dt.05.07.2002 and a notice was issued accordingly on 16.08.2002 to vacate the tenement, Petitioner being aggrieved by such action of the Opp. Party in cancelling the allotment and directing him to vacate the tenement moved the learned District Judge, Cuttack in Misc. Appeal No.131 of 2002. But learned District Judge vide his judgment dt.21.02.2005 when dismissed the appeal on contest, Petitioner being aggrieved by such cancellation of allotment of the tenement on 05.07.2002 and judgment dt.21.02.2005, approached this Court by filing W.P.(C) No.3274 of 2005.

2.8. It is contended that this Court vide order dt.03.01.2018 under Annexure-15, while setting aside the order dt.05.07.2002 and order passed by the appellate Court on 21.02.2005 in Misc. Appeal No. 131 of 2002, remitted the matter to the Tenement Committee for fresh consideration involving the Petitioner vide order dt.03.01.2018.

2.9. It is contended that application filed by the private Opp. Party No.5 in Misc. Case No.478 of 2018 for modification of the order dt.03.01.2018 and to allow him to participate before the Tenement Committee was also not entertained while disposing the Misc. Case vide order dt.29.01.2018.

2.10. It is contended that on the face of the order passed initially by this Court on 12.05.1995 in OJC No.5862 of 1991 and order passed on 03.01.2018 in W.P.(C) No.3274 of 2005, the Tenement Committee headed by the Labour Commissioner, Odisha as its Chairman, in its decision dt.14.12.2020 under Annexure-1, decided to cancel the allotment of the tenement so made in favour of the Petitioner and to evict him from the said tenement. The said order passed by the Tenement Committee was communicated vide letter dt.30.06.2021 under Annexure-1 and the present Writ Petition has been filed inter alia challenging such order passed by the Tenement Committee under Annexure-1.

2.11. Learned counsel appearing for the Petitioner vehemently contended that since the tenement in question was allotted in favour of the Petitioner vide letter of allotment dt.24.09.1977 under Annexure-2, as the Petitioner at the relevant point of time was an Industrial Worker and such provisional allotment was made final vide allotment order dt.21.12.1977 under Annexure-3 with delivery of possession vide letter dt.28.12.1977 under Annexure-4, in view of the resolution issued by the Housing and Urban Development Department on 24.06.1987 under Annexure-10. Petitioner became eligible for transfer of the tenement in his favour.

2.12. But without proper appreciation of the nature of allotment made in favour of the Petitioner and the stipulation contained in resolution dt.24.06.1987 under Annexure-10, when the tenement allotted in favour of the Petitioner was cancelled vide order dt.05.10.1990 and the same was allotted in favour private Opp. Party No.5 vide another order issued on 05.01.1990, the matter was carried to this Court in OJC NO.5862 of 1991.

2.13. This Court vide order dt.12.05.1995 while setting aside the order of cancellation directed for restoring the possession of the tenement in favour of the Petitioner. In terms of the said order, Petitioner was handed over with the possession of the tenement on 03.04.1996 as found from Annexure-12 series. However, while complying the direction of this Court so passed in OJC No.5862 of 1991, when the Tenement Committee in its proceeding dt.05.07.2002 under Annexure-16 series cancelled the allotment and accordingly notice of eviction was issued on 16.08.2002 vide Annexure-16 series, Petitioner challenging such decision of the Tenement Committee dt.05.07.2002 and the notice issued on 16.08.2002, approached the appellate authority i.e. the learned District Judge, Cuttack in Misc. Appeal No.131 of 2002.

2.14. Learned District Judge vide his judgment dt.21.02.2005 when dismissed the appeal by confirming the cancellation, Petitioner again approached this Court challenging the cancellation of the allotment and so also the decision of the appellate Court in W.P.(C) No.3274 of 2005. This Court vide order dt.03.01.2018 under Annexure-15 while setting aside the order of cancellation as well as the notice of eviction and the order passed by the appellate Court remitted back the matter to the Tenement Committee for fresh consideration. But without proper appreciation of the

nature of allotment made in favour of the Petitioner and the stipulation contained in the resolution dt.24.06.1987 under Annexure-10, the Tenement Committee once again in the proceeding of the meeting dt.14.12.2020 under Annexure-1 decided to cancel the allotment of the Tenement so made in favour of the Petitioner, which is the subject matter of challenge in the present Writ Petition.

2.15. It is contended that by the time the tenement was allotted in favour of the Petitioner vide Annexures-2 & 3, Petitioner which is not disputed, was an Industrial Worker having been in employment in the establishment of M/s. Orissa Textile and Steel Limited. However, the company i.e. M/s. Orissa Textiles and Steel Limited when was divided into two parts during February, 1982, Petitioner continued in employment in the other establishment i.e. M/s. Kalinga Textile Corporation. But while continuing under M/s. Kalinga Textile Corporation, when the management laid off the Petitioner along with others, such action of the management was challenged by the Petitioner and other workmen before the Industrial Tribunal, Orissa, Bhubaneswar in I.D. Case No.4 of 1986.

2.16. Learned Industrial Tribunal vide its award dt.26.09.1986 so published in the Gazette Extraordinary on 06.11.1986 under Annexure-5, held the action of the Management as illegal and the workmen were held entitled to full wages from the date of lay off i.e. 16.01.1984.

2.17. It is contended that in view of the nature of the employment of the Petitioner under Orissa Textiles and Steel Limited and subsequently in the other firm namely; M/s. Kalinga Textile Corporation, Petitioner remained as an industrial worker all through and in terms of the resolution dt.24.06.1987 under Annexure 10, he became eligible and entitled to get the benefit of transfer of the tenement in his favour. But on the ground that Petitioner is not in continuous possession of the tenement and on the date of issuance of the Resolution he was not an Industrial Worker, the Tenement Committee vide order dt.05.01.1990 cancelled the allotment so made in favour of the Petitioner. Vide another order of the same date, the tenement was allotted in favour of the private Opp. Party No.5. However, such allotment was in favour of Opp. Party No.5 interfered with by this Court vide its order dt.12.05.1995 in OJC No.5862 of 1991.

2.18. On the face of such order passed on 12.05.1995, when the Tenement Committee once again vide its order dt.05.07.2002 took a decision to cancel the allotment and accordingly notice of eviction was issued on 16.08.2002, Petitioner approached the appellate forum, i.e. learned District Judge, Cuttack in Miscellaneous Appeal No.131 of 2002. But the said appeal when was dismissed vide judgment dt.21.02.2005, challenging the order of cancellation dt.05.07.2002 and the judgment dt.21.02.2005, the matter was carried to this Court once again in W.P.(C) No.3274 of 2005. Even though this Court set aside the order dt.05.07.2002 and so also the judgment dt.21.02.2005 vide its order dt.03.01.2018 under Annexure-15 and remitted the matter for a fresh decision, but the Tenement Committee once again

vide the impugned decision dt.14.12.2020, decided to cancel the allotment so made in favour of the Petitioner.

2.19. It is contended that since in terms of the resolution issued by the Government under Annexure-10, Petitioner is entitled for transfer of the tenement in his favour, the decision taken by the Tenement Committee to cancel the allotment in its proceeding dt.14.12.2020 is not sustainable in the eye of law and requires interference of this Court.

2.20. It is also contended that after being given possession in terms of order dt.12.05.1995, Petitioner is continuing in possession over the tenement in question.

3. Ms. Deepali Mohapatra, learned counsel appearing for the contesting Opp. Party No.5 on the other hand made her submission basing on the stand taken in the counter affidavit.

3.1. It is contended that though there is no dispute that the tenement was provisionally allotted in favour of the Petitioner vide order dt.24.09.1977 under Annexure-2 with final allotment made in his favour vide order dt.21.12.1977 under Annexure-3 and such allotment was made in favour of the Petitioner, he being an industrial worker at the relevant point of time having been in employment under M/s. Orissa Textiles and Steel Ltd. But with effect from the year 1980, Opp. Party No.5 who was also an industrial worker working in Orissa Industrial Company, a Government of Orissa undertaking, remained to stay with the Petitioner in the tenement in question.

3.2. It is contended that Orissa Textiles and Steel Ltd. became sick in the year 1982 and the company was closed subsequently. Because of such closure of the company, petitioner left the quarter and went to his native village. However, Opp. Party No.5 remained in possession of the tenement. Since Petitioner left the quarter in the year 1982 and Opp. Party No.5 remained in occupation of the quarter, in terms of the letter issued by the Asst. Labour Officer on 21.07.1989 under Annexure-A/5, a verification was made with regard to occupation of the tenement.

3.3. As per the said inquiry made by the Asst. Labour Officer, report was submitted vide letter dt.29.08.1989 under Annexure-B/5 inter alia holding that Opp. Party No.5 is staying in the tenement since January, 1985. In terms of Annexures-B/5, Opp. Party No.5 was also permitted to deposit the rent of the tenement for the period from January, 1985 to July, 1987 by way of treasury challan which was made on 13.09.1989 under Annexure-C/5.

3.4. It is contended that since on verification, it was found that Petitioner is not in possession of the tenement and Opp. Party No.5 is in possession since January, 1985, Opp. Party No.5 was permitted to pay the rent of the tenement for the period from January, 1985 to July, 1987. Since in the meantime, Government in the Department of Housing and Urban Development vide its resolution dt.24.06.1987 under Annexure-10 decided to transfer the tenement in favour of such industrial

workers and economically weaker sections of the community, taking into account the fact that on the date of issuance of such resolution, Petitioner was not in possession of the tenement and basing on Annexure-B/5, it was proved that Opp. Party No.5 is in possession of the tenement with effect from January, 1985, after accepting the rent vide Annexure C/5 for the period from January, 1985 to July, 1987, allotment made in favour of the Petitioner of the tenement was cancelled vide order dt.05.01.1990 under Annexure-D/5.

3.5. After such cancellation of the allotment, vide another order issued on 05.01.1990 under Annexure E/5, the tenement in question was allotted in favour of Opp. Party No.5. However, such cancellation of the allotment vide order dt.05.01.1990 was interfered with by this Court in its order dt.12.05.1995 in OJC No.5862 of 1991. In terms of the order passed on 12.05.1995, Opp. Party No.5 vacated the quarter on 31.03.1996 and Petitioner was restored back with the possession of the tenement.

3.6. However, while complying the order dt.12.05.1995 and as directed, the Tenement Committee vide its decision dt.05.07.2002 under Annexure-P/5 once again decided to cancel the allotment made in favour of the Petitioner on the ground that on the date of notification of the resolution under Annexure-10 on 24.06.1987, Petitioner was not an industrial worker and he was not in continuous possession over the tenement.

3.7. Such decision of the Tenement Committee dt.05.07.2002 and the notice of eviction issued to the Petitioner on 26.08.2002 was assailed before the Appellate Forum i.e. learned District Judge, Cuttack in Misc. Appeal No.131 of 2002. Learned District Judge vide judgment dt.21.02.2005 when dismissed the appeal, challenging such decision of the appellate Court and so also the decision of the Tenement Committee dt.05.07.2002, Petitioner approached this Court by filing W.P.(C) No.3274 of 2005.

3.8. This Court vide order dt.03.01.2018 though set aside the decision of the Tenement Committee dt.05.07.2002 and so also the judgment passed by the District Judge in the appeal in question, but remitted the matter once again to the Tenement committee to take a fresh decision.

3.9. It is contended that in terms of the order passed by this Court on 03.01.2018, the Tenement Committee for the third time decided to cancel the allotment made in favour of the Petitioner vide its decision dt.14.12.2020 under Annexure-1. Such a decision was taken by the Tenement Committee by giving due opportunity of hearing to the Petitioner as well as to the Present Opp. Party No.5.

3.10. It is contended that such a decision was taken by the Tenement Committee on 14.12.2020 inter alia on the ground that on the date of notification of the Resolution under Annexure-10, since Petitioner was not an industrial worker, in terms of the provisions contained under the Orissa Industrial Housing Act, 1966 and Orissa Industrial Housing Board, 1969, Petitioner became an unauthorized occupier

of the tenement in question. Since in terms of the resolution issued under Annexure-10, the requirement for transfer of the Tenement, is possession of the industrial worker over the tenement, on the date of such notification and admittedly Petitioner as on the date of notification was not in possession of the tenement, the Tenement Committee time and again held the occupation of the Petitioner over the tenement as unauthorized and accordingly cancelled the allotment so made in his favour under Annexures-2 & 3 by making the allotment in favour of Opp. Party No.5.

3.11. Section 6(c) of the Orissa Industrial Housing Act, 1966 reads as follows:

6. Occupation when deemed to be unauthorized-For the poses of this Act a person shall, save as otherwise provided in this Act, be deemed to be in unauthorized occupation of any house.

Xxx xxx xxx

(c) has ceased to be an industrial worker

3.12. Similarly, Rule 12(5)(p) of the Orissa Industrial Housing Rules, 1969 reads as follows:

12. Procedure and conditions of allotment-

5. No house shall be allotted to any worker unless he abides by the following conditions, namely:

(p) The allottee being an industrial worker within the meaning of Section 6(i) of the Act the tenancy shall cease forthwith as soon as he ceases to be an industrial worker:

Provided that where a worker dies while in service or goes on transfer , or retires or resigns, or goes on medical leave or where services are terminated by his employer, the allotment may, with the previous approval of the Housing Commissioner continue up to the period as detailed below:

(i) in the case of death or transfer, a period not exceeding two months;

(ii) in the case of retirement, resignation or termination of service, a period not exceeding one month; and

(iii) in the case of medical or ordinary leave, for the period of leave.

3.13. It is contended that in view of the terms and conditions indicated in resolution dt.24.06.1987 under Annexure-10, Petitioner on the date of publication of such resolution on 06.07.1987 in the Gazettee, was not an Industrial Worker and had ceased to be an Industrial Worker. In view of the provisions contained under Section 6 (c) of the Act read with Rule 12(5) (p) of the Rules, his occupation is to be treated as unauthorized occupation over the tenement. Not only that, basing on Annexure-A/5 when an inquiry was made by the Asst. Labour Officer, he found that the present Opp. Party No.5 is staying in the tenement since January, 1985. Therefore as on the date of issuance of the Resolution on 06.07.1987, Petitioner in terms of Para 3 (a) (i) was not in continuous possession of the tenement.

3.14. Basing on such report of the Asst. Labour Officer dt.29.08.1989 under Annexure-B/5, Opp. Party No.5 was permitted to deposit the rent of the tenement for the period from January, 1985 to July, 1987 which the Opp. Party No.5 made on

13.09.1989 under Annexure-C/5. Petitioner at no point of time has assailed the report submitted under Annexure-B/5 nor the acceptance of rent from Opp. Party No.5 under Annexure-C/5.

3.15. It is accordingly contended that since on the date of publication of the resolution under Annexure-10, Petitioner had ceased to be an industrial worker and he was not in continuous possession in terms of para 3(a)(i) of the Resolution, no illegality or irregularity can be found with the decision of the Tenement Committee so taken on 14.12.2020 under Annexure-1 and the Writ Petition is liable to be dismissed on that count.

4. Learned Addl. Govt. Advocate on the other hand made his submission basing on the stand taken in the counter affidavit so filed by Opp. Party No.2.

4.1. It is contended that though the tenement in question was allotted in favour of the Petitioner vide letter of allotment issued under Annexures-2 & 3, but since Petitioner ceased to be an industrial worker because of closure of the company, in view of the provisions contained under Section 6(c) of the Act and Rule 12(5) (p) of the Rules, Petitioner was found ineligible for transfer of the tenement in his favour in terms of the resolution issued by the Government on 24.06.1987 under Annexure-10.

4.2. It is also contended that as reflected in the resolution dt.24.06.1987 more particularly, para 3(a) (i) of the said resolution for such transfer of the tenement an Industrial worker should be in continuous possession of the tenement allotted to him.

4.3. It is contended that since on inquiry made in terms of Annexure-A/5, Asst. Labour Officer vide Annexure B/5 found that Opp. Party No.5 is staying in the tenement since January, 1985, he was allowed to pay the rent for the period from January, 1985 to July, 1987 under Annexure-C/5. Taking into account the fact that Petitioner is not in continuous possession of the tenement which is a pre-requirement for transfer of the tenement as provided under para 3(a)(i) of the resolution dt.24.06.1987, the Tenement Committee cancelled the allotment made in favour of the Petitioner initially vide order dt.05.01.1990 under Annexure-C/2. Vide another order issued on 05.01.1990 under Annexure-D/2, the tenement was allotted in favour of the present Opp. Party No.5. Petitioner has never assailed the finding of the Enquiry Officer that Petitioner is not in continuous possession of the tenement nor the permission to pay the arrear rent.

4.4. However, when such cancellation of the allotment was interfered with by this Court in its order dt.12.05.1995 in OJC No.5862 of 1991, in terms of the said order, the Tenement Committee by giving due opportunity of hearing to the Petitioner as well as Opp. Party No.5 in its proceeding dt.05.07.2002 under Annexure-B/2, decided to cancel the allotment made in favour of the Petitioner inter alia on the ground that on the date of issuance of the resolution under Annexure10, Petitioner was not in continuous possession of the tenement. In terms of such decision taken by the Tenement Committee on 05.07.2002 under AnnexureB/2 when

notice was issued to the Petitioner vide letter dt.16.08.2002 under Annexure-G/2 to vacate the tenement, Petitioner being aggrieved carried the matter before the learned District Judge, Cuttack in Misc. Appeal No.131 of 2002. However, the said appeal was dismissed by the appellate Court vide judgment dt.21.02.2005.

4.5. Challenging such decision of the Tenement Committee dt.5.07.2002 under Annexure-B/2 and the judgment passed by the learned District Judge, Cuttack on 21.02.2005 in Misc. Appeal No.131 of 2002, Petitioner again approached this Court by filing W.P.(C) No.3274 of 2005. Even though this Court vide order dated 03.01.2018 set aside the decision taken by the Tenement Committee in its proceeding dated 05.07.2002 as well as the order passed by the District Judge, Cuttack in Misc. Appeal No.113 of 2002, but while quashing the decision as well as the judgment, the matter was again remitted to the Tenement Committee to take a fresh decision on the claim of the Petitioner for transfer of the tenement in his favour in terms of Annexure-10 resolution.

4.6. It is contended that on the face of such order passed by this Court on 03.01.2018, the matter was again placed before the Tenement Committee. The Committee by giving due opportunity of hearing to the Petitioner as well as Opp. Party No.5 and on verification of the records found that as on publication of the resolution dated 24.06.1987 under Annexure-10 which is the basic guideline framed by the Government for transfer of the tenement in question in favour of industrial workers, Petitioner is not in continuous possession of the tenement allotted to him. Petitioner was also found ineligible to get the benefit of such resolution as in terms of the provisions contained under Section 6(C) of the Act and Rule (12)(5)(p) of the Rules, Petitioner had ceased to be an Industrial Worker. Since Petitioner ceased to be an industrial worker because of the closure of the company where he was in employment and Petitioner was found not in continuous possession of the tenement allotted to him, Petitioner was found ineligible to get the benefit of Annexure-10 resolution. Accordingly, the impugned decision was taken by the Tenement Committee on 14.12.2020 deciding inter alia to cancel the allotment of the Tenement No. Z-4, Khapurja Industrial Estate, Cuttack so made in favour of the Petitioner.

4.7. It is accordingly contended that since Petitioner ceases to be an industrial worker due to closure of the Company and he was not in continuous possession of the tenement which is a pre-requirement for transfer of the tenement in terms of Annexure-10 resolution, no illegality or irregularity can be found with the impugned decision taken by the Tenement Committee on 14.12.2020 under Annexure-1.

5. Learned counsel appearing for the Petitioner taking account to stand taken in the counter affidavit filed by Opp. Party No.2 and Opp. Party No.5 made further submission basing on the stand taken in the Rejoinder Affidavit.

5.1. It is contended that in terms of the letter of allotment issued in favour of the Petitioner under Annexures- 2 and 3, not only Petitioner used to pay the rent, but

also he has paid the rent for the Period from September, 1985 to May, 1986 on 15.05.1987 vide Annexure-9. Therefore, the stand taken by the Opp. Party that Petitioner is not in possession from January, 1985 as reflected in Annexure-B/5 is not acceptable. Since the Petitioner was the allottee of the tenement in terms of Annexures-2 & 3 and he was in possession of the tenement as on the date of publication of the resolution under Annexure-10, he became eligible and entitled for transfer of tenement in his favour. But by taking a wrong plea that Petitioner was not in continuous possession of the tenement as on the date of notification and he ceases to be an Industrial Worker, the tenement allotted in his favour has been finally cancelled vide order dated 14.12.2020 under Annexure-1. It is accordingly contended that the impugned order passed by the Tenement Committee on 14.12.2020 under Annexure-1 is not sustainable in the eye of law and requires interference of this Court and with a further direction to transfer the tenement in favour of the Petitioner in terms of the Resolution issued under Annexure-10.

6. I have heard Mr. P.K. Satapathy learned counsel appearing for the Petitioner, Mr. P.K. Panda learned Addl. Standing Counsel and Ms. D. Mohapatra learned counsel appearing on behalf of Opp. Party No.5. On the consent of the learned counsel appearing for the parties and with due exchange of the pleadings, the matter was heard at the stage of admission and disposed of by the present judgment.

7. This Court after going through the materials available on record finds that the tenement in question i.e. Industrial Tenement No.Z-4, Khapuria Industrial Estate, Cuttack was allotted in favour of the Petitioner on the ground that the Petitioner at the relevant point of time was an Industrial Worker, having been employed in Orissa Textiles and Steels Ltd. Nayabazar, Cuttack vide provisional Allotment letter issued on 24.09.1977 under Annexure-2 and final allotment order issued on 21.12.1977 under Annexure-3. In terms of Annexures-2 & 3, Petitioner was given possession of the Tenement No.Z-4 on 28.12.1977 vide Annexure-4.

7.1. As found Government in the Housing and Urban Development Department issued the Resolution dated 24.06.1987 under Annexure-10. Such a resolution was issued for the purpose of transfer of tenements constructed under Integrated Subsidized Housing Schemes for Industrial Workers and economically weaker sections of the Community. The said Resolution was published in the Orissa Gazette on 06.07.1987. As per the terms and conditions prescribed in the said resolution, such transfer of the ownership of the tenement free of cost is to be made in favour of bona fide occupants and industrial workers, subject to various conditions and one such condition as prescribed under Para-3 (a)(i) is that the person should be in continuous possession of the tenement allotted to him.

7.2. As found from the record and on enquiry, Assistant Labour Officer, Cuttack vide his letter dated 29.08.1989 under Annexure-B/5, found that Opp. Party No.5 is in possession of a tenement since January 1985. Such an enquiry was made basing on the letter issued on 21.07.1989 under Annexure-A/5. Basing on such report made

by the Asst. Labour Officer on 29.07.1989 under Annexure-D/5, rent for the tenement for the period from January 1985 to July 1987 was accepted from Opp. Party No.5 on 13.09.1989 vide Annexure-C/5. It is also found that basing on such report of the Asst. Labour Officer under Annexure-B/5, since petitioner was found not in continuous possession of the tenement and in terms of the provisions contained under Section 6(C) of the Orissa Industrial Housing Act, 1966 and Rule 12(5)(p) of the Orissa Industrial Housing Rules 1969, Petitioner ceased to be an Industrial Worker, allotment of the tenement so made in his favour was cancelled vide order dated 05.01.1990 under Annexure-E/5. Vide another order issued on 05.01.1990 under Annexure A/5, the tenement was allotted in favour of Opp. Party No.5.

7.3. However, such cancellation of the allotment made in favour of the Petitioner vide order dated 05.01.1990 and subsequent allotment made in favour of Opp. Party No.5 vide order dated 05.1.1990 was interfered with by this Court in its order dated 12.05.1995 in OJC No.5862 of 1991. Even though this Court vide order dated 12.05.1995 set aside the order dated 05.01.1990 and remitted the matter for a fresh decision by the Tenement Committee, but as found in terms of said order, the Tenement Committee once again in its proceeding dated 05.07.2002 under Annexure-B/2 to the Counter Affidavit of Opp. Party No.2, decided to cancel the allotment made in favour of the Petitioner on the ground that in view of the provisions contained under Section 6(C) read with Rule 12(5)(p) of the Rules, Petitioner ceased to be an industrial worker and he is not in continuous possession of the tenement as on date of publication of the Resolution dated 24.06.1987 under Annexure-10. Petitioner's possession over the tenement was not only found unauthorized but also he was not held entitled to get the benefit of Annexure-10, as he was not in continuous possession of the tenement so allotted in his favour.

7.4. Such a decision of the Tenement Committee taken in its proceeding dated 05.07.2002 and subsequent notice issued to the Petitioner on 16.08.2002 to vacate the tenement was assailed by the Petitioner by filing Misc. Appeal No.113 of 2002 before the District Judge, Cuttack. But as found from the record, the said appeal was dismissed vide judgment dated 21.02.2005 under Annexure-16 Series.

7.5. Challenging the decision of the Tenement Committee dtd.05.07.2002 and so also the judgment passed by the Appellate Court on 21.02.2005, Petitioner approached this Court by filing W.P.(C) No.3274 of 2005. This Court vide order dated 03.01.2018 under Annexure-15 though was pleased to set aside the decision of the Tenement Committee dt. 05.07.2002 as well as order passed by the District Judge on 21.02.2005 in Misc. Appeal No.131 of 2002, but while setting aside both the decisions as well as the order, the matter was again remitted to the Tenement Committee to consider the claim of the Petitioner for transfer of the tenement in his favour in terms of Annexure-10.

7.6. But as found, the Tenement Committee taking recourse to the provisions contained under Section-6(C) of the Orissa Industrial Housing Act, 1966 and Rule-12 (5)(p) of the Orissa Industrial Housing Rules, 1969 found the possession of the Petitioner over the tenement as unauthorized as due to closure of the company, where the Petitioner was working, he ceased to be an Industrial Worker from the year 1984. The Tenement Committee also found that in terms of Annexure-10 resolution since the Petitioner in view of the report available under Annexure-A/5 is not in continuous possession of the tenement, he is not eligible to get the benefit of transfer of the tenement in his favour.

7.7. This Court after going through the records finds that in terms of the letter issued under Annexure-A/5 when an enquiry was made by the Asst. Labour Officer, Cuttack, it was found that Petitioner is not in possession of the tenement since January, 1985. In terms of the report of Asst. Labour Officer, permission was given to Opp. Party No.5 to deposit the rent of the tenement from January 1985 to July 1987 and neither the report nor the permission to deposit the rent by Opp. Party No.5 has been assailed by the Petitioner at any point of time.

7.8. In view of such inaction on the part of the Petitioner in not assailing the report submitted by the Asst. Labour Officer under Annexure-B/5 and the permission accorded to Opp. Party No.5 to deposit the rent for the period from January 1985 to July 1987, the stand taken by the Tenement Committee that Petitioner is not in occupation of the tenement and accordingly he is not entitled to get the benefit of Resolution dated 24.06.1987 cannot be found fault with.

7.9. Not only that, in view of the provisions contained under Section 5(6) of the Act and Rule 12(5)(p) of the Rules, since Petitioner ceases to be an Industrial Worker because of closure of the company w.e.f. 16.08.1984 as found from Annexure-5, no fault also can be found with regard to such stand of the Tenement Committee. No document is also on record that the award passed in I.D. Case No. 4 of 1986 was implemented by the employer.

7.10. This Court, in view of the aforesaid analysis, is not inclined to interfere with the decision taken by the Tenement Committee in its proceeding dated 24.12.2020 under Annexure-1 so communicated vide letter dated 30.06.2021.

7.11. This Court accordingly dismiss the Writ Petition. 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 dismissed.

2025 (II) ILR-CUT-569

**Dr. SURENDRANATH MAHAPATRA
V.
STATE OF ODISHA & ORS.**

[W.P.(C) NO. 18094 OF 2019]

06 MAY 2025

[BIRAJA PRASANNA SATAPATHY, J.]

Issue for Consideration

Whether an acquittal based on compromise can be treated as an honorable acquittal.

Headnotes

(A) SERVICE JURISPRUDENCE – Disciplinary Proceeding – Honorable acquittal in criminal case – Opp. Party No. 1 imposed punishment of withholding 10% of monthly pension for a period of ten years and the period of suspension should be treated as such – The contention of the petitioner is that as he was acquitted in the criminal proceeding, the disciplinary proceeding initiated against him on the self-same cause should be dropped – The order of acquittal was passed basing upon the compromise effected between the petitioner and the victim – Whether the acquittal based on compromise can be treated as an honorable acquittal.

Held: No – It is the view of this Court that acquittal of the Petitioner cannot be taken as an honorable acquittal as contended by the learned counsel appearing for the Petitioner and Petitioner accordingly is not eligible and entitled to get the benefit of the order passed by the Apex Court in the case of G.M. Tank and Ram Lal – It is also found from the record that Petitioner when initially was dismissed from his services vide order dtd.14.07.2014 under Annexure-5, challenging the same Petitioner moved the Tribunal in O.A. No. 3087 of 2014 – The Tribunal vide order dtd.24.03.2017 under Annexure-6, while quashing order dtd.14.07.2014 remitted the matter to Opp. Party No. 1 to start the proceeding from the stage of supply of the documents and by affording opportunity of hearing to the Petitioner. (Para 5.2)

(B) WORDS & PHRASES – Honourable Acquittal – Discussed with reference to case laws. (Para 3.16)

Citations Reference

Commissioner of Police, New Delhi & Anr. Vs. Mehar Singh, **Civil Appeal No. 4842 of 2013, disposed of on 02.07.2013**; G.M. Tank Vs. State of

Gujarat & Ors.,(2006) 5 SCC 446; Ram Lal Vs. State of Rajasthan & Ors., (2024) 1 SCC 175 – referred to.

List of Acts

Orissa Civil Services (Classification, Control & Appeal) Rules, 1962; Indian Penal Code, 1860; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Orissa Civil Services (Pension) Rules, 1992; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Keywords

Acquittal based on compromise; Honorable acquittal; Suspension; Disciplinary proceeding.

Case Arising From

Orders dtd.02.05.2018 & 09.01.2020 passed by Opp. Party No. 1.

Appearances for Parties

For Petitioner : Mr. N. Rath

For Opp. Parties : Mr. C.K. Pradhan, A.G.A.

Judgment/Order

Judgment

BIRAJA PRASANNA SATAPATHY, J.

The present writ petition has been filed inter alia challenging order dtd.02.05.2018 so passed by Opp. Party No. 1 under Annexure-16 and further order passed by the self-same Opp. Party No. 1 on 09.01.2020 under Annexure-18.

2. Vide order dtd.02.05.2018 Opp. Party No. 1 while disposing the proceeding so initiated against the Petitioner vide Memorandum dtd.06.12.2011 under Annexure-2, imposed the punishment of withholding of 10% of monthly pension for a period of 10 years. Vide order dtd.09.01.2020 under Annexure-18 the period of suspension from 20.04.2011 to 30.06.2016 was treated as such.

3. Learned counsel appearing for the Petitioner contended that Petitioner while continuing as a Lecturer in Education, DPIASE, Berhampur, he was placed under suspension with immediate effect vide office order dtd.20.04.2011 under Annexure-1. Subsequent thereto, the proceeding under Rule 15 of OCS (CCA) Rules, 1962 (in short Rules) was initiated against the Petitioner vide Memorandum dtd.26.12.2011 under Annexure-2 with the following charges:-

“Dr. S.N. Mohapatra, Reader in Education in D.P.I.A.S.E. Berhampur has committed gross misconduct and injustice to his post and duty abusing his official position during his incumbency as Reader in Education of D.P.I.A.S.E. Berhampur.

1. *Being a teacher, whose profession should be noble in the society has involved himself in an inhumanly nature of work, resulting Attempt of rape to a young Girl of the Institution prosecuting her M. A. Part-I study.*
2. *In order to satisfy his beastly desire, he forced the concerned girl to oblige him physically, to obtain higher marks/percentage in the ensuing examination and even mishandled her, shamelessly touching the secret organs of her body.*
3. *Further, he is not co-operative with the head of the Institution/Co-workers and not even to other students and behaves very hardly/ruthlessly and defies the Instructions of the Head of the Institution a very often.*
4. *Besides, he keeps himself always in a drunken state during the College hours also. He resorts to Gundaism and does not attend to duties properly.*
5. *His habit f of making sexual harassment to the girls students in the institution has been very chronic.*

He is, therefore, charged with.

- a) *Disobedience to the higher authority.*
- b) *Highly irregular in duty and not loyal to the authority.*
- c) *An indisciplined and arrogant employee embarrassing the staffs of own College and students.*
- d) *Irresponsible behaviour with in humanly attitude.*

(UNDER SUSPENSION)

- 1) *He has committed gross misconduct and high injustice to his post and duty.*
- 2) *He has disobeyed the orders of the higher authority.*
- 3) *He has embarrassed his fellow colleagues and students of the Institution making the entire atmosphere poisonous.*
- 4) *He has very irresponsible and irrational behaviour.*
- 5) *He use to exploit Girls students sexually at the cost of their career and mishandles them very inhumanly."*

3.1. Learned counsel appearing for the Petitioner contended that challenging the action of the Petitioner with regard to harassment caused to the girl student, a criminal proceeding was also initiated against him, which culminated in Sessions Case No. 58 of 2012 in the file of learned Sessions Judge-cum-Special Judge, Ganjam, Berhampur in Sessions Case No. 58 of 2012. In the said criminal proceeding Petitioner was acquitted for the offences under Sec. 294/506 of the I.P.C. and Sec. 3(1)(xi) and 3(1)(xii) of the SC & ST (PA) Act, 1989.

3.2. It is contended that since Petitioner in the criminal proceeding so initiated against him was honourably acquitted vide Judgment dtd.22.11.2012 under Annexure-3, on the face of such acquittal in the criminal proceeding, Petitioner could not have been held guilty of the charges in the disciplinary proceeding so initiated vide Memorandum dtd.26.12.2011 under Annexure-2.

3.3. It is also contended that in the proceeding so initiated under Annexure-2, Petitioner was never provided with the documents as provided under Rule 15(3) of the Rules and thereby disentitling him to file his written statement of defence.

3.4. It is contended that since the document basing on which the charges were framed against the Petitioner, were never provided to the Petitioner in spite of several requests, the enquiry could not have been made with submission of the enquiry report under Annexure-4. It is also contended that the enquiry officer who happens to be the Commissioner of Departmental Enquiries & Ex-Officio, Additional Secretary to Govt., G.A. Department though recommended that Petitioner may be censured, but on the face of such opinion of the Enquiry Officer, Petitioner without being provided with the 2nd showcause as provided under rule 15(10)(i)(b) of the Rules when was imposed with the punishment of dismissal from service vide office order dtd.14.07.2014 of Opp. Party No. 1 under Annexure-5, Petitioner challenging the said order approached the Odisha Administrative Tribunal (in short Tribunal) by filing O.A. No. 3087 of 2014.

3.5. It is contended that the Tribunal vide its order dtd.24.03.2017 under Annexure-6 while quashing the order of dismissal passed on 14.07.2014 under Annexure-5, remitted the matter to Opp. Party No. 1 to consider the matter from the stage of supply of documents, affording opportunity of hearing in compliance with the principle of natural justice and to pass appropriate order. Para 15 of the order containing the aforesaid direction reads as follows:-

“15. In view of the above discussion, as the proceeding has not been conducted fairly, the order of punishment of dismissal vide Annexure-15 dtd.04.07.2014 passed by the disciplinary authority is quashed. However, keeping n view the gravity of the charges against the applicant, the matter is remitted back to the respondent No.1/Disciplinary authority with a direction to consider the matter from stage of supply of documents affording opportunity of hearing in compliance with the principle of natural justice and pass appropriate order, within a period of four months from the date of receipt a copy of this order. As the order of dismissal has been quashed, the applicant should be treated under suspension till the date he was due superannuation.”

3.6. It is contended that even though the Tribunal vide order dtd.24.03.2017 under Annexure-6 while remitting the matter to Opp. Party No. 1 directed the said authority to start the proceeding from the stage of supply of the documents, but without providing the documents and to start the proceeding from that stage, vide notice dtd.27.12.2017 Petitioner was issued with the 1st show-cause by enclosing the enquiry report under Annexure-9.

3.7. It is contended that in the meantime basing on the application made by the Petitioner, Petitioner was sanctioned with the provisional pension vide order dtd.20.01.2018 under Annexure-13 w.e.f.01.07.2016 as the Petitioner in the meantime had retired from his service on attaining the age of superannuation w.e.f.30.06.2016.

3.8. It is further contended that since by the time the Tribunal remitted the matter vide order under Annexure-6, Petitioner had already attained the age of superannuation on 30.06.2016, Opp. Party No. 1 while issuing the 2nd show-cause vide letter dtd.16.02.2018 under Annexure-14, proposed the punishment of

withholding of 10% of monthly pension for a period of 10 years in terms of the provisions contained under Rule 7 of OCS (Pension) Rules, 1992 (in short Pension Rules, 1992).

3.9. Learned counsel appearing for the Petitioner contended that Petitioner though gave a reply against the proposed punishment vide his representation dtd.24.02.2018 under Annexure-15, but without proper appreciation of the same, the impugned order of punishment was passed vide office order dtd.02.05.2018 under Annexure-16 with imposition of the punishment of withholding of 10% of monthly pension for a period of 10 years.

3.10. It is also contended that while disposing the proceeding vide order dtd.02.05.2018, no order was passed as to how the period of suspension w.e.f.20.04.2011 till the Petitioner attained the age of superannuation on 30.06.2016 has to be treated.

3.11. However, challenging the order of punishment passed on 02.05.2018 Petitioner when made a further representation before Opp. Party No. 1 on 15.05.2018 under Annexure-17, vide order dtd.09.01.2020 under Annexure-18, the period of suspension w.e.f.20.04.2011 to 30.06.2016 was treated as such.

3.12 It is contended that since while disposing the proceeding vide order dtd.02.05.2018 under Annexure-16, the period of suspension was not taken note of with passing of any order, no further order could have been passed to treat the same as such vide office order dtd.09.01.2020 under Annexure-18.

3.13 It is also contended that with passing of the order dtd.02.05.2018 under Annexure-16, since the proceeding was finally disposed of, Opp. Party No. 1 became functus officio with regard to the said proceeding and no further order could have been passed to treat the period of suspension as such vide order under Annexure-18. It is also contended that since the charges so framed against the Petitioner in the proceeding initiated under Annexure-2, there is no allegation of misappropriation of any amount, withholding of 10% of pension for a period of 10 years so imposed vide the impugned order dtd.02.05.2018 under Annexure-16 is not sustainable in the eye of law.

3.14. In support of such submission, reliance was placed to a decision of this Court dt.12.08.2024, in W.P.C.(O.A.) No. 1314 of 2017. This Court in para 6.1 of the said order has held as follows:-

“6.1. It is also found that even though petitioner after receipt of the 2nd show-cause dated 09.12.2010 under Annexure-10, submitted his reply under Annexure-11, but the proceeding was not disposed of till the petitioner attained the age of superannuation on 31.03.2011. In view of such analysis, this Court is inclined to quash the order of punishment imposed on the petitioner vide order dated 12.05.2015 under Annexure-14 so confirmed vide order dated 04.03.2017 under Annexure-17. While quashing both the orders under Annexure-14 and 17, this Court allows the Writ Petition and directs O.P.

No.1 to release the withheld pension, within a period of 2(two) months from the date of receipt of this order."

3.15. A further contention was also raised that since on self-same issue Petitioner was honorably acquitted by the learned trial court vide its Judgment dtd.22.11.2012 in Sessions Case No. 58 of 2012 under Annexure-3, on the face of such honorable acquittal, Petitioner could not have been imposed with any punishment in the disciplinary proceeding so initiated against him vide Annexure-2.

3.16. In support of the said submission reliance was placed on a decision of the Hon'ble Apex Court in the case of **Commissioner of Police, New Delhi & Anr. Vs. Mehar Singh** (Civil Appeal No. 4842 of 2013) disposed of on 02.07.2013. Hon'ble Apex Court in the case of Mehar Singh in Para 20 & 21 has held as follows:-

"20. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal case and a departmental inquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical namely whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full fledged trial, where there is no indication of the witnesses being won over. In R.P. Kapur v. Union of India (AIR 1964 SC 787) this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

21. The expression 'honourable acquittal' was considered by this Court in S. Samuthiram. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 of the IPC and under Section 4 of the Eve-teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal (1994) 1 SCC 541, where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in departmental proceedings. This Court observed that the expressions 'honourable acquittal', 'acquitted of blame' and 'fully exonerated' are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression 'honourably acquitted'. This Court expressed that when the accused is acquitted after full consideration of prosecution case and the prosecution miserably fails to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted. In light of above, we are of the opinion that since the purpose of departmental B proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the

department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it."

3.17. Reliance was also placed to a decision of the Hon'ble Apex Court in the case of **G.M. Tank Vs. State of Gujarat & Ors.** (2006) 5 SCC 446. Hon'ble Apex Court in the following Para 30 & 31 of the said judgment has held as follows:-

"30. The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In present case criminal and disciplinary proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination concluded that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

3.18. Further reliance was also placed to a decision of the Hon'ble Apex Court in the case of **Ram Lal Vs. State of Rajasthan & Ors.** (2024) 1 SCC 175. Hon'ble Apex Court in Para 13 and 24 to 26 of the said Judgment has held as follows:-

"13. However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the court in judicial review

concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances. The court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts. [See G.M. Tank vs. State of Gujarat & Others, (2006) 5 SCC 446, State Bank of Hyderabad vs. P. Kata Rao, (2008) 15 SCC 657 and S. Samuthiram (supra)]

xxx xxx xxx

24. What is important to notice is that the Appellate Judge has clearly recorded that in the document Exh. P-3 - original marksheet of the 8th standard, the date of birth was clearly shown as 21.04.1972 and the other documents produced by the prosecution were either letters or a duplicate marksheet. No doubt, the Appellate Judge says that it becomes doubtful whether the date of birth was 21.04.1974 and that the accused was entitled to receive its benefit. However, what we are supposed to see is the substance of the judgment. A reading of the entire judgment clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge [See S. Samuthiram (Supra).]

25. Expressions like "benefit of doubt" and "honorably acquitted", used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Ext. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

26. We are satisfied that the findings of the appellate judge in the criminal case clearly indicate that the charge against the appellant was not just, "not proved" - in fact the charge even stood "disproved" by the very prosecution evidence. As held by this Court, a fact is said to be "disproved" when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be "not proved" when it is neither "proved" nor "disproved" [See Vijayee Singh and Others v. State of U.P. (1990) 3 SCC 190]."

3.19. Making all these submissions learned counsel appearing for the Petitioner contended that the impugned order of punishment passed on 02.05.2018 under Annexure-16 and further order passed on 09.01.2020 under Annexure-18 are not sustainable in the eye of law and requires interference of this Court.

3.20. It is also contended that even though Petitioner has retired from his service on attaining the age of superannuation on 30.06.2016, save and except the provisional pension, he has not been released with his pensionary benefits.

4. Mr. C.K. Pradhan, learned Addl. Govt. Advocate on the other hand made his submissions basing on the stand taken in the counter affidavit. It is contended that

taking into account the action of the Petitioner in harassing and molesting a girl student while Petitioner was serving as a Reader in Dibakar Pattnaik Institute of Advanced Studies in Education, Berhampur, Petitioner was placed under suspension vide order dtd.20.04.2011 under Annexure-1 and the departmental proceeding was initiated vide Memorandum dtd.26.12.2011 under Annexure-2.

4.1. Learned State Counsel contended that even though Petitioner was acquitted in the criminal proceeding, but the same cannot be treated as an honorable acquittal, as the said order of acquittal was passed basing on the compromise effected in between the Petitioner and the Victim (P.W. 1). In support of the same reliance was placed to the finding of the learned trial court in Para 6 of the Judgment, which reads as follows:-

“6. It appears from the evidence of P.W. 1 that the matter has been compromised between her and the accused. P.W. 1 did not state anything about the alleged incident in the Court.”

4.2. It is accordingly contended that since Petitioner was acquitted in the criminal proceeding because of the compromise effected in between him and the accused, it cannot be taken that the Petitioner was honorably acquitted in the criminal proceeding. It is also contended that since without following the provisions contained under Rule 15 of the Rules Petitioner was dismissed from his services vide order dtd.14.07.2014 under Annexure-5, the Tribunal while interfering with the said order, remitted the matter to Opp. Party No. 1 for fresh disposal of the proceeding vide order dtd.24.03.2017 under Annexure-6 from the stage of supply of the documents.

4.3. It is contended that in terms of the order passed by the Tribunal though Petitioner was issued with the 1st show-cause to make his representation against the finding of the enquiry report vide notice dtd.10.11.2017 under Annexure-7 and on consideration of the reply to the 1st show-cause vide notice dtd.16.02.2018 under Annexure-14, Petitioner was issued with the 2nd show-cause proposing the punishment to be imposed in terms of Rule 7 of OCS (Pension) Rules, 1992, as Petitioner during pendency of the proceeding retired from his service on 30.06.2016.

4.4. It is further contended that after due consideration of the representation made by the Petitioner against the proposed punishment and after taking the concurrence of OPSC vide letter dtd.13.04.2018, Petitioner was imposed with the punishment of withholding of 10% of monthly pension for a period of 10 years vide order dtd.02.05.2018 under Annexure-16.

4.5. However, since Petitioner from the date of his suspension w.e.f.20.04.2011 remained as such till he attained the age of superannuation on 30.06.2016, vide office order dtd.09.01.2020 the said period was treated as such under Annexure-18. It is accordingly contended that since after remittance of the matter by the Tribunal Petitioner was given due opportunity of hearing with issuance of the 1st and 2nd

show-cause as provided under Rule 15(10)(i)(a) & 15(10)(i)(b) of the Rules, no illegality or irregularity can be found with the impugned order of punishment.

4.6. It is also contended that since while disposing the proceeding vide order dtd.02.05.2018 the period of suspension was not duly dealt with, the same was treated as such vide order dtd.09.01.2020 under Annexure-18. It is also contended that unless and until the period of suspension is regularized, Petitioner will not be eligible to get the benefit of pension and other pensionary benefits.

4.7. A further submission was also made that taking into account the nature of allegation made by the student, an enquiry was conducted against the Petitioner, in terms of the provisions contained under Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013. It is contended that the District Complaint Committee after due enquiry of the matter submitted a report vide Annexure-D/1 with the following finding:-

"The allegation petition was received from the Office of the R.D.C (SD), Berhampur for necessary action. As desired by the Collector, Ganjam, the Complaint Committee started process of necessary enquiry into the petition.

The notices were issued to the concerned persons along with the President, Pramila Devi Mahila Kalyana Sangha to appear before the committee on 08.04.2011 at 11.30 A.M. Miss Snigdha Behera, Student of MED (hereinafter will be called as the victim) and the President, Pramila Devi Mahila Kalyana Sangha were present on that date. Sri Surendranath Mohapatra, Lecturer, D.P. Govt. B.Ed. College, Kanisi (hereafter will be mentioned as the accused) was absent.

The allegation petition in brief is that, Sri S.N.Mohapatra, is a Lecturer in D.P. Govt. B.Ed. College, Kanisi. His wife stays at Cuttack. Many young girls have been exploited by Sri Mohapatra. He is a sex maniac lecturer who misbehaved indecently Miss Snigdha Behera on 20.02.2011 after College hours in his room during the checking of practical notes by gossiping about her family. Miss Behera expressed about such harassment/molestation to her friends and all of them alleged to the Principal. The Principal suggested to remained silent about the incident as it will degrade the reputation of the college. On 26.02.2011, Sri Mohapatra again repeated the same behaviours with Miss Behera in the absence of Principal, for which the FIR was lodged by Miss Behera in Golanthara P.S.

During the enquiry, the victim was interviewed and the deposition was taken from her. As per the deposition, she is a student of M.A. in Education in the distance course. She regularly attends the classes. The teaching classes were from 25th January to February 20th. After the class on 20th February Sir (Sri Mohapatra) called for his signature in the project. At around 1.00 P.M, when she went, Sri Mohapatra asked about the existence of her friends and family, marital status etc. become Then he clarified that, "whether regular or IGNOU students but they became pass only after satisfying 'me every year". "If you will satisfy me once then you will be passed." He caught her hand forcefully and pressed her mouth as if to hug her with a demand to satisfy him once to be passed. While deposing she cried twice and after due consolation the narration of the bad incident was done. The victim expressed all these to Dr. Pratiba Hota (a lady Lecturer of that college) and then to the Principal. The Principal consoled her by telling that, Sri

Mohapatra is such type of person may create problem in future, to remain silent and to help get signature in the project safely.

On 26th when the victim entered the room of Sri Mohapatra with two students, Sri Mohapatra got angry with them and asked the victim to come corrected project papers. When Miss Snigdha entered into the room she saw that, Si Mohapatra was sitting like half naked i.e. with open shirt and half opened pant. He thed molestation, hugged and by beating and pulling the victim even fell down for which her bangle broken. However, she managed to escape from there and narrated to Hota Madam by crying and then to Principal and submitted her written statement about the facts. when the Principal did not accept the written allegation from the victim for which she became bound to lodge FIR and then the Sangha. The victim has deposed that, the atmosphere of that College is such that, anybody can know about the standard. Even, the Room of Sri Mohapatra is so clumsy and there is a bench in front of his table and such type that, he can easily see if someone enters his room but the entered person cannot see him at the first glance.

The deposition of Smt. Pramila Tripathy, the President of the Sangha, was also recorded. As per the deposition, she came to know about the incident when victim brought the matter to her Sangha. She has also examined the scratch mark etc. and she is confirmed about such harassment.

As Sr. Mohapatra was absent, the committee decided to issue notice him once again and, accordingly notice was issued to him through the Principal of the college with a direction to appear before the committee on 13.04.2011. As Sri Mohapatra did not appear before the committee on the scheduled days the committee proceeded to the College on 15.04.2011 and conducted field enquiry and interacted with other official staff of the college for the investigation purpose to enquire into the matter.

The Principal had proceeded to Bhubaneswar for some meeting which was cancelled but the Principal was on the returning way at around 2.40 P.M.

The committee decided to extract the actual light of the matter by way of chatting with the I ncharge Principal and with other staff of the College. During conversation with Dr. Maheswar Panda, I/C Principal-Cum-Reader of D.P.I.A.S.E and Dr Prativa Hota, Lecturer and other staff of the College it was clearly evident that, the allegation is true and the harassment has been happened. Maximum staff supported the truth of the bad incident and indirectly expressed about the harassment of Sri Mohapatra every year. Even, Sri Mohapatra drinks in the College many times. During the spot visit of the Committee, it was found that, the room of Sri Mohapatra (though he has not been officially allotted) is situated after the staff common room in a corner -like place. The room was sealed and, it was found that, Sri Mohapatra was on leave since 27.02.2011, The In-Charge Principal could not clarify about the position of leave, status of leave of Sr. Mohapatra, whether allowed or not.

The committee easily felt about the position of Sri Mohapatra due to his long in that College. Besides, it came to light that, he has been suspended earlier and transferred to Bhanjanagar and again posted here. Some staff expressed their helplessness towards their statements as enquiry after enquiry is being done but no fruitful action is being taken, which might be risky for them, some staff played safe role by avoiding the topic. To the utter surprise, no body protested that, such type of allegation against the College is false. Rather, it was felt from the expressions of the staff that. Sri Mohapatra is an influential man and can create problem in future.

The committee further decided to interview the Principal of the College for which he was noticed to appear before the Committee on 18.04.2011. Sri Gopal Ch. Biswal, Principal was present and the deposition was taken from him.

As per his deposition, the victim told him about the incident on 22.02.2011, that had happened on 20. Sri Mohapatra misbehaved her by pulling her hand and tried to outrage. And then the victim requested the Principal after half an hour not to tell anything to the accused. On 26.02.2011, he saw Sri Mohapatra and Snigdha Behera on the verandah while he was to proceed to Berhampur University with Sri Mohapatra and did not give importance by believing that he will sign her project. But, the Principal also stated that, he asked Sri Mohapatra on 26.02.2011 about the allegation which was denied by him. In the evening, after returning from the University he got notice from the Police Station. Sri Mohapatra proceeded on leave from 27.02.2011 On 04.03.2011 an explanation was sent through a peon but Sri at that time we evidence Mohapatra was not found at his residence. Even he was not available on the address at Cuttack. After highlighting of the issue in Media there is no idea about the whereabouts of Sri Mohapatra.

The Principal admitted about the bad habits of Sri Mohapatra taking liquor in the College as he has heard earlier, as the committee heard from the College. He also admitted that, he was on contact with Sri Mohapatra only twice after that incident. On 18.04.2011, Sri Mohapatra intimated about his joining but the Principal refused. Then, he came to know about the suspension of Sri Mohapatra on 18.4.2011.

From the spot enquiry, from the depositions of the victim, the Principal and the discussion with the employees of the College, the committee came to the conclusion that, the harassment has been happened. The identical deposition, narration and opinions were found during the enquiry from all most all concerned: During the recording of deposition, the Principal hesitated to express clearly about the instant action against the accused. Even, the leave applications were not refused and whether treated as accepted or not could not be cleared. Above all, the accused absconded in the plea of health ground from the very next day of the incident got highlight proves the harassment. No sincere, sympathetic attitude has been noticed towards such harassment which is a matter of shame and great concern.

During the recording of deposition from the victim, the emotional, moral shock seen faced by her was noticed from her burst into tears and she challenged to go to the room of the accused to get the clear picture of opportunity of harassment i.e. there is no space that a girl student can stand far from the accused, in that room. The fact was also confirmed during the discussion with others in the College premise.

Most importantly everybody indirectly admitted about the regular harassment of the students by the accused every year. The matter is a shameful fact in such a pious institution.

Due to the influence of the accused, no body dare to ask about the allegation rather tried to suppress the matter. Rather, everybody is well acquainted about the character of the accused. Even on 26.02.2011 the victim complained by crying which many have witnessed and admitted. The matter of great regret is that, the victim deposed that, the written allegation was entertained. On the contrary, the head of the institution deposed, the victim did not submit any written complaint. The question arises, why the victim was not advised to submit the written allegation on the spot and why immediate action was not taken by the authority without waiting for the media highlight. The matter was

neither taken sympathetically since 22.02.2011 nor considered even on 26.02.2011 humanely.

To the utter surprise, nobody is denying the incident keeping in view of such type of nature, attitude and character of the accused. Though, he has been suspended in the meantime, seems a threat to the career of girl students in that College in future. The harassment is in compensation towards the moral shock faced by the victim."

4.8. It is contended that since the District Level Complaint Committee found the Petitioner to have committed the offence and the Petitioner was acquitted in the criminal proceeding because of the compromise effected in between him and the Victim, decisions rendered by the Hon'ble Apex Court in the case of **G.M. Tank & Ram Lal** as cited (supra) so relied on by the learned counsel appearing for the Petitioner are not applicable to the facts of the present case.

4.9. It is also contended that against such finding of the District Level Complaint Committee, Petitioner never preferred any appeal as provided under the provisions of the 2013 Act. Making all these submissions learned Addl. Govt. Advocate contended that the impugned order has been rightly passed and it requires no interference.

5. Having heard learned counsel appearing for the Parties and considering the submissions made and after going through the material available on record, this Court finds that the Petitioner while continuing as a Lecturer in Education in DPIASE, Berhampur, he was placed under suspension vide order dtd.20.04.2011 of Opp. Party No. 1 under Annexure-1. Thereafter, Petitioner was proceeded with in the departmental proceeding vide Memorandum dtd.26.12.2011 under Annexure-2 so initiated under Rule 15 of the Rules.

5.1. For the alleged action of the Petitioner, a criminal proceeding was also initiated against him, in which he was charged for the offence under Sec. 294/506 of I.P.C. and Sec. 3(1)(xi) and 3(1)(xii) of the SC & ST (PA) Act, 1989. Even though the said proceeding ended in acquittal, but as found from the judgment so available under Annexure-3, Petitioner got the benefit of acquittal, because of the compromise effected in between him and the Victim (P.W. 1).

5.2. Therefore, it is the view of this Court that acquittal of the Petitioner cannot be taken as an honorable acquittal as contended by the learned counsel appearing for the Petitioner and Petitioner accordingly is not eligible and entitled to get the benefit of the order passed by the Apex Court in the case of G.M. Tank and Ram Lal as cited (supra). It is also found from the record that Petitioner when initially was dismissed from his services vide order dtd.14.07.2014 under Annexure-5, challenging the same Petitioner moved the Tribunal in O.A. No. 3087 of 2014. The Tribunal vide order dtd.24.03.2017 under Annexure-6, while quashing order dtd.14.07.2014 remitted the matter to Opp. Party No. 1 to start the proceeding from the stage of supply of the documents and by affording opportunity of hearing to the Petitioner.

5.3. As found from the record, in terms of the said order the proceeding never commenced from the stage of supply of documents and instead Petitioner was issued with the 1st show-cause as provided under Rule 15(10(i)(a) of the Rules vide notice dtd.10.11.2017 under Annexure-7. Since in terms of the order passed by the Tribunal the proceeding never commenced from the stage of supply of documents, it is the view of this Court that the proceeding was not conducted in terms of the order passed by the Tribunal under Annexure-5.

5.4. Not only that, this Court taking into account the report available under Annexure-D/1 so made by the District Level Complaint Committee, is of the view that the proceeding requires a fresh disposal by Opp. Party No. 1 from the stage of supply of the documents so directed by the Tribunal.

5.5. Since after remand of the matter, the proceeding has not been conducted in terms of the order passed by the Tribunal, this Court is inclined to quash order dtd.02.05.2018 so passed by Opp. Party No. 1 under Annexure-16 and order dtd.09.01.2020 so passed by Opp. Party No. 1 under Annexure-18. While quashing both the orders, this Court remits the matter to Opp. Party No. 1 to conclude the same in terms of the order passed by the Tribunal under Annexure-5 and commence the proceeding from the stage of supply of the documents.

5.6. Taking into account the fact that the Petitioner retired since 30.06.2016, this Court directs Opp. Party No. 1 to conclude the proceeding as expeditiously as possible preferably by the end of this year. This Court directs Opp. Party No. 1 to supply the documents to the Petitioner within a period of four (4) weeks from the date of receipt of this order. On such supply of the documents Petitioner will be allowed four (4) weeks time to file his written statement of defence. Opp. Party No. 1 is directed to take up the proceeding after such filing of the written statement of defence and conclude the proceeding by the end of this year as directed. Petitioner is however directed to co-operate with the enquiry and participate in the proceeding at each stage without praying for any time, save and except under compelling circumstances.

5.7. This Court further directs Opp. Party No. 1 to decide the proceeding in accordance with law and will also look into the fact that as to whether against the finding of the District Level Complaint Committee under Annexure-D/1, Petitioner has taken any further step in the matter as provided under the 2013 Act.

6. The writ petition accordingly stands disposed of with the aforesaid observation and direction.

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 (II) ILR-CUT-583

SUNIL KUMAR ROUT
V.
URBAN CO-OPERATIVE BANK LTD., ROURKELA & ORS.

[W.P.(C) NO. 11189 OF 2011]

08 APRIL 2025

[G. SATAPATHY, J.]**Issue for Consideration**

Whether Judicial Review in disciplinary proceeding is permissible.

Headnotes

CONSTITUTION OF INDIA, 1950 – Article 226 – Whether Judicial Review in disciplinary proceeding is permissible.

Held: Yes – It is only in exceptional circumstances, where it is found that the penalty awarded by the Disciplinary Authority is shockingly disproportionate to the misconduct, the Courts may step in and interfere – No doubt the award of penalty which is grossly in excess to the misconduct cannot claim immunity and remains open for the interference under the limited scope for judicial review which is based on the “Doctrine of Proportionality”. (Para 7)

Citations Reference

Union of India and Others Vs. P. Gunasekaran, **(2015) 2 SCC 610**; Union of India and Others Vs. Dalbir Singh, **(2021) 11 SCC 321** – referred to.

List of Acts

Constitution of India, 1950

Keywords

Scope of Judicial Review; Disciplinary Proceeding; Doctrine of Proportionality; Disproportionate to the misconduct; Quantum of penalty.

Case Arising From

Judgment dated 28.12.2010 passed by the Member Co-operative Tribunal, Odisha, Bhubaneswar.

Appearances for Parties

For Petitioner : Mr. T.K. Mishra

For Opp. Parties : Mr. R.N. Mishra (O.Ps.1 & 2)

Judgment/Order**Judgment****G. SATAPATHY, J.**

1. The Petitioner by way of this Writ Petition seeks to challenge the judgment dated 28.12.2010 passed in Service dispute 6 of 2009 under Annexure-7 by which the

member Co-Operative Tribunal, Odisha, Bhubaneswar has allowed the service dispute in part by setting aside the penalty to make good for the loss suffered by the Bank to the tune of Rs.14,92,930/, while confirming it for reversion of the petitioner to the post of Junior Assistant.

2. The factual matrix as delineated is that on 04.03.1991, the Writ Petitioner was initially appointed as Junior Assistant in Urban Co-operative Bank and he was promoted to the post of Senior Assistant in April, 1995 and subsequently promoted to Assistant Manager in December, 1995. After his promotion to Assistant Manager, the Petitioner worked as Branch Manager in different Branches, however, a Departmental Proceeding (DP) bearing D.P. No.1275 dated 06.10.2007 was initiated against him with 11 charges, to which the Petitioner submitted his show-cause, but an Inquiry Officer was appointed paving the way for conducting a Domestic inquiry in which two charges were proved against the Petitioner. Accordingly, the Petitioner submitted his show-cause to the enquiry report, but the disciplinary authority without considering his explanation proceeded to impose final punishment in the DP by reverting him to the rank of Junior Assistant from the grade of Assistant Manager and to make a good for the losses caused by him to the assets of the Bank with interest and cost, failing which his service was directed to be terminated. Accordingly, the loss was assessed at Rs.14,92,930/.

2.1. Being aggrieved, the Petitioner submitted an application to review the order of penalty, but the authority issued a notice to the Petitioner to pay the loss caused to the Bank. Finding no way out, the Petitioner approached the Tribunal against the impugned order passed in the DP, but the Tribunal by the impugned judgment only set aside the penalty for payment of loss caused to the Bank by the Petitioner while confirming his reversion to the post of Junior Assistant. Against such finding of the Tribunal, the Petitioner has approached this Court in this Writ Petition.

3. In the course of hearing Mr. Tushar Kumar Mishra, learned counsel for the Petitioner submits that when the Tribunal has come to a finding that the Petitioner is not liable to pay for the loss caused to the Bank, then as to how he can be found guilty of the charges of negligence and misconduct, but the learned Tribunal ignoring the principle of law has confirmed the penalty of reversion of the Petitioner in the DP which needs to be interfered in this Writ Petition. Accordingly, Mr. Mishra has prayed to allow the writ petition.

3.1. On the other hand, Mr. R.N. Mishra, learned counsel for the OP Nos. 1 and 2 however, has submitted that since the Departmental Proceeding has been conducted properly and no prejudice has been caused to the Petitioner and the finding of the reversion of the Petitioner being upheld by the Tribunal, it could not be proper to interfere with the findings of the Tribunal, but in case the findings of the Tribunal is considered to be perverse, then the proper recourse is to remit the matter back to the Tribunal for fresh adjudication. Accordingly Mr. Mishra, has prayed to pass appropriate order in the matter. Mr. Mishra has also produced the file of Departmental Proceeding at the time of argument.

4. After having carefully bestowed an anxious considerations to the rival submissions, since the Petitioner challenges the concurrent findings of facts and penalty

as recorded in the Disciplinary Proceeding and service dispute case, this Court by reiterating the settled position of law on “scope of judicial review” against the orders passed in Disciplinary Proceeding and confirmed by the Tribunal makes it ample clear that Courts should not interfere in the matter by reappreciating the evidence taken in Disciplinary Proceeding and substitute its own view merely because some other view is possible. Further, the Court shall not disturb the findings of the Disciplinary Authority, unless there is serious miscarriage of justice or such finding has been recorded without any evidence or on the basis of no evidence or the punishment imposed is shockingly disproportionate. What is the scope and ambit of judicial review against the order of Disciplinary authority has been well settled by the Apex Court in paragraph-12 &13 of the decision in **Union of India and others Vs. P. Gunasekaran; (2015) 2 SCC 610**, wherein it has been held thus:-

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*

The aforesaid principle was not only followed, but also has been reiterated by the Apex Court in paragraph-21 in ***Union of India and others Vs. Dalbir Singh; (2021) 11 SCC 321***.

5. Looking at the prayer on the anvil of the principles as settled and noted above, the Petitioner in this case has faced the Departmental Proceeding with 11 charges, but two charges are proved against the petitioner, who was accordingly found guilty of two charges and the Enquiring Officer conclude the following in his report:

(i) *He (petitioner) is negligent in discharging his duties and responsibilities as a Branch Manager;*

(ii) *He (petitioner) has disobeyed the official orders causing deficiency to the assets of the Bank.*

Examining the aforesaid findings of Enquiring Officer which was not only concurred by the Disciplinary Authority, but also was confirmed by the Tribunal, on the backdrop of settled legal principles, this Court on perusal of materials on record does not find anything to conclude that the aforesaid finding was without any evidence or no evidence. In the enquiry report, the findings were arrived at on due discussion of evidence, but the Petitioner has set forth grounds in the writ petition to re-appreciate the evidence by extensively quoting the evidence adduced by the Department, however, scope of judicial review to re-appreciate the evidence adduced in Disciplinary Proceeding is very limited in the writ jurisdiction and that is the reason why the learned Tribunal did not interfere with the findings of the Disciplinary Authority while interfering with the penalty of recovery against the petitioner. It is more than clear that this Court in exercise of extraordinary writ jurisdiction cannot overturn the findings of the Disciplinary Authority by re-appreciating the evidence on record merely because another view is possible and in this case, the Court having not come to conclude that the findings of the Disciplinary Authority being without or no evidence, it cannot interfere with the findings of the Disciplinary Authority. Hence, the challenge of the petitioner with regard to findings of the Disciplinary Authority and confirmed by the Tribunal merits no consideration.

6. Adverting to examine the penalty on pedestal of the principle as to whether it is “shockingly disproportionate”, it appears that the petitioner is not only found negligent, but also found guilty of disobedience, but imposing penalty commensurate to the delinquency is within the domain of the Disciplinary Authority, however, when it is shockingly disproportionate, the Court can definitely interfere with it. In the service dispute case, the learned Tribunal has set aside the penalty of recovery, which was not challenged by the Department, however, the penalty of reversion has been termed by the petitioner to be “shockingly disproportionate”. True it is that the petitioner has been reverted to the original grade, which is two grade below than the grade in which was posted at the time of initiation of Departmental Proceeding and normally in case of reversion, the delinquent employee is down-graded to one grade below which is of course not a universal rule, however, taking into consideration the penalty as imposed on the petitioner reverting him to the post of Junior Assistant, which is base level post, to which originally he had joined. The delinquency of the petitioner as noted by the Enquiring Officer makes it clear that he was negligent and disobedience of official order,

but still then the charge against the petitioner is on the basis of allowing over drawal to some accounts which is stated to be on account of negligence and not in consonance with the orders and circulars of the bank, however, nothing was brought on record to suggest that the petitioner had committed the act of negligence or disobedience of orders with malafide intention and, therefore, the penalty of reversion of the petitioner to his original post which is two grade below the post which the petitioner was holding at the time of initiation of Departmental Proceeding.

7. True it is that no rule or circular has been brought to the knowledge of the Court to indicate that the authority was in fact debarred to impose such a harsh punishment to the petitioner, but at the same time, the authority concerned could have imposed the penalty to revert the petitioner to one grade below which is in fact a major penalty, but not so harsh than the penalty of reversion to two grade. It is trite that Courts while exercising their power of judicial review over the findings of the Disciplinary Authority, do not sit as the Appellate Authority. Decision qua the nature and quantum of the penalty is the prerogative of the Disciplinary Authority and it is not the function of the Court to decide the same. It is only in exceptional circumstance, where it is found that the penalty awarded by the Disciplinary Authority is shockingly disproportionate to the misconduct, the Courts may steps in and interferes. No doubt the award of penalty which is grossly in excess to the misconduct cannot claim immunity and remains open for the interference under the limited scope for judicial review which is based on the “Doctrine of Proportionality”. It is also equally true that the Court cannot impose penalty or substitute penalty in those cases where the penalty is found to be violative on the pedestal of “Doctrine of Proportionality” and in such cases, the only option left to the Court to remit the matter back to the Disciplinary Authority for reconsideration of the penalty. In this case, looking at the gravity of misconduct vis-a-vis the imputation of charges, this Court is of the considered view that the penalty of reversion of the petitioner to the post of Junior Assistant is excessive and disproportionate and thereby, the matter be remitted back to the authority concerned for reconsideration of the penalty of the petitioner. It is, however, open to the authority to impose appropriate penalty on the petitioner in accordance with rule.

8. In the result, the writ petition is allowed in part on contest, but in the circumstance there is no order as to cost. Consequently, the penalty of reversion of the petitioner to the post of Junior Assistant is hereby quashed and matter is remitted back to the authority for reconsideration to award appropriate penalty in accordance with rule.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Writ Petition allowed in part.

2025 (II) ILR-CUT-588

**NIMAI HARICHANDAN PANDA
V.
STATE OF ODISHA & ANR.**

[W.P.(C) NO. 4632 OF 2003]

08 APRIL 2025

[G. SATAPATHY, J.]

Issues for Consideration

1. Whether Court has jurisdiction to interfere in the decision taken by the Government.
2. Whether non-consideration of petitioner's case alike co-employees amounts to violation of Articles 14 & 16 of the Constitution of India.

Headnotes

(A) SERVICE JURISPRUDENCE – Abolition of post – Jurisdiction of Court – Petitioner was working as a tracer in Orissa Lift Irrigation Corporation Ltd (OLIC) – The OLIC vide notification dated 21.05.1986 abolished the Hydrological Division – The Additional Secretary to Govt. vide letter dated 30.12.1995 while addressing to the Managing Director OLIC Ltd., made it clear that the Directorate of GWS & I newly created will be transferred to the administrative control of the Department of Water Resources with effect from 01.01.1996 along with the staff on “as is where is basis” – The Petitioner has not exercised his option within the stipulated date and time – Petitioner challenges the abolition of post of tracer against which he was praying for absorption – Whether the Court has jurisdiction to interfere in the decision taken by the Government.

Held: No – The creation & abolition of posts is a matter of Government policy and every sovereign Government has this power in the interest and necessity of internal administration – It is, however, clarified that unless the creation and abolition of post is actuated with any *mala-fide*, the Court should go slow to interfere in the matter. (Para 5)

(B) CONSTITUTION OF INDIA, 1950 – Article 14 – Negative equality – Petitioner claims to protect his service in the same status in the same department and to direct the Opposite Parties to adjust or absorb him in the directorate of GWS & I w.e.f. 11.10.2007 as allowed to other two co-employees/tracers – Petitioner has neither proved to have exercised any option to come over to GWS & I nor has produced any material as to how these two co-employees have been absorbed subsequently –

Whether non-consideration of petitioner's case alike co-employees amounts to violation of Articles 14 & 16 of the Constitution of India.

Held: No – A litigant coming to the Court cannot claim negative discrimination/equality seeking direction from the Court to the Department to act in violation of the law or statutory Rules – It is a settled proposition of law that Article 14 of the Constitution of India does not envisage negative equality. (Para 8)

Citations Reference

State of Haryana and Others Vrs. Navneet Verma, **AIR 2008 SC 417**; R. Muthukuma Vrs. The Chairman and Managing Director TANGEDCO, **(2022) SCC Online SC 151** – referred to.

List of Acts

Constitution of India, 1950.

Keywords

Government decision/policy; Jurisdiction of the Court; Interference; Creation & abolition of post; Internal administration; Claim of negative equality/discrimination; *Mala-fide*.

Case Arising From

Letter dated 26.10.2022 issued by the Commissioner-cum-Secretary, Government of Odisha, Department of Water Resources.

Appearances for Parties

For Petitioner : Mr. P.K. Das (1)

For Opp. Parties : Mr. A.K. Apat, AGA, Mr. A.K. Panigrahi (O.P. 6)

Judgment/Order

Judgment

G. SATAPATHY, J.

1. The Petitioner by means of this writ petition has invoked the extra ordinary jurisdiction of this Court under Articles 226 & 227 of the Constitution of India with following prayers:-

(i) to adjust him in any other department taking into account his experience;

(ii) to declare the decision taken by the State Cabinet Committee under Annexure-5 as illegal so far as it relates to him;

(iii) to quash the letter dated 26.10.2022 issued by the Commissioner-cum-Secretary, Government of Orissa, Department of Water Resources and the subsequent action of the State Government in abolishing the post of tracer against which he was continuing under Annexure-7;

(iv) to direct OP No.1 to accept the option exercised by him and allow him to join in the Directorate of Ground Water Survey and Investigation(GWS&I) and pass appropriate

order protecting his services in the same status in the same Department or any other sister department of the State Government; and

(v) to direct the Opposite Parties to adjust/absorb in the Directorate of GWS&I under Water Resources Department w.e.f 11.10.2007 as allowed to two co-employees tracers, namely Smt. Manorama Mishra and Smt. Bishnupriya Mishra and pay his retiral dues, EPF contribution from 2002, arrear wages/salary, gratuity, full and final EPF dues, unpaid wages from 21.10.2008 to 31.01.2008 and pensionary benefits within a stipulated period.

2. The Petitioner case in nutshell is that he having acquired the qualification of I.T.I. Draftsman (Civil) was initially joined as Tracer on NMR basis in Orissa Lift Irrigation Corporation Ltd. (OLIC) in the year 1982, but later was appointed as regular tracer and posted at Hydrological Division, Jeypore in the District of Koraput on 28.11.1985. The OLIC vide notification No. 14034 dated 21.05.1986 abolished the Hydrological Division and created a new division called LI Division(West), Kendrapara w.e.f 01.06.1986 and the Petitioner was posted at Kendrapara vide Office order no. 1349 dated 29.05.1986 and subsequently, he was posted as a tracer in LI (KFN) Division, Cuttack and while continuing as such, a gradation list of different cadre including the Tracers working under OLIC was prepared in which the Petitioner's name found place at Serial No. 35. According to the Petitioner, OLIC consisted of two cells, namely Ground Water Survey and Investigation (GWS&I) and Lift Irrigation Corporation Cell, but the Directorate of GWS&I was created in R.D. Department Resolution No. 25469 dated 29.12.1995 and it was transferred to the Administrative Control of the Department of Water Resources w.e.f. 01.01.1996 along with Staffs on "as is where is basis" and the Tracers continued in the OLIC cell were allowed to continue in the said cell as a Corporation Staff, but it was decided, if the number of employees in position is less than the number of sanctioned posts, then the senior most employees in each category may be given the first option to go over to the Directorate of GWS&I, but in case, the employees do not exercise the option, the next junior shall have to join in the directorate and in case, the junior did not join, he may have to be reverted or retrenched. Accordingly, 16 numbers of posts of Tracers were transferred to GWS&I and one post was still vacant. The Petitioner further alleges that the employees after being transferred from OLIC to GWS&I, a gradation list was prepared by the Directorate of GWS&I on 24.12.1998, wherein juniors had been retained in the gradation list ignoring his case as he is senior to most of them and one Jadumani Das who stands at Serial No. 01 in the gradation list having been promoted to the post of Draughtsman created another vacancy in the post of tracers and thereby, vacancy of overall two posts remained to be filled up. While the matter stood thus, on 03.01.1996 the Managing Director(MD), OLIC, Bhubaneswar(OP No.2) asked the Petitioner to exercise option within seven days about his willingness to opt for service in the Directorate of GWS&I and accordingly, the Petitioner exercised his option in time, but the same was not carried out by the Department as his service was essential in the Corporation, notwithstanding to the fact that OP No.2 had sponsored his name to GWS&I and thereafter, the Petitioner made representation to OP No. 1 time and again including his last representation on 12.12.2001, but his case was never considered in adjusting him under Water Resources Department and as a result, his service has been

going to be dispensed with in response to the abolition of post of tracers under OP No.2 which according to the Petitioner is arbitrary and he filed the writ petition to interfere in the matter to quash the decision to abolish the post of tracers depriving him of his legitimate claim. Later on, the Petitioner being permitted to amend the averments in the writ petition has taken another plea that in the meantime, two tracers namely Manorama Mishra and Smt. Bishnupriya Mishra have been absorbed in the Directorate of GWS&I by State Government and they were allowed to join in the directorate on 11.10.2007 and when the Petitioner could know about this, he again applied to the Secretary, Water Resource Department on 11.10.2007 to consider his case, but in vain. However, these aforesaid two tracers without exercising option in time were found to have absorbed in the Directorate of GWS&I and thereby, the authority concerned has clearly discriminated the Petitioner and thereby, they are guilty of violation of Articles 14 & 16 of the Constitution of India. This is the basis of claim of the petitioner to the relief sought for.

It is to be noted here that the Petitioner by virtue of the status quo order of this Court passed on 16.05.2003 continued in the department till his superannuation from service on attaining age of 60 years on 31.01.2018.

3. In response to the notice of the writ, OP No.2 filed its counter affidavit stating inter-alia that the newly created GWS&I started functioning w.e.f 01.01.1996 and all its employees are declared as Government employees, whereas the Directorate of Lift Irrigation is under the control of Managing Director which remained as a Corporate Body and at the time of creation of the Directorate, the Rural Development Department, Government of Orissa had invited option from the senior most employees in different cadres for filling up the posts vacant prior to 01.01.1996 asking the staff existing in Ground Water Divisions of OLIC on “as is where is basis”, but the Petitioner has not exercised his option within the stipulated date and accordingly, the transfer of the employees to the newly created Directorate was made “as is where is basis” and a gradation list was prepared of the existing employees in the cadre of tracers by GWS&I and thereby, OLIC has nothing to do with such gradation list of GWS&I. It is further stated in the counter affidavit that taking into account the severe financial crisis and the decision taken by the State Cabinet Committee, the Government of Orissa feeling the necessity to down size OLIC had dispensed with 7341 posts including 39 posts of tracers in the process of restructuring in the Corporation and in the process, all the posts of tracers were found surplus and decided to be abolished and all the available tracers including the service of the Petitioner was to be dispensed with by offering VRS/VSS and the Petitioner had accordingly applied for VRS and the same was accepted by the Competent Authority. OP No.2 after being permitted to file second additional affidavit has stated therein that due to subsequent development of transfer of L.I. points to Pani Panchayats, the work of the Corporation reduced considerably and the Cabinet decided to dispense with 7341 number of employees from the corporation in the process of restructuring on the principle of “last come first go” and the Petitioner being opted for VRS was giving such VRS w.e.f 31.05.2003, but subsequently, the Petitioner refused to receive the benefit of VRS and continued on interim order of the Court and since the

State Cabinet has decided to abolish the post of tracers from the Corporation, the post of tracers has become zero category and the claim of the Petitioner, therefore, is not acceptable.

4. In the course of hearing, Mr. Pradeep Kumar Das(1), learned counsel for the Petitioner has submitted that although the Petitioner has duly exercised his option within time, but the authority concerned has never adjusted the Petitioner in any department by taking into account his experience and even if two posts were lying vacant in GWS&I, the Petitioner was never absorbed against any such vacant post of tracers and thereby denied the Petitioner of his legitimate claim on one or some other pretext, like the Petitioner application for VRS has already been accepted, but fact remains that the Petitioner although has applied for VRS, but subsequently, refused to accept the VRS and unless an employee is relieved of his duty after acceptance of his request for VRS, the jural relationship of the employees and employer does not come to an end and in this case, the Petitioner's service was protected by way of an interim order which has been passed in the writ petition on 16.05.2003, the Petitioner cannot be said to have been given VRS. It is further submitted by Mr. Das that since two of the co-employees being junior to the Petitioner having been allowed and absorbed in GWS&I and post having already lying vacant at the time of the application of the Petitioner, he should have been adjusted in such post and, therefore, the action of the authority being not in consonance with right to equality, the Petitioner may kindly be adjusted nominally in any post since he has already superannuated in the meantime to regularize his service with payment of retiral dues. Accordingly, Mr. Das has prayed to allow the writ petition.

4.1. On the contrary, Mr. A.K. Panigrahi, learned counsel for the OP No.2 has, however, submitted that since the Petitioner has not exercised any option, his claim for adjustment in any post subsequently cannot have the basis to adjust him either in any post or in the post of tracers and the Petitioner having applied for VRS, he is estopped to claim any substantive post. Accordingly, Mr. Panigrahi has prayed to dismiss the writ petition. On the other hand, Mr. A.K. Apat, learned Additional Government Advocate echoing the aforesaid submission as advanced for OP No.2 has submitted that the claim of the Petitioner has no basis and thereby, the writ petition merits no consideration.

5. After having considered the rival submissions upon perusal of record, since the Petitioner has made a number of prayers, but this Court before taking other prayers into account, now confines itself to the prayer with regard to the decision taken by the State Cabinet Committee and the letter dated 26.10.2002 issued by Commissioner-cum-Secretary, Government of Orissa and the action of the Government in abolishing the post of tracers jointly. It is, however, claimed by the Petitioner in his prayer that the decision of State Cabinet Committee under Annexure-5 issued by OPs as illegal so far as the Petitioner is concerned, but fact remains that Annexure-5 is a letter issued by Directorate GWS&I to all tracers enclosing a copy of tentative gradation list of tracers. Be that as it may, the decision of the State Cabinet Committee and consequent letter issued by Commissioner-cum-Secretary dated 26.10.2002 under Annexure-7 reveals an issue regarding taking decision to dispense with 7341 numbers of employees from OLIC in the process of restructuring of Corporation. Accordingly, it is an admitted fact that the

Government has taken decisions to dispense with 7341 post including 39 posts of tracers in the Corporation as revealed from the counter affidavit of OP No.2, but it is, however, very clear that the Government has power to create or abolish a post and whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative requirement. The creation & abolition of posts is a matter of Government policy and every sovereign Government has this power in the interest and necessity of internal administration. It is, however, clarified that unless the creation and abolition of post is actuated with any mala-fide, the Court should go slow to interfere in the matter. In this regard, this Court considers it useful to refer to the decision in ***State of Haryana and Others Vrs. Navneet Verma; AIR 2008 SC 417***, wherein at paragraph-11, the Apex Court has held as under:-

“11. We summarized the power of Government in abolishing a post and the role of the Court for interference:

(a) the power to create or abolish a post rests with the Government;

(b) whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity;

(c) creation and abolition of posts is a matter of Government policy and every sovereign Government has this power in the interest and necessity of internal administration;

d) creation, continuance, and abolition of posts are all decided by the Government in the interest of administration and general public;

(e) the court would be the least competent in the face of scanty material to decide whether the government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fide, legal or factual;

(f) as long as the decision to abolish the post is taken in good faith in the absence of material, interference by the court is not warranted.”

6. In the aforesaid backdrop of facts and the principle culled out by the Apex Court in the decision referred to above, this Court does not find any *mala-fide* with the decision of the Government to abolish the post in the process of restructuring and that decision having been taken in the year 2002, this Court does not feel it proper to interfere with such decision after twenty three years, when it is not established by the Petitioner that the decision to abolish the post is not taken in good faith.

7. In coming back to address, the plea of the Petitioner to adjust him in any other department taking his experience into account, it needs to be emphasized here that the Additional Secretary to Government by letter dated 30.12.1995 addressed to the Managing Director, OLIC Ltd., Bhubaneswar under Annexure-3 has made it clear that the Directorate of GWS&I newly created will stand transferred to the administrative control of Department of Water Resources w.e.f 01.01.1996 along with the staffs on “as is where is basis” and if the number of employees in position is less than the number of sanctioned posts, then the senior most employees in each of the categories may be given the first option to go over to the aforesaid Directorate and in case, they do not exercise the option, the junior most shall have to join in the directorate and if they do not join, they may have to be reverted/retrrenched. It is not disputed that the Petitioner was given with the option to come over to the Directorate of GWS&I vide Annexure-6 on

03.01.1996, but although the Petitioner claims to have exercised option within the time stipulated in Annexure-6, however, the OP claims that the Petitioner has never exercised such option. It is a matter of fact that the Petitioner has not produced any material or document to indicate that he had exercised such option within the stipulated time. The Petitioner only produces Annexure-8 in support of his claim to have exercised option, but Annexure-8 never discloses it to have been given by the Petitioner within seven days of issuance of Annexure-6 which was in fact issued according to the Petitioner on 03.01.1996, but in Annexure-8 the date "12.12.2001" has been super scribed under the signature of the Petitioner. Further, Annexure-8 does not reveal to have been given before 10.01.1996, even if it is to be considered that the option was invited from the Petitioner on 03.01.1996. It is, therefore, clear that the Petitioner could not establish to have exercised valid option to express his intention to come over to GWS&I. It is also admitted by the Petitioner to have applied for VRS, but contends that since he was not relieved of the duty, the VRS could not be said to have been completed, however, the application for VRS by the petitioner itself is indicative of his desire not to continue in service which supports the plea of OP that the petitioner had not given option to come to the Directorate of GWS&I. On the other hand, Annexure-3 clarifies that if the senior most employees do not exercise the option, the junior most shall have to join in the directorate and, therefore, when the Petitioner has not proved to have exercised option and junior to him must have been asked to join, otherwise the junior most has to be retrenched or reverted and, therefore, such post might have been filled up. In the circumstance, especially when the Petitioner has failed to exercise the option or proved to have exercised option and his service being remained in Corporation, but the corporation, by virtue of the State Cabinet decision having abolished the post of tracers in the process of restructuring, the Petitioner cannot claim as a matter of right for his absorption in any other department inasmuch as the situation itself speaks in volume against the petitioner for not being able to have exercised valid option within stipulated time and he has no vested right to claim for absorption in any other department. Further, the petitioner having not accepted the VRS despite applying for it and having continued in the service by way of an interim order, this Court in the aforesaid backdrop and situation cannot direct the OP No.1 to accept the option exercised by the Petitioner subsequently and allow him to join in the directorate of GWS&I.

8. Adverting to the claim of the Petitioner to protect his service in the same status in the same department and to direct the Opposite Parties to adjust or absorb him in the directorate of GWS&I w.e.f 11.10.2007 as allowed to two co-employees tracers Smt. Manorama Mishra and Smt. Bishnupriya Mishra, it appears that neither the Petitioner has proved to have exercised any option to come over to GWS&I nor has produced any material as to how these two co-employees have been absorbed subsequently. It appears that OP No.2 in his reply affidavit has made it clear that after careful consideration of five representations received from the surplus tracers of OLIC Ltd. and the information provided by OLIC Ltd. regarding the list of tracers continuing in OLIC Ltd. without availing VRS, the senior most two applicants namely Smt. Manorama Mishra and Smt. Bishnupriya Mishra were allowed to be absorbed in the directorate of GWS&I against the vacant post of tracers. In the context, two things emerges, firstly; the Petitioner has

not proved to have exercised his option to come over to the GWS&I at the earliest and he had applied for VRS, but on the other hand, it is not clarified as to whether these two Petitioners had not given option when it was called for, however, had the two employees given their option prior to the Petitioner, such appointments could not be considered discriminatory or violative of Articles 14 & 16 of the Constitution of India. Be that as it may, for a moment accepting, but not admitting the claim of the petitioner for the appointments of these two co-employees in GWS&I to be discriminatory and in violation of Articles 14 of the Constitution of India, suffice it to say that this Court cannot put a stamp of approval on the illegalities committed by the Department while appointing these two employees. A litigant coming to the Court cannot claim negative discrimination/equality seeking direction from the Court to the Department to act in violation of the law or statutory Rules. It is a settled proposition of law that Article 14 of the Constitution of India does not envisage negative equality. In this context, this Court considers it useful to refer to the decision in **R. Muthukuma Vrs. The Chairman and Managing Director TANGEDCO; (2022) SCC Online SC 151**, wherein at Paragraph-28, the Apex Court has held as under:-

“28. A principles, axiomatic in this Country’s constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or being relied upon as a principle of parity or equality.

In Basawaraj Vrs. Special Land Acquisition officer; (2013) 14 SCC 81, the Apex Court at Paragraph-8 has held that it is settled legal position that Article 14 of the Constitution of India is not meant to perpetuate illegality or fraud, even by extending the wrong decision made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit in advertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in earlier case, it cannot be perpetuated.”

9. From a careful conspectus of discussions made hereinabove and taking into consideration the principles that has been referred to in the decisions noted above and considering the prayer as advanced by the Petitioner who has already superannuated in the meanwhile, this Court does not consider it proper to accede to the prayer of the Petitioner to direct the OPs to absorb him in GWS&I or any other department and the Petitioner having not been able to establish to have exercised the option at the time of creation of GWS&I, he cannot subsequently directed to be absorbed in said department or any other department and further the abolition to the post being the policy decision of Government, this Court does not consider it proper to interfere with such decision of the Government. Accordingly, the claim of the Petitioner in this Writ petition being not within the legal frame work, the Writ Petition merits no consideration.

10. In the result, the Writ Petition 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:

Writ Petition dismissed.

2025 (II) ILR-CUT-596

RASHMI RANJAN BHOL @ SILU
V.
STATE OF ODISHA

[BLAPL NO. 848 OF 2025]

24 APRIL 2025

[G. SATAPATHY, J.]**Issue for Consideration**

Whether bail should be granted to the petitioner in an offence under the Narcotic Drugs and Psychotropic Substances Act (NDPS Act) while Court does not find any reasonable ground for believing that the petitioner is not guilty of such offence and he is unlikely to commit any offence while on bail.

Headnotes

BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 483 r/w Section 37 of NDPS Act – There is allegation against the Petitioner for possessing 1238 grams of Brown Sugar – After going through the evidence of the witnesses vis-à-vis the material placed on record, Court does not believe that the accused/ petitioner is not guilty of such offence – Whether bail should be granted to the petitioner in an offence under the NDPS Act while Court does not find any reasonable ground for believing that the petitioner is not guilty of such offence and he is unlikely to commit any offence while on bail.

Held: No – The Petitioner having not satisfied the conditions of Section 37 of NDPS Act, this Court is not inclined to grant bail to the Petitioner. (Para-5)

Citations Reference

Narcotic Control Bureau Vrs. Kashif, **(2024) SCC Online SC 3848**; Narcotic Control Bureau Vrs. Mohit Agarwal; **(2022) 18 SCC 374 – referred to.**

List of Acts

Narcotic Drugs and Psychotropic Substances Act, 1985.

Keywords

Bail; Offence under NDPS Act; Conditions under Section 37 of NDPS Act.

Case Arising From

STF(CID-CB) P.S. Case No.12 of 2022 corresponding to TR Case No.206 of 2022 pending in the file of learned 3rd Additional Sessions Judge, Bhubaneswar.

Appearances for Parties

For Petitioner : Mr. Bishnu Prasad Pradhan
For Opp. Party : Mr. A.K. Apat, Addl. PP

Judgment/Order**Judgment**

G. SATAPATHY, J.

1. This is the 5th bail application U/S.483 of BNSS by the petitioner for grant of bail in connection with STF(CID-CB) PS Case No.12 of 2022 corresponding to TR Case No.206 of 2022 pending in the file of learned 3rd Additional Sessions Judge, Bhubaneswar, for commission of offences punishable under Sections 21(C)/29 of the NDPS Act, on the main allegation of receiving a consignment of Brown Sugar weighing 1238 Grams from the co-accused Kapildev Majumdar.

2. Heard Mr. Bishnu Prasad Pradhan, learned counsel for the Petitioner and Mr. A.K. Apat, learned Additional Public Prosecutor in the matter and perused the record.

3. No doubt Mr. Pradhan, however, by taking this Court through its earlier order passed on 10.07.2024 submits that although this Court intends for early disposal of the case, but the trial in this case is yet to be concluded and, therefore, the Petitioner may kindly be granted bail, but trial has already been commenced with examination of four witnesses in the meanwhile. Notably, there is allegation against the Petitioner for possessing 1238 grams of Brown Sugar which is coming under commercial quantity and thereby, the petitioner is required to satisfy the conditions of Sec. 37 of NDPS Act. In the aforesaid circumstance of allegations against the Petitioner and ongoing though the evidence of the witnesses vis-à-vis the materials placed on record, this Court does not find any reasonable ground for believing that the accused-Petitioner is not guilty of such offence and he is unlikely to commit any offence while on bail, which is mandate of Section 37 of NDPS Act. In this context, this Court considers it useful to refer to the decision in **Narcotic Control Bureau Vrs. Kashif;(2024) SCC Online SC 3848**, wherein the Apex Court in Paragraph No.8 has been pleased to hold as under:

COMPLIANCE OF THE MANDATE UNDER SECTION 37:

*“8. There has been consistent and persistent view of this Court that **in the NDPS cases, where the offence is punishable with minimum sentence of ten years, the accused shall generally be not released on bail. Negation of bail is the rule and its grant is an exception.** While considering the application for bail, the court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature.*

The recording of finding as mandated in Section 37 is a sine qua non for granting bail to the accused involved in the offences under the said Act. Apart from the granting opportunity of hearing to the Public Prosecutor, the other two conditions i.e., (i) the satisfaction of the court that there are reasonable grounds for believing that the accused

is not guilty of the alleged offence and that (ii) he is not likely to commit any offence while on bail, are the cumulative and not alternative conditions.

4. In the context to submissions of the Petitioner with regard to the delay in disposal of the case, this Court considers it proper to refer to a recent decision of the Apex Court in ***Narcotic Control Bureau Vrs. Mohit Agarwal; (2022) 18 SCC 374***, wherein the Apex Court by considering its earlier judgment on the compliance of Section 37 of NDPS Act has held as under:-

"The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act."

Further, in ***Kashif*** (supra) the Apex Court has summarized its conclusion in Paragraph No. 39 and some of such conclusions which are relevant for the purpose of adjudication of this bail application are extracted as under:-

"39.(i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

xx xx xxx xxx xxx

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act."

5. In view of the aforesaid facts and circumstance and following the law laid down by the Apex Court in the decisions referred to above and applying the principle as culled out by the Apex Court in these decisions to the facts of this case and the Petitioner having not satisfied the conditions of Sec. 37 of NDPS Act, this Court is not inclined to grant bail to the Petitioner.

Hence, the bail application of the petitioner stands rejected.

6. Accordingly, the BLAPL stands disposed of.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

BLAPL disposed of.

2025 (II) ILR-CUT-599

**LAKSHMAN SRINIVASAN
V.
REPUBLIC OF INDIA (CBI)**

[CRLREV NO. 660 OF 2024]

10 APRIL 2025

[SIBO SANKAR MISHRA, J.]

Issue for Consideration

Whether Court has power to order release of seized property to its lawful owner.

Headnotes

CODE OF CRIMINAL PROCEDURE, 1973 – Sections 451 & 457 – Release of seized currency – In the present case during search an amount of ₹15.00/- lakh was seized from the cupboard of office chamber of the petitioner – Whether Court has power to order release of seized property to its lawful owner.

Held: Yes – By implementing the structured guidelines, courts and law enforcement agencies can ensure that seized property is managed in a manner that is efficient, legally sound, and beneficial to both the justice system and society at large – The Registry of this Court is advised to transmit a copy of this judgment to all District Courts, Special Courts, and other subordinate courts – Additionally, copies may also be forwarded to the Director General of Police, Odisha Police Headquarters, and all other law enforcement agencies, including the State Vigilance Directorate, Excise Department, Forest Department, and other investigating agencies, for the purpose of guidance. (Para 12)

Citations Reference

Sunderbhai Ambalal Desai v. State of Gujarat, (2002) 10 SCC 283; Manjit Singh v. State, 2014 SCC OnLine Del 4652; Subrata Chattoraj v. Union of India, (2014) 8 SCC 768; Santosh Kumar Tripathy Vs. State of Odisha, CRLMC No. 2631 of 2023, High Court of Orissa, Cuttack – referred to.

List of Acts

Code of Criminal Procedure, 1973; Narcotic Drugs and Psychotropic Substances Act, 1985.

Keywords

Seizure of property/cash; Release of seized property; Return of seized property; Panchnama; Photography; Videography; Undertaking of compliance.

Case Arising From

Order dated 14.08.2024 passed by the learned Special Judge (CBI), Court No.1 -cum-Additional Sessions Judge, Bhubaneswar in CrI. Misc Case No. 32 of 2024 arising out of T.R. No.03 of 2023 corresponding to CBI/SCB/Kol P.S. Case No.RC.30/S/2014-Kol dated 05.06.2014.

Appearances for Parties

For Petitioner : Mr. Debashis Sinha

For Opp. Party : Mr. Sarthak Nayak, Special P.P.-cum-Retainer Counsel (CBI)

Judgment/Order**Judgment**

S.S. MISHRA, J.

The present Criminal Revision Petition is filed by the petitioner under Section 397 read with Section 401 of the Cr.P.C, 1973, [Corresponding provision-Section 442 read with Section 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023], assailing the order dated 14.08.2024 passed by the learned Special Judge (CBI), Court No.1 -cum- the Additional Sessions Judge, Bhubaneswar in CrI. Misc Case No.32 of 2024 arising out of T.R. No.03 of 2023 corresponding to CBI/SCB/Kol P.S. Case No.RC.30/S/2014-Kol dated 05.06.2014 rejecting the application filed by the petitioner U/s. 451 read with Section 457 of Cr.P.C, 1973 seeking release of cash seized by the CBI; during investigation.

2. The learned Special Judge (CBI) – Court No.1-cum- The Additional Sessions Judge, Bhubaneswar, rejected the application of the petitioner seeking release of Rupees Fifteen Lakhs which was seized by CBI by the impugned order. It will be apposite to reproduce the operative part of the impugned order which reads as under:

“...The cash of Rs.15 lakhs seized from the office chamber of the accused-petitioner during search is not properly accounted for by him. The source of the seized cash is not clear as to whether it is legal or illegal from the averments of the petition and submissions made on behalf of the petitioner.

5. Considering the facts and circumstances of the case, nature of allegation and gravity of the offence as well as improper keeping of huge unaccounted money in shape of cash I am not inclined to allow the petition filed by the petitioner to release the cash of Rs. 15 lakhs in his favour...”

Aggrieved by such finding of the court below, the present Revision Petition has been preferred by the petitioner.

3. Heard, Mr. Debashis Sinha, learned Counsel for the petitioner and Mr. Sarthak Nayak, learned Special P.P. -Cum- Retainer Counsel (CBI) for the opposite party.

4. The present petitioner who is an accused in this case, is alleged to have been involved in an illegal money collusion fraud through M/s Infinity Realcon Ltd. by operating various investment schemes without obtaining the requisite statutory approval from the Reserve Bank of India. Following his arrest on 26th September 2022, officials of the Central Bureau of Investigation (CBI) conducted searches on the same day at multiple locations, including the office of M/s. Finshore Management Services Ltd. at Anand Lok Building, 227, A.J.C. Bose Road, Kolkata –700020, his previous residence at Tolly Apartments and Golf Towers, and his present residence during the late hours of that night. During the search, an amount of ₹15.00 lakh cash was seized from the cupboard of his chamber/exclusive room at Anand Lok Building, 227, A.J.C. Bose Road. Subsequently, the accused petitioner was granted bail by the Hon'ble Supreme Court vide order dated 03.10.2023 in SLP No. 9318/2023.

5. Mr. Sinha, the learned counsel for the petitioner while justifying the source of the cash contended that out of the total amount seized, ₹4.50 lakh was withdrawn from the petitioner's and his spouse's bank accounts, while ₹4 lakh was received as a loan from a professional friend, who is a family to him. Additionally, a portion of the amount comprised the petitioner's mother's widow pension of ₹30,000 per month, which had been accumulated over a long period, along with gifts received from various relatives. It is further submitted that the petitioner's mother had entrusted him with these funds for medical and other emergency and family expenses. The amount was kept in the office, because several hospitals are situated in the vicinity, allowing for immediate access in case of emergencies.

6. Learned counsel for the petitioner further submits that the present petitioner is the rightful custodian of the money seized and for that the money should be accordingly released and given back to the petitioner. While contending this, the learned counsel places reliance on Section 451 read with Section 457 of Cr.P.C., 1973. For ready reference, the said provisions are reproduced as under: -

“451. Order for custody and disposal of property pending trial in certain cases.

When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation. - For the purposes of this section, "property" includes –

(a) property of any kind or document which is produced before the Court or which is in its custody;

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.”

“457. Procedure by police upon seizure of property.

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.”

Further, he has relied upon the following passage from the judgment of Hon’ble Apex Court in **Sunderbhai Ambalal Desai v. State of Gujarat**¹:

“5. Section 451 clearly empowers the court to pass appropriate orders with regard to such property, such as:

(1) for the proper custody pending conclusion of the inquiry or trial;

(2) to order it to be sold or otherwise disposed of, after recording such evidence as it thinks necessary;

(3) if the property is subject to speedy and natural decay, to dispose of the same.

7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. court or the police would not be required to keep the article in safe custody;

3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

8. The question of proper custody of the seized article is raised in a number of matters. In *Basavva Kom Dyamangouda Patil v. State of Mysore* [(1977) 4 SCC 358 : 1977 SCC (Cri) 598] this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a

trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under: (SCC p. 361, para 4)

“4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the court or should be in its custody. The object of the Code seems to be that any property which is in the control of the court either directly or indirectly should be disposed of by the court and a just and proper order should be passed by the court regarding its disposal. In a criminal case, the police always acts under the direct control of the court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the court exercises an overall control on the actions of the police officers in every case where it has taken cognizance.”

Learned counsel for the petitioner in addition to this also placed reliance on the judgement of the High Court of Delhi in the case of **Manjit Singh v. State²**,

“65. The currency notes seized by the police may be released to the person who, in the opinion of the Court, is lawfully entitled to claim after preparing detailed panchnama of the currency notes with their numbers or denomination; taking photographs of the currency notes; and taking a security bond.

66. The photographs of such currency notes should be attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over and memo of the proceedings be prepared which must be signed by the parties and witnesses.

67. The production of the currency notes during the course of the trial should not be insisted upon and the releasee should be permitted to use the currency.”

Learned counsel relying on the aforesaid judgments contended that the petitioner is entitled to the release of the seized money as its rightful custodian. He submitted that the Hon'ble Supreme Court, in the case of **Sunderbhai Ambalal Desai v. State of Gujarat** (supra) has emphasized that property seized by the police should not be retained unnecessarily and must be released to the rightful owner at the earliest. He has further contended that under Sections 451 and 457 of Cr.P.C.,

1973, the court has the power to order the return of seized property to its lawful owner, subject to appropriate safeguards.

Additionally, the learned counsel draws the court's attention to the judgment of the High Court of Delhi in the case of **Manjit Singh v. State** (supra) which lays down specific guidelines regarding the release of seized currency notes in the course of investigation and while pending trial. He argued that as per the principles enunciated in the said case, the seized amount may be returned to the petitioner after proper documentation, including a detailed panchnama, photographing of the currency notes, and obtaining a security bond.

7. However, on the contrary, Mr. Nayak, learned Special P.P. -Cum- Retainer Counsel(CBI) for the opposite party vehemently opposed the contentions of the petitioner's counsel and submitted that the afore- said judgements would only be applicable in the case when the person is lawfully entitled to such currency notes and relied on the order of the Trial Court which state that the seized amount was properly not accounted for by the accused-petitioner and the source of seized cash was not clear as to whether the same was legal or illegal.

8. In addition to this, Mr. Nayak, learned Special P.P. -Cum- Retainer Counsel(CBI) for the opposite party submitted that the present case against the accused petitioner was registered pursuant to the Hon'ble Supreme Court's orders in WP(C) No. 401 of 2013 and WP(C) No. 413 of 2013, treating FIR No. 82 dated 14.05.2013 as the original FIR. During the investigation, it was revealed that investors had deposited money with M/s IRL through its agents under various illegal schemes, amassing approximately ₹565 crores in between 2009-2014, out of which ₹343 crores remained unpaid to investors.

The Hon'ble Supreme Court, in **Subrata Chatteraj v. Union of India**³, noted the involvement of influential persons and the need for further investigation into the money trail. In compliance, the CBI probed deeper into the larger conspiracy, regulatory lapses, and financial misappropriation.

The investigation revealed that the accused-petitioner, Lakshman Srinivasan, conspired with the Directors of M/s IRL and facilitated the formation of two Multi-State Credit Co-operative Societies, M/s Golden Society and M/s Pride Society, using fraudulent means to bypass regulatory scrutiny. The accused-petitioner received ₹4.15 crores from M/s IRL without any legal documentation, and misappropriated ₹3.93 crores for personal gain.

Additionally, the petitioner has been involved in multiple similar scams, amounting to crores of rupees misappropriated from the hard-earned money of the public. Furthermore, it is submitted that the investigation still remains open under Section 173(8) Cr.P.C., 1973. In the preliminary charge-sheet, it has conclusively

established the petitioner's direct role in aiding and abetting the illegal deposit schemes. Therefore, it is submitted that the present application is devoid of merit and ought not to be entertained owing to the gravity and magnitude of economic offences caused by the petitioner.

9. I have carefully scrutinized the materials placed before this Court and the judgment cited by both the learned Counsel appearing for the parties. The larger picture emerging from the facts of the present case is that petitioner and others targeted the innocent citizens, exploited them and amassed huge wealth, sometimes resulting in cash currency hounding. When application for release of said cash/currency of economic offences of such magnitude, the Courts become circumspective to release the amount. However, the release of money ensures that the seized currency remains in circulation, thereby aiding the national economy. If the money remains stagnant, it serves no practical purpose and fails to contribute to economic activity. Currency is meant to be in circulation to facilitate trade, commerce, and overall economic growth. Keeping large sums of money idle in custody neither benefits the State nor the affected individuals. Instead, it restricts liquidity in the financial system and prevents the owner from utilizing the funds for legitimate purposes.

10. In recent past when a question relating to the release of the currency note came before this Court in the case of **Santosh Kumar Tripathy Vs. State of Odisha**⁴, this Court in the disposal order held thus:

“4. Regard being had to the submissions made by the learned counsel and the facts of the present case, I am inclined to allow the petition. The trial court is directed to release the seized cash deposited by the I.O. in the court in favour of the petitioner by preserving color photographs of the currency notes. It is open for the trial court to impose any other condition as deemed fit and proper.”

Similar *modus* can be applied in the present case.

Furthermore, in **Santosh Kumar Tripathy v. State of Odisha** (supra), this Hon'ble Court recognized the importance of preserving the evidentiary value of seized cash through colour photographs while ensuring that the currency itself remains available for economic use. This principle aligns with broader economic considerations, where unnecessary stagnation of monetary resources can hinder financial fluidity. Releasing the seized cash with proper safeguards, such as the preparation of *Panchnamas* and photographic documentation, balances both the interests of justice and economic utility.

Thus, allowing the release of the seized currency under appropriate conditions would not only comply with legal precedents but also serve the larger

public interest by ensuring that money continues to contribute to the economy rather than remaining unutilized in the custody.

11. In light of the above discussion and considering the judicial precedents, this Court is inclined to direct the release of the seized amount of ₹15.00 lakhs (Fifteen Lakhs) to the accused petitioner, subject to certain conditions that ensure both the integrity of the investigation and the smooth conclusion of trial.

It is well established that money, as a movable property, should not remain stagnant in judicial custody when it can be preserved through alternative means without prejudicing the prosecution's case. In the lights of the judgements cited, the release of seized cash should be considered while ensuring that its evidentiary value is duly preserved, which can be used for trial.

Accordingly, before releasing the amount, the following broad safeguards shall be ensured:

I. Preparation of a Detailed Panchnama – A formal record (Panchnama) of the seized cash shall be prepared under the supervision of the trial court, documenting essential details such as the total amount, denominations, serial numbers (where feasible), and other relevant particulars.

II. Preservation of Colour Photographs – High-resolution colour photographs of the seized currency shall be taken to ensure that its physical attributes are recorded for evidentiary purposes. These photographs shall be signed by the investigating officer, the accused petitioner, and two independent witnesses before being placed on record.

III. Security for the Released Amount – To balance the interests of justice and financial security, the petitioner shall be required to furnish a bank guarantee equivalent to 50% of the seized amount (i.e., ₹7.50 lakh) which shall remain valid until the conclusion of the trial. Additionally, the petitioner shall also secure the remaining 50% (i.e., ₹7.50 lakh) through the indemnification of any immovable property or other financial security, to the satisfaction of the trial court, as an assurance against potential liabilities arising from the case.

IV. Undertaking of Compliance – The petitioner shall submit an affidavit affirming that the released amount shall remain available for restitution if required by the court at a later stage, and that any misuse or misappropriation of the released amount shall lead to immediate legal consequences.

With these conditions in place, the Court finds no justifiable reason to retain the seized cash in judicial custody when its circulation could contribute to economic activity without compromising the investigation or trial proceedings.

Similar course of action may be taken in such cases arising out of the jurisdiction of this Court, keeping in mind the demand and need (which may vary) in different cases.

12. In addition to this, it is also desirable that not only regarding cash but also other materials which are seized such appropriate action must be taken by the authorities and courts below to do the needful and dispose of the items unless necessary to be in custody, which will additionally save the resources of the state and will also aid in the well-being of the rightful owner.

By taking into consideration, the law laid down by the Hon'ble Supreme Court in *Sundarbhai* (supra) judgement and various other High Courts, this Court feels it expedient to cull out following principles regarding disposal of the seized article in form of broader guidelines, which may not be exhaustive but to some extent inclusive:

1. General Principles

1.1 Courts and investigating authorities must ensure that seized property is not retained indefinitely without valid legal justification. It is imperative to take steps for its prompt release or disposal unless required for an ongoing investigation or trial.

1.2 The disposal process should adhere to the provisions of Sections 451, 452, and 457 of the Criminal Procedure Code (Cr.P.C.) and be guided by established judicial precedents.

1.3 The primary objective should be to prevent unnecessary storage, avoid wastage of resources, and ensure that valuable assets retain their utility keeping in mind the investigation and trial process is not compromised.

2. Handling of Seized Cash

2.1 In cases involving seized currency, courts may consider its release upon fulfilment of the following conditions:

- High-resolution colour photographs should be taken for permanent record-keeping.
- A detailed *panchnama* should be prepared and signed by the investigating officer, the claimant, and other relevant parties and/or witnesses.
- Appropriate conditions or security bonds should be imposed to ensure compliance.

2.2 If immediate release is not feasible, the cash must be deposited in a nationalized bank to prevent stagnation and contribute to the economy. Keeping cash in judicial or police custody for extended periods serves no practical purpose.

3. Releasing of Bank Deposits/ Fixed Deposits

3.1 Bank deposits and/or fixed deposits may be released against similar or varied amount of property securities or bank guarantee made by the accused petitioner, as per the direction of the competent authorities or court.

3.2 Such bank deposits/fixed deposits, shall not be released, in case when attachment and/or confiscation proceeding regarding the same assets have already been initiated. In such cases the release shall be decided by the competent court.

4. Disposal of Seized Vehicles

4. Vehicles that remain impounded in police stations deteriorate in value and become unfit for use. To prevent such depreciation, courts and authorities must ensure their early release by:

- Verifying ownership and allowing release to the rightful owner upon submission of a security bond and valid proof of ownership.
- Ensuring that any legal dispute concerning ownership are resolved efficiently through judicial orders.
- If a vehicle cannot be immediately returned, it should be stored in a secure facility instead of being left exposed to damage.
- If the rightful owner is untraceable or the vehicle is linked to a serious crime, the court may order its auction or disposal through appropriate channels after preserving appropriate records and photographs for the process of trial(in case linked to a crime) subjecting the provisions of law.

5. Management of Precious Articles (Gold, Jewellery, and Valuables)

5.1 Precious items such as gold, silver, and gemstones should not be kept in police custody for extended periods. Instead, they should be stored in proper lockers or bank lockers under court supervision.

5.2 If ownership is clear, the magistrate may order their release after verification, ensuring that:

- Photographic or video graphic evidence is recorded for reference.
- The claimant provides a bond ensuring return if required for trial.

5.3 If ownership is contested or the valuables are crucial evidence, they should be preserved under strict security protocols until the matter is resolved.

6. Disposal of Seized Liquor and Narcotic Substances

6.1 Alcoholic beverages and narcotic drugs must not be stockpiled unnecessarily. Authorities must ensure that:

- Necessary samples are collected and properly sealed for forensic analysis and trial purposes.
- The remaining quantity is destroyed promptly after obtaining court approval in accordance with law.

6.2 Large consignments of seized liquor should not be stored indefinitely in police stations, as this poses logistical and security challenges. Once samples are preserved for legal proceedings, the rest should be disposed of under proper supervision and in accordance with law.

6.3 In narcotics cases, forensic examination of samples should be conducted without delay, and the remaining substances should be disposed of as per the provisions of the Narcotic Drugs and Psychotropic Substances (NDPS) Act.

7. Perishable Goods and Agricultural Products

7.1 Perishable goods such as food and agricultural produce must be handled on a priority basis to prevent spoilage. Courts may consider:

- Immediate release to the rightful owner, if legally permissible.
- Auctioning or distribution through government agencies, in cases where the goods have no direct claimant.

7.2 If required for legal proceedings, only small representative samples should be retained, and the rest should be disposed of efficiently.

8. Firearms, Explosives, and Dangerous Weapons

8.1 Firearms, ammunition, and explosives should be stored in designated armouries instead of police stations to ensure safety and security.

8.2 If the weapons are lawfully owned, they may be returned to the rightful owner after proper verification. However, if the arms are linked to criminal activities or pose a public threat, courts may order destruction or forfeiture to the State.

8.3 Any delay in processing these items may pose safety hazards; therefore, courts should prioritize their disposal.

9. Electronic Devices and Digital Evidence

9.1 Seized electronic devices, including mobile phones, laptops, hard drives, other storage devices, surveillance footage and other such digital evidences, must be handled with care to prevent tampering. Authorities should:

- Create forensic copies or digital images of the data using proper digital forensic tools so that the integrity of the digital evidences is not lost, before returning the device.
- A proper chain of custody must be maintained on record to ensure authenticity.

9.2 If the device is not crucial to the case, it should be released to the owner without unnecessary delay. However, if it at all is a key piece of evidence and authenticity of the digital evidence can be challenged at a later stage then strict storage protocols must be followed for storing the evidence.

10. Disposal of Miscellaneous Seized Property

10.1 Items that do not fall under specific categories should be assessed based on their legal relevance and economic value.

10.2 If an item is no longer required for investigation or trial, it should be:

- Returned to its rightful owner, if identifiable.
- Auctioned or disposed of, if no claimant comes forward within a reasonable time.

10.3 Courts should introduce a time-bound review mechanism to prevent unnecessary accumulation of seized goods.

11. Role of the Courts and Investigating Authorities

11.1 Magistrates should take proactive measures to ensure that seized property is not retained for an extended period without justification. Court directives for the return or disposal of property should be issued without undue delay.

11.2 Investigating officers must regularly report on seized property and seek judicial orders for its appropriate handling.

11.3 A system of periodic review and compliance checks should be established to prevent excessive backlog and mismanagement of seized assets.

By implementing aforementioned structured guidelines, courts and law enforcement agencies can ensure that seized property is managed in a manner that is efficient, legally sound, and beneficial to both the justice system and society at large.

The Registry of this Court is advised to transmit a copy of this judgment to all District Courts, Special Courts, and other subordinate courts. Additionally, copies may also be forwarded to the Director General of Police, Odisha Police Headquarters, and all other law enforcement agencies, including the State Vigilance Directorate, Excise Department, Forest Department, and other investigating agencies, for the purpose of guidance.

13. With the above observations and directions the CRLREV is allowed, subject to compliance with the conditions as stipulated above.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

CRLREV allowed.

2025 (II) ILR-CUT-611

**RIKHIRAM CHANDRAKAR
V.
STATE OF ODISHA (VIGILANCE)**

[CRLMC NO. 2783 OF 2021]

WITH

PRAMOD KUMAR BISWAL V. STATE OF ODISHA (VIGILANCE)
[CRLMC NO. 1685 OF 2022]

GOPAL CHANDRA BISOI V. STATE OF ODISHA (VIGILANCE)
[CRLMC NO. 2063 OF 2022]

MANOJ KUMAR SAHOO V. STATE OF ODISHA (VIGILANCE)
[CRLMC NO. 1323 OF 2023]

SURATH CHANDRA MALLICK V. STATE OF ODISHA (VIGILANCE)
[CRLMC NO. 4994 OF 2023]

SUMANTA PAIKARAY V. STATE OF ODISHA (VIGILANCE)
[CRLMC NO. 3967 OF 2024]

AND

Dr. DEBABRATA MOHANTY V. STATE OF ODISHA (VIGILANCE)
[CRLMC NO. 4103 OF 2024]

10 APRIL 2025

[SIBO SANKAR MISHRA, J.]

Issue for Consideration

Whether exoneration of an accused in departmental proceeding having been concluded, should criminal proceedings based on the same set of facts be allowed to continue?

Headnotes

(A) CODE OF CRIMINAL PROCEDURE, 1973 – Section 482 – Quash of criminal proceeding – Learned Court below has taken cognizance of the offences U/ss. 13 (2) r/w 13(1) (c) (d) of the Prevention of Corruption Act read with Sections 468/ 471/406/120B of the Indian Penal Code against the petitioners – The departmental proceedings initiated against the petitioners on the self-same allegations ended in exoneration – Whether exoneration of an accused in departmental proceeding having been concluded, should criminal proceedings based on the same set of facts be allowed to continue?

Held: Exoneration in the departmental proceeding which is the culmination of much lower standard of prove cannot enure to the advantage of the petitioners which would lead to quashing of the criminal proceeding.

This Court finds it appropriate to emphasize that exoneration in departmental proceedings does not necessarily preclude the prosecution to continue the proceedings. (Paras 27 & 33)

(B) Difference between Departmental Proceeding vis-a-vis Criminal Proceeding – Explained. (Para 26)

(C) PREVENTION OF CORRUPTION ACT, 1988 – Petitioners were charge sheeted under Sections 13(2) r/w 13(1) (c) (d) of the Prevention of Corruption Act – Petitioners were exonerated in departmental proceedings initiated against them on the self-same allegation – Notwithstanding the exoneration of the petitioners in departmental proceedings, the competent authority on evaluation of the materials on record accorded sanction to prosecute the petitioners – Whether continuation of such criminal proceeding should be deemed an abuse of the process of the Court and a wastage of judicial time.

Held: No – After grant of sanction by the competent authority, the effect of exoneration in departmental proceedings loses its sanctity because the sanctioning authority accords sanction to prosecute the accused on the material placed before him which from the part of the charge sheet and arrived at the satisfaction that *prima facie* materials are there against the public servant which warrant prosecution. (Para 30)

Citations Reference

Radheshyam Kejriwal V. State of West Bengal, (2011) 3 SCC 581; State (NCT of Delhi) V. Ajay Kumar Tyagi, (2012) 9 SCC 685; Ashoo Surendranath Tewari V. Deputy Superintendent of Police, EOW, CBI & Anr., (2020) 9 SCC 636; P.S. Rajya vs. State of Bihar, (1996) 9 SCC 1; Dr. Minaketan Pani v. State of Orissa, (2022) SCC OnLine Ori 3304; Depot Manager v. Md. Yousuf Miya, (1997) 2 SCC 699; State of Rajasthan v. B.K. Meena, (1996) 6 SCC 417; Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679; State through SPE & CBI, AP v. M. Krishna Mohan, (2007) 14 SCC 667; M. Krishnan Mohan v. State of Kerala, (2015) 13 SCC 215; CBI v. V.K. Bhutiani, (2009) 10 SCC 674; Superintendent of Police (CBI) v. Deepak Choudhury, (1995) 6 SCC 225; Depot Manager, A.P. SRTC v. Mohd. Yousuf Miya, (1997) 2 SCC 699; R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183 – referred to.

List of Acts

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Prevention of Corruption Act, 1988.

Keywords

Departmental Proceeding; Criminal Proceeding; Exoneration; Self-same allegation; Preponderance of Probability; Beyond Reasonable Doubt; Differences between Departmental & Criminal Proceeding; Rule of Law.

Case Arising From

Vigilance P.S. Case No.27 of 2017 corresponding to G.R. Case No.15 of 2017 (Vigilance), pending in the Court of the learned Special Judge, Vigilance, Jeypore.

Appearances for Parties

For Petitioners : Mr. Debi Prasad Dhal, Sr. Adv., Mr. B.S. Dasparida, Mr. K. Mohanty, Mr. M.K. Agrawalla,
Mr. Debi Prasad Dhal, Sr. Adv., Mr. B.S. Dasparida, Mr. S. Mohapatra, Mr. K. Mohanty, Mr. M.K. Agrawalla, Mr. A. Ray, Mr. A. Pradhan, Ms. S. S. Lenka, (CRLMC 1685 of 2022)
Mr. Debi Prasad Dhal, Sr. Adv., Ms. R. Dhal, Mr. B.S. Dasparida, Mr. S. Mohapatra, Mr. K. Mohapatra, Mr. M.K. Agrawalla, Mr. A. Ray, Mr. A. Pradhan, (CRLMC 2063 of 2022)
Mr. Debi Prasad Dhal, Sr. Adv., Mr. B.S. Dasparida, Mr. S. Mohapatra, Mr. K. Mohanty, Mr. M.K. Agrawalla, Mr. A. Ray (CRLMC 1323 of 2023 & 3967 of 2024)
Mr. Sameer Ku. Das, Mr. P.K. Behera, Mr. N. Jena (CRLMC 4994 of 2023)
Mr. Debi Prasad Dhal, Sr. Adv., Mr. N.Rath, Mr. A.Nayak, Mr. S.J. Prakash (CRLMC 4103 of 2024)

For Opp. Parties : Mr. Niranjana Moharana, ASC (Vig. Deptt.) (in all CRLMCs)

Judgment/Order

Judgment

SIBO SANKAR MISHRA, J.

In the present batch of matters, the petitioners have sought for quashing of the entire criminal prosecution initiated against them solely on the ground that they have been exonerated in the departmental proceeding initiated against them on the

selfsame allegations, hence, the prosecution cannot proceed with the criminal cases against them. The common question of law regarding the applicability of the judgments of the Hon'ble Supreme Court in the fact scenario of the present cases is the point of determination in the present batch of cases. Therefore, all the matters are heard analogously and by a common judgment, they are disposed of.

Bereft of unnecessary details the facts of all the cases in brevity are enumerated as preface to the Judgement.

In CRLMC No.2783 of 2021

1. This petition has been filed by the petitioner with a prayer to quash the criminal proceedings initiated in Koraput Vigilance P.S. Case No.27 of 2017 corresponding to G.R. Case No.15 of 2017 (Vigilance), pending in the Court of the learned Special Judge, Vigilance, Jeypore.

2. The prosecution case, in short, is that the petitioner, namely, Rikhiram Chandrakar while working as the Welfare Extension Officer as well as the Nodal Officer of Badakumari Gram Panchayat under the Umerkote Block, he along with other ineligible beneficiaries have illegally availed houses by producing fake photographs and false verification report and misappropriated the Government funds under the Indira Awas Yojana (I.A.Y.) as per the recommendations of Kedar Nath Nayak and Jeturam Majhi. After investigation, charge-sheet has been filed on 27.12.2021 after obtaining sanction on 17.11.2021 from the competent authority. Thereafter, the learned Court below has taken cognizance of the offences under Sections 13(2)r/w13(1)(c)(d) of the P.C. Act read with Sections 468/471/406/420/120-B of the I.P.C. against the petitioner and other co-accused persons. It is alleged that after submission of charge-sheet and taking cognizance, the petitioner was exonerated in the departmental proceeding wherein the evidences collected by the prosecution have not been considered and the vital prosecution witnesses have not been examined. Thereafter, the concerned administrative department, i.e., the Director, SC & ST Development and Welfare Department vide order dated 03.04.2024 has directed for *de novo* enquiry of the departmental proceeding initiated against the petitioner. Hence, this case.

In CRLMC No.1685 of 2022

3. This petition has been filed by the petitioner with a prayer to quash the criminal proceedings initiated in the F.I.R. dated 27.08.2009 in Cuttack Vigilance P.S. Case No.32 of 2009 corresponding to T.R. No.48 of 2017, pending in the Court of the learned Special Judge (Vigilance), Dhenkanal.

4. The petitioner, namely, Pramod Kumar Biswal while working as J.E. of Sadar Block, Dhenkanal during the year 2004-05 along with two others have misappropriated Rs.1,75,000/- by preparing false bills and forged documents showing execution of a cement concrete road from Mangalpur Satyabadi High School to Mangalpur U.P. School under the scheme of Sampurna Gramina Rojgar

Yojana (S.G.R.Y. Scheme). After obtaining sanction, charge-sheet was submitted on 31.10.2012 and cognizance was taken by the learned trial Court for the offence under Section 13(2) r/w 13(1)(c)(d) of the P.C.Act, 1988 and Sections 468/420/409/120-B of the IPC on 25.02.2013 against the petitioner. It is apposite to mention that the petitioner has been exonerated in departmental proceeding in 2020. On the basis of such exoneration order the petitioner is seeking quashment of the criminal case.

In CRLMC No.2063 of 2022

5. This petition has been filed by the petitioner with a prayer to quash the criminal proceedings in Cuttack Vigilance P.S. Case No.02 of 2009 corresponding to T.R. Case No.01 of 2020, pending in the Court of the learned Special Judge, Vigilance, Angul.

6. The petitioner, namely, Gopal Chandra Bisoi being the public servant as Assistant Director of Factories and Boilers, Angul Zone during the year 1986-2009 had possessed disproportionate assets to the tune of Rs.80,11,074.96/- in his name and in the name of his wife, who has allegedly abated him in acquisition of the assets in her name claiming false sources of income. After completion of investigation, charge-sheet has been filed against the petitioner and his wife on 29.06.2019 under Section 13(2) read with Section 13(1)(e) of the P.C. Act, 1988 and Section 109 of the I.P.C. Since the petitioner had already retired from the service by the time charge-sheet was submitted and there was no need of sanction to prosecute against him. Therefore, without sanction cognizance of offences has been taken. However, the departmental proceeding initiated against the petitioner was concluded with a punishment of warning, i.e., the petitioner is hereby warned to conduct himself in a disciplined manner and be careful in future. Thus, he was not exonerated on merit. The finding recorded in the departmental proceeding has been made the cause for quashment of the criminal case.

In CRLMC No.1323 of 2023

7. This petition has been filed by the petitioner with a prayer to quash the criminal proceedings in Balasore Vigilance P.S. Case No.02 of 2015 corresponding to T.R. Case No.17 of 2022 pending in the Court of the learned Special Judge, Vigilance, Balasore.

8. The petitioner, namely, Manoj Kumar Sahoo while working as Junior Technician in Tihidi Electrical Sub-Division under NESCO, Bhadrak, allegedly misappropriated the amount to the tune of Rs.5,66,000/- within the period from 05.10.2013 to 22.11.2014. After completion of investigation and obtaining sanction from the competent authority, charge-sheet has been filed U/s.13(2) r/w 13(1)(c)(d) of the P.C. Act, 1988 and Sections 409/477-A/120-B of IPC against the petitioner and other co-accused persons on 31.05.2022 and trial is going on. Departmental proceeding has also been initiated against the petitioner. The petitioner assailed the

instant criminal proceeding on the basis of the inquiry report in the departmental proceeding by which he has been exonerated.

In CRLMC No.4994 of 2023

9. This petition has been filed by the petitioner with a prayer to quash the criminal proceeding in Cuttack Vigilance P.S. Case No.55 of 2011 corresponding to V.G.R. Case No.55 of 2011 pending in the Court of the learned Special Judge, Vigilance, Cuttack.

10. The petitioner, namely, Surath Chandra Mallick being a public servant was found possession of disproportionate assets to the tune of Rs.15,79,895/- during the check period and his wife alleged to have abated the petitioner in possessing the assets in her name having no sources of income by filing false income tax return etc. After conclusion of investigation and obtaining the order of sanction for prosecution from the competent authority, charge-sheet U/s.13(2) r/w 13(1)(e) of the P.C. Act, 1988 and Section 109 of IPC has been filed on 07.11.2023 against the petitioner and his wife. The departmental proceeding has also initiated against the petitioner. Exoneration in departmental proceeding has been made cause to file this petition.

In CRLMC No.3967 of 2024

11. This petition has been filed by the petitioner with a prayer to quash the criminal proceeding in Sambalpur Vigilance P.S. Case No.54 of 2019 corresponding to V.G.R. Case No.21 of 2019 pending in the Court of the learned Special Judge (Vigilance), Sambalpur.

12. The prosecution case, in brief, is that, the petitioner, namely, Sumanta Paikaray while working as Section Supervisor of OFDC Limited, Jharsuguda (C-KL) Sub-Division, Badmal, demanded and accepted bribe of Rs.16,000/- from the complainant for preparing challan and T.T. permit and allowing load of firewood from OFDC Limited, Badmal Depot, Jharsuguda. It is alleged that the petitioner was trapped on the spot and the tainted bribe money was recovered from his possession. After completion of investigation and obtaining sanction for prosecution, charge-sheet has been filed on 13.10.2020. Subsequent thereto, the learned Court below has taken cognizance of the offences punishable U/s.7 of the P.C. Act, 1988 against the petitioner on 02.07.2021. However, the petitioner has been exonerated in the departmental proceedings; therefore, he seeks quashing of the criminal case relying upon the findings of departmental proceedings.

In CRLMC No.4103 of 2024

13. This petition has been filed by the petitioner with a prayer to quash the criminal proceeding in V.G.R. Case No.43 of 2009 corresponding to T.C. No.162 of 2013 arising out of Balasore Vigilance P.S. Case No.43 of 2009, pending in the Court of the learned Special Judge, Vigilance, Baripada.

14. The petitioner, namely, Dr. Debabrata Mohanty being the Senior Surveyor of Mines, Baripada, in connivance with other Mining Officers abused his official position and shown undue official favour to the lease holders as well as the Power of Attorney Holders and allowed them to illegally excavate the iron ore of 1,88,484.440 MT beyond the leasehold area and thereby cheated the government fund by fabricating records to the tune of Rs.21,60,56,217/-. After obtaining sanction, the charge-sheet was submitted on 17.03.2011 and cognizance was taken by the learned trial Court on 10.01.2012.

It is also alleged that earlier the petitioner had approached this Court by filing CRLMC No.1661 of 2012 against the cognizance order seeking quashing of the entire proceeding. However, the same was dismissed. Again the petitioner by filing CRLREV No.518 of 2017, challenged the order of rejection of discharge petition on 20.07.2017. The same was also not entertained by this Court as by that time charge had already been framed. Again the petitioner had approached this Court by filing CRLREV No.365 of 2018 which was disposed of on 15.02.2019 giving liberty to the petitioner to raise all such contentions at the time of trial before the court below. In the case as well petitioner is relying upon the Departmental inquiry findings to press his prayer for quashing the FIR.

Submissions

15. Mr. Dhal, learned Senior Counsel for the petitioners submitted that the central issue for determination in the present cases is whether the exoneration of an accused in departmental proceedings, having been concluded, criminal proceedings based on the same set of facts should be allowed to continue or not. The learned counsel further argued as to whether such proceedings should be deemed an abuse of the process of the Court and a wastage of judicial time.

In advancing this argument, the learned Senior Counsel for the petitioners have relied on three judgments passed by a Three-Judge Bench of the Hon'ble Apex Court: ***Radheshyam Kejriwal V. State of West Bengal*¹, *State (NCT of Delhi) V. Ajay Kumar Tyagi*² and *Ashoo Surendranath Tewari V. Deputy Superintendent of Police, EOW, CBI & Anr.*³.**

16. In the context of the judgment in ***Radheshyam Kejriwal*** (supra), the learned Senior Counsel for the petitioners pointed out that the Hon'ble Supreme Court while discerning adjudication proceedings vis-à-vis criminal prosecution has outlined the following distinctive yardstick: -

“38. The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

1 (2011) 3 SCC 581

2 (2012) 9 SCC 685

3 (2020) 9 SCC 636

- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;
- (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and
- (vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.”

17. Learned Senior Counsel for the petitioners submitted that the yardstick to judge whether the allegation in the adjudication proceedings and the prosecution proceedings are identical, and whether the exoneration in the adjudication proceedings is on merits, is crucial. The learned Senior Counsel contended that if it is found on merit that there is no contravention of the provisions of the relevant Act in the adjudication proceedings, continuing the criminal trial would amount to an abuse of the process of the Court.

18. Further, the learned Senior Counsel has relied upon paragraph-47 of the judgment in the case of **Radheshyam Kejriwal** (supra), where the Court held that: -

“47. Bearing in mind the principles aforesaid we proceed to consider the case of the appellant. In the adjudication proceedings on merit the adjudicating authority has categorically held that “the charges against Shri Radheshyam Kejriwal for contravening the provisions of Section 9(1)(f)(i) and Section 8(2) read with Section 64(2) of the Foreign Exchange Regulation Act, 1973 cannot be sustained”. In the face of the aforesaid finding by the Enforcement Directorate in the adjudication proceedings that there is no contravention of any of the provisions of the Act, it would be unjust and an abuse of the process of the court to permit the Enforcement Directorate to continue with the criminal prosecution.”

Learned Senior Counsel for the petitioners further submitted that similar issue was again in consideration before a three Judge Bench in the case of **Ajay Kumar Tyagi** (supra) of the Hon’ble Supreme Court in which the Court held as under:

“25. We are, therefore, of the opinion that the exoneration in the departmental proceeding ipso facto would not result in the quashing of the criminal prosecution. We

hasten to add, however, that if the prosecution against an accused is solely based on a finding in a proceeding and that finding is set aside by the superior authority in the hierarchy, the very foundation goes and the prosecution may be quashed. But that principle will not apply in the case of the departmental proceeding as the criminal trial and the departmental proceeding are held by two different entities. Further, they are not in the same hierarchy.”

However, the petitioners’ counsel contended that in the aforementioned judgment, the Hon’ble Court has not noticed the prior ruling in **Radheyshyam Kejriwal** (supra) by a coordinate Bench of three Judges, which decided the same issue differently. Although, the Senior Counsel is not being questioning the judgment of **Ajay Kumar Tyagi** (supra) in terms of its authority, it is argued that the former should be considered *per incuriam*.

19. Mr. Dhal, learned Senior Counsel for the petitioner further draw the attention of this Court towards the Judgment of the Hon’ble Supreme Court in the case of **Ashoo Surendranath Tewari** (supra), in which the Hon’ble Court while discussing the earlier judgment of **Radheshyam Kejriwal** (supra) unanimously held that:

“13. It finally concluded: (Radheshyam Kejriwal case [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] , SCC p. 598, para 39)

“39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.”

14. From our point of view, para 38(vii) is important and if the High Court had bothered to apply this parameter, then on a reading of the CVC report on the same facts, the appellant should have been exonerated.

15. Applying the aforesaid judgments to the facts of this case, it is clear that in view of the detailed CVC order dated 22-12-2011, the chances of conviction in a criminal trial involving the same facts appear to be bleak. We, therefore, set aside the judgment [Ashoo Surendranath Tewari v. CBI, 2014 SCC OnLine Bom 5042] of the High Court and that of the Special Judge and discharge the appellant from the offences under the Penal Code.”

The Petitioners place their reliance on the judgment in **Ashoo Surendranath Tewari** (supra) for two key reasons. First, it properly acknowledges the prior decision of a coordinate Bench in **Radheyshyam Kejriwal** (supra) on the same issue, in line with judicial propriety and discipline. No Supreme Court decision by a Bench of three or more Judges has contradicted it, making **Ashoo Surendranath Tewari** (supra) the latest authoritative ruling on the matter. Second, the **Ajay Kumar Tyagi** (supra) judgment relied on by a two-judge Bench decision in **P.S. Rajya vs. State of Bihar**⁴, but not noticed to refer to **Radheyshyam Kejriwal** (supra), violating the

principle of binding precedent. **Ashoo Surendranath Tewari** (supra) rightly referred to **Radheyshyam Kejriwal** (supra) and addressed **P.S. Rajya** in a manner consistent with judicial precedent. Thus, the learned counsel for the petitioners contended that **Ajay Kumar Tyagi** (supra) is considered *per incuriam* and should not be followed as precedent.

20. Mr. Dhal, learned Senior Counsel further contended that this Court have dealt with a similar issue in **Dr. Minaketan Pani v. State of Orissa**⁵ and have reiterated similar principles as in **Ashoo Surendranath Tewari** (supra) and **Radheyshyam Kejriwal** (supra) and held thus:-

“26. For all of the aforementioned reasons, in the facts and circumstances of the present case where on the same charges on which the Petitioner is facing criminal trial he has been honourably exonerated in the departmental proceedings, the Court adopts the reasoning of the decisions in **Radheyshyam Kejriwal v. State of West Bengal** (supra) and **Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EOW, CBI** (supra) and sets aside the impugned order dated 15th January 2009, passed by the Sub-Divisional Judicial Magistrate (S) Cuttack in G.R. Case No.1057 of 2007.”

Conclusively, learned Senior Counsel for the petitioners submitted that where an individual has been exonerated on merits in departmental proceedings, and in the absence of any contravention of the relevant provisions of the Act, continuing criminal prosecution based on the same facts would constitute an abuse of the process of the Court, and such proceedings must be quashed.

21. On the contrary, Mr. Niranjan Moharana, the learned Additional Standing Counsel for the Vigilance Department has contended that the above mentioned judgments are not applicable to the present scenario, basing on the facts and circumstances of the matters arising before this Court. He submitted that the ratio laid down by the judgment of the Hon’ble Supreme Court in **Radheshyam Kejriwal** (supra) is not applicable to the present case for several reasons. Firstly, the **Kejriwal** (supra) judgement dealt with adjudication and criminal proceedings under the Foreign Exchange Regulation Act, not departmental and criminal proceedings. Secondly, the adjudication in **Kejriwal** (supra) found no contravention of the Act, and both proceedings were initiated by the same authority. Thirdly, the present case involves offences under the Prevention of Corruption Act (P.C. Act) and I.P.C., with the necessary sanction for prosecution, unlike the **Kejriwal** (supra) case. Additionally, the **Kejriwal** (supra) judgment did not consider earlier three-Judge Bench decisions that are relevant to the issue of simultaneous departmental and criminal proceedings. He has relied upon the judgment in **Depot Manager v. Md. Yousuf Miya**⁶, **State of Rajasthan v. B.K. Meena**⁷, **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.**⁸, and **State through SPE & CBI, AP v. M. Krishna**

5 (2022) SCC OnLine Ori 3304

6 (1997) 2 SCC 699

7 (1996) 6 SCC 417

8 (1999) 3 SCC 679

Mohan⁹. These cases allow for concurrent departmental and criminal proceedings unless the charges are identical or significantly overlapping, in which case it is preferable to stay the departmental proceedings until the criminal case is concluded. Therefore, he has asserted that the **Kejriwal** (supra) case does not apply to these matters.

22. Mr. Moharana, learned Additional Standing Counsel further submitted that the decision in **Ashoo Surendranath v. CBI** (supra) referred to the ratio of the **Kejriwal** (supra) judgment which does not pertain to the interplay between the departmental proceedings and the criminal prosecution under the Prevention of Corruption Act, 1988 (P.C. Act), but rather concerns adjudication and criminal proceedings. Furthermore, the case only considered the decision in **P.S. Rajya Case** (supra) (two-Judge Bench), while escaping notice to take into account the law laid down by the three-Judge Bench in **State (NCT of Delhi) v. Ajaya Kumar Tyagi** (supra). In **Ajaya Kumar Tyagi** (supra), the Supreme Court, after referring to **P.S. Rajya** (supra), **M. Krishnan Mohan v. State of Kerala**¹⁰, **CBI v. V.K. Bhutiani**¹¹, and **Superintendent of Police (CBI) v. Deepak Choudhury**¹², held that exoneration in a departmental proceeding does not automatically lead to the quashing of a criminal prosecution under the P.C. Act.

23. Mr. Moharana, learned ASC has also emphasized that in **Ashoo Surendranath** (supra), the Central Vigilance Commission (CVC), after due verification, had refused to grant sanction for prosecution, citing lack of evidence, making the criminal case unsustainable. Since sanction is a *sine qua non* for prosecuting a public servant under the P.C. Act, the decision in **Ashoo Surendranath** (supra) is factually and legally distinguishable from the present cases.

24. Mr. Moharana, learned Additional Standing Counsel for the Vigilance Department finally submitted that it is no more *res integra* that the procedure established and the purpose of departmental proceedings and criminal proceeding is all together different. Departmental proceedings are simply an inquiry done by the Departmental Authorities whereas criminal proceedings is conducted by the competent Court which have jurisdiction as provided by the statutes. The standard of prove in both the cases are different. In this regard, he refers to the judgment of the three Judge Bench of the Hon'ble Supreme Court in the case of **Depot Manager, A.P. SRTC v. Mohd. Yousuf Miya**¹³, the relevant part of which is reproduced here under: -

“..... The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the

9 (2007) 14 SCC 667

10 (2015) 13 SCC 215

11 (2009) 10 SCC 674

12 (1995) 6 SCC 225

13 (1997) 2 SCC 699

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.”

8. We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The 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 (sic 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 Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings 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. **The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. 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. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338, IPC. Under these circumstances, the High Court was not right in staying the proceedings.”**

25. It is pertinent to note that the judgment in **Radheshyam Kejriwal** (supra) pertains to exoneration in adjudication proceedings, whereas the issue in the present cases concerning the interplay between departmental proceedings and subsequent criminal proceedings. Additionally, while the judgment in **Ajay Tyagi** (supra) specifically addresses departmental proceedings, the subsequent decision in **Ashoo Surendranath** (supra) did not rely on the ratio of **Ajay Tyagi** (supra) (a three-judge bench decision) but instead referred to the rulings in **P.S. Rajya** (supra) (a two-judge bench decision) and **Radheshyam Kejriwal** (supra), which may not be directly relevant to the issue under consideration.

26. The rival submission of the learned counsels appearing for the parties prompt this Court to delve upon the distinguishable elements between the departmental and adjudicative proceedings.

The key difference lies on the very nature of proceeding, departmental proceeding aims to the disciplinary purpose of a delinquent officer on the basis of service rules and regulations which is an administrative action whereas adjudication proceeding by its nature involves adjudication by a Quasi-Judicial Authority. It determines the guilt of the persons facing the proceeding culminating into penalty order. Therefore, the departmental proceeding deals with service related misconduct within an organization while adjudication proceedings involve a legal dispute resolution process conducted by an independent authority under statutory law. The law is no longer *res integra* that “there is distinction between the procedure, purpose and finding of adjudication proceeding and departmental proceeding.” Adjudication proceedings are conducted by statutory bodies under the Act, tribunals, or quasi-judicial authorities, adhering to procedures akin to a formal trial. In contrast, departmental proceedings are inquiries conducted by departmental authorities, distinct in their purpose and methodology from adjudicatory processes.

Since the departmental proceeding deals with internal disciplinary action rather than criminal liability, the threshold for proof is lower and must establish that misconduct is more likely than not to have occurred, purely the preponderance of probability. However, in the adjudication proceedings clear and convincing evidence must be brought on record which should be stronger than "Preponderance of Probability", but not as stricter as "Beyond Reasonable Doubt".

27. Therefore the attempt of the learned Senior Counsel for the petitioners to draw parallel between the departmental proceeding with adjudication proceeding is misconceived. Hence, exoneration in the departmental proceeding which is the culmination of much lower standard of prove cannot enure to the advantage of the petitioners which would lead to quashing of the criminal proceeding.

28. Mr. Dhal, learned Senior Counsel tried to impress upon this Court that the coordinate Bench of this Court has already settled the dispute and this Court is bound by the judgement in **Dr. Minaketan** (supra). He rather suggested for referring

the matter to a bench of larger combination, in case this Court is not agreeing with the view of **Dr. Minaketan** (supra).

29. I have carefully evaluated the judgment in **Dr. Minaketan** (supra), in which the coordinate Bench of this Court has only borrowed the reasoning of **Radheshyam Kejriwal** (supra) and quashed the proceedings. Moreover, in **Dr. Minaketan** (supra) the exoneration in departmental proceeding had undergone judicial scrutiny by the Orissa Administrative Tribunal (OAT) and then by this Court in W.P.(C) No. 2225 of 2015 which was dismissed 19.12.2017. Again an S.L.P. was filed before Hon'ble Supreme Court being SLP (Civil) No.23691 of 2018, which came to be dismissed on 19.07.2019. Therefore the coordinate Bench of this Court by adopting the reasoning of the decision of **Radheshyam** (supra) granted benefit of departmental exoneration to the delinquent officer and quash criminal prosecution *qua* him. Hence, the judgment of the coordinate Bench of this Court in **Dr. Minaketan** (supra) is clearly distinguishable and does not lay down subtle ratio as propounded by the petitioners herewith.

30. It is further noteworthy to mention that in all the cases under consideration, notwithstanding the exoneration of petitioners in departmental proceedings, the competent authority on evaluation of the materials on record accorded sanction to prosecute the petitioners. After grant of sanction by the competent authority, the effect of exoneration in departmental proceedings loses its sanctity because the sanctioning authority accords sanction to prosecute the accused on the material placed before him which form the part of the charge sheet and arrived at the satisfaction that *prima facie* materials are there against the public servant which warrant prosecution.

31. It is relevant to note that the present set of cases involved the allegation of P.C. Act. The P.C. Act is special statute and this Act is enacted keeping in view to curtail the rampant corruption by the public servants. The corruption in our country not only possesses a grave danger to the constitution of governance, it is also threatens the very foundation of Indian democracy under Rule of Law. The magnitude of corruption coming to the liability has all potential to choke the development of the nation and undermines the Rule of Law. Therefore, it is the duty of the Court to interpret the corruption law to strengthen the fight against corruption. In **R.S. Nayak v. A.R. Antulay**¹⁴, the Constitution Bench of the Hon'ble Supreme Court has held that:

“.....Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the court to adopt that construction which would advance the object underlying the Act namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it.”

32. From the foregoing discussion facts as well as law, this Court culled out the following conclusion:-

- a) The standard of proof in the departmental proceedings being preponderance of probability cannot be equated with the standard of proof required in a criminal prosecution.
- b) The exoneration of the petitioners in the departmental proceedings shall not enure to the benefit of public servant who is facing charges of PC Act, 1988, which would lead to quashing of the entire criminal prosecution.
- c) The adjudication proceeding and departmental proceeding are distinct, the former involves adjudication whereas the latter is not an adjudication.
- d) The benefit of the judgment of **Radheshyam** (supra) cannot be extended to the petitioners as the same judgment deals with adjudication proceeding, but not in house departmental proceedings.
- e) The judgment of the coordinate Bench of this Court in **Dr. Minaketan** (supra) is factually distinguishable from the cases in hand.
- f) Once the Sanctioning Authority accords sanction, the exoneration of the public servant in the departmental proceeding loses its effect. Hence, dropping of the criminal prosecution on exoneration in departmental proceeding is not tenable.
- g) The judgment of the Hon'ble Supreme Court in **Ajay Tyagi** (supra) passed in 2012 by three Judge Bench supersedes the ratio laid down by the Division Bench of Supreme Court in **PS Rajya** (supra) in 1996.
- h) The exoneration of accused in a departmental proceeding shall have limited bearing in regard to the offences under special statute however, diminish the effect once the sanction for prosecution under special statutes is granted.

33. Therefore, in light of the aforementioned discussion and judgements cited, this Court is of the considered view that there exists a fundamental distinction between adjudication proceedings and departmental proceedings. Moreover, given that the judgment in **Ashoo Surendranath** (supra) primarily relied on **Radheshyam Kejriwal** (supra), which do not directly address the interplay between departmental proceedings and criminal trial proceedings. This Court finds it appropriate to emphasize that exoneration in departmental proceedings does not necessarily preclude the prosecution to continue the proceedings.

34. Accordingly, this Court is of the view that even in cases where exoneration has taken place in departmental proceedings, the criminal trial must proceed in accordance with law to ensure a comprehensive adjudication of the matter.

35. With the above observation, the CRLMCs are disposed of. The petitioners are granted liberty to raise all other point before the trial Court at the appropriate stage.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

CRLMCs disposed of.

2025 (II) ILR-CUT-626

**RAGHUNATH MISHRA
V.
KAILASH CHANDRA BEHERA & ORS.**

[S.A. NO. 17 OF 1997]

16 APRIL 2025

[A.C. BEHERA, J.]

Issues for Consideration

1. Whether the decree passed in favour of a dead person is sustainable under law.
2. Whether the suit is maintainable due to non-joinder of party.

Headnotes

(A) ODISHA ESTATE ABOLITION ACT, 1951 – Section 7 – Undisputedly at the time of vesting of the suit properties in the State in the year 1964, Narayan Mishra Panigrahi (Grandfather of plaintiff) had already expired in the year 1939 – The OEA collector settled the suit properties in the name of Lakhrajdar i.e. in the name of grandfather of the plaintiff – Whether the decree passed in favour of a dead person is sustainable under law.

Held: No – When, undisputedly by the time of vesting of the suit properties in the State in the year 1964, Narayan Mishra Panigrahi was not in mortal earth, as he had expired much prior to that i.e. in the year 1939, then it was obvious and natural that, by the time of initiation of O.E.A Case No.724 of 1965-66 under Section 7 of the O.E.A. Act, Narayan Mishra Panigrahi was not in Khas possession over the suit properties, as he was dead by then and the settlement of the suit properties in O.E.A. Case No.724 of 1965-66 under Section 7 of the O.E.A. Act according to the Section 7 of the O.E.A. Act as per Ext.3 in favour of a dead person i.e. Narayan Mishra Panigrahi (who was not in possession over the suit properties due to his death much prior to 1964) shall be deemed as *non est* in the eye of law – Because, as per law, no order of settlement like the suit properties can be made under Section 7 of the O.E.A. Act in favour of a dead person, who was not in actual possession over the suit properties on the date of settlement of the same in his name – For which, it is held that, the order of settlement of the suit properties made in O.E.A. Case No.724 of 1965-66 as per Ext.3 in favour of the grandfather of the plaintiff i.e. Narayan Mishra Panigrahi is illegal, void and *non est* in the eye of law. (Para 17)

(B) PROPERTY LAW – Non-joinder of party – It is established that the properties held by the grandfather of the plaintiff was vested with

the State, when plaintiff filed the suit for eviction against the defendants on the basis of his ownership over the properties – Plaintiff has not made the State as party – Whether the suit is maintainable due to non-joinder of party.

Held: No.

(Para 19)

Citations Reference

Binayak Mohapatro and others Vrs. Jagilal Nayak and others, **(1977) 09 OHC CK 0009**; Gurnam Singh (Dead) through LRs and others Vrs. Gurbachan Kaur (dead) by LRs., **(2017) 13 SCC 414**; Raniya Bai Vrs. Tekmani Rathore and others, **2023 Livelaw (MP) 64 – referred to.**

List of Acts

Odisha Estate Abolition Act, 1951.

Keywords

Khas possession; Intermediary; Decree in favour of dead person; Maintainability; Non-joinder of party.

Case Arising From

Judgment and decree dated 29.10.1996 and 08.11.1996 respectively passed by the First Appellate Court in T.A. No. 18 of 1989.

Appearances for Parties

For Appellant : Mr. S.D. Das, Sr. Adv. & Mr. M. Faradish

For Respondents : Mr. A.K. Mishra

Judgment/Order

Judgment

A.C. BEHERA, J.

This second appeal has been preferred against the confirming judgment.

2. The appellant in this second appeal was the sole plaintiff before the Trial Court in the suit vide T.S. No.20 of 1983 and appellant before the First Appellate Court in the First Appeal vide T.A. No.18 of 1989.

The respondents in this second appeal were the defendants before the Trial Court in the suit vide T.S. No.20 of 1983 and respondents before the First Appellate Court in the First Appeal vide T.A. No.18 of 1989.

3. The suit of the plaintiff (appellant in this second appeal) before the Trial Court vide T.S. No.20 of 1983 against the defendants (respondents in this second appeal) was a suit for eviction.

4. According to the pleadings of the plaintiff, the suit land is A0.14 decimals out of A0.78 decimals of Plot No.4764 under Khata No.1643/4 in ward No.18 of Baripada Municipality described in Schedule 'A' of the plaint.

As per the averments made in the plaint of the plaintiff, the entire Plot No.4764 measuring an area A0.78 decimals originally belong to Narayan Mishra Panigrahi (grandfather of the plaintiff).

Narayan Mishra Panigrahi died in the year 1939 leaving behind his three sons i.e. Krishnna Chandra Mishra, Purnna Chandra Mishra and Nilamani Mishra alias Nilamber Mishra.

Krishnna Chandra Mishra died in the year 1978 leaving behind the plaintiff along with his widow mother and other brothers.

After the death of Narayan Mishra Panigrahi in the year 1939, the suit Plot No.4764 along with other properties left by him devolved upon his three sons i.e. Krishnna Chandra Mishra, Purnna Chandra Mishra and Nilamani Mishra. Subsequent to the death of Narayan Mishra Panigrahi, his three sons including the father of the plaintiff partitioned their all joint properties including the suit Plot No.4764. In such partition, the suit Plot No.4764 along with some other properties fell into the share of the father of the plaintiff i.e. Krishnna Chandra Mishra.

When Krishnna Chandra Mishra died in the year 1978, then, the plaintiff filed a suit vide T.S. No.20 of 1968 against his brothers and mother for partition of his own share in the properties left by his father including the suit Plot No.4764. In such partition, the suit Plot No.4764 fell into the share of the plaintiff and accordingly, the plaintiff is the owner of the suit properties.

Krishnna Chandra Mishra (father of the plaintiff) during his life time, he (Krishnna Chandra Mishra) had given different portion of suit Plot No.4764 to different persons on lease basis. The suit land described in Schedule 'A' measuring an area of A0.14 decimals was leased out by Krishnna Chandra Mishra (father of the plaintiff) in favour of the father of the defendant Nos.1 to 3 and husband of the defendant No.4 i.e. Nakula Behera in the year 1942 through a lease deed.

On the strength of such lease deed, Nakula Behera was possessing the suit land, but, in the year 1964, the suit land vested in the State of Odisha, because the suit plot was lakhraj land. After vesting of the suit properties in the State, Krishnna Chandra Mishra applied before the O.E.A. Collector for settlement of the suit properties in his name. The O.E.A. Collector settled the suit properties in the name of Lakhrajdar i.e. in the name of his grandfather Narayan Mishra Panigrahi. As Nakula Behera (predecessor of the defendants) was under the permissive possession over the suit properties under the plaintiff on the basis of the lease deed, for which, after vesting of the suit properties in the State, the plaintiff requested Nakula Behera to vacate the possession of the suit land, but, as Nakula Behera had built a kutchra house over the suit properties, for which, except the house portion, the possession of rest other portions i.e. except the suit properties, the rest portions of Plot No.4764 were delivered by him (Nakula Behera) to the plaintiff.

When in spite of request of the plaintiff to the defendants on dated 20.10.1982 for vacation of the suit properties in his favour, they (defendants) did not vacate, then without getting any way, the plaintiff approached the Civil Court by filing the suit vide T.S. No.20 of 1983 praying for eviction of the defendants from the suit properties.

5. Having been noticed from the Trial Court in the suit vide T.S. No.20 of 1983, the defendants contested the same by filing their joint written statement denying the averments made by the plaintiff in his plaint taking their stands therein that, the father of the defendant Nos.1 to 3 and husband of the defendant No.4 i.e. Nakula Behera got the suit properties from the father of the plaintiff i.e. from Krishnna Chandra Mishra through a permanent lease in the year 1942 and since 1942, he was in occupation over the suit properties and their predecessor i.e. Nakula Behera had constructed a kutch house initially therein, wherein he along with his family members were residing and subsequent thereto, Nakula Behera constructed a pucca house on the same, in which, electric and water connections were provided and the Holding number of the house of the defendants over the suit properties has been allotted by the Baripada Municipality in favour of the defendants and the father of the plaintiff had never recovered the possession of any portion of the suit properties either from Nakula Behera or from the defendants at any point of time till yet. The plaintiff has no interest in the suit properties and they (defendants) are possessing the suit properties and they had/have been residing on the same since the year 1942 i.e. since the time of their predecessor Nakula Behera on the basis of the permanent lease deed executed by the father of the plaintiff Krishnna Chandra Mishra in favour of their predecessor Nakula Behera and as the plaintiff has no interest over the suit properties, for which, the suit of the plaintiff is liable to be dismissed against them (defendants).

6. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether 5 (five) numbers of issues were framed by the Trial Court in the suit vide T.S. No.20 of 1983 and the said issues are:-

ISSUES

- (i) *Is the suit maintainable?*
- (ii) *Is the suit barred by principles of waiver, acquiescence, estoppels and limitations?*
- (iii) *Is the suit bad for non-joinder of necessary parties?*
- (iv) *Whether the plaintiff is entitled to a decree for eviction against the defendants?*

7. In order to substantiate the aforesaid relief sought for by the plaintiff against the defendants in the suit vide T.S. No.20 of 1983, the plaintiff examined four witnesses on his behalf including him and his brother as P.Ws.1 & 4 and exhibited series of documents vide Exts.1 to 4. On the contrary, in order to nullify/defeat the suit of the plaintiff, the defendants examined three witnesses from their side including defendant No.1 as D.W.1 and relied upon series of documents vide Exts.A to D.

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 against the plaintiff and in favour of the defendants and basing upon the findings and observations made by the Trial Court in all the issues against the plaintiff, the Trial Court dismissed

the suit of the plaintiff vide T.S. No.20 of 1983 as per its judgment and decree dated 23.02.1989 and 09.03.1989 respectively assigning the reasons that,

“the plaintiff has failed to establish his any interest over the suit properties and likewise the suit of the plaintiff is not maintainable for non-joinder of all the necessary parties. Because, the plaintiff has claimed his title over the suit properties on the basis of the settlement of the suit properties in O.E.A. Case No.724 of 1965-66 w.e.f. 01.10.1964 as per Ext.3 under Section 7 of the O.E.A. Act, 1951 in the name of Narayan Mishra Panigrahi (grandfather of the plaintiff), though admittedly his grandfather Narayan Mishra Panigrahi was not alive by the time of initiation of O.E.A. Case No.724 of 1965-66, as Narayan Mishra Panigrahi had expired in the year 1939. For which, settlement of the suit properties in O.E.A. Case No.724 of 1965-66 as per Ext.3 in favour of a dead person i.e. Narayan Mishra Panigrahi is non est in the eye of law. So, no interest in the suit properties was created in favour of the plaintiff and as such, the plaintiff has no interest in the suit properties. Therefore, the plaintiff is not entitled to get the decree against the defendants. As the plaintiff has admitted that, the defendants are staying in the suit properties since the time of their predecessor Nakula Behera i.e. since 1942 and the State being the owner of the suit properties has not taken any step to evict them, for which, the suit of the plaintiff is not maintainable under law.”

9. On being dissatisfied with the aforesaid judgment and decree i.e. dismissal of the suit of the plaintiff passed by the Trial Court, he (plaintiff) challenged the same by preferring the First Appeal vide T.A. No.18 of 1989 being the appellant against the defendants arraying them (defendants) as respondents.

10. After hearing from both the sides, the First Appellate Court dismissed that First Appeal vide T.A. No.18 of 1989 of the plaintiff concurring/accepting the findings and observations made by the Trial Court as per its judgment and decree dated 29.10.1996 and 08.11.1996 respectively.

11. On being aggrieved with the aforesaid judgment and decree of the dismissal of the First Appeal vide T.A. No.18 of 1989 of the plaintiff passed by the First Appellate Court, he (plaintiff) challenged the same by preferring this second appeal being the appellant against the defendants arraying them (defendants) as respondents.

12. This Second Appeal was admitted on formulation of the following substantial question of law i.e.:-

Whether after vesting of interest in the Lakhraj property in the State, recording of the said land in the name of the Lakhrajdar as per Ext.3 creates a title?

13. I have already heard from the learned counsel for the appellant and the learned counsel for the respondents.

14. In order to assail the judgments and decrees passed by the Trial Court and First Appellate Court, the learned counsel for the appellant relied upon the ratio of a decision of Hon'ble Court in a case between **Binayak Mohapatro and others Vrs. Jagilal Nayak and others** reported in (1977) 09 OHC CK 0009.

15. It is the own case of the plaintiff that,

“the name of the grandfather of the plaintiff was Narayan Mishra Panigrahi. The said Narayan Mishra Panigrahi expired in the year 1939.

Narayan Mishra Panigrahi died leaving behind his three sons i.e. Krishnna Chandra Mishra, Purnna Chandra Mishra and Nilamani Mishra.

Krishnna Chandra Mishra is the father of the plaintiff. Krishnna Chandra Mishra died in the year 1978 leaving behind his widow wife, the plaintiff along with his other sons.

The suit properties vested in the State in the year 1964 free from all encumbrances. The suit properties were settled in the name of the Narayan Mishra Panigrahi (grandfather of the plaintiff, who had expired in the year 1939) in O.E.A. Case No.724 of 1965-66 w.e.f. 01.10.1964 under Section 7 of the O.E.A. Act, 1951 as per Ext.3.

The father of the plaintiff i.e. Krishnna Chandra Mishra had executed a lease deed in the year 1942 in respect of the suit properties in favour of the predecessor of the defendants i.e. Nakula Behera and since 1942, Nakula Behera was residing over the suit properties. The suit properties had fallen in the share of the plaintiff as per the decree passed in the suit vide T.S. No.20 of 1968 between him, his mother, his brothers and others.”

16. As per Section 7 of the O.E.A. Act, 1951, the lands those were in Khas possession of the intermediaries at the time of vesting, the said properties can be settled in the name of the intermediary, but not in favour of any person other than the intermediary.

17. When, undisputedly by the time of vesting of the suit properties in the State in the year 1964, Narayan Mishra Panigrahi was not in mortal earth, as he had expired much prior to that i.e. in the year 1939, then it was obvious and natural that, by the time of initiation of O.E.A Case No.724 of 1965-66 under Section 7 of the O.E.A. Act, Narayan Mishra Panigrahi was not in Khas possession over the suit properties, as he was dead by then and the settlement of the suit properties in O.E.A. Case No.724 of 1965-66 under Section 7 of the O.E.A. Act according to the Section 7 of the O.E.A. Act as per Ext.3 in favour of a dead person i.e. Narayan Mishra Panigrahi (who was not in possession over the suit properties due to his death much prior to 1964) shall be deemed as non est in the eye of law. Because, as per law, no order of settlement like the suit properties can be made under Section 7 of the O.E.A. Act in favour of a dead person, who was not in actual possession over the suit properties on the date of settlement of the same in his name. For which, it is held that, the order of settlement of the suit properties made in O.E.A. Case No.724 of 1965-66 as per Ext.3 in favour of the grandfather of the plaintiff i.e. Narayan Mishra Panigrahi is illegal, void and non est in the eye of law.

When it is held that, the order of settlement of the suit properties in the name of the grandfather of the plaintiff i.e. Narayan Mishra Panigrahi as per the O.E.A. Case No.724 of 1965-66 under Section 7 of the O.E.A. Act, 1951 is illegal/invalid/non est in the eye of law, then at this juncture, the said order of settlement passed in O.E.A. Case No.724 of 1965-66 in the name of a dead person i.e. in the name of grandfather of the plaintiff Narayan Mishra Panigrahi is to be ignored.

On this aspect, the propositions of law has already been clarified by the Hon'ble Court and Apex Court in the ratio of the following decisions:-

*(i) In a case between **Gurnam Singh (Dead) through LRs and others Vrs. Gurbachan Kaur (dead) by LRs.** reported in (2017) 13 SCC 414, any decision in favour of and/or against dead person renders such decision nullity.*

(ii) In a case between **Raniya Bai Vrs. Tekmani Rathore and others** reported in 2023 **Livelaw (MP) 64** that, any decree passed in favour of or against a dead person is in nullity, as it has been passed in favour of a dead person, for which, the same is nullity. (Para 10)

18. When, the order passed in O.E.A. Case No.724 of 1965-66 in favour of the grandfather of the plaintiff i.e. Narayan Mishra Panigrahi in respect of the settlement of the suit properties is ignored, then at this juncture, it is held that, the State is the owner of the suit properties. Because, due to vesting of the suit properties in the State free from all encumbrances, the State has become the owner as per the own saying of the plaintiff.

For which, the decision relied upon by the appellant (plaintiff) indicated in Para No.14 of this judgment is not applicable to this appeal at hand on facts as discussed above.

19. When, there is no material in the record to show that, the plaintiff is in possession over the suit properties and when it is established that, the ownership of the suit properties lies with the State and when the plaintiff has filed the suit for eviction against the defendants on the basis of his ownership over the suit properties and when the plaintiff has failed to establish his ownership over the suit properties and when the plaintiff has not impleaded to the owner of the same i.e. State along with his mother and brothers as parties to the suit and when it is established from the materials in the records that, the defendants are residing on the suit properties since the time of their predecessor Nakula Behera i.e. since 1942 on the basis of the lease deed executed by the father of the plaintiff in favour of Nakula Behera, then at this juncture, it cannot be held that, the judgments and decrees passed by the Trial Court as well as First Appellate Court dismissing the suit of the plaintiff are unreasonable or improper in any manner. For which, the question of interfering with the same through this second appeal filed by the plaintiff does not arise.

Therefore, there is no merit in the appeal of the appellant (plaintiff). The same must fail.

20. In result, the second appeal filed by the appellant (plaintiff) is dismissed on contest, but without cost.

The judgments and decrees passed by the Trial Court and First Appellate Court in T.S. No.20 of 1983 and T.A. No.18 of 1989 respectively are confirmed.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Second Appeal dismissed.

2025 (II) ILR-CUT-633

**NIGAMANANDA RATH & ORS.
V.
SIBA NARAYAN PATI (DEAD) & ORS.**

[R.S.A. NO. 386 OF 2004]

16 APRIL 2025

[ANANDA CHANDRA BEHERA, J.]**Issues for Consideration**

1. Whether the judgment and decree passed in the suit are binding upon the plaintiff when he was not a party to it.
2. Whether the plaintiff's claim in the suit is barred by limitation as per Article 59 of the Limitation Act when the plaintiff prays to set aside the decree.

Headnotes

(A) SPECIFIC RELIEF ACT, 1963 – Section 34 – Judgment in *rem* – The defendant filed T.S. No. 17/71, 59/74, 19/75 and SCC No. 7/3 of 1975 without implementing anybody from the plaintiff's branch in a suit for declaration and permanent injunction – Whether the judgment and decree passed in the suit are binding upon the plaintiff when he was not a party to it.

Held: No – It is the settled propositions of law that, the declaration made under Section 34 of the Specific Relief Act does not operate as *Judgment in Rem*.

A declaratory decree does not bind the parties to the suit or the persons claiming through parties to the suit and the same does not bind anybody other than the parties to the suit.

Likewise, the relief i.e. injunction is purely personal and independent – The matter relating to injunction is limited/concentrated only between the parties to the suit, not to anybody other than the parties to the suit. (Para 15)

(B) INDIAN LIMITATION ACT, 1963 – Article 57 – Limitation in case of fraud – Limitation when previous decree obtained without impleading the plaintiff as a party – Plaintiff filed a suit for declaration and for setting aside the judgment and decree passed in T.S. Nos. 17/71, 59/74, 19/75 and S.C.C. No. 7/3 of 1975 – Defendant Nos. 1 and 2 filed the above suits against some members of other branches of the family for declaration of their right, title and interest over the suit properties and for permanent injunction against them without impleading any members of the branch of the plaintiff and got the decree in the said suits behind back and without knowledge of the

plaintiff – The plaintiff came to know about the said judgments and decrees for the first time on 31.05.1975 and filed the present suit – The trial Court decreed the suit of the plaintiff in part against the defendants and declared that the decrees passed in the previous suits are not binding upon the plaintiff and also declared his 1/4th interest in the suit schedule properties – The First Appellate Court as per its judgment and decree concurred the finding and observations made by the learned Trial Court – Whether the plaintiff's claim in the suit is barred by limitation as per Article 59 of the Limitation Act when the plaintiff prays to set aside the decrees dated 17.04.1972, 29.07.1971 and 30.05.1975.

Held: No – It is held that, the plaintiff had filed the suit vide T.S. No.30 of 1981 praying for a declaration that, the Judgments and Decrees in T.S. Nos.17/71, 59/74,19/75 & S.C.C. No.7/3 of 1975 have been passed behind his back without impleading him as party by practising fraud knowing fully well that, he (plaintiff) had/has 1/4th interest in the suit properties, then, at this juncture, it cannot be held that, the suit vide T.S. No.30 of 1981 filed by the plaintiff is barred by limitation.

Because, fraud is a continuous wrong and period of limitation begins to run at every moment – For which, there is no limitation to challenge the same – Therefore, it cannot be held that, the suit of the plaintiff is barred by limitation. (Para 21)

Citations Reference

SNP Shipping Services Private Limited & Others Vs. World Tanker Carrier Corporation & Another, **AIR 2000 Bombay 34**; Dunia Lal Datta Vs. Nagendra Nath Datta & Another, **AIR 1982 Calcutta 163**; Indubai Dagdu @ Dhondiram & Others Vs. Laxman Balwant Chougule (deceased) & Others, **Civil Revision Application No.636 of 2023 (Bombay) at Para No.5**; (O&M) Taqdir Jeet Singh @ Jagdir Jeet Vs. State of Haryana & Others, **CR No.512 of 2006 (P & H) at Para No.12**; Bengal Ambuja Housing Development Limited vs. Pramila Sanfui and Ors, **AIR 2015 (SC) 3729**; P.S. Radhakrishnan Vs. A. Indu, **2018 (4) Civ.C.C. (Ker) (DB)**; Madan Lal & Another Vs. Rajesh Kumar (Dead) through LRs, **2006 (1) CCC (P & H) 230 & 2006 (1) Civ.L.T. 123 (P & H)**; Sanotsh vs. Jagat Ram & Another, **2010 (1) CLR (SC) 425 (Para No.12)**; Subala Tarai & Diriba Swain vs. Collector, Puri and Others, **2019 (1) CLR 748 – referred to.**

List of Acts

Specific Relief Act, 1963; Indian Limitation Act, 1963.

Keywords

Judgment in Rem; Non-impleadment of party; Bar of limitation.

Case Arising From

Judgment and decree dated 23.07.2004 and 28.07.2004 respectively passed by the First Appellate Court in T.A. No. 57 of 1997.

Appearances for Parties

For Appellants : Mr. B. Panigrahi

For Respondents : Mr. B. Das

Judgment/Order

Judgment

A.C. BEHERA, J.

1. This 2nd Appeal has been preferred against the confirming Judgment.
2. The predecessor of the appellants in this 2nd Appeal i.e. Ambika Patel was the defendant No.1 before the Trial Court in the suit vide T.S. No.30 of 1981 and Appellant before the First Appellate Court in the 1st Appeal vide T.A. No.57 of 1997.

After the death of the defendant No.1 Ambika Patel during the stage of 1st Appeal, her successors were substituted in her place as respondent Nos.1(a) to 1(c).

The predecessor of the respondent Nos.1(a) to 1(g) in this 2nd Appeal i.e. Siba Narayan Pati was the sole plaintiff before the Trial Court in the suit vide T.S. No.30 of 1981 and respondent No.1 before the First Appellate Court in the First Appeal vide T.A. No.57 of 1997.

After the death of Siba Narayan Pati during the stage of this 2nd Appeal, his successors have been substituted in his place as respondent Nos.1(a) to 1(g).

Respondent Nos.2 to 38 in this 2nd Appeal were the defendant Nos.2 to 38 before the Trial Court in the suit vide T.S. No.30 of 1981 and respondent Nos.2 to 38 before the 1st Appellate Court in the First Appeal vide T.A. No.57 of 1997.

3. The suit of the plaintiff vide T.S. No.30 of 1981 was a suit for declaration and for setting aside the Judgment and Decree passed in T.S. Nos.17/71, 59/74,19/75 & S.C.C. No.7/3 of 1975.

4. As per the case of the plaintiff, Krushna Pati, Keshaba Pati, Madhaba Pati and Jadab Pati are the four sons of Ghana Pati. Ghana Pati died long back.

The first son of Ghana Pati i.e. Krushna Pati died in the year 1952. The 2nd Son of Ghana Pati i.e. Keshaba Pati died in the year 1971 and the 3rd Son of Ghana Pati i.e. Madhab Pati died in the year 1972 leaving behind his son Jogeswar Pati.

Jogeswar Pati died leaving behind his widow wife Bhargabi Pati and one son i.e. Siba Narayan Pati.

The 4th son of Ghana Pati i.e. Jadab Pati died in the year 1973.

The suit properties originally belonged to the predecessors of the defendant Nos.1 and 2. The predecessor of the defendant Nos.1 and 2 had mortgaged the suit properties in favour of Krushna Pati, Keshaba Pati, Madhab Pati and Jadab Pati on dated 23.01.1925 and 28.09.1927 for Rs.10,000/- and Rs.3,000/- respectively. When the ancessetors of the defendant Nos.1 and 2 did not repay the mortgaged amount, then, Krushna Pati, Keshaba, Madhab Pati and Jadab Pati filed a suit vide T.S. No.32 of 1940 against the predecessor of defendant Nos.1 & 2 for a decree of foreclosure in the Court of Sub-Judge, Sambalpur and the said suit was decreed in favour of Krushna Pati, Keshaba Pati, Madhab Pati and Jadab Pati. The said suit vide T.S. No.32 of 1940 was also decreed finally in favour of Krushna Pati, Keshaba, Jadab Pati and Madhab Pati and possession thereof was delivered to them through Execution of the decree of the said suit vide Execution Case No.36 of 1943 on dated 04.04.1944.

After getting the suit properties through execution since 04.04.1944, the 4 brothers i.e Krushna Pati, Keshaba, Madhab Pati and Jadab Pati possessed the suit properties being the owners of the same and mutated the same to their names and after mutation, they paid the rent of the suit properties to the Government in their names obtaining proper rent receipts. Thereafter, they (Krushna Pati, Keshaba, Madhab Pati and Jadab Pati) distributed the suit properties among them having 1/4th share in each.

The defendant Nos.1 and 2 filed suits vide T.S. No.17 of 1971, T.S. No.59 of 1974, T.S. No.19 of 1975 and S.C.C. No.7/3 of 1975 against some members of the branch of Krushna Pati, Keshab Pati and Jadaba Pati in respect of the suit properties for declaration of their right, title, interest over the suit properties and for permanent injunction against them without impleading any members of the branch of the plaintiff and got the decrees in the said suits behind the back and without the knowledge of the plaintiff. For which, the Judgments and Decrees passed in the said suits in favour of the defendant Nos.1 & 2 are not binding upon the plaintiff. The plaintiff came to know about the said Judgments and Decrees for the first time on 31.10.1975 in the settlement camp at Bargarh and subsequently enquired about the same and obtained the copies of the said decrees and filed the suit vide T.S. No.30 of 1981 against the defendant Nos.1 and 2 arraying others as defendant Nos.3 to 38 as defendants praying for declaration of his right, title and interest over the suit properties and also to declare that, the Judgments and Decrees passed in the suit vide .S. No.17 of 1971, T.S. No.59 of 1974, T.S. No.19 of 1975 and S.C.C. No.7/3 of 1975 are not binding upon him and to set aside the said Judgments and Decrees.

5. Having been noticed from the Trial Court in the suit vide T.S. No.30 of 1981, the defendant No.1 contested the same by filing her written statement denying the averments made by the plaintiff in his plaint on the ground that, the suit of the plaintiffs for setting aside the Judgments and Decrees passed in T.S. No.17 of 1971, T.S. No.59 of 1974, T.S. No.19 of 1975 and S.C.C. No.7/3 of 1975 is barred by law of limitation.

Her specific stands were that, neither the plaintiff nor his co-sharers had ever possessed the suit properties and likewise neither the plaintiff nor his co-sharers had their any right, title and interest over the same. The plaintiff had full knowledge about the above 4 suits as well as result of the same. For which, the plaintiff has no locus standie to challenge the Judgments and Decrees passed in the above 4 said suits. They (defendant Nos.1 and 2) are all along in possession over the suit properties since the time of their forefathers and during major settlement, they had also received draft Parcha in respect of the suit properties in their favour on the basis of the order passed in Settlement Appeal No.96 of 1976, for which, the suit of the plaintiff is liable to be dismissed.

6. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether 8 numbers of issues were framed by the Trial Court in the suit vide T.S. No.30 of 1981 and the said issues are:

ISSUES

1. *Is there any cause of action for the suit?*
2. *Is the suit barred by limitation?*
3. *If the defendant No.1 and 2 have perfected a title to the suit property by adverse possession?*
4. *If the suit is barred by the principles of resjudicata?*
5. *If the plaintiff has any right, title, interest and possession in respect of the suit land?*
6. *To what relief, if any?*

7. In order to substantiate the aforesaid reliefs sought for by the plaintiffs against the defendant Nos.1 and 2, the plaintiffs examined 4 numbers of witnesses from his side including him as P.W.1 and relied upon the documents vide On the contrary, in order to nullify/defeat the suit of the plaintiffs, the defendant Nos.1 examined 3 witnesses on her behalf and relied upon the documents vide Ext.A to N.

8. After conclusion of hearing and on perusal of the materials, documents and evidence available in the record, the Trial Court decreed the suit of the plaintiff vide T.S. No.30 of 1981 in part against the defendants as per its Judgment and Decree dated 30.09.1997 & 20.10.1997 respectively and declared that, the decrees passed in the suits vide T.S. No.17 of 1971, T.S. No.59 of 1974, T.S. No.19 of 1975 and S.C.C. No.7/3 of 1975 are not binding upon him (plaintiff) and also declared his 1/4th interest in the suit schedule properties assigning the reasons that, plaintiff has cause of action for filing of the suit. The suit of the plaintiff is not bared by the law of limitation and the defendant Nos.1 and 2 have not perfected their title over the suit properties through adverse possession and the plaintiff has 1/4th interest in the suit properties on the basis of the preliminary and final decree passed in T.S. No.32 of 1940 in his favour in respect of the suit properties, as the preliminary decree, final decree as well as final order passed in Execution Case No.36 of 1943 have not been set aside by the competent Court of Law and the Judgments and Decrees passed in T.S. No.17 of 1971, T.S. No.59 of 1974, T.S. No.19 of 1975 and S.C.C. No.7/3 of 1975 in favour of the defendant Nos.1 and 2 are not binding upon the plaintiff,

because, the said Judgments and Decrees were passed without impleading the predecessor of the plaintiff or the plaintiff as a party in the same.

9. On being dissatisfied with the aforesaid Judgment and Decree passed by the Trial Court in the suit vide T.S. No.30 of 1981 in favour of the plaintiff and against the defendants, the defendant No.1 challenged the same by filing the 1st Appeal vide T.A. No.57 of 1997 being the appellant against the plaintiff and defendant No.2 & rest others arraying them as respondents.

When during the pendency of the 1st Appeal, the appellant (defendant No.1) expired, then, her LRs were substituted in her place as Appellant Nos.1(a) to 1(c).

After hearing from both the sides, the First Appellate Court dismissed to the First Appeal vide T.A. No.57 of 1997 of the defendant No.1 on contest as per its Judgement and Decree dated 23.07.2004 & 28.07.2004 respectively concurring/accepting the findings & observations made by the learned Trial Court in its Judgment and Decree.

10. On being aggrieved with the aforesaid Judgment and Decree of the dismissal of the 1st Appeal vide T.A. No.57 of 1997 of the defendant No.1 passed by the 1st Appellate Court, the LRs of the defendant No.1 challenged the same by preferring this 2nd Appeal being the appellants against the plaintiff and defendant Nos.2 to 38 arraying them as respondents.

When, during the pendency of this 2nd Appeal, the respondent No.1 (plaintiff Siba Narayan Pati) expired, then, his LRs have been substituted in his place as respondent Nos.1(a) to 1(g).

11. This 2nd Appeal was admitted on formulation of the following substantial questions of law i.e.

I. Whether the Plaintiffs claim in the instant suit is barred by Article 59 of the Indian Limitation Act,

a) When the Plaintiff's unequivocal case is that the impugned decrees dtd. 17.4.72, 29.7.74, and 30.5.75 are to be set aside.

(b) When the co-sharers of the present plaintiff were parties to the said suit.

II. Whether the Learned Courts below were correct in applying the provision of Sec.14 of the Indian Limitation Act in view of the following dates:

(a) 15.11.75 - Suit filed.

(b) 12.12.80 - Court returns the plaint on the ground lack of pecuniary jurisdiction.

(c) 17.12.80 - On the Plaintiff's prayer Court directed appearance in the proper Court on 19.1.81.

(d) 14.5.81 - The present Plaint filed.

12. I have already heard from the learned counsel of both the sides.

13. When both the aforesaid formulated substantial questions of law are interlinked having ample nexus with each other as per the pleadings of the parties, findings and observations made by the Trial Court and First Appellate Court in their

respective Judgments and Decrees, then, both the substantial questions of law are taken up together for their discussions hereunder:

14. It is the undisputed case of the parties that, Krushna Pati, Keshaba, Madhab Pati and Jadab Pati being the 4 sons of late Ghana Pati were 4 brothers. The preliminary decree passed in T.S. No.32 of 1940 in respect of the suit properties in favour of Krushna Pati, Keshaba, Madhab Pati and Jadab Pati as well as final decree thereof and recovery of possession through Execution Case No.36 of 1943 on the basis of the final decree passed in T.S. No.32 of 1940 in their favour in respect of the suit properties have not been set aside.

Accordingly, undisputedly, the grandfather of the plaintiff i.e. Madhab Pati had 1/4th share in the suit properties, because, all 4 brothers i.e. Krushna Pati, Keshaba Pati, Madhab Pati and Jadab Pati had equal share in the suit properties having 1/4th share each. The plaintiff Siba Narayan Pati being the sole successor of Madhab Pati, after the death of his father Jogeswar Pati, he (Siba Narayan Pati) had inherited the 1/4th share of Madhab Pati in the suit properties.

It is also the undisputed case of the parties that, in the suit vide T.S. Nos.17/71, 59/74,19/75 & S.C.C. No.7/3 of 1975 filed by the defendant Nos.1 and 2 in respect of the suit properties against some of the successors of Krushna Pati, Keshaba Pati & Jadab Pati, neither the father of the plaintiff i.e. Jogeswar Pati nor his mother Bhargabi Pati or the plaintiff Siba Narayan Pati were the parties.

15. The decrees in the suits vide T.S. Nos.17/71, 59/74,19/75 & S.C.C. No.7/3 of 1975 were passed without impleading anybody from the plaintiff's branch. The above suits vide T.S. Nos.17/71, 59/74,19/75 & S.C.C. No.7/3 of 1975 in respect of the suit properties were the suit for declaration and permanent injunction.

It is the settled propositions of law that, the declaration made under Section 34 of the Specific Relief Act does not operate as *Judgment in Rem*.

A declaratory decree does not bind, the parties to the suit or the persons claiming through parties to the suit and the same does not bind anybody other than the parties to the suit.

Likewise, the relief i.e. injunction is purely personal and independent. The matter relating to injunction is limited/concentrated only between the parties to the suit, not to anybody other than the parties to the suit.

16. On this aspect, the propositions of law has already been clarified by the Hon'ble Courts in the ratio of the following decisions:

I. *In a case between SNP Shipping Services Private Limited & Others Vs. World Tanker Carrier Corporation & Another* reported in AIR 2000 Bombay 34 that, a declaration given under section 34 is binding only between the parties. It is a declaration in personam and not in rem.

II. *In a case between Dunia Lal Datta Vs. Nagendra Nath Datta & Another* reported in AIR 1982 Calcutta 163 that, as per Section 35 of the Specific Relief Act, a decree of declaration will not be binding on Dunialal who was a stranger to the suit.

III. In a case between **Indubai Dagdu @ Dhondiram & Others Vs. Laxman Balwant Chougule (deceased) & Others** reported in **Civil Revision Application No.636 of 2023 (Bombay)** at Para No.5 that, declaration of right in personam and that therefore, the same would not bind nonparties to suit.

IV. In a case between **(O&M) Taqdir Jeet Singh @ Jagdir Jeet Vs. State of Haryana & Others** reported in **CR No.512 of 2006 (P & H) at Para No.12** that, the decree of declaration is a Judgment in personam and not a Judgment in rem.

V. In a case between **Bengal Ambuja Housing Development Limited vs. Pramila Sanfui and Ors** reported in **AIR 2015 (SC) 3729** that, either temporary or permanent injunction can be grant only against the parties to a suit but not against others. An injunction decree being a personal decree cannot be binding upon anybody else other than the parties to the suit.

17. So, in view of the principles of law enunciated in the ratio of the above decisions, when neither the father of the plaintiff i.e. Jogeswar Pati, nor the mother of the plaintiff i.e. Bhargabi Pati or the plaintiff i.e. Sib Narayan Pati were the parties in the suit vide T.S. Nos.17/71, 59/74,19/75 & S.C.C. No.7/3 of 1975 in respect of the suit properties filed by the defendant Nos.1 and 2, then, at this juncture, naturally, as per law, such Judgments and Decrees passed in T.S. Nos.17/71, 59/74,19/75 & S.C.C. No.7/3 of 1975 are not binding upon the plaintiff.

As such, the plaintiff is not bound by the Judgments and Decrees passed in T.S. Nos.17/71, 59/74,19/75 & S.C.C. No.7/3 of 1975. Because as per law, the Judgments and Decrees passed in the said suits have no binding effect upon the plaintiff, as the plaintiff was not a party in the said suits.

18. Now, the question arises, whether the suit of the plaintiff vide T.S. No.30 of 1981 was barred by limitation, as the same was filed much after 3 years of the decrees passed in the suits vide T.S. Nos.17/71, 59/74,19/75 & S.C.C. No.7/3 of 1975.

It has been specifically pleaded and proved on behalf of the plaintiff that, the plaintiff was totally ignorant about the filing of the suits vide T.S. Nos.17/71, 59/74,19/75 & S.C.C. No.7/3 of 1975 by the defendant Nos.1 and 2 in respect of the suit properties against others and he came to know about the same for the first time on dated 31.10.1975, when in the settlement camp, the defendant No.1 disclosed about the same. Then on dated 15.11.1975, the plaintiff filed the suit and thereafter, the plaint thereof was returned on 12.12.1980 on the ground of lack of pecuniary jurisdiction and then, on dated 14.05.1981 the same was presented again and after presentation, the same was registered as T.S. No.30 of 1981.

When, undisputedly the preliminary decree as well as final decree in respect of the suit properties were passed in T.S. No.32 of 1940 in favour of the father of the plaintiff along with his 3 brothers and on the basis of such final decree, the delivery of possession of the suit properties was given in favour of the father of the plaintiff along his with 3 brothers in Execution Case No.36 of 1943 executing the final decree passed in T.S. No.32 of 1940 in respect of the suit properties against the predecessor of the defendant Nos.1 and 2 and when the preliminary decree and final

decree in T.S. No.32 of 1940 as well as order regarding delivery of possession of the suit properties in favour of the father of the plaintiff and his three brothers passed in Execution Case No.36 of 1943 have not been set aside, and when the father of the plaintiff i.e. Jogeswar Pati, after him, the mother of the plaintiff i.e. Bhargabi Pati as well as the plaintiff Sib Narayan Pati has 1/4th share in the suit properties, then, in the suits vide T.S. Nos.17/71, 59/74,19/75 & S.C.C. No.7/3 of 1975 filed by the defendant Nos.1 and 2 in respect of the suit properties for declaration and permanent injunction, the members of plaintiff's branch should have been arrayed as party, but the defendant Nos.1 and 2 have not done so.

On this aspect, the propositions of law has already been clarified by the Hon'ble Courts in the ratio of the following decision:

I. In a case between P.S. Radhakrishnan Vs. A. Indu reported in 2018 (4) Civ.C.C. (Ker) (DB) that, plaintiff cannot expect to receive the discretionary relief of declaration without impleading the person against whom the declaration is sought or the person, who will be effected by the declaration or person against whom, declaration is directed.

19. So, due to non-impleadment either to the father of the plaintiff, mother of the plaintiff as well as plaintiff in the suit vide T.S. Nos.17/71, 59/74,19/75 & S.C.C. No.7/3 of 1975 in respect of the suit properties filed by the defendant Nos.1 and 2, it is held that, the defendant Nos.1 and 2 have managed to obtain the decrees in the suits vide T.S. Nos.17/71, 59/74,19/75 & S.C.C. No.7/3 of 1975 behind the back of the plaintiff and without his knowledge suppressing the material facts and practising fraud. Because, in spite of knowing that, as per the preliminary and final decree passed in T.S. No.32 of 1940, the plaintiff has 1/4th share in the suit properties, the plaintiff was not impleaded by them (defendant Nos.1 & 2) as parties in the suit vide T.S. Nos.17/71, 59/74,19/75 & S.C.C. No.7/3 of 1975.

Here in this matter at hand, when the Judgments and Decrees vide T.S. Nos.17/71, 59/74,19/75 & S.C.C. No.7/3 of 1975 in respect of the suit properties have been passed behind the back and without the knowledge of the plaintiff as well as without impleading plaintiff as a party in favour of the defendant Nos.1 and 2 in respect of the suit properties and when the plaintiff has prayed for setting aside the said decrees, then, at this juncture, it cannot at all be held that, the suit of the plaintiff vide T.S. No.30 of 1981 was barred by limitation. Because as per law, a fraudulent decree is itself non-est in the eye of law and there is no limitation to challenge the same. That apart, limitation starts from the date of fraud becomes known to the plaintiff.

20. On this aspect, the propositions of law has already been clarified by the Hon'ble Courts and Apex Court in the ratio of the following decisions:

I. In a case between Madan Lal & Another Vs. Rajesh Kumar (Dead) through LRs reported in 2006 (1) CCC (P & H) 230 & 2006 (1) Civ.L.T. 123 (P & H) that, suit for setting aside Judgment and Decree allegedly obtained by fraud and misrepresentation. Starting point of limitation would be the date of knowledge of alleged fraud. Decree was

passed in 1988, but evidence to show that, plaintiff came to know about it in 1995 and suit was filed in 1995. Suit was rightly held to be in within time. (Para Nos.14 & 16)

II. *In a case between **Sanotsh vs. Jagat Ram & Another** reported in 2010 (1) CLR (SC) 425 (Para No.12) that, a fraud puts an end to everything. It is a settled position in law that, such decree is nothing, but a nullity.*

III. *In a case between **Subala Tarai & Diriba Swain vs. Collector, Puri and Others** reported in 2019 (1) CLR 748 that, action initiated on discovery of fraud is not barred by limitation. Since, fraud is a continuing wrong, period of limitation would begin to run at every moment of time during which, such wrong continues.*

21. Here in this suit/appeal at hand, as per the discussions and observations made above, when it is held that, the plaintiff had filed the suit vide T.S. No.30 of 1981 praying for a declaration that, the Judgments and Decrees in T.S. Nos.17/71, 59/74,19/75 & S.C.C. No.7/3 of 1975 have been passed behind his back without impleading him as party by practising fraud knowing fully well that, he (plaintiff) had/has 1/4th interest in the suit properties, then, at this juncture, it cannot be held that, the suit vide T.S. No.30 of 1981 filed by the plaintiff is barred by limitation.

Because, fraud is a continuous wrong and period of limitation begin to run at every moment. For which, there is no limitation to challenge the same. Therefore, it cannot be held that, the suit of the plaintiff is barred by limitation.

22. As per the discussions and observations made above, when it is held on being fully agreed with the findings and observations made by the Trial Court and First Appellate Court that, the suit of the plaintiff vide T.S. No.30 of 1981 was not barred by limitation, then, at this juncture, the question of interfering with the Judgments and Decrees passed by the Trial Court and First Appellate Court through this 2nd Appeal filed by the LR of the defendant No.1 does not arise.

23. Therefore, there is no merit in the 2nd Appeal of the appellants (LRs of defendant No.1). The same must fail.

24. In result, the 2nd Appeal filed by the appellants (LRs of defendant No.1) is dismissed on contest, but without cost.

25. The Judgments and Decrees passed by the Trial Court as well as by the 1st Appellate Court in T.S. No.30 of 1981 & T.A. No.57 of 1997 respectively are confirmed.

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

27. Interim order(s), if any, stand(s) vacated.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Second Appeal dismissed.