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NOMINAL INDEX

	PAGE
Ajay Singh V. State of Odisha	559
Ajay Kumar Bhramar Bar Ray V. Union of India & Ors.	701
Ajit Kumar Mishra V. State of Odisha & Ors.	406
Badrinaryan Mishra V. State of Odisha (Home Deptt) & Ors.	520
Binapani Mahalik V. State of Odisha & Ors.	654
Chandramani Mahar V. State of Orissa (Vig)	729
Deba Bisi V. State of Odisha & Ors.	525
Divisional Manager, M/s. ICICI Lombard General Insurance Company Ltd., Bhubaneswar V. Ashalata Barik & Anr.	532
Dinabandhu Dehury & Ors. V. State of Odisha	434
Dukha @ Krushna Behera V. State of Odisha	463
Dr. Amiya Kumar Mohanty V. State of Odisha & Ors.	596
Dr. Supreet Saurav V. State of Odisha & Ors.	614
G. Debendra Rao V. G. Puspa Prabha Rao & Anr.	719
Gobinda Chandra Samal & Ors. V. Fakir Charan Samal @ Fakir Samal & Anr.	581
Hemanta Nayak V. State of Odisha & Ors.	630
Lala Nalini Kumar Ray (dead, his legal heirs) & Ors. V. Shri Jagannath Mahaprabhu Bije-Srikhetra, Puri & Anr.	480
Lingaraj Behera V. State of Odisha	571
Lipika Nayak V. Ajitav Nayak	692
Md. Usman Khan V. State of Odisha & Ors.	503
M/s. Utkal Alumina International Ltd., (UAIL), Doraguda V. The Presiding Officer, Labour Court, Jeypore & Ors.	494
Manguli Bhal & Ors. V. State of Orissa	740
Nandini Samal & Ors. V. The Principal, Saint Mary's School & Anr.	625
Namita Swain & Anr. V. Union of India (G.M., South Eastern Railway, Kolkata)	540
Pranaya Kishore Harichandan V. Union of India, Revenue Ministry of Finance, New Delhi & Ors.	400
Rupesh Kumar Agarwal V. Priyasha Goenka	413
Ruby@Bishnupriya Beura@Samal V. Pradeep Kumar Beura	427
Sabitri Palei V. Bhikari Palei & Ors.	765
Sanjeeb Kumar Kar V. Anadi Charan Giri & Anr.	639
Sankarprasad Pradhan V. State of Odisha	714
Sasmita Das V. State of Odisha & Ors.	420
Satyabati Mishra & Ors. V. State of Orissa	746
Sk. Sabakttulah & Ors. V. Sk. Attaulla & Ors.	587
Smt. Renuka Dei V. State of Odisha, Commissioner-cum-Secretary, Water Resources Department, Bhubaneswar & Ors.	662
Surendra Kumar Sahu V. State of Odisha (Vig.)	547
Tansukha Rai Agarwal (since dead) through his LRs V. State of Odisha & Ors.	757
Udayanath Sahoo (dead) represented by LRs. & Anr. V. State of Odisha & Ors.	510

ACTS & RULES

Acts &No.

1959-54	Arms Act, 1959
1908-5	Code of Civil Procedure, 1908

1974-2	Code of Criminal Procedure, 1973
1950	Constitution of India, 1950
1923-8	Employee's Compensation Act, 1923
1948-34	Employees' State Insurance Act, 1948
1984-66	Family Courts Act, 1984
1955-25	Hindu Marriage Act, 1955
1860-45	Indian Penal Code, 1860
1947-14	Industrial Disputes Act, 1947
1894-1	Land Acquisition Act, 1894
1985-61	Narcotic Drugs and Psychotropic Substances Act, 1985
1949-7	Orissa Muhammedan Marriages and Divorces Registration Act, 1949
1965-1	Orissa Grama Panchayats Act, 1964
1988-49	Prevention of Corruption Act, 1988
1989-24	Railways Act, 1989
2005-22	Right to Information Act, 2005

SANHITA

1. Bharatiya Nagarik Suraksha Sanhita, 2023

RULES

1. Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Services of President and Members) Rules, 2023
2. Orissa Civil Services (Classification, Control & Appeal) Rules, 1962
3. Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974
4. Orissa Muhammedan Marriages and Divorces Registration Rules, 1976
5. Odisha Revised Scale of Pay Rules, 2008

TOPICAL INDEX

CLAIM OF COMPENSATION
CRIMINAL TRIAL
INTERPRETATION OF STATUTES
MOTOR ACCIDENT
PRINCIPLE OF ESTOPPEL
SERVICE JURISPRUDENCE
SERVICE LAW

SUBJECT INDEX

PAGE

ARMS ACT, 1959 – Suspension/ Revocation of License – The confirming order of the Appellate authority is under challenge – Two criminal cases against the petitioner is pending – Authority after giving opportunity of hearing has suspended the license on the ground of public safety, security and peace – Petitioner pleaded that, pendency of criminal cases have no relevance to possession of the Arms license and such weapon have not been misused in any circumstances – Subjective satisfaction of the statutory authority – Scope and interference of the Writ Court – Whether in the circumstances above the confirming order of the statutory authorities warrant any interference.

Held: No – In the instant case when the criminal cases are still pending against the Petitioner the assertions made on his part that it would no way affect the use of fire arms to disturb public safety is not found convincing – At the same time it needs to be mentioned here that when the licensing authority having considered all such materials on record has satisfied about the threat posed by the Petitioner for possessing the fire arms to the public peace and safety it would not be wise on the part of this court to interfere with the same on the facts that the conduct of the Petitioner is not justifying such action on the part of the licensing authority – Therefore the impugned order under Annexure-4 and confirmation of the same by the appellate authority under Annexure-8 does not warrant any interference – The writ petition is dismissed.

Badrinaryan Mishra V. State of Odisha (home Deptt) & Ors.
2025 (III) ILR-Cut…… 520

BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 483 – Bail – The petitioners are charged U/ss.147/ 148/341/323/307/324/326/302/120-B/149 of IPC r/w section 25(1)(a)/27(1) of the Arms Act – PIea of parity – It is submitted by the petitioner that some of the material witnesses have already examined and 15 co-accused persons have already been granted bail – Whether the petitioners are entitled to bail on the ground of parity though the informant and some other eye witnesses are yet to be examined?

Held: – Taking into consideration the nature and gravity of the offences alleged against the petitioners vis-à-vis the allegations sought to be brought against them and the materials collected in support thereof and keeping in view the number & nature of injuries sustained by the deceased & the injured persons and the role as alleged against each of the petitioners and on going through the material accusations against the petitioners together with the evidence of material witnesses and taking into account the circumstances under which the occurrence took place and its impact on society at large and regard being had to the no specific allegations made against the petitioners Sankarprasad Pradhan, Asish Sahu @ Panda and Sukanta Tarei @ Kalia @ Babu for attacking or assaulting the deceased and injured persons by means of any lethal weapons, this Court while being not inclined to grant bail to the petitioners-Papu Tarei, Raja Tarei, Kartika Parida and Raju Tarei considers it proper to admit the petitioners-Sankarprasad Pradhan, Asish Sahu @ Panda and Sukanta Tarei @ Kalia @ Babu to bail by extending the principle of parity.

Sankarprasad Pradhan V. State of Orissa
2025 (III) ILR-Cut…… 714

CIVIL PROCEDURE CODE, 1908 – Section 115 r/w Sections 10, 18, 30 of Land Acquisition Act, 1894 – Revision – The Land Acquisition Officer rejected the application for reference of the matter to the Civil Court – Whether revision U/s. 115 of C.P.C is maintainable against such rejection?

Held: Yes – It is held that, these revisions filed by the Petitioners are maintainable (entertainable) under the law for adjudication.

Tansukha Rai Agarwal (since dead) through his LRs V. State of Odisha & Ors.
2025 (III) ILR-Cut…… 757

CIVIL PROCEDURE CODE, 1908 – Order 6, Rule 17 – Amendment of pleadings – In the present case after closure of evidence from the side of the plaintiff the defendants filed petition under Order 6 Rule 7 of the C.P.C. praying for amendment of their written statement – Trial Court allowed such amendment without giving opportunity to the plaintiff for amending his plaint commensurate to the proposed amendment of the written statement of the defendants – Whether allowing amendment of written statement at the bleated stage of the suit can be held as correct.

Held: – Even though, the learned Trial Court allowed the petition for proposed amendment of the written statement of the defendants, but, the learned Trial Court has not given any opportunity to the Plaintiff for amending his plaint commensurating the proposed amendment of the written statement of the defendants and for adducing rebuttal evidence concerning the amendments of the written statement of the defendants and for framing of any additional issues in respect of the same.

The impugned order dated 08.12.2015 (Annexure-5) passed by the learned Trial Court in C.S. No.501 of 2013 concerning the allowing of the proposed amendment under Order 6 Rule 17 of the CPC of the Defendants for amendment of their written statement is confirmed, but, the cost imposed in the impugned order dated 08.12.2015 (Annexure-5) i.e. Rs.500/- (five hundred) for allowing such amendment is enhanced from Rs.500/- (five hundred) to Rs.5000/- (five thousand) giving liberty to the Plaintiff (Petitioner in this CMP) to amend his plaint according to the proposed amendment of the written statement of the Defendants and for framing of any additional issues relating to the said amendment and for adducing any additional evidence by the Plaintiff concerning the amendment of the written statement of the defendants, if he (Plaintiff) desires for the same.

Sabitri Palei V. Bhikari Palei & Ors.
2025 (III) ILR-Cut…… 765

CIVIL PROCEDURE CODE, 1908 – Order VI Rule 17 – Amendment of pleading/Written statement – In the present Writ appeal the confirming judgment of the Hon'ble Single Bench is under challenge – The Motor Vehicle Accident Claims Tribunal had rejected the application of the appellant filed under Order VI Rule 17 of

CPC – Appellant pleaded that such amendment will not change the nature of case and if amendment is not made it will cause prejudice to him – In the other hand Respondent pleaded that, six years after commencement of trial such application is not maintainable further it will change the original defence and a new case will be introduced if amendment is allowed and the appellant can't withdraw the admission made in the show cause/ Written statement –In the circumstances above, whether the confirming judgment of the Hon'ble Single Bench is required to be interfered?

Held: No – Keeping in mind the judgments of the Hon'ble Supreme Court as well as the judgments noted above that were cited in the impugned judgment, we are of the considered view that the amendment to pleading must not change the nature of the suit and it must be timely and the delay as well as lack of specificity can justify dismissal of such amendments – Moreover, law is well established that amendment of pleading is permissible before commencement of the trial of a case, if made within a reasonable time.

Considering the stage of the MACT (Misc. Case) No.17/2012 pending before the learned 3rd MACT, Bhubaneswar as well as the provisions of Order VI, Rule 17 of the CPC, we found that the 3rd MACT, Bhubaneswar by its order dated 24.07.2018 passed in MACT (Misc. Case) No.17/2012 has rightly rejected the appellant's petition submitted under Order VI, Rule 17 of the CPC.

For the reasons above, we are of the view that the impugned Judgment dated 28.03.2025 passed by the learned Single Judge in W.P.(C) No.14411 of 2018 does not call for any interference

Rupesh Kumar Agarwal V. Priyasha Goenka
2025 (III) ILR-Cut…… 413

CIVIL PROCEDURE CODE, 1908 – Order VII, Rule 3 of the C.P.C. – Description of property – In the plaint schedule the suit land has been described as District Cuttack, Thana Cuttack Sadar, Thana No. 82, Mouza- Sisua, Khata No. 123/1543, Kisama-Gharabari an area of Ac 0.03 decimals, out of Ac 0.07 decimals with a house standing thereon belonging to the plaintiff and occupied by the defendants – The learned Trial Court held that the description of the suit land was not specific and was also not identifiable from the plaint schedule, hence the suit was dismissed – First Appellate Court held that the suit property as described in the plaint schedule was not properly described and therefore, the suit was liable to be failed – Whether the learned Courts below have committed any error while upholding that the suit land is not identifiable because the plaint schedule does not disclose any boundary.

Held: No – The requirement of the statute is for the plaintiffs to provide such description of the property as would be sufficient to identify it – It is the settled position of law that mis-description of suit property in the plaint is a defect that goes to the root of the matter as it would not be possible for the Court to pass an enforceable decree.

Since the defect of mis-description is a fundamental defect rendering to suit not maintainable by itself, the trial court must be held to have committed an error in entering into the merits of the case after its finding regarding mis-description

of the property – The First Appellate Court therefore, rightly refrained from going into the merits of the case and held that the observations of the trial court regarding title and possession of either of the parties would not operate as res-judicata between them in any future litigation – The above, in the considered view of this Court is the correct approach.

Gobinda Chandra Samal & Ors. V. Fakir Charan Samal @ Fakir Samal & Anr.
2025 (III) ILR-Cut…… 581

CIVIL PROCEDURE CODE, 1908 – Order XLV Rule 15 r/w Article 144 of Constitution of India, 1950 – A settlement was arrived between the two license forest contractors in terms of which Civil Appeal No. 62 of 1979 came to be disposed of by the Apex Court vide common order dated 27.03.1992 – The said settlement was essentially between the decree holders (two contractors) – Whether the settlement is bound to the judgment debtors who are not signatories/party to it.

Held: It is true that the said settlement, was essentially between Decree Holders – However, without certain things being accomplished from the side of Judgement Debtors, the said settlement would lose its efficacy – Therefore, the Apex Court, after examining the same, specifically imposed certain obligations on the Judgment Debtors, they having not objected to – On the contrary, they became parties to the same tacitly accepting the settlement.

Our Constitution, vide Article 144 obligates every civil authority to act in aid of the decisions of Apex Court, whether party *eo nomine* or not. This applies with more vigor here, inasmuch as civil authorities are none other than the Judgment Debtors, being parties to the proceedings who were in so many words directed to give effect to the settlement recorded in the order dated 27.03.1992, whereby subject Civil Appeals were disposed off.

Udayanath Sahoo (dead) represented by LRs. & Anr. V. State of Odisha & Ors.
2025 (III) ILR-Cut…… 510

CONSTITUTION OF INDIA, 1950 – Article 21 – Right to Education – Dignity of an individual – Petitioner while serving as a senior resident doctor at DHH, Jharsugada, a criminal case was initiated on the allegation of demand of bribe – Present Writ petition has been filed with a prayer to issue NOC for pursue of fellowship programme – Authority denied to issue the NOC mainly on the ground of pendency of departmental as well as criminal proceedings – Issue raised that, petitioner being a in-service candidate his right to pursue higher education can be denied merely on the ground of pendency of criminal as well as departmental proceedings.

Held: No – It is thus evident that the right to education, being an integral facet of the right to life and personal liberty under Article 21, must be recognized even in respect of an in-service candidate aspiring for higher studies – Although it is true that such right of the in-service candidate can be made subject to the service conditions of the said candidate and the demands of administration, it cannot, however, be curtailed or denied solely on account of the pendency of departmental or criminal proceedings against the employee – In the instant case at hand, at this juncture, the criminal

proceeding against the Petitioner remains at the investigative stage, and there is nothing on record to demonstrate that departmental proceedings have actually been initiated – Therefore, it can very well be ascertained that both the proceedings are pending – As such, neither the eventual outcome of such proceedings nor the timeframe for their conclusion can be determined at this stage – Nevertheless, the mere pendency of such proceedings alone cannot justify denying the Petitioner the opportunity to pursue higher education, which was the object of his request for an NOC.

Dr. Supreet Saurav V. State of Odisha & Ors.

2025 (III) ILR-Cut…… 614

CONSTITUTION OF INDIA, 1950 – Article 226 – During pendency of special leave petition before the Hon'ble Supreme Court, the managing Committee of Shri Jagannath Temple issued a resolution dated 13th July, 2017 – After dismissal of SLP, the applicants filed the present Interim Application seeking a direction to execute the sale deed in their favour pursuant to the order passed in the Review Petition – The applicant never challenged resolution dated 13th July 2017 – Whether applicants are entitled to the benefit passed in Review petition in view of the lis pendense development and resolution dated 13th July 2017.

Held: No – Fact remains, situation is not the same at present, which was prevailing on the date of disposal of the Review Petition, i.e., 18th June, 2016 or subsequent orders dated 5th August, 2016 passed in Misc. Case No.205 of 2016 – A resolution dated 13th July, 2017 has been passed by the Managing Committee of the Temple Administration for construction of a guest house over the case land – The Applicants being aware of the same did not prefer to challenge the same – They have also not raised any objection at the time of disposal of SLPs(C) by Hon'ble Supreme Court taking note of the aforesaid resolution – Thus, in view of the aforesaid facts and circumstances, we are not inclined to entertain the IA.

The Uniform Policy issued by the Law Department, Government of Odisha for alienation of immovable properties of Shri Jagannath Mahaprabhu Bije-Srikhetra at Puri (in short "Uniform Policy"), had been framed keeping the interest of the deity-Lord Jagannath as well as the persons in long possession of such land – Orders for sale of the case land had been passed pursuant to the said policy – The Uniform Policy does not give any absolute right to a person to possess or purchase any land belonging to Lord Jagannath – The interest of Lord Jagannath has to be paramount – Any alienation has to be in the interest of Lord Jagannath, the deity – In the present case, during pendency of the SLPs before the Supreme Court, the resolution has been passed by the competent authority of the temple management on 13.07.2017 – Such a resolution is in the interest of Lord Jagannath.

Lala Nalini Kumar Ray (dead, his legal heirs) & Ors. V. Shri Jagannath Mahaprabhu Bije-Srikhetra, Puri & Anr.

2025 (III) ILR-Cut…… 480

CONSTITUTION OF INDIA, 1950 – Article 226 – The Applicants filed an Interim Application seeking a direction to the Administrator of the managing committee of Shri Jagannath Mahaprabhu Bije-Srikhetra, at Puri to execute the sale

deed in favour of the applicants pursuant to an order passed in Review Petition – After disposal/rejection of intervention petition filed in Review petition, Special leave petition was filed before the Hon'ble Supreme Court – The Hon'ble Supreme Court vide Order dated 28/10/2016 directed to maintain status quo in respect of the case land – Special Leave Petitions were dismissed as withdrawn – During pendency of the Special Leave Petition, one resolution was passed in consonance with direction of the Hon'ble Supreme Court in other matter – Pursuant to the order passed by the Hon'ble Supreme Court the temple Administration took a decision that, the case land being on the side of the Badadanda could not be handed over to any private individual – Whether an Interim Application for implementation of direction/order passed in disposed of Review Petition or Writ Petition is maintainable.

Held: No – In view of the subsequent developments after disposal of the Review Petition, the ratio in the case of K.A. Ansari (supra) is not applicable to the case at hand, as subsequent significant developments have taken place in the interest of the pilgrims in particular and public at large – In the light of the resolution passed by the Managing Committee of the Temple Administration (Annexure-R/1), the relief sought for in the IA is no more available to be considered for simple implementation of the order passed in Review Petition and subsequent Misc. Case No.205 of 2016. As such, the IA is not maintainable in the eye of law.

The writ jurisdiction of the High Court under Article 226 of the Constitution is wide in scope – It is also well-established by umpteen number of judicial pronouncements that the High Courts may in exercise of this power, issue not only final writs but also interim directions to safeguard rights during pendency of the proceedings – But once a writ petition is disposed of, the Court is deemed to be *functus officio* and an interim application is normally not entertained, unless it is for correction of arithmetical or clerical errors and occasionally for clarification of the judgment – An interim application may be entertained if it has been filed for pursuing and getting implemented the relief granted in the writ petition – The same principle would apply in a review petition – But the scope of entertaining an interim application in a disposed of review petition, is further narrowed as the matter has already been tested and decided by the Court twice.

Lala Nalini Kumar Ray (dead, his legal heirs) & Ors. V. Shri Jagannath Mahaprabhu Bije-Srikhetra, Puri & Anr.

2025 (III) ILR-Cut…… 480

COVID 19 DEATH – Claim of Compensation – Petitioner's husband was working as an Asst. Engineer & was authorized to look after public health work of Community Health Center (CHC) and Hospitals of Ganjam and Gajapati District – The present writ appeal has been filed challenging the order of the Hon'ble Single Judge dismissing the writ petition on the ground that husband of the petitioner was not a health worker – Whether the deceased husband of the petitioner satisfied the prescribed parameter as under the specified scheme of the Government of Odisha to get compensation & order of the Hon'ble single Bench warrant any interference?

Held: No – This Court has examined the details as indicated above as required for

consideration of the claim of benefit and it is noticed that the petitioner has not stated whether the deceased husband of the petitioner was in active line of duty in COVID-19 – It is also not indicated in the writ petition that the deceased employee had contact of COVID-19 infection while in active line of duty, it is not stated the deceased employee had tested positive upon being tested for COVID19 within 30 days from his/her last day of active COVID-19 related duty.

As a result it has to be concluded that nothing is forthcoming either in the petition nor in the pleadings as to the compliance of the paragraphs B, C, F & G of notification dated 20.07.2020 as has been reproduced above.

In absence of all these, this Court cannot form any opinion regarding claim of the appellant, much less, can direct the authorities to do anything to consider the claim of the petitioner.

Sasmita Das V. State of Odisha & Ors.
2025 (III) ILR-Cut…… 420

CRIMINAL PROCEDURE CODE, 1973 – Section 125(1)(C) r/w Section 20(3) of Hindu Adoptions & Maintenance Act, 1956 – The petitioner challenges the order of learned Family Court awarding maintenance of ₹5,000/- each to wife and daughter – The order of the Learned Family court is challenged mainly on the ground that the daughter has attained majority and that the wife being an educated lady, has voluntarily deserted the society of husband – Whether petitioner is liable to pay maintenance to his unmarried major daughter and educated wife?

Held: Yes – The plea for maintenance by major unmarried daughter is unsustainable as advanced does not stand to the legal scrutiny and the impugned order does not call for any interference by this Court on such plea of the revision-petitioner, provided it is established that such daughter is unable to maintain herself out of his own earning or other properties.

It appears that the learned trial Court on analysis of evidence albeit has considered present OP No.1 as an advocate at Bargarh Bar, but it has considered that all the advocates have no sufficient income.

G. Debendra Rao V. G. Puspa Prabha Rao & Anr.
2025 (III) ILR-Cut…… 719

CRIMINAL PROCEDURE CODE, 1973 – Section 389(1) – Petitioner was found in possession of counterfeit currency worth ₹31,27,500/- and convicted under Sections 489-B and 489C of Penal Code – Application under section 389(1) of Cr.P.C for suspension of sentence and bail during pendency of appeal rejected – Plea of procedural lapses, lack of corroboration, and prolonged custody raised in revision – Whether the Petitioner is entitled to suspension of sentence and release on bail under section 389(1) of Cr.P.C, pending disposal of appeal?

Held: No – Admittedly, a large number of fake currency notes found from the exclusive and conscious possession of the petitioner prima facie proved by the seizure carried out with no any explanation received back from him as revealed from

his statement recorded under Section 313 Cr.P.C except a reply that a false case has been foisted and with such evidence on record and forensic report i.e. Ext.21, it may not be proper to allege that the order of conviction is indefensible and hence, in view of the above discussion, the irresistible conclusion of the Court is that the learned court below did not err in denying suspension of execution of sentence under Section 389(1) Cr.P.C. disallowing the petitioner to go on bail by the impugned order i.e. Annexure-5 despite his custody ever since 2023 especially when the conditions of release suspending sentence post-conviction are distinctly different with the plea of presumption of innocence is not available to a convict anymore.

At last, before winding up, it is made clear that the Court has not discussed the evidence on merit, rather, made an endeavor to assess the materials on record objectively to examine whether a case is made out for suspension of sentence and hence, the learned court below shall have to consider disposal of appeal on merit and according to law without being influenced by any of its observations made and discussed herein above but within a stipulated period since in the words of the Apex Court in Bhagwan Rama Shinde Gosai (supra), the invaluable right of appeal becomes a futile exercise by passage of time.

Lingaraj Behera V. State of Odisha

2025 (III) ILR-Cut…… 571

CRIMINAL TRIAL – Delay in recording the statement by Investigating officer – Effect of – The appellants are found guilty U/Ss. 147, 148, 302/149, of the IPC – Prosecution examined as many as nineteen witnesses among them P.W. 1, P.W. 6 and P.W. 15 are the eye witnesses – Learned counsel for the appellants contended that since P.W. 6 was examined by the I.O. at a belated stage and no cogent explanation is coming forth in that respect, his evidence should be viewed with suspicion – Whether the evidence of eyewitness (P.W. 6) can be discarded on the ground of delay examination.

Held: No – We are of the view that the testimony of a witness cannot become unreliable merely because there is a delay in the examination of such witness by police during investigation – Question of delay in examining a witness during investigation is material only when there are concomitant circumstances to indicate and suggest that some unfair practice has been adopted by the investigating agency for the purpose of introducing a witness to falsely support the prosecution case or the investigator was deliberately marking time with a view to decide about the shape to be given to the case – Delay in examination of witnesses is a variable factor which would depend upon a number of circumstances like non-availability of witnesses, the investigating officer being pre-occupied in some serious matters, the investigating officer spending his time in arresting the accused, who were absconding, being occupied in other spheres of investigation of the same case, which may require his attention urgently and importantly etc.

Dinabandhu Dehury & Ors. V. State of Odisha

2025 (III) ILR-Cut…… 434

CRIMINAL TRIAL – Offence U/s. 395 of Penal Code – Case & Counter Case –

Injuries on the accused person – No explanation has been offered by the prosecution – The prosecution witness are related & interested to each other and also inimical to the accused – Whether non explanation of injuries on the accused persons by the prosecution vitiate its case?

Held: Yes – In the present case, the evidence of the prosecution witnesses suffers from these very defects – Witnesses examined by the prosecution are either related to the informant or otherwise inimically disposed towards the accused – Their consistent silence regarding the injuries sustained by the accused, particularly when the injury is serious and is medically proven, indicates suppression of material aspects and raises grave suspicion as to whether the prosecution has presented a true and fair account of the incident.

Furthermore, the defence has provided a plausible explanation that the occurrence was not unilateral and that the accused had also sustained injuries during the scuffle, which could indicate an altercation where the right of private defence cannot be ruled out – The affidavit filed by the informant also omits any reference to injuries to the accused, further confirming suppression of the genesis and origin of the occurrence.

Given the above, it is no longer safe to rely upon the prosecution's version to sustain conviction – The evidence of the prosecution witnesses stands compromised on account of suppression, omission, and interested testimony – The legal position being clear from a catena of decisions referred above, the benefit of doubt must necessarily go to the accused – In view of the foregoing discussion and in light of the settled position of law, this Court is of the considered view that the prosecution has failed to prove its case beyond reasonable doubt.

Manguli Bhal & Ors. V. State of Orissa

2025 (III) ILR-Cut…… 740

EMPLOYEE'S COMPENSATION ACT, 1923 – Section 4A(3)(b) – Penalty – Whether insurance company is liable to pay penalty.

Held: No – The legal position on this point is well settled – In *Ved Prakash Garg v. Premi Devi*, the Supreme Court observed that the Insurance Company, so far as the question of penalty is concerned, would not be liable under the provision of the Workmen's Compensation Act, 1923.

While the insurer is liable to indemnify the employer for the compensation and interest payable under Section 4A(3)(a), the penalty imposed under Section 4A(3)(b) is on account of the personal fault of the employer and does not fall within the scope of indemnification – The insurer cannot, therefore, be made liable for penalty.

Divisional Manager, M/s. ICICI Lombard General Insurance Company Ltd., Bhubaneswar V. Ashalata Barik & Anr.

2025 (III) ILR-Cut…… 532

EMPLOYEE'S COMPENSATION ACT, 1923 – Section 30 – Appeal before the

High Court – Jurisdiction – Whether the jurisdiction of the High Court under Section 30 is akin to section 96 of the C.P.C.?

Held: No – In this regard, the Supreme Court in *North East Karnataka Road Transport Corpn. v. Sujatha* observed that the High Court's jurisdiction under Section 30 is not akin to a first appeal under Section 96 of C.P.C. and that it is confined only to substantial questions of law.

Divisional Manager, M/s. ICICI Lombard General Insurance Company Ltd., Bhubaneswar V. Ashalata Barik & Anr.
2025 (III) ILR-Cut…… 532

EMPLOYEES STATE INSURANCE ACT, 1948 – Section 81, 85(B) r/w E.S.I. General Regulation, 1950 – Regulation 31(C) r/w OEIC Rule, 1951 – Opp. Party No. 2 issued letter U/R 31(C) r/w Section 85-B of the E.S.I. Act seeking recovery of damage to the tune of Rs. 3,83,999/- and calling upon to show cause as to why maximum damages should not be imposed – Petitioner prayed to waive the damages imposed on it for delay payment of E.S.I. contribution due to non-availability of E.S.I. medical facilities, but the prayer was rejected by the Authority – Whether Writ petition is maintainable without approaching the Employees Insurance Court U/s. 75 of the Act.

Held: Yes – Admittedly, one of the controversies in the present lis is, in view of the provisions enshrined under Regulation 31(C) of the Regulation, 1950 to impose damages, whether the provisions under Section 85-B of the ESI Act, 1948, concerning imposition of damages, are mandatory or directory, which is a pure question of law – The said issue has already been decided by the Supreme Court in HMT Limited (supra), as detailed above – That apart, Section 81 of the E.S.I. Act permits an Employees' Insurance Court to submit any question of law for the decision of the High Court.

Furthermore, the second prayer made in the writ petition is regarding facilitation of medical facilities in a nearby area for the convenience of the beneficiaries/ insured persons. Hence, this Court is of the view that the Employees' Insurance Court may not be competent to issue directions to the ESI Authorities to do so in a proceeding U/s. 75 of the E.S.I. Act like a Writ Court. In view of the above reasons, this Court is inclined to hold that the writ petition is maintainable.

Ajay Kumar Bhramar Bar Ray V. Union of India & Ors.
2025 (III) ILR-Cut…… 701

FAMILY COURTS ACT, 1984 – Chapter-IV r/w Order XIV of the Code of Civil Procedure, 1908 r/w and Hindu Marriage Act, 1955 – The appellant/ wife challenges the Judgment and decree passed by the learned Judge, Family Court, Cuttack allowing the petition ex-parte against her who was the Defendant/ Opposite Party in the C.P. – The learned Judge, Family Court did not give its reasons, did not frame or settle the issues and did not delve into the evidence on record, passed ex parte order – Whether the procedure followed by the learned judge Family Court is correct in law.

Held: No – The correct proposition of law is, even in ex-parte orders/judgments,

though no judgment has been passed by the trial court, it is the duty of the trial court to deal with the pleadings, evidence on record, frame and settle the issues and give its finding diligently on each of the aspects.

Having gone through the order (rendered by the learned Judge, Family Court dated 20.07.2009), we have to observe that the judgment does not contain the concise statement of the case – It does not contain point for determination – The order does not contain the decision on the points for determination nor any reasons assigned for such decision – After discussing the pleadings and statement to certain extent made in the plaint before the learned Judge, Family Court, without at all referring to any evidence rendered by the plaintiff and also absolutely without any reasons, the order has been passed containing about three lines only.

In our considered view, the impugned order which is akin to a judgment under Family Courts Act and the Code of Civil Procedure has to be and is hereby set aside and C.P. No.95 of 2009 in the file of the learned Judge, Family Court, Cuttack is directed to be dismissed.

Ruby@ Bishnupriya Beura@ Samal V. Pradeep Kumar Beura
2025 (III) ILR-Cut…… 427

GOODS AND SERVICES TAX APPELLATE TRIBUNAL (APPOINTMENT AND CONDITIONS OF SERVICES OF PRESIDENT AND MEMBERS) RULES, 2023 – – Rule 3 – Petitioner offered his candidature pursuant to the advertisement issued by the concerned authority for the appointment of the Member in the Central Goods and Services Tax Appellate Tribunal – The search-cum selection committee was constituted on 5th July 2024 after exhausting the procedure as mandated in Rule 3 of the said Rules, 2023, short listed the candidates for personal interaction and the petitioner was included as one of the candidates and appeared for personal interaction – The said committee was re-constituted on 24th April 2025 as the Chairperson of the earlier constituted committee expressed his inability to continue in such capacity – The re-constituted committee scrutinized the application upon obtaining the feedback from Intelligence Bureau, selected the persons for interaction – Since the petitioner was kept outside the zone of consideration hence he approached the Honb'le Court – Whether the Court should put any statutory obstacle once the re-constituted selection committee decided to start the process de novo for selection of the member.

Held: No – The Authority has to act within the precincts of the provisions of the law and in the event there is no express fetter put in the Authority if the reconstituted Search-cum-Selection Committee decided to start the process de novo, we do not find any statutory obstacles having put in this regard. We have been taken to a confidential reports received by the Committee which cannot be said to be a mere piece of paper and if the Committee decided to undertake an exercise of scrutinizing the applications and selecting the persons for personal interaction on the basis of inputs received from the Intelligence Bureau (IB), we do not find that there can be any illegality perceived from the action of the Search-cum-Selection Committee.

Pranaya Kishore Harichandan V. Union of India, Revenue Ministry of Finance,

New Delhi & Ors.

2025 (III) ILR-Cut…… 400

HINDU MARRIAGE ACT, 1955 – Section 24 – Pendente lite maintenance – The present petitioner is the wife/respondent in C.P. No.04/2020-46/2018 – The petitioner-wife moved an application on dated 06/03/2018 with a prayer to file written statement after receiving the litigation expenses and maintenance – The learned Court below allowed the said prayer – The petitioner-wife on 21.03.2023 filed an application for dismissal of C.P on the ground of non-compliance of order of maintenance passed on dated 28.10.2022 – The learned Court below rejected the petition and posted the matter to 04.05.2023 for filing of written statement by the petitioner-wife – The petitioner challenges the said rejection order in the present writ petition – Whether a matrimonial proceeding can be dismissed on the ground of non-compliance of interlocutory order of maintenance?

Held: No – From the discussions made above, so also the settled position of law, it is amply clear that there is no such provision under the C.P.C, 1908 or Hindu Marriage Act, 1955 or Family Courts Act, 1984 for dismissal of a matrimonial proceeding for non-compliance of interim order of maintenance passed under Section 24 of the 1955 Act – Hence, this Court is of the view that a matrimonial proceeding cannot be dismissed for non-compliance of interlocutory order of maintenance passed by the concerned Court – The appropriate remedy would be to initiate an execution proceeding under Section 28-A of the Hindu Marriage Act, 1955, read with Section 18 of the Family Courts Act, 1984 and Order 21 Rule 94 of CPC before the concerned Court, so also to file petition to strike off the pleadings of the party, in case of non-payment of maintenance in accordance with the interim order passed.

Lipika Nayak V. Ajitav Nayak

2025 (III) ILR-Cut…… 692

INDIAN PENAL CODE, 1860 – Sections 300, 301 & 302 – A quarrel ensued between the Appellant and P.W. 15 and in a fit of anger, Appellant threatened to crush P.W. 15 under the wheels of the truck and left the spot – Thereafter, the appellant drove the truck, while driving the vehicle at a very high speed, rammed it into a group of people standing in front of the shop, allegedly targeting P.W. 15, who managed to jump aside and escaped – However, the truck ran over the four persons, who died at the spot and also caused severe injuries to four others – Whether the appellant ought to have been charged U/s. 301 instead of 302 IPC which provides for punishment of culpable homicide, when death is caused to a person other than the one intended.

Held: – The Appellant's act of driving a heavy truck at high speed directly into a group of people after having issued a threat to crush P.W.15 under its wheels evinces an unmistakable intention to cause such bodily injuries sufficient in the ordinary course of nature to cause death – That the intended victim escaped is of no avail to the Appellant, for Section 301 makes him equally culpable for the deaths of the others who actually sustained the injuries – Therefore the Appellant's conduct is covered within Clause 3rd of Section 300, and the offence made out against him is murder punishable under Section 302 IPC.

Dukha @ Krushna Behera V. State of Odisha
2025 (III) ILR-Cut…… 463

INDIAN PENAL CODE, 1860 – Section 301 – Distinction between an accidental death and death caused by transfer of malice – Discussed.

Dukha @ Krushna Behera V. State of Odisha
2025 (III) ILR-Cut…… 463

INDIAN PENAL CODE, 1860 – Sections 302/149, 304 Part II/149 – The appellants are found guilty U/Ss. 147,148. 302/149, of the IPC – The post mortem report proved by doctor (P.W. 8) indicates that out of nine injuries, eight injuries were on the non-vital parts of the body – The doctor has stated that there was fracture of humerus bone at its middle and fracture in right second and third metacarpal bones – However none of the injuries has been opined to be individually or collectively sufficient in the ordinary course of nature to cause death – The weapons which were in the hands of the appellants were deadly weapons and they could have easily caused injuries on the vital parts of the body of the deceased – Whether the act of the appellant fall within section 302/149 of I.P.C. or 304 Part II/149 of IPC.

Held: From the evidence and circumstances of the case and the ratio laid down in the aforesaid citations, we are of the view that the appellants do not appear to have had the intention causing the death of the deceased or even causing such bodily injury as was likely to cause death – They can at the best be attributed with the knowledge that their act was likely to cause death or to cause such bodily injury as was likely to cause death – We, therefore, alter the conviction of the appellants from section 302/149 of I.P.C. to section 304 Part-II I.P.C./149 of I.P.C.

Dinabandhu Dehury & Ors. V. State of Odisha
2025 (III) ILR-Cut…… 434

INDIAN PENAL CODE, 1860 – Sections 304B and 498-A – The learned trial Court has convicted the accused/appellants for the offences U/s. 304-B / 498-A / 34 of the IPC and acquitted U/s. 4 of D.P. Act – Whether in the absence of satisfactory evidence establishing cruelty against the deceased in connection with demand of dowry, the offence U/s. 304B of the IPC can be charged upon the accused/appellant.

Held: No – It is trident law that main cruelty or harassment dehors demand of dowry cannot satisfy the ingredient required to establish the offence under Section 304B of the IPC – Hence, on the basis of the available evidence on record and the findings recorded by the learned trial Court, this Court is satisfied that the prosecution has miserably failed to bring home the charge under Section 304 IPC, as the basic ingredient requires to bring the case under the mischief of Section 304B IPC is missing – Hence, the accused persons are entitled to the benefit of doubt and accordingly acquitted of the said charge of Section 304B.

Satyabati Mishra & Ors. V. State of Orissa
2025 (III) ILR-Cut…… 746

INDUSTRIAL DISPUTES ACT, 1947 – Section 17-B – Benefits under the section – Necessary requirements to obtain such benefits – Discussed.

M/s. Utkal Alumina International Ltd., (UAIL), Doraguda V. The Presiding Officer, Labour Court, Jeypore & Ors.

2025 (III) ILR-Cut…… 494

INDUSTRIAL DISPUTES ACT, 1947 – Section 17-B – Industrial dispute was raised by the Workmen – It was referred to the Labour Court – Learned Labour Court answered the reference vide award dated 30th March 2024 and directed the management to absorb the workmen into its regular establishment – The management has filed the writ petition assailing the award – The workmen filed the interim application to extent the benefit U/s. 17-B of the Act during pendency of the writ petition – The learned counsel for the management argued that the provision U/s. 17-B of the Act has no application as the impugned award has been passed directing absorption of workman not to reinstatement him – Whether the direction of absorption can be treated as reinstatement.

Held: Yes – Section 17-B of the Act being a beneficial provision for the Workmen without employment during pendency of the proceedings before the High Court, it should be given a liberal interpretation so that a Workman gets benefit, of course, on fulfilling the three conditions as narrated above – Thus, the term 'reinstatement' should be given a broader interpretation to include the term 'absorption' – In fact, the term 'reinstatement' is not exclusive; it also connotes any act to give a meaning of putting the Workman in the post/job from which he was terminated or disengaged.

M/s. Utkal Alumina International Ltd., (UAIL), Doraguda V. The Presiding Officer, Labour Court, Jeypore & Ors.

2025 (III) ILR-Cut…… 494

INTERPRETATION OF STATUTES – Difference between up-gradation and promotion – Discussed with reference to case laws.

Smt. Renuka Dei V. State of Odisha, Commissioner-cum-Secretary, Water Resources Department, Bhubaneswar & Ors.

2025 (III) ILR-Cut…… 662

LAND ACQUISITION ACT, 1894 – Sections 10, 18, 30 r/w section 115 of Code of Civil Procedure – Petitioners filed Misc Case before the Land Acquisition Officer Angul for consideration of the objection U/s. 10 & 18 r/w section 30 of the 1894 Act for referring the matter to the Civil Court for determination of apportionment and enhancement of the compensation – The Land Acquisition Officer rejected the objection of the petitioners assigning the reason that they have no interest over the properties – Aggrieved with the order of rejection petitioner filed revision U/s. 115 of the C.P.C – Whether rejection order of Land Acquisition Officer is sustainable, once a dispute arises with regard to the apportionment and enhancement of the compensation amount.

Held: No – The law has also further been clarified in the ratio of the above decisions

that, once a dispute arises with regard to the apportionment and enhancement of the compensation amount, the Land Acquisition Officer is duty bound to make a reference to the said matter to the Civil Court for its adjudication, but, the Land Acquisition Officer has no jurisdiction to enquire into the title of the properties referring to the documents and to give a finding relating to the title of the Parties in respect of the said acquired properties like a Civil Court.

Tansukha Rai Agarwal (since dead) through his LRs V. State of Odisha & Ors.
2025 (III) ILR-Cut…… 757

LAND ACQUISITION ACT, 1894 – Sections 18 & 30 – Scope, Power and Jurisdiction of the Land Acquisition Officer – Discussed with reference to case law.

Tansukha Rai Agarwal (since dead) through his LRs V. State of Odisha & Ors.
2025 (III) ILR-Cut…… 757

MOTOR ACCIDENT – Compensation – Enhancement – Appellants filed the appeal seeking to saddle the liability on Insurance Company & enhancement of compensation amount – The appellant submitted that tribunal wrongly proceeded to hold that driver had no valid license & that the offending vehicle was a heavy vehicle as such absolved the Insurance Company from paying the compensation – That the amounts on conventional heads, namely loss of estate, loss of consortium and funeral expenses should be enhanced at the rate of 10% in every three years – Whether the claimants are entitled to receive the reliefs claimed.

Held: Yes – This Court on the basis of the materials on record comes to the finding that absolving the Insurance Company of the liability being fallacious is also liable to be set aside and as such the Insurance Company is found to be liable to pay the compensation.

As per the decision of the Apex Court in the case of Pranay Sethi (supra), in every three years Rs.70,000/- towards conventional heads should be enhanced at the rate of 10% from the date of filing of the claim application i.e. 20.06.2015 – Hence, further amount of Rs.21,000/- would be added thereon – Hence, the total compensation would be Rs.29,73,940/- plus Rs.21,000/- = Rs.29,94,940/-.

Nandini Samal & Ors. V. Principal, Saint Mary's School & Anr.
2025 (III) ILR-Cut…… 625

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 – Section 20(b)(ii)(C) and 36A(4) r/w section 167(2) of Code of Criminal Procedure, 1973 – Petitioner was arrested on 9-4-2021 for possession of commercial quantity of ganja – Investigation could not be concluded within 180 days – Charge sheet was filed on 7-10-2021 (182nd day) without chemical examination report – No application for default bail filed by accused between expiry of statutory period and submission of charge sheet – Trial court rejected plea for default bail holding that right stood extinguished after filing of charge sheet – Whether the accused's indefeasible right to default bail under section 167(2) Cr.P.C stands extinguished upon filing of the charge sheet, when no application for such bail was made within the statutory

period?

Held: No – In the present case, the learned court below was unaware of any such consequence to follow and simply waited to respond upon receiving the preliminary charge sheet (to be treated as a final charge sheet, since investigation was not pending in real terms) under the impression that the right of the petitioner for default bail stood extinguished thereby – A duty cast upon the learned Court below to inform the petitioner to go on bail was not sincerely discharged when a complete charge sheet was not filed within the stipulated period – Since, the right to go on statutory bail under Section 167(2) Cr.P.C. was not informed to the petitioner any time before receiving the charge sheet on 7th October, 2021, in the considered view of the Court, where was occasion for him to avail the remedy making an application demanding release – That apart, the learned Court below was under the impression that the right of default bail is lost after filling of the charge sheet and as the investigation is complete – According to the Court, an investigation could be challenged for being not over or incomplete in absence of a chemical examination report since an opinion is to be formed that the seized article to be a contraband substance – Such a question, as earlier stated, is still pending decision of the Apex Court in SLP (Cri.) No. 5724 of 2023 with batch of matters – Nevertheless, the learned court below was required to inform the petitioner regarding the right to be released on bail in terms of Section 167(2) Cr.P.C. immediately after expiry of the period – Such right of an accused being a fundamental right, according to the Court, is required to be zealously guarded without any breach – Notwithstanding the delay in demanding release, the learned Court below was to consider the same since further detention without statutory compliance infringed upon the petitioner's fundamental right guaranteed under the Constitution of India.

After a threadbare discussion taking judicial notice of the settled position of law, the irresistible conclusion of the Court is that the learned Court below failed in its solemn duty to let the petitioner know about him having the right to go on default bail and that apart, was oblivious of the consequence of receiving a charge sheet in a case of present nature without a chemical examination report, which could lead to an impression that the investigation is inchoate, hence, further detention would be unauthorized – The petitioner has been in custody from 9th April, 2021 and in similar cases, the Apex Court pending decision in the SLPs, directed release of some of the accused persons on interim bail on account of for long detention – In any view of the matter, regard being had to the discussions held herein before, the Court reaches at a conclusion that the petitioner, who is in custody since 9th April, 2021 and though involved in a case leading to recovery and seizure of commercial quantity of contraband Ganja, deserves to be released on bail under Section 167(2) Cr.P.C. as a right to go on default bail accrued to him, which could not be availed of, as he was not informed about it upon expiry of the statutory period, a duty, which is not only cast upon the Courts but even to the extent including the investigating agency as held in Satender Kumar Antil (*supra*).

Ajay Singh V. State of Odisha

ORISSA EDUCATION (RECRUITMENT AND CONDITIONS OF SERVICE OF TEACHERS AND MEMBERS OF THE STAFF OF AIDED EDUCATIONAL INSTITUTIONS) RULES, 1974 – Rule 16(2) – The appellant

was permitted to discharge the duties of a teacher since 1992 continuously and uninterruptedly – The prayer for regularization of his service was rejected in the year 2004 – The order of rejection was challenged before State Education Tribunal, which was disposed of with a direction to approve the appointment of appellant and give him grant in aid at untrained scale within a period of three months – The direction of learned tribunal was not complied with for a long span of time – The appellant obtained B.Ed degree in the year 2014 – The appellant filed writ application as well as contempt petition for compliance the order of Education tribunal as there was no express provision applicable to the State Education Tribunal to implement its own order – The appellant approached the Authority for trained scale of pay, as the Authority did not consider, he filed writ application – The learned single judge dismissed the writ petition solely on the ground that the order of the Tribunal postulates the pay scale on an untrained teacher, and the said order having accepted and not assailed by the appellant, he cannot claim the pay scale as trained teacher – Whether the finding of the learned Single Bench that the appellant should assail the order of the State Education Tribunal being the substratum of the entire adjudication, can be sustained.

Held: No – The sequel of the facts, as narrated above, leaves no ambiguity in our mind that the appellant was illegally and wrongfully prevented from discharging his duties, and the right which got crystalized and /or fructified on the basis of the order of the Tribunal, was kept in abeyance for a considerable period of time, for which we feel that the appellant is entitled to a compensation.

We are unable to persuade ourselves to agree with the findings returned in the impugned judgment.

The impugned judgment is thus set aside – The writ petition is allowed with the following observation – We feel that a sum of ₹1,00,000/- as compensation shall be adequate.

Ajit Kumar Mishra V. State of Odisha & Ors.

2025 (III) ILR-Cut…… 406

ORISSA GRAMA PANCHAYATS ACT, 1964 – Section 38 (3), (4) r/w Article 226 of Constitution of India – Learned Civil Judge (Jr. Division) Balasore in Election Misc. Case condone the delay in filing the election petition and also held the election petition is maintainable – Petitioner contended that challenging his election as Sarpanch, the Opp. Party No. 1 field the election petition on 04.05.2022 after the stipulated period – Present petitioner challenges the order passed by learned Civil Judge (Jr. Division) in Election Petition before the Hon'ble High Court by filing writ application – Whether writ application is maintainable in view of the provision prescribed U/s. 38(4) of the Act which provides that any person aggrieved by an order of the Civil Judge, within 30 days from the date of the order may prefer an appeal.

Held: No – Taking into account the provisions contained under sub-section-3 r/w sub-section 4 of Section 38 of the Act and the decisions in the case of *K. Prabhakaran, Om Prakash Bhatia and Vivek Narayan*, it is the view of this Court that the word "all orders" does not mean that the final order passed in an election

petition – The word "all" in order to give a sensible meaning has to be construed as "any".

In view of the provision contained under sub-section 3 read with sub-section 4 of Section 38 of the Act, it is the view of this Court that an appeal lies against the impugned order.

In view of the aforesaid analysis, this Court is of the view that the impugned order is an appealable one and it is open for the Petitioner to move the appellate Court.

Sanjeeb Kumar Kar V. Anadi Charan Giri & Anr.
2025 (III) ILR-Cut…… 639

ORISSA MUHAMMEDAN MARRIAGES AND DIVORCES REGISTRATION ACT, 1949 & ORISSA MUHAMMEDAN MARRIAGES AND DIVORCES REGISTRATION RULES, 1976 r/w ORISSA CIVIL SERVICES (CLASSIFICATION, CONTROL & APPEAL) RULES, 1962 – The petitioners are the teachers of Government/Aided Schools – They were performing as Registrar of Muslim Marriage – Petitioners have filed the present writ petition challenging decision of government in revoking/rescinding licenses granted to them for registering Muslim marriage/divorce and for maintaining concerned official records – Whether the decision of government regarding revocation/ cancellation of such licenses can be regarded as faltered one.

Held: No – In registering marriage/divorce or refusing to register, he exercises quasi-judicial power vide Section 9 of the Act read with Rules 26, 27, 34, 35, 36 & 37 of 1976 Rules – These Registrars work under the supervision of District Registrars and the Inspector General of Registration to whom they are answerable – They have to maintain and update several Registers/Books – They have to examine parties and witnesses – At times, they have to travel to other places for the discharge of their duties – Rule 49 provides for their personal appearance along with Registers/Records, if the Courts summon them – That being the position, how will they be able to discharge their duty as teachers with absolute commitment in the Government Schools, is a big question – Teaching is a noble profession – It is teachers in general and primary/secondary school teachers in particular, who inculcate civilizational values & culture in the young minds – Therefore, our ancient scriptures chant '*Guru Saakshaat Parabrahma*' literally likening teacher to God – As such, the impugned decision of the Government, regardless of certain arguable defects therein, cannot be faltered.

Md. Usman Khan V. State of Odisha & Ors.
2025 (III) ILR-Cut…… 503

ODISHA REVISED SCALE OF PAY RULES, 2008 – Revised Assured Career Progression – The petitioner joined in service as Lower Division Clerk on 14.06.1978 – Petitioner completed 30 years of service on 14.06.2008 – After completion of around 32-33 years of service, petitioner joined in the promotional Post of Senior Clerk on 23.12.2011 – Whether pension of petitioner should be re-fixed after granting 3rd financial up-gradation under RACP with effect from 01.01.2013, as per the notification dated 19.09.2015.

Held: Yes – It has become abundantly clear that the petitioner in terms of RACPS under the Odisha Revised Scales of Pay Rules, 2008 is entitled to 1st, 2nd and 3rd financial up-gradation as on 13.06.2008 having completed 10, 20 and 30 years of service from date of entry into the service.

In the present case, it is patent on record that the promotion to the rank of "Senior Clerk" was not accorded before the year 2008, when the petitioner completed 30 years of service as on 13/14.06.2008 – The petitioner, therefore, deserves to be extended similar benefit as is given to Shiba Charan Bal (supra) by the competent authority as he is entitled to "financial up-gradations" as per the RACPS under the ORSP Rules, 2008.

Smt. Renuka Dei V. State of Odisha, Commissioner-cum-Secretary, Water Resources Department, Bhubaneswar & Ors.

2025 (III) ILR-Cut…… 662

PREVENTION OF CORRUPTION ACT, 1988 – Sections 7 & 12 – Offence under the section – In the present case the order of cognizance under sections 7 & 12 of the P.C. Act is under challenge – Trap case – Bribe/tainted money recovered from the co-accused not from the petitioner – The statement of co-accused revealed that as per the instruction of the petitioner he has received the bribe money – The petitioner/accused pleaded that inculpatory confession/confession of co-accused is not a substantive evidence against the another co-accused, hence the order of cognizance is not maintainable – The confession of co-accused is not the only incriminatory material against the petitioner but the fact demand of bribe is proved from the statement of the co-accused – Essentials of section 7 of the Act are attracted – Whether the order of cognizance taken by the learned trial court needs any interference.

Held: No – In the present case, the confession of the co-accused is not the only incriminatory material against the petitioner – Nor is it the case of the prosecution that the co accused demanded the bribe on behalf of the petitioner – It is the other way around – The allegation of the informant is that the petitioner demanded the bribe of Rs 50,000/- which was subsequently reduced to Rs 35,000/- and the petitioner asked the informant to pay it through the co accused – The co-accused confirmed the demand of bribe by the petitioner and accepted the bribe.

To constitute an offence under Section 7 of the PC Act, the accused must be or expecting to be a public servant and had accepted, agreed to accept or attempted to obtain gratification from a person, which was not due to him as remuneration as a motive or reward for doing something. In the present case, the petitioner is alleged to have demanded gratification from the informant for not initiating proceedings against him for placing him under suspension – He had allegedly threatened the petitioner that if the gratification was not paid he would be suspended.

The materials collected by the prosecution are enough to form a prima facie opinion that the accused-petitioner made demand for illegal gratification and asked the informant to pay it to the co-accused, threatening to initiate departmental proceedings against him in case of non-payment – The co accused confirmed that he

had been instructed by the petitioner to accept the bribe amount of Rs.35,000/- from the informant on his behalf. This amount was thereafter received by the co accused and recovered from him and he stated before the witnesses that he had taken the money on the direction of the petitioner – A prima facie case under Section 7 of the Prevention of Corruption (Amendment) Act, 2018 is thus made out against the petitioner – Absence of the petitioner from the spot and his presence at a meeting at the time of acceptance of the gratification is not relevant as the amount was to be paid to the co accused as per the instructions of the petitioner.

Surendra Kumar Sahu V. State of Odisha (Vig.)
2025 (III) ILR-Cut…… 547

PREVENTION OF CORRUPTION ACT, 1988 – Section 7 and 13(2) r/w section 13(1) (d) – The complainant has categorically stated that he himself had kept the money inside the file without the knowledge of the appellant – The phenolphthalein test on the Appellants hand wash was negative, which itself shows that the Appellant never accepted the money – Whether keeping money inside the Appellant's file by the complainant can be treated as acceptance of bribe or gratification.

Held: No – The trial Court reasoned that since the file belonged to the Appellant and the money was found in it, acceptance was proved – However, as urged by learned counsel for the Appellant, the absence of phenolphthalein on the Appellant's hands weakens this inference, because if he had actually handled the tainted notes, traces ought to have been found – Furthermore, the Complainant himself testified that the Appellant was absent when he placed the money, thereby rendering the theory of voluntary acceptance by the accused doubtful.

Chandramani Mahar V. State of Orissa (Vig)
2025 (III) ILR-Cut…… 729

PREVENTION OF CORRUPTION ACT, 1988 – Section 20 – The complaint has turned hostile, on demand has admitted that he kept the money in the file/ record – The prosecution has strongly relied on the fact that tainted currency notes were recovered from the OLR case record kept on the Appellant's table, and the file was turned pink which establishes that the Appellant had accepted the bribe money which was kept in his file – Whether the statutory presumption under section 20 of the Act can be invoked in absence of proof of demand.

Held: No – The foundational requirement for raising the presumption of voluntary acceptance by the accused remains unproved – Consequently, the statutory presumption under Section 20 cannot automatically be drawn on the basis of recovery alone – The burden, therefore, cannot be said to have shifted to the Appellant, and the prosecution must stand or fall on the strength of its own evidence.

Chandramani Mahar V. State of Orissa (Vig)
2025 (III) ILR-Cut…… 729

PRINCIPLE OF ESTOPPEL – The earlier suit bearing T.S. No. 24 of 1943-1 was disposed of on compromise between the parties – The plaintiff's claim that on 16.01.1963, Hanifa orally gifted her share in favour of plaintiff and accordingly

delivered the possession – In the MS ROR in Lot No. 1, 4 and 6 in 'Kha' Schedule, the properties were wrongly recorded in the names of Didar and Ataulla, even though only Lot No.2 belongs to Didar – The plaintiff filed the suit claiming shares of Hanifa and Kariman apart from their 2/3rd shares – Learned Trial Court basically found that the oral gift of Hanifa in favour of the original plaintiff was acted upon and is valid – Further the shares of Ataulla, Hanifa and Kariman having already decided in the earlier suit (T.S. No. 61/1951) Ataulla is estopped from claiming the entire properties of Didar – Learned Appellant Court after re-appreciating the evidence on record held that the Final Decree passed in T.S. No. 24 of 1943-1 is valid and binding on the parties, as such Hanifa being the sister of Didar has right over half share as per the said decree, the oral gift as alleged by the plaintiff was not proved – It is further held that the plaintiffs have no locus standi to bring the suit for partition – Whether the principle of estoppel applied against the plaintiff basing upon the allotment sheet of the earlier suit bearing T.S. No. 24/1943-I which was disposed on compromise.

Held: Yes – There is no quarrel with the proposition of law in the cited judgments, but on facts, this Court finds that Hanifa during her lifetime never came forward to challenge the compromise decree on the ground of not being a party to it – On the contrary, the plaintiffs themselves claim to have been bestowed with the property by way of gift by Hanifa from her allotted share – This appears to be a contradictory stand taken by the plaintiffs, which obviously cannot be accepted.

According to the plaintiffs, Hanifa was prejudicially affected by the compromise but then it is for the Hanifa to come forward and say so, which she has not – So, if Haifa herself does not come forward and claim prejudice, the plaintiffs cannot say so purportedly on her behalf.

It was further urged that the finding of the First Appellate Court that the ingredients necessary to constitute a valid gift under the Mohemmedan Law are absent is factually erroneous – Reading of the impugned judgment reveals that the First Appellate Court has scanned the evidence meticulously particularly that of one of the substituted plaintiffs, Sk. Sabaktulla, P.W.-1, who admitted to have no direct knowledge about the oral gift – The donor and the donee being dead, the plaintiffs could not demonstrate through evidence the factum of delivery of possession of the property of Hanifa on the strength of the so called gift – This being essentially a question of fact and there being nothing brought on record to show as to how such finding, based on evidence, is wrong, this Court finds no reason to interfere therewith.

Sk. Sabakttulah & Ors. V. Sk. Attaulla & Ors.

2025 (III) ILR-Cut…… 587

RAILWAYS ACT, 1989 – Section 123(C) (2) r/w Section 124 A – Compensation on account of untoward Incidents – Death of a child – Denial of compensation – A child aged about three and half years while travelling with his mother accidentally fell & died – The Railway Claims Tribunal dismissed the claim application holding that the deceased child was not bonafide passenger for want of ticket and death occurred due to contributory negligence of Appellant/mother – Mandatory requirements of section 124A not satisfied – Testimony of Co-passenger and medical

as well as police record established that the death was occurred due to such untoward incident – Whether the plea of negligence and bonafide passengership is sustainable once the alleged incident is proved from the testimony of co-passenger and from the medical as well as police record.

Held: No – At the outset, it is necessary to examine the statutory framework – Section 124A of the Railways Act enacts a regime of strict liability – Once it is established that death or injury has occurred as a result of an 'untoward incident,' the Railway Administration is bound to pay compensation, unless the case falls within the narrowly defined exceptions of suicide, self-inflicted injury, criminal act, intoxication, or natural cause – Negligence, even gross negligence, is not among these exceptions – This position was firmly settled in Union of India v. Prabhakaran Vijaya Kumar, where the Supreme Court held that fault or negligence is irrelevant under the no-fault scheme of Section 124A.

On the question of bona fide passengership, the Tribunal laid undue emphasis on the non-production of a ticket – The law on this issue stands settled in Union of India v. Rina Devi, wherein the Supreme Court recognised that in train accident cases, tickets are frequently lost, misplaced, or destroyed during the incident or subsequent medical treatment. It was held that bona fide passenger status may be established by circumstantial or oral evidence, and non-recovery of a ticket cannot by itself be fatal to a claim.

The absence of ticket recovery, or the suggestion of contributory negligence, does not dislodge the claim within the framework of Section 124A – The incident falls squarely within the definition of an "untoward incident," and none of the statutory exceptions are attracted.

Namita Swain & Anr. V. Union of India (G.M., South Eastern Railway, Kolkata)
2025 (III) ILR-Cut…… 540

RIGHT TO INFORMATION ACT, 2005 – Section 16(1), 19(1) – Petitioner made an application u/s. 16(1) of the Act to the Public Information Officer for certain information – Since such information was not provided within stipulated period the petitioner preferred an appeal – The petitioner on 12.12.2018 was informed in the first appeal that information sought by him is not available as per the statement of dealing Assistant, Encroachment – Being aggrieved, petitioner preferred Second Appeal – State Information Commissioner on 26.02.2024 dropped the case, petitioner filed Writ Application – Whether the decision of Information Commission is sustainable under the law.

Held: No – This Court is constrained to observe that in rendering the impugned decision the State Information Commission allowed its finding to be entrapped in officialdom and red tapism, which are illegitimate tools to fall back, to deny response to an application under the RTI Act, 2005 and thereby render the provisions nugatory.

Accordingly, the ground on which the RTI proceeding has been dropped being the outcome of non-application of mind is liable to be set aside – As such the impugned order at Annexure-16 is quashed.

The matter is remitted back to the State Information Commissioner to be heard and decided afresh on merits in the light of the observations made hereinabove, after giving opportunity of hearing to all concerned.

Hemanta Nayak V. State of Odisha & Ors.

2025 (III) ILR-Cut…… 630

SERVICE JURISPRUDENCE – Appointment – Preference clause – Petitioner was an applicant in respect of the advertisement under U.R. category for the post of B.A. B.Ed. Trained Graduate Teacher – The petitioner's contention is that when the advertisement provides preference to the candidates of Nabarangpur district, removal of his name from the revised merit list & giving appointment to a candidate outside Nabarangpur is against the preference clause and therefore his name should be included in the merit list – Whether as per the preferential clause, preference would be given to a candidate securing less mark than the candidate securing more mark, on the ground of domicile to the district of Nabarangpur.

Held: No – So at no circumstance, the merits of candidates can be compromised to give preference to a candidate securing less marks – The interpretation of the entire clause-6 has depicted in the advertisement to indicate that the said preference would be subject to the merits of the candidates – Therefore, what is clarified in the letter of the Government under Annexure-5 that the preference will come only if two candidates secure same mark cannot be said unjustified.

Deba Bisi V. State of Odisha & Ors.

2025 (III) ILR-Cut…… 525

SERVICE JURISPRUDENCE – Revision of select list – The petitioner applied in respect of the post of B.A. B.Ed Teacher – Pursuant to the selection process a provisional select list was published showing the name of petitioner – Thereafter the revised merit list of qualified candidates was published on the basis of guideline issued by the Government of Odisha in SC and ST Development department where petitioner's name was not found – Whether the revision of the selection list subsequent to preparation of the merit list is permissible.

Held: Yes – As seen from the facts brought on record that Annexure-5, the clarification of the Government, was issued on 13th September 2022 after noticing some conflicting approach taken by different district authorities in selection of the candidates – Thus, to avoid the ambiguity, it was clarified that preferential clause will only apply when two or more candidates tie at the same merit by securing same marks – Therefore no illegality is seen in such approach to revise the merit list in terms of Annexure-6 series to give higher place to the candidates securing more marks.

Deba Bisi V. State of Odisha & Ors.

2025 (III) ILR-Cut…… 525

SERVICE JURISPRUDENCE – Unauthorized absence – The petitioner while continuing as an Assistant Teacher transferred from Kantuapani Primary school to Butupali UGME School by order dated 10.05.2001, relived on 15.05.2001, and

joined on 16.05.2001 – The transfer order was later cancelled, but the D.I. of schools by order dated 27.06.2001 permitted teachers already joined under the earlier order to continue – Despite this, the petitioner was illegally relived on 31.07.2003 by the Head Master – She made representation to the authorities but no action was taken to reinstate or reposted her for years – Pursuant to the order dated 02.05.2018 in O.A. No. 2136 of 2016 by the Odisha Administrative Tribunal, she rejoined on 06.05.2019 in Butupali UGME School – The Disciplinary Authority treated the period 01.08.2003 to 05.05.2019 as unauthorized absence and non-duty, and the order was confirmed in appeal – Whether the punishment of unauthorized absence from 01.08.2003 to 05.05.2019 should be treated as non-duty when no fault lies with the petitioner.

Held: No – It is the view of this Court that, since after being illegally relieved from the school by the Headmaster on 31.07.2003, Petitioner was never given a posting nor allowed to continue in Butupali UGME School, no fault lies with the Petitioner for her not joining and continuing for the period from 01.08.2003 to 5.5.2019.

Accordingly, this Court is inclined to quash the order of punishment passed against the Petitioner vide order dt.31.10.2019 under Annexure-16, further confirmed vide order dt.20.11.2020 under Annexure-19, While quashing both the orders, this Court held that Petitioner is deemed to be continuing in service for the period 01.08.2003 to 05.05.2009 and is entitled to get all service and financial benefits as due and admissible to her.

However, since for the period 01.08.2003 to 05.05.2019, Petitioner has not discharged any duty, this Court held the Petitioner entitled to get the arrear salary to the extent of 50%.

Binapani Mahalik V. State of Odisha & Ors.

2025 (III) ILR-Cut…… 654

SERVICE LAW – Regularisation of service – Petitioner, an Assistant Surgeon, has rendered 31 years of service, yet his service has not been regularised – He prayed for regularisation of service – Petitioner initially engaged as an Asst. Surgeon on ad-hoc basis vide notification dated 18.12.1992 and continued as such till 31.12.1999 & thereafter, he has been continuing in the service on contractual basis for about 31 years – Similarly placed employees have already been regularised – The petitioner made an application before the authority for regularisation of service but the same was rejected on the ground that, the appointment of petitioner has not been made on the recommendation of the OPSC as required under the relevant rule & his service also cannot be validated as the validation Act is not applicable to the petitioner – Whether the petitioner is entitled to the relief of regularisation.

Held: Yes – Keeping in view the principle laid down by the Constitution Bench of the Hon'ble Supreme Court of India in Uma Devi's case (supra), particularly, in para 53, this Court would now examine the factual background of the present case – Indisputably, the Petitioner was initially engaged in the year 1992 on ad-hoc basis – Thereafter, he was continuing on contractual basis w.e.f. 02.01.2000 – Initially the recruitment of the Petitioner was by virtue of a government notification, although the same was without the concurrence of the OPSC, which is one of the requirements in

the recruitment rules – Thus, at best it can be said that the initial recruitment of the Petitioner was "irregular" and was not completely "illegal" – Moreover, by the time the judgment in Uma Devi's case (supra) was delivered on 10.04.2006, the Petitioner had completed 10 years of service on being appointed irregularly – Therefore, the case of the Petitioner meets the requirement of para 53 of the judgment in Umadevi's case (supra) as he had completed 10 years of service as on the date of the judgment i.e. 10.04.2006 – In furtherance of the direction contained in para 53, the State-Opposite Parties should have carried out the exercise of regularization of service of such ad-hoc/ contractual employees as a one-time measure – However, there is nothing on record to conclusively prove that any such exercise was ever carried out by the State-Opposite Parties as a one-time measure – Additionally, there is no dispute with regard to the fact that the Petitioner was performing his duties against a sanctioned post and that the continuance of the Petitioner for more than 3 decades was without any intervention by any Constitutional Court or Tribunal – Thus, the principle laid down in para 53 in Umadevi's case (supra) squarely applies to the instant case of the Petitioner – As such, as a one-time measure, the case of the Petitioner should have been considered and he should have been regularized against the post of Assistant Surgeon – Although records reveal that an attempt was made in the year 2015 and 2023 by regularizing some of the ad-hoc Dental Surgeons, the case of the Petitioner was never considered – Moreover, there is nothing on record that the vacant post against which the Petitioner was working was ever filled up by the candidates who were recommended by the Odisha Public Service Commission.

In view of the aforesaid analysis of law, this Court has no hesitation in coming to a conclusion that the case of the Petitioner is squarely covered by the direction of the Constitution Bench in Umadevi's case (supra) – Thus, it is further held that the Opposite Parties have failed to carry out the exercise as directed in para 53 of the Umadevi's case (supra) – Therefore, this Court has no hesitation to hold that the case of the Petitioner should have been regularized as a one-time measure pursuant to the direction contained in para 53 of the Umadevi's case (supra).

Dr. Amiya Kumar Mohanty V. State of Odisha & Ors.

2025 (III) ILR-Cut…… 596

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2025 (III) ILR-CUT-400

PRANAYA KISHORE HARICHANDAN
V.
UNION OF INDIA, REVENUE MINISTRY OF FINANCE, NEW DELHI & ORS.

[W.P.(C) NO.15220 OF 2025]

26 JUNE 2025

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

Issue for Consideration

Whether the Court should put any statutory obstacle once the reconstituted Search-*cum*-Selection Committee decided to start the selection process de novo for selection of the Member, Goods and Services Tax Appellate Tribunal.

Headnotes

GOODS AND SERVICES TAX APPELLATE TRIBUNAL (APPOINTMENT AND CONDITIONS OF SERVICES OF PRESIDENT AND MEMBERS) RULES, 2023 – Rule 3 – Petitioner offered his candidature pursuant to the advertisement issued by the concerned authority for the appointment of the Member in the Central Goods and Services Tax Appellate Tribunal – The search-cum selection committee was constituted on 5th July 2024 after exhausting the procedure as mandated in Rule 3 of the said Rules, 2023, short listed the candidates for personal interaction and the petitioner was included as one of the candidates and appeared for personal interaction – The said committee was re-constituted on 24th April 2025 as the Chairperson of the earlier constituted committee expressed his inability to continue in such capacity – The re-constituted committee scrutinized the application upon obtaining the feedback from Intelligence Bureau, selected the persons for interaction – Since the petitioner was kept outside the zone of consideration hence he approached the Honb'le Court – Whether the Court should put any statutory obstacle once the re-constituted selection committee decided to start the process de novo for selection of the member.

Held: No – The Authority has to act within the precincts of the provisions of the law and in the event there is no express fetter put in the Authority if the reconstituted Search-*cum*-Selection Committee decided to start the process de novo, we do not find any statutory obstacles having put in this regard. We have been taken to a confidential reports received by the Committee which cannot be said to be a mere piece of paper and if the Committee decided to

undertake an exercise of scrutinizing the applications and selecting the persons for personal interaction on the basis of inputs received from the Intelligence Bureau (IB), we do not find that there can be any illegality perceived from the action of the Search-cum-Selection Committee.

(Para 5.3)

Citations Reference

Union of India v. Kali Dass Batish, **(2006) 1 SCC 779 – referred to.**

List of Acts

Central Goods and Services Tax Act, 2017; Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Services of President and Members) Rules, 2023.

Keywords

Appointment; Selection; Confidential report; De novo exercises; Reconstituted Committee; Judicial Review; Selection procedure

Case Arising From

Challenging the *de novo* selection process of re-constituted committee for selection of member GSTAT.

Appearances for Parties

For Petitioner : Mr. Susanta Kumar Dash, Sr Adv. & Mr. Prabin Das

For Opp.Parties : Mr. N. Venkatraman, Additional Solicitor General of India,
Mr. Prasanna Kumar Parhi, Deputy Solicitor General,
Mr. Satya Sindhu Kashyap, Senior Panel Counsel,
Mr. Deepak Gochhayat, Central Government Counsel

Judgment/Order

Judgment

HARISH TANDON, C.J.

The matter is taken up out of turn on the prayer of the parties citing urgency as one of the Members of the Search-*cum*-Selection Committee constituted under the Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Services of President and Members) Rules, 2023 (hereafter be referred to as "the Rules, 2023") is likely to demit Office on and from 30th June, 2025.

2. An application, I.A. No.10243 of 2025, for vacation/modification and/or recalling of the order dated 30th May, 2025 is taken out; in addition thereto the pleadings have also been exchanged by the parties so that the Court may intend to hear the matter finally, and in such eventuality, the same could be taken into consideration.

3. It is undisputed that the petitioner offered his candidature pursuant to the advertisement issued by the concerned authority for the appointment of the Member in the Central Goods and Services Tax Appellate Tribunal ("GSTAT", abbreviated) to be constituted under the Central Goods and Services Tax Act, 2017 (be called "CGST Act" for brevity). The Search-*cum*-Selection Committee (for short, "Committee") was constituted as per provisions of Section 110(4)(b) of the CGST Act consisting of five members which includes the Chairman who would be the Judge of the Supreme Court of India. There is no dispute on the composition of the Search-*cum*-Selection Committee nor on the procedures followed in constituting such Committee, but the dispute hovers around the action of the Committee on the premise of the violation of the statutory provisions. The entire arguments advanced by the respective parties are founded upon the applicability and the interpretation of Rule 3 of the Rules, 2023 which postulates the exhaustive mechanism for the procedure in appointing the Member of the said GSTAT.

4. It would be apposite to quote Rule 3 of the said Rules, which runs thus:

> "*3. Selection for posts of President and Members.—*
>
> *(1) The Committee may cause a vacancy circular to be issued through the Member Secretary, giving details of the posts of Members proposed to be filled up, including the following—*
>
> *(a) number of existing and anticipated vacancies;*
>
> *(b) qualifications;*
>
> *(c) salary and allowances;*
>
> *(d) format for application; and*
>
> *(e) last date for filing of applications,*
>
> *in Form-I after making such modifications as may be deemed fit by the Committee.*
>
> *(2) The Committee shall scrutinise, or cause to be scrutinised, every application received in response to the circular, against the qualifications and may shortlist such number of eligible candidates for personal interaction as it may deem fit.*
>
> *(3) For the post of President, the Committee may, either cause a vacancy circular to be issued and call for applications or search for suitable persons eligible for appointment and make an assessment for selection to the post of President.*
>
> *(4) The Committee shall make its recommendations based on the overall assessment of eligible candidates including assessment through the personal interaction after taking into account the suitability, record of past performance, integrity as well as adjudicating and experience keeping in view the requirements of the Tribunal and shall recommend a panel of two names for every post for which selection is being done in accordance with the provisions of sub–section (6) of Section 110 of the Act."*

4.1. The conjoint reading of the language employed in the aforementioned Rule leaves no ambiguity that the Committee so constituted may cause a vacancy circular to be issued inviting the application from the intending candidates who are mandatorily required to furnish information as provided in the prescribed format as per clauses of sub-rule (1) thereof. After receipt of the application from the

intending candidates, the Committee is obligated to scrutinize or cause to be scrutinized each and every application so received and shall shortlist such number of the eligible candidates for personal interaction as it may deem fit.

4.2. Precisely, the arguments are advanced by the respective parties on the interpretation and the manner of the applicability of the aforesaid provision in juxtaposition with the action and/or the procedure adopted by Search-*cum*-Selection Committee. It is no doubt true that said Committee constituted on 5th July, 2024 after exhausting the procedures as mandated in Rule 3 of the said Rules, 2023 shortlisted the candidates for personal interaction and the petitioner was included as one of the candidates and in fact, appeared for personal interaction.

4.3. The said Committee was reconstituted on 24th April, 2025 as the Chairperson of the earlier constituted Committee showed his inability to continue in such capacity. The reconstituted Committee as the tenet of the said Office Memorandum dated 24th April, 2025 suggests scrutinized the applications upon obtaining the feedback or the opinion from the Intelligence Bureau and selected the candidates for personal interaction. Since the petitioner was kept outside the zone of the said personal interaction by the subsequent reconstituted Committee, the approach is made to this Court on a solitary premise that the reconstituted Committee cannot adopt a *de novo* exercise, but should continue from the stage at which the said recruitment process was left by the earlier Committee.

4.4. A piquant situation has arisen in the instant case more particularly, on an interpretation of Rule 3 of the said Rules, 2023 which does not contain any express words or stipulations in this regard. Said Rule does not in express word suggest the procedures to be adopted by a reconstituted Search-*cum*-Selection Committee and, therefore, it invites a solemn duty of the Court to interpret the said provisions in a pragmatic manner.

4.5. It is no longer *res integra* that the interpretative tools in relation to the statutory provisions should be used with an avowed object of upholding the intention of the makers of the law and to make such provision workable as opposed to rendering the said provision otiose or redundant. Harmonious interpretation of the various provisions should be strictly adhered to more particularly, on the basis of the object and purpose for which the said legislation is put in place. Rule 3(1) of the said Rules, 2023 is a repository of the information to be furnished by the intending candidates so as to bring an uniformity in scrutinizing the applications and a prescribed form is also appended thereto. Sub-rule (2) of Rule 3 provides for a personal interaction by the Committee after the scrutiny of the applications for the shortlisting the candidates. Sub-rule (4) of Rule 3 though applied at a particular stage, yet it imbibes within itself several aspects to be borne in mind before the Committee recommended the name(s) of the candidate to be appointed as a Member.

4.6. There is no quarrel to the proposition of law that mere offering the candidature in a public employment does not create indefeasible or inchoate right into the appointment. Even a person, whose name is included in the select list, cannot claim a vested right on appointment. It is within the prerogative of the Committee or the Appointing Authorities to appoint a person to a post subject to the fulfillment of the various criteria envisaged in the statutory provisions.

5. As discussed hereinbefore, the provisions contained in Rule 3 does not in express terms postulate the role of reconstituted Committee or the procedures to be adopted by it in the event one or more Members of the earlier Committee signify their intention to demit the office. The expression "as it may deem fit" has to be construed in a more pragmatic manner and to be ascribed the meaning in a reasonable way. Such expression cannot put deterrence to the action to be taken by the statutory Committee nor should the restrictive interpretation be assigned to whittle down the object of constituting the Committee. The Court cannot overlook the onerous duty to be discharged by the member which undertaking the exercise for selection to such an important post, which requires a high degree of integrity, the knowledge and/or experience, as such post ordains the solemn duty of adjudication of the rights of the rival parties within the framework of the statute as well as the Constitutional provisions.

5.1. The suitability and integrity is the hallmark in any appointment in a Court or a Tribunal and, therefore, a synergy is required to be created amongst various clauses and sub-rules in Rule 3 of the said Rules, 2023. The Committee comprises of persons holding a high degree of office in Constitutional field, therefore, their actions have to be tested on the anvil of keeping the same in the mind.

5.2. The Apex Court in ***Union of India v. Kali Dass Batish*** reported in ***(2006) 1 SCC 779*** observed that once the Constitutional Authority has accepted the report submitted by the Intelligence Bureau (IB) and did not find the candidate to be suitable to hold a highly responsible post, there is no justification in discarding such opinions expressed by the Constitutional Authority in the following:

> *"14. Unfortunately, the High Court seems to have proceeded on the footing that the appointment was being made on its own by the Central Government and that there was an irregular procedure followed by the Secretary by giving undue importance to the IB report. It was most irregular on the part of the High Court to have sat in appeal over the issues raised in the IB report and attempted to disprove it by taking affidavits and the oral statement of the Advocate General at the Bar. We strongly disapprove of such action on the part of the High Court, particularly when it was pointed out to the High Court that along with the proposals made by the Government, the Minister of State had specifically directed for submission of the IB report to the Chief Justice of India for seeking his concurrence, and that this was done. We note with regret that the High Court virtually sat in appeal, not only over the decision taken by the Government of India, but also over the decision taken by the Chief Justice of India, which it discarded by a side wind. In our view, the High Court seriously erred in doing so. Even assuming that the Secretary of the department concerned of the Government of India had not*

apprised himself of all necessary facts, one cannot assume or impute to a high constitutional authority, like the Chief Justice of India, such procedural or substantive error. The argument made at the Bar that the Chief Justice of India might not have been supplied with the necessary inputs has no merit. If Parliament has reposed faith in the Chief Justice of India as the paterfamilias of the judicial hierarchy in this country, it is not open for anyone to contend that the Chief Justice of India might have given his concurrence without application of mind or without calling for the necessary inputs. The argument, to say the least, deserves summary dismissal.

15. In this matter, the approach adopted by the Jharkhand High Court commends itself to us. The Jharkhand High Court approached the matter on the principle that judicial review is not available in such a matter. ***The Jharkhand High Court also rightly pointed out that mere inclusion of a candidate's name in the selection list gave him no right, and if there was no right, there could be no occasion to maintain a writ petition for enforcement of a non-existing right.****"*

5.3. The Authority has to act within the precincts of the provisions of the law and in the event there is no express fetter put in the Authority if the reconstituted Search-*cum*-Selection Committee decided to start the process *de novo*, we do not find any statutory obstacles having put in this regard. We have been taken to a confidential reports received by the Committee which cannot be said to be a mere piece of paper and if the Committee decided to undertake an exercise of scrutinizing the applications and selecting the persons for personal interaction on the basis of inputs received from the Intelligence Bureau (IB), we do not find that there can be any illegality perceived from the action of the Search-*cum*-Selection Committee.

6. We, therefore, do not find any merit in the instant writ petition, which is accordingly dismissed. All the interlocutory application(s) pending, if any, stands disposed of accordingly. No order as to costs.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ Petition dismissed.

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2025 (III) ILR-CUT-406

AJIT KUMAR MISHRA
V.
STATE OF ODISHA & ORS.

[W.A. NO. 845 OF 2025]

24 JULY 2025

[HARISH TANDON, C.J. & MANASH RANJAN PATHAK, J.]

Issue for Consideration

Whether the finding of the learned Single Bench that the appellant should assail the order of the State Education Tribunal being the substratum of the entire adjudication, can be sustained.

Headnotes

ORISSA EDUCATION (RECRUITMENT AND CONDITIONS OF SERVICE OF TEACHERS AND MEMBERS OF THE STAFF OF AIDED EDUCATIONAL INSTITUTIONS) RULES, 1974 – Rule 16(2) – The appellant was permitted to discharge the duties of a teacher since 1992 continuously and uninterruptedly – The prayer for regularization of his service was rejected in the year 2004 – The order of rejection was challenged before State Education Tribunal, which was disposed of with a direction to approve the appointment of appellant and give him grant in aid at untrained scale within a period of three months – The direction of learned tribunal was not complied with for a long span of time – The appellant obtained B.Ed degree in the year 2014 – The appellant filed writ application as well as contempt petition for compliance the order of Education tribunal as there was no express provision applicable to the State Education Tribunal to implement its own order – The appellant approached the Authority for trained scale of pay, as the Authority did not consider, he filed writ application – The learned single judge dismissed the writ petition solely on the ground that the order of the Tribunal postulates the pay scale on an untrained teacher, and the said order having accepted and not assailed by the appellant, he cannot claim the pay scale as trained teacher – Whether the finding of the learned Single Bench that the appellant should assail the order of the State Education Tribunal being the substratum of the entire adjudication, can be sustained.

Held: No – The sequel of the facts, as narrated above, leaves no ambiguity in our mind that the appellant was illegally and wrongfully prevented from discharging his duties, and the right which got crystalized and /or fructified on the basis of the order of the Tribunal, was kept in abeyance for a

considerable period of time, for which we feel that the appellant is entitled to a compensation. (Para 12)

We are unable to persuade ourselves to agree with the findings returned in the impugned judgment.

The impugned judgment is thus set aside – The writ petition is allowed with the following observation – We feel that a sum of ₹1,00,000/- as compensation shall be adequate. (Para 18)

List of Acts

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of The Staff of Aided Educational Institutions) Rules, 1974.

Keywords

Regularization of service; Compensation; Trained scale of pay; Scale of pay; Grant in aid; Approve of appointment

Case Arising From

W.P.(C) No. 863 of 2007 disposed of on 25.09.2007.

Appearances for Parties

For Appellant : Mr. Sameer Kumar Das

For Respondents : Mr. Saswat Das, A.G.A.

Judgment/Order

Judgment

HARISH TANDON, CJ.

1. This matter is taken up through Hybrid mode.

2. The case has checkered history. The appellant is subjected to several rounds of litigations before this Court as well as the Tribunal ventilating his grievance for regularization of service, payment of scale of pay and entitlement to receive higher pay scale admissible to the trained teachers.

3. The prelude to the litigation as discerns from the record can be traced from the year, 1992 when the appellant was permitted to discharge the duties of a teacher continuously and uninterruptedly. After achieving requisites number of years, the prayer was made for regularization of the said service before the Authority, which was rejected in the year, 2004. Since the regularization was rejected, the appellant was not put in the role of a teacher, and it can be reasonably inferred that he was not allowed to join and discharge his duties. The order rejecting the regularization of service was challenged before the State Education Tribunal, which was disposed of in a short span of time with the following directions:-

"In the present case the applicant joined his service on 15.07.1992 i.e. prior to the advent of the above Rules. Therefore, he cannot be said that his appointment was illegal for select of B.Ed. Training. Annexure-5 is therefore misconceived and is therefore liable to be quashed. The applicant is also entitled to approval of his appointment and to get grant-in-aid at untrained scale.

O R D E R

The case is allowed on contest but without costs. Annexure-5 is quashed. The O.P. Nos. 1, 2 & 3 shall approve the appointment of the applicant and shall give him grant-in-aid at un-trained scale, within a period of three months of communication of a copy of this judgment."

4. Despite a specific direction passed by the learned Tribunal to approve the appointment of the appellant as an untrained teacher within the stipulated time, a complete apathy was shown by the State and the fact remains that the order of the Tribunal was not implemented. It is brought to the notice of the Bench that there was no express provision in the Tribunal Act applicable to the State Education Tribunal to implement its own order. The only course available to the aggrieved person was to move the High Court under Article 226 of the Constitution of India, which, in fact, was filed by the appellant in 2007 being W.P.(C) No.863 of 2007. The said writ petition was disposed of on 25.09.2007 directing the concerned Authorities to implement the said award of the State Education Tribunal within three months from the date of receipt of a copy of the order subject to however that there is no interdict from the proper forum.

5. Despite the communication of the said order, the appellant's service was not regularized nor any appointment order was made in his favour, which constrained the appellant to file a contempt application being CONTC No.371 of 2008 before this Court. The contempt petition was dropped on an assurance given by the learned counsel appearing for the Contemnor - Opposite Party that the order of the Tribunal would be implemented. Yet there was no respect or sanctity shown to the order of the Court. A miscellaneous application being Miscellaneous Case No.58 of 2010 was registered in the said disposed of contempt matter, and by an order dated 03.05.2010, the Secretary, School and Mass Education Department and the Inspector of Schools, Mayurbhanj were directed to appear in person before this Court on 05.07.2010. After receiving the said order, office order No.8118 dated 20.06.2010 was issued by the Inspector of Schools, Mayurbhanj implementing the order of the State Education Tribunal with stipulations that the appellant shall be treated as an untrained teacher and be entitled to Block-grant in untrained scale of pay from the date he joins the duty. Undeniably, after the said order, the appellant was permitted to join on 29.06.2010 as a teacher in untrained scale of pay.

6. Subsequently, the appellant approached the School Authority asserting that he being a B.Ed. degree holder, should be granted trained scale of pay. The School Authority vide Letter No.17 dated 29.04.2014 wrote to the District Education Officer, Mayurbhanj recommending for trained scale of pay to be given to the appellant, as he has passed B.Ed. degree course from IGNOU and a certificate in this

regard is issued on 10.03.2014 which was annexed thereto. Despite such communication, the appellant was not paid the trained scale of pay. The approach was made to this Court before a Single Bench for writ of mandamus directing the respondents-Authorities to release the arrear Block-grant and trained scale of pay to the appellant from 01.01.2004 to 26.06.2010 and enhanced rate of Block-grant from 01.04.2013 to 09.03.2014, and further Block-grant in the trained scale of pay from 10.03.2014.

7. The counter affidavit filed by the respondents-Authorities, the stand was taken that the arrear salary is not tenable, as the appointment of the appellant was not in conformity with the procedures laid down by the Government on the basis of an approved staffing pattern or yardstick. The Single Bench, after noticing the same, dismissed the writ petition solely on the ground that the order of the Tribunal postulates the pay scale on an untrained teacher, and the said order having accepted and not assailed by the appellant, he cannot claim the pay scale as trained teacher.

8. The point emerged before us is whether the findings of the learned Single Bench that the appellant should assail the order of the State Education Tribunal being the substratum of the entire adjudication, can be sustained.

9. Indubitably, the Tribunal passed an order in favour of the appellant not only directing regularization of the service but also to grant approval to the appointment, as at the relevant point of time, the appellant did not have a training qualification and, therefore, to be paid as an untrained candidate. The Authorities consumed several years to implement the said order, as the litigations travelled before different forums which are adumbrated hereinbefore. Ultimately, the appellant is appointed to the post of Assistant Teacher at a scale of pay admissible to an untrained teacher and was paid the salary at such scale of pay. There has been a considerable lapses and latches on the part of the Authorities in implementing the order of the Tribunal. The finding of the learned Judge of the Single Bench cannot be sustained for the reason that if the Petitioner was held guilty of not challenging the order of the Tribunal, the Tribunal ought not to have overlooked the fact that the State did not implement the order for a considerable period of years and the right which was crystalized in terms of the order of the Tribunal was kept in suspended animation. It is only in the year 2010, when the contempt application was filed and a direction was passed to implement the order, the Petitioner's appointment letter was issued. The operative portion of the order passed by the State Education Tribunal is exposit on the entitlement of the appellant for regularization of his service with further direction to appoint the appellant to the post of an Assistant Teacher to a scale of pay attributed to an untrained teacher.

10. Since the appellant did not have the requisite educational qualification to come within the ambit of a trained teacher, we do not find any ambiguity in the order of the Tribunal in directing the payment of salary at the pay scale of an untrained teacher. The claim of a pay scale admissible to the post of a trained teacher was pursued only in the year, 2014 after acquiring B.Ed. degree from the

IGNOU and the certificate dated 10.03.2014 was submitted to the Competent Authority. The appellant claimed such scale of pay from the date of said certificate and not from an anterior date. The learned Single Bench did not consider the aforesaid aspect and was misdirected by the statement made in paragraph-16 of the counter affidavit filed by the respondents side that the appointment of the teaching and non-teaching staff was not in conformity with the procedures laid down by the Government on the basis of approved staffing pattern or the yardstick mentioned in the different provisions of law. The Single Bench did not consider the fact that the Education Tribunal passed order in the year, 2006 directing for regularization of the service of the appellant with effect from 2004. Therefore, the question of appointment dehors the provision cannot be reopened for the reason that the State did not challenge the order of the Education Tribunal or, in the event challenge is made, could not yield any fruitful result. The order attained its finality and therefore is not susceptible to be interfered with. There is no occasion on the part of the State Authorities in not implementing the same in its true spirit and purport. The State appears to be valiant in not implementing the said order which led deprivation of the appellant to get the benefit of the approval of appointment from the date indicated in the order passed by the State Education Tribunal.

11. So far as the claim of the arrear salary from the date mentioned in the order of the State Education Tribunal till the actual appointment is made by issuing the order of appointment in the year 2010 is concerned, we cannot ignore the fact that the appellant did not render service nor discharged his duties during the aforesaid period. If a person has not worked for such period, whether he is entitled to any monetary benefit in the form of salary, as his service was directed to be reckoned from particular anterior date, we do not intend to delve deep into the fact that whether the appellant was prevented from joining the said post or was forced not to join, as we find that the appellant did not discharge his duties for the reasons which can reasonably be attributed to the conduct of the respondents Authorities. It would be too onerous and burdensome to direct for payment of the salary for the period, when the teacher (appellant) did not discharge his duty, but equally, we cannot ignore that despite the order having passed which subsequently attained its finality, there was an unjust enrichment upon the legal rights which gets fructified in favour of the appellant. The right to appointment should be construed from the date of the order of the State Education Tribunal. But, since the appellant did not discharge his duties, the benefit shall be treated as notional for the purpose of computation of the length of service.

12. The sequel of the facts, as narrated above, leaves no ambiguity in our mind that the appellant was illegally and wrongfully prevented from discharging his duties, and the right which got crystalized and /or fructified on the basis of the order of the Tribunal, was kept in abeyance for a considerable period of time, for which we feel that the appellant is entitled to a compensation.

13. So far as the claim of the pay scale of trained teacher category is concerned, reliance is placed upon Rule 16 of The Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974, which postulates that all appointments except those made under Rule 8 shall be on probation for a period of two years, and in case of non-trained teacher, it may be extended for a period not exceeding one year.

14. Sub-Rule (2) of Rule 16, which, in our opinion, is clinching the issue, is relatable to the scale of pay admissible to the teacher who acts as a trained category candidate and therefore it is pertinent and relevant to quote such provision, which reads thus :-

> "16 (2) No teacher who has not undergone the training prescribed for the post shall hold the post substantively;
>
> Provided that an untrained teacher having not less than ten years of service shall undergo condensed in-service training provided by the Government and after successful completion of such training shall be eligible for confirmation and shall be entitled to draw salary of a trained teacher :
>
> Provided further that a teacher attaining the age of 48 years shall be exempted from undergoing the training and shall be entitled to financial benefits of a trained teacher."

A manifest reading of the above quoted provisions conveys laudable message that an untrained teacher having not less than 10 years of service is to undergo condensed in-service training provided by the government and, then, after completion of the said training successfully, will be eligible for confirmation as trained teacher.

15. The appellant sought to interpret the 1st proviso to Sub-Rule (2) of Rule 16 that the moment he has acquired B.Ed. degree, he is entitled to be a trained teacher. The meaningful reading of the first proviso does not indicate the interpretation sought to be given by the counsel for the appellant. The first proviso is applicable only where the training is provided by the government to an in-service teacher and only after the successful completion of the said training, the untrained teacher shall be eligible to the pay scale of a trained teacher.

16. Admittedly, the petitioner has not pursued B.Ed. degree course, provided by the government, as an in-service candidate, but independently applied and got admission and obtained the B.Ed. degree and therefore it can be reasonably inferred that the conditions enshrined in the first proviso does not meet the requirements relating to the claim of pay scale as a trained candidate. However, we cannot overlook the second proviso appended thereto, wherein, any non-trained teacher having attained the age of 48 years, shall be exempted from undergoing the training, but shall be entitled to the financial benefit of a trained teacher.

17. It is not in dispute that the Petitioner has attained the age of 48 years much before and therefore comes within the ambit of the second proviso. Even if we consider the stand of the State that the petitioner's eligibility is not in conformity with the relevant provisions, yet by virtue of the second proviso, the moment the petitioner crossed 48 years of age, the financial benefit as a trained teacher should be admissible to him.

18. From the discussions as made hereinabove, we are unable to persuade ourselves to agree with the findings returned in the impugned judgment. The impugned judgment is thus set aside. The writ petition is allowed with the following observations –

(i) The service of the Petitioner shall be notionally reckoned in terms of the order of the State Education Tribunal, but he shall not be entitled to any actual financial / monetary benefit.

(ii) Since the petitioner was deprived of not only getting his appointment but also to discharge his duties despite having successfully undergoing all the adjudicatory process, we feel that a sum of Rs.1,00,000/-(Rupees one lakh) as compensation shall be adequate and, therefore, direct the State to pay a sum of Rs.1,00,000/- (Rupees one lakh) to the petitioner towards compensation within three weeks from the date of this order.

(iii) The Petitioner is also entitled to such Pay Scale, as admissible to the trained teachers, from the month following the month in which he completes 48 years of age, as recorded in his Service Book prepared by the State Authorities, and such amount shall be paid to him within four weeks from the date of communication of this order.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
W.A. Allowed.

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2025 (III) ILR-CUT-413

RUPESH KUMAR AGARWAL
V.
PRIYASHA GOENKA

[W.A. NO. 857 OF 2025]

23 JULY 2025

[HARISH TANDON, C.J. & MANASH RANJAN PATHAK, J.]

Issue for Consideration

Whether the confirming judgment of the Hon'ble Single Bench is required to be interfered.

Headnotes

CODE OF CIVIL PROCEDURE, 1908 – Order VI Rule 17 – Amendment of pleading/Written statement – In the present Writ appeal the confirming judgment of the Hon'ble Single Bench is under challenge – The Motor Vehicle Accident Claims Tribunal had rejected the application of the appellant filed under Order VI Rule 17 of CPC – Appellant pleaded that such amendment will not change the nature of case and if amendment is not made it will cause prejudice to him – In the other hand Respondent pleaded that, six years after commencement of trial such application is not maintainable further it will change the original defence and a new case will be introduced if amendment is allowed and the appellant can't withdraw the admission made in the show cause/ Written statement –In the circumstances above, whether the confirming judgment of the Hon'ble Single Bench is required to be interfered?

Held: No – Keeping in mind the judgments of the Hon'ble Supreme Court as well as the judgments noted above that were cited in the impugned judgment, we are of the considered view that the amendment to pleading must not change the nature of the suit and it must be timely and the delay as well as lack of specificity can justify dismissal of such amendments – Moreover, law is well established that amendment of pleading is permissible before commencement of the trial of a case, if made within a reasonable time. (Para 32)

Considering the stage of the MACT (Misc. Case) No.17/2012 pending before the learned 3rd MACT, Bhubaneswar as well as the provisions of Order VI, Rule 17 of the CPC, we found that the 3rd MACT, Bhubaneswar by its order dated 24.07.2018 passed in MACT (Misc. Case) No.17/2012 has rightly rejected the appellant's petition submitted under Order VI, Rule 17 of the CPC. (Para 33)

For the reasons above, we are of the view that the impugned Judgment dated 28.03.2025 passed by the learned Single Judge in W.P.(C) No.14411 of 2018 does not call for any interference. (Para 34)

Citations Reference

Ram Niranjan Kajaria -Vs- Sheo Prakash Kajaria & Others, **(2015) 10 SCC 203;** North Eastern Railway Administration, Gorakhpur -Vs- Bhagwan Das, **(2008) 8 SCC 511;** Pirgonda Hongonda Patil -Vs- Kalgonda Shidgonda Patil and Others, **1957 SCR 595;** Rajesh Kumar Aggarwal and Others -Vs- K. K. Modi & Others, **(2006) 4 SCC 385**; Life Insurance Corporation India -Vs- Sanjeev Builders Private Limited, **(2022) 16 SCC 1 – referred to.**

List of Acts

Code of Civil Procedure, 1908; Motor Vehicle Act, 1988; Constitution of India, 1950.

Keywords

Motor Accident; Claim; Show cause; Written statement; Amendment of Written statement; Commencement of trial; Nature of Case; Original defence; Introduction of new case; Reasonable time.

Case Arising From

Judgment dated 28.03.2025 passed by the learned Single Judge, In Writ Petition No.14411 of 2018.

Appearances for Parties

For Appellant : Mr. Amit Prasad Bose
For Respondent : Mr. Rahul Ray

Judgment/Order

Judgment

MANASH RANJAN PATHAK, J.

1. Heard Mr. Amit Prasad Bose, learned Counsel for the appellant and Mr. Rahul Ray, learned Advocate for the sole Respondent.

2. This intra-court appeal is against the judgment dated 28.03.2025 passed by the learned Single Judge, dismissing the writ petition W.P.(C) No.14411 of 2018 of the appellant that he preferred as a petitioner.

3. Learned Single Judge by the impugned judgment dated 28.03.2025 rejected the prayer of the petitioner, wherein he prayed for correction of his written statement that he filed in MACT (Misc. Case) No.17 of 2012 by filing application under Order VI, Rule 17 of the Code of Civil Procedure.

4. Perused the records of W.P.(C) No.14411 of 2018.

5. Brief facts of the case is that on 04.09.2011 around 12:30 p.m. when the respondent herein with her friend Payal Choudhury were proceeding towards Master Canteen Square from Sriya Talkies Square in the road on their left side, then the appellant riding a Bajaj Motor Cycle bearing Registration No. OR 02 AL 9529 in a rash and negligent manner, knocked/dashed the respondent from backside, threw her to a considerable distance, in which she sustained severe head and multiple bodily injuries and became unconscious. She was immediately taken to the Nilachal Hospital, Unit-3, Kharvel Nagar, Bhubaneswar and subsequently, she was referred to the Apollo Hospital for her further medical treatment. For her such medical treatment, the respondent incurred significant financial loss.

6. The respondent, after her recovery, filed an application under Section 166 of the Motor Vehicles Act 1988 before the Motor Accident Claims Tribunal (MACT), Bhubaneswar against the appellant, owner of the Bajaj Motor Cycle, involved in the said accident claiming compensation with interest for the injuries which she sustained in the said road traffic accident that was registered as MACT (Misc. Case) No.17 of 2012, presently pending before the learned 3rd Motor Accident Claims Tribunal, Bhubaneswar (hereinafter referred to as the said Tribunal).

7. The appellant, on receipt of notice, appeared before the said Tribunal and on 17.10.2012 filed his show cause reply written statement in said MACT (Misc. Case) No.17/2012 denying the claim of the respondent.

8. After the closer of evidence from the side of the claimant/respondent herein on 20.04.2017, the appellant on 04.09.2017 filed his affidavit-in-evidence as OPW No.1.

9. After he was cross examined by the claimant/present respondent, the appellant on 16.04.2018, during pendency of the trial of said MACT (Misc. Case) No.17/2012, filed a petition under Order VI, Rule 17 of the CPC before the said Tribunal, praying for amendment to his show cause reply / written statement that he filed in said MACT case earlier on 17.10.2012, praying for its amendments by inserting the follows:-

> (i) In para-18, line No. 7, the word “it is not a fact” before the word “the rider”;
>
> (ii) In para-18, line No. 14, the word “and” after the word “Master Canteen Square” by deleting the “full stop”; and
>
> (iii) In para-18, line Nos. 15 and 17, the word “and” after the word “accident”, by deleting the “full stops”.

10. The respondent filed her objection before the said Tribunal to the petition under Order VI, Rule 17 of the CPC filed by the appellant.

11. By order dated 24.07.2018 the said Tribunal rejected the proposed amendment of his show cause reply / written statement filed by the appellant under Order VI, Rule 17 of the CPC, holding that the law is well settled that amendment cannot be allowed after the commencement of the hearing and further, withdrawal of

admission made in the course of cross-examination also cannot be allowed by way of an amendment.

12. The said Tribunal in its order dated 24.07.2018 also held that if the proposed amendment of show cause reply/written statement of the appellant is allowed, he will be able to cover up the latches and deficiencies in his written statement/show cause reply and that the admission that he had made in his objection will amount to be withdrawn.

13. By the said order dated 24.07.2018 the Tribunal further held that it cannot be said that the appellant was not aware of his own pleadings during the six years of pendency of the said proceeding.

14. For those reasons, the said Tribunal by its order dated 24.07.2018 rejected the said amendment petition of the appellant filed under Order VI, Rule 17 of the CPC and fixed the said MACT (Misc. Case) No.17/2012 for further evidence of opposite parties of the said case.

15. Aggrieved with the said rejection order dated 24.07.2018 passed by the said Tribunal, the appellant preferred the Writ Petition W.P.(C) No.14411 of 2018 under Articles 226 and 227 of the Constitution of India praying amongst others — to set aside and quash the order dated 24.07.2018 passed by the learned 3rd MACT, Bhubaneswar in MACT (Misc. Case) No.17 of 2012 for the greater interest of justice.

16. While issuing notice to the respondent in said W.P.(C) No.14411/2018, the learned single Judge on 14.08.2018, in the interim, stayed the further proceeding of said MACT (Misc. Case) No.17 of 2012 pending before the learned 3rd MACT, Bhubaneswar.

17. The contention of the appellant before the learned Single Judge was that as certain inadvertent typographical and clerical errors had occurred in his written statement that he had filed in said MACT (Misc. Case) No.17 of 2012 before the said Tribunal, which came to his knowledge only during the trial of the said MACT proceeding, he immediately, without any undue delay, filed the petition under Order VI, Rule 17 of the CPC before the said Tribunal seeking an amendment/correction and removal of the erroneous typographical and clerical errors. As the learned Tribunal by its order dated 24.07.2018 rejected his petition under Order VI, Rule 17 of the CPC, it caused prejudice to him and he being interested, it caused sheer injustice to him.

18. According to the appellant such amendment of his written statement would not alter the nature and character of the written statement that he had filed in said MACT (Misc. Case) No.17/2012 before the Tribunal, and on such rejection by order dated 24.07.2018 passed by the Tribunal, he is now in a position of admitting that the respondent was injured by his vehicle. The appellant also contended that the same is contrary to the protection guaranteed to him under the Article 20(3) of the Constitution of India.

19. The other contention of the appellant in the writ petition was that the Tribunal compelled him to proceed with an erroneous written statement, where inadvertent typographical and clerical errors had occurred, creating an impression of his admission

to the allegations made against him, which not only caused grave injustice to him but also defeated the very purpose of ensuring justice.

20. The appellant also contended before the learned Single Judge that Order VI, Rule 17 of the CPC does not have any direct application in MACT Case. According to the appellant, his proposed amendment, if allowed, would not have altered the nature and character of the case nor it would have prejudiced the respondent in any manner and therefore, the appellant stated that had the said amendment been allowed by the Tribunal, it would have served the ends of justice.

21. As such, the appellant prayed before the learned Single Judge to set aside the order dated 24.07.2018 passed by the Tribunal in said MACT (Misc. Case) No.17/2012 and to allow his proposed amendment, pertaining to his written statement that he had filed in the said MACT Case.

22. On the other hand, the respondent urged before the Court that the Motor Vehicles Act, 1988 does not contain any such provisions for the amendment or alteration to the show-cause reply / written statement or petitions filed by the parties. It is also contended by the respondent that, in said MACT (Misc. Case) No.17 of 2012, trial had already commenced before the learned Tribunal and that the appellant filed his application under Order VI, Rule 17 of the CPC for amendment of his show-cause reply after commencement of the trial of the said MACT Case without stating or giving any explanation pertaining to due diligence as to why he did not seek amendment of his said show cause reply prior to the commencement of the trial of the said MACT case, except stating about inadvertent typographical and clerical errors that had occurred in his said reply, which, according to him, came to his knowledge only during the trial of the said proceedings.

23. According to the respondent, if the amendment sought for by the appellant is allowed, it would fundamentally alter the nature and character of the said MACT Case and would amount to introduction of entirely a new case, which would change the original defence taken by the appellant in his show cause reply/written statement. The respondent placed before the Court that the appellant after six years of initiation of the said MACT proceeding, submitted the said application under Oder VI, Rule 17 of the CPC before the Tribunal and that he completely failed to provide any justification for such prolonged delay in seeking amendment of his show-cause reply /written statement.

24. Relying on the judgment of the Hon'ble Supreme Court in the case of ***Ram Niranjan Kajaria -Vs- Sheo Prakash Kajaria & Others,*** reported in ***(2015) 10 SCC 203***, the respondent submitted that the appellant cannot withdraw the admissions that he had made in his show-cause reply/written statement by an amendment petition filed under Order VI, Rule 17 of the CPC that too after his cross examination. For such reasons the respondent contended that the prayer of the appellant cannot be considered for amendment of his show-cause reply submitted in said MACT (Misc. Case) No.17/2012 and that the learned Tribunal by the order dated 24.07.2018 rightly rejected the said amendment of the appellant.

25. We have perused the judgment of the learned Single Judge dated 28.03.2025 passed in W.P.(C) No.14411/2018, that is assailed by the appellant.

26. Learned Single Judge in the impugned judgment dated 28.03.2025, pondered the fact that the principle regarding the amendment of pleadings as provided under Order VI, Rule 17 of the CPC has to be considered as to whether such amendment will cause any injustice or prejudice to the respondent / other side and whether such amendment is necessary for the purpose of determining the real questions in controversy between the parties.

27. In the impugned judgment dated 28.03.2025 learned Single Judge discussed the Judgments of the Hon'ble Supreme Court in the cases of: -

i) North Eastern Railway Administration, Gorakhpur -Vs- Bhagwan Das, reported in (2008) 8 SCC 511.

ii) Pirgonda Hongonda Patil -Vs- Kalgonda Shidgonda Patil and Others, reported in 1957 SCR 595;

iii) Rajesh Kumar Aggarwal and Others -Vs- K. K. Modi & Others, reported in (2006) 4 SCC 385 and

iv) Life Insurance Corporation India -Vs- Sanjeev Builders Private Limited, reported in (2022) 16 SCC 1.

28. In the impugned judgment learned Single Judge found that, at paragraph-13 of his written statement / show cause reply filed in MACT (Misc. Case) No.17/2012, the appellant before the Tribunal made an admission of causing a road traffic accident due to rash and negligent driving and as such the said Court came to a finding that if the proposed amendment sought for by the appellant is allowed, it would enable him to withdraw the said admission and rectify the deficiency in his defence that would substantially alter the course of the case and would raise a significant issue and in such circumstance, amendment is generally not permissible. As such, the learned Single Judge came to the conclusion that such amendment is generally not permitted after commencement of hearing of a case, when it involves withdrawing of admission made in the stage of cross-examination.

29. The learned Single Judge in the impugned judgment dated 28.03.2025 also found that the appellant cannot reasonably claim to be ignorant on his own pleading not particularly in a case that is pending for about six years before the learned Tribunal, which indicates that he was aware of the contents of his own written statement including the admission that he had made therein at paragraph-18, where the appellant acknowledged of causing the accident due to rash and negligent driving. The learned single Judge in the impugned judgment observed that such deficient on the part of the appellant that too after such significant amount of time, cannot be overlooked, as he had ample opportunity to address any of his discrepancy and/or errors in his pleading much before the amendment that he had sought for.

30. Considering the above, the learned Single Judge by the impugned Judgment dated 28.03.2025, came to the conclusion that the prayer of the writ petitioner/ appellant herein pertaining to amendment of his written statement submitted before the said Tribunal under Order VI, Rule 17 of the CPC has no merit and that, such amendment sought for by the appellant/petitioner are also not permissible under the circumstances, as he had already admitted the fact that he had committed the accident due to rash and negligent driving. Learned Single Judge by the said impugned Judgment also came to a finding that, if such amendment, as sought for by the appellant herein is allowed, it would enable him to withdraw the said admission that he had made earlier before the said Tribunal, which would substantially prejudice the respondent. Accordingly, finding no merit, the learned Single Judge by its judgment dated 28.03.2025 passed in W.P.(C) No.14411 of 2018, dismissed the said writ petition of the appellant.

31. We have considered the judgment of the learned Single Judge dated 28.03.2025 passed in W.P.(C) No.14411 of 2018 as well as the order dated 24.07.2018 passed by the 3rd MACT, Bhubaneswar in MACT (Misc. Case) No.17/2012 rejecting the petition of the appellant submitted under Order VI, Rule 17 of the CPC.

32. Keeping in mind the judgments of the Hon'ble Supreme Court as well as the judgments noted above that were cited in the impugned judgment, we are of the considered view that the amendment to pleading must not change the nature of the suit and it must be timely and the delay as well as lack of specificity can justify dismissal of such amendments. Moreover, law is well established that amendment of pleading is permissible before commencement of the trial of a case, if made within a reasonable time.

33. Considering the stage of the MACT (Misc. Case) No.17/2012 pending before the learned 3rd MACT, Bhubaneswar as well as the provisions of Order VI, Rule 17 of the CPC, we found that the 3rd MACT, Bhubaneswar by its order dated 24.07.2018 passed in MACT (Misc. Case) No.17/2012 has rightly rejected the appellant's petition submitted under Order VI, Rule 17 of the CPC.

34. For the reasons above, we are of the view that the impugned Judgment dated 28.03.2025 passed by the learned Single Judge in W.P.(C) No.14411 of 2018 does not call for any interference.

35. Accordingly, this Writ Appeal, being devoid of merit, stands dismissed.

Headnotes prepared by:
Shri Jnanendra Kumar Swain, Judicial Indexer
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ Appeal dismissed.

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2025 (III) ILR-CUT-420

SASMITA DAS
V.
STATE OF ODISHA & ORS.

[W.A NO. 3036 OF 2024]
[ARISING OUT OF W.P.(C) NO. 35923 OF 2023]

11 SEPTEMBER 2025

[MANASH RANJAN PATHAK, J. & MRUGANKA SEKHAR SAHOO, J.]

Issue for Consideration

Whether the deceased husband of the petitioner satisfied the prescribed parameter to qualify as Health Worker, as specified in the scheme of the Government of odisha to get compensation & order of the Hon'ble single Bench warrant any interference?

Headnotes

COVID 19 DEATH – Claim of Compensation – Petitioner's husband was working as an Asst. Engineer & was authorized to look after public health work of Community Health Center (CHC) and Hospitals of Ganjam and Gajapati District – The present writ appeal has been filed challenging the order of the Hon'ble Single Judge dismissing the writ petition on the ground that husband of the petitioner was not a health worker – Whether the deceased husband of the petitioner satisfied the prescribed parameter as under the specified scheme of the Government of Odisha to get compensation & order of the Hon'ble single Bench warrant any interference?

Held: No – This Court has examined the details as indicated above as required for consideration of the claim of benefit and it is noticed that the petitioner has not stated whether the deceased husband of the petitioner was in active line of duty in COVID-19 – It is also not indicated in the writ petition that the deceased employee had contact of COVID-19 infection while in active line of duty, it is not stated the deceased employee had tested positive upon being tested for COVID19 within 30 days from his/her last day of active COVID-19 related duty. (Para 12)

As a result it has to be concluded that nothing is forthcoming either in the petition nor in the pleadings as to the compliance of the paragraphs B, C, F & G of notification dated 20.07.2020 as has been reproduced above.

In absence of all these, this Court cannot form any opinion regarding claim of the appellant, much less, can direct the authorities to do anything to consider the claim of the petitioner. (Para 13)

List of Acts

Pradhan Mantri Garib Kalyan Yojana.

Keywords

Covid 19 death; Claim Compensation; Health Worker; Government Scheme;

Case Arising From

Order dated 02.01.2024 passed by Hon'ble Single Bench in W.P.(C) No. 35923 of 2023.

Appearances for Parties

For Appellant : Mr. Bijoy Das Mohapatra
For Respondents : Mr. Debraj Mohanty, A.G.A.

Judgment/Order

Judgment

MRUGANKA SEKHAR SAHOO, J.

1. The appeal has been filed challenging the order dated 2.1.2024 passed by the learned Single Judge in W.P.(C) No. 35923 of 2023 dismissing the writ petition.

2. The writ application was filed by the appellant-petitioner.

3. Learned counsel for the appellant was heard in extenso. Earlier the matter was heard on 19.08.2025.

4. The appellant is aggrieved by the order passed by the learned Single Judge in Writ Petition No. 35923 of 2023. Learned Single Judge has given the following reasons for rejecting the writ petition which are reproduced from the order dated 02.01.2024 :

> *"4. Learned counsel for the Petitioner further contends that after death of her husband the Petitioner had approached the Executive Engineer of the concerned department for considering her case under the Pradhan Mantri Garib Kalyan Package.*
>
> *5. Learned counsel for the State submits that as per the Pradhan Mantri Garib Kalyan Package the health workers, who perform duties relating to the COVID-19 work, are only covered under the said package and the Petitioner is no way concerned with the said health work. He further contends that the husband of the Petitioner was also not a health worker."*

5. Learned AGA supports the judgment passed by the learned Single Judge in writ petition. He submits that the deceased husband of the petitioner does not come within the definition of health worker. He did not perform duties relating to COVID-19 work.

6. Considering nature of claim raised in the writ petition, we have heard the learned counsel for the appellant on merits of the claim made in the writ petition, by

going into details of the annexures to the writ petition and also we have heard learned counsel for the appellant regarding his submissions on the said annexures.

The copy of the claim application made by the applicant-petitioner appellant under the scheme Pradhan Mantri Garib Kalyan Yojana/Package has not been annexed to the writ petition and not before us. However, annexed to the writ petition are the documents indicating that the deceased husband of the petitioner was authorized to look after public health work of Community Health Center (CHC) and hospitals of Ganjam and Gajapati districts he then working as Assistant Engineer, General Public Health (GPH) subdivision. The certificate of death annexed to the writ petition (entire writ petition has been annexed to the writ appeal) has issue No. 8107/2020, indicates that the death was registered on 31.10.2020 Registration No.8317/2020. Death having occurred on 17.10.2020. There is another death certificate issued on 16.2.2022 issued by the Government Department of Health & Family Welfare in compliance of the Hon'ble Supreme Court judgment dated 30th June, 2021 that is marked as Annexure-XIX to the writ petition wherein it is written that the COVID-19 Death Ascertaining Committee has certified that the person died due to COVID.

7. Annexed to the writ petition is letter dated 28.1.2022 issued by the Executive Engineer GPH Division, Bhubaneswar addressed to the Collector and District Magistrate, Ganjam (marked as Annexure-XVIII). Since the said letter has bearing on the adjudication of the writ petition, it is reproduced herein :

"OFFICE OF THE EXECUTIVE ENGINEER GPH DIVISION NO.I, BHUBANESWAR

To
Collector & District Magistrate,
Ganjam.

Sub : Submission of application for insurance claim under Pradhan Mantri Garib Kalyan Package in connection with the death of S. Binod Chandra Patro Ex-A.E GPH Section Paralakhemundi.

Ref : i) Your Letter No.765 dt 2.3.2021 and Memo No 295 /Emg. dated 25.1.2021.

ii) letter No.903 dated 15.7.2021 of Superintending Engineer P.H Circle (R&B) Bhubaneswar.

Sir,
With reference to the letter and subject cited above, it is to submit herewith the application of Smt. Sasmita Das W/o late S. Binod Chandra Patro regarding insurance claim under Pradhan Mantri Garib Kalyan Package in connection with the death of S. Binod Chandra Patro Ex- A.E GPH Section, Paralakhemundi along with the following observations and this correspondence made in the matter for necessary examination:

1.) Late S. Binod Chandra Patro had performed Covid-I9 management related duties from 01.03.2020 to 31.08.2020. However, he was admitted in Sum Hospital, Bhubaneswar on 15.10.2020 and expired on 17.10.2020 due to chronic kidney disease (CKD), T2DM and B/L Pneumonia as mentioned in medical certificate of cause of death.

2.) It is found that S. Binod Ch Patra had not been tested Covid 19 positive within 30 days from his last day of active Covid-19 related duty.

3.) Laboratory report certifying positive medical test is not submitted by the applicant.

4.) No documentary evidence is available with this office that the loss of life of late S. Binod Chandra Patra was due to Covid-19.

5.) Death summary by the Hospital where death occurred is not submitted by the applicant.

Therefore, it is requested to take further necessary action at your end as per guidelines issued by Health and Family Welfare Department, Govt. of Odisha vide letter No.l7l97/H. dated 20.07.2020 and an instructions may kindly be issued to this office for further compliance or action.

This is for favour kind information and necessary action."

8. After the said letter was issued on 28.01.2022, the Bhubaneswar Municipal Corporation, Bhubaneswar within whose jurisdiction is the hospital where the deceased husband of the petitioner breathed his last, issued certificate subsequently on 16.2.2022.

Assuming that the certificate dated 16.02.2022, is to be accepted, we have to examine whether the deceased husband comes within the parameter as specified in the Scheme of the Government of Odisha, Health and Family Welfare Department dated 20.07.2020 (Annexure-XXXIV) and the corrigendum dated 29.07.2020 (Annexure-XXXIII) issued in continuation of the notification dated 20.07.2020.

Since the consideration has to be on the basis of the said official notifications relevant Paragraphs B, C, F & G of the notification dated 20.07.2020 are reproduced herein :

"B. ELIGIBILITY

Any person engaged in COVID-19 related work drafted by Government of Odisha or any of its agencies, who are not eligible for insurance coverage under the guidelines Issued by Government of India vide their D.O. letter No. Z-21020/16/2020- PH Dt. 30.03.2020, is eligible for such financial assistance to be given to their spouse or next of kin. It shall cover the following categories of personnel engaged in COVID19 related duties by Government of Odisha or any of its agencies Employees of State Government, Urban and Rural Local Bodies, PSUs, Autonomous Organisations, Societies under different Departments of the Government

2. Any private person or volunteer

3 Elected representatives

4 Any person hired by Govemment/ its authorized agencies through a professional agency on contract / daily wage basis

C. MANDATORY CONDITIONS OF ELIGIBILITY:

The above category of persons will be eligible for financial assistance under these guidelines provided they fulfill the following mandatory conditions;

1 That they are drafted by Government or by its authorized agencies to perform COVID-19 related duties/responsibilities directly

2 The contact of COVlD-19 infection must be while in active line of duty and the worker/ employee must not be on any kind of leave from the duty.

Provided that he/ she is tested/ detected COVID-19 positive within 14 days from his / her last day of active COVID-19 related duty (the 14 day count is from the last day of COVID-19 duty to the collection) and subsequently succumbs to COVID-19 or meets with accidental loss of life on account of COVID-19 related duty.

xx xx xx

F. CLAIM PROCEDURE

In case of death as indicated above, the-*Head of Office of the deceased person/ Drafting Authority shall facilitate and guide the claimant to initiate the proposal of claim under Insurance Scheme of Govt. of lndia in Form I or II, as the case may be.*

Besides, claim shall be simultaneously submitted in Form III attached to these guidelines under the Government of Odisha Scheme if the person was drafted by Government or its agencies to perform COVID-19 related duties and has succumbed to the disease after contacting Corona Virus infection in his/her active line of duty or meets with accidental loss of life on account of COVID-19 related duty.

The claim in Forms I or II, as the case may be, and the Form-III shall be submitted, duly filled in and signed by the claimant, to the Medical Superintendent of the concerned Hospital where the person succumbed to COVID-19.

The Medical Superintendent, after certifying the appropriate portion, shall forward the forms to the Head of the: Office/ Drafting Authority of the deceased.

The Head of the Office/ Drafting Authority, after making necessary entries, shall forward the forms to the Collector and District Magistrate of the concerned District for countersignature.

The Collector, after his countersignature, shall transmit the form to the Competent Authority as notified by the Government in Health & Family Welfare Department.

The Competent Authority will transmit the Form I or II, as the case may be, with required documents to the Insurance Company identified by the Government of India for approval and retain the Form-lil at its level.

In case the claim is not approved under Government of India Scheme, the Competent Authority as notified by the Government in Health & Family Welfare Department shall process the claim under Form-III for sanction of the financial assistance of Rs.50 Lakh from Government of Odisha under these guidelines in favour of the eligible claimant and take steps for payment.

(The Form I and II and the FAQ of Government of India along with the guidelines of Government of India and Form ill of Government of Odisha are annexed to these guidelines).

G. Documents to be submitted along with claim form:

The claim Form III shall accompany the following documents:

1. Claim form duly filled in and signed by the nominee/claimant

2. Identity proof of the deceased (PAN/ AADHAR / Institution ID card / Voter ID card) self certified by claimant

3. Identity proof of the claimant (spouse/next of Kin)- self certified by claimant

4. Proof for establishment of relationship of the deceased with the claimant - self certified by claimant 4. Proof for establishment of relationship of the deceased with the claimant - self certified by claimant

Laboratory report certifying having tested positive for COVID 19.- certified by claimant

6 Death summary by the Hospital where death occurred (in case death occurred in hospital).

7. Death Certificate (in original)

8. Post-mortem Report

9. Cancelled Cheque (desirable) (in Original)

10. Certificate in support of engagement by the Government or its authorized agency in form attached to these guidelines"

9. Relevant sub-para of the notification dated 29.07.2020 is extracted herein :

"Guidelines for providing Financial Assistance to Spouse/Next of Kin of Persons who Succumb to COVID-19 while in Active Line of Duty and are not eligible for Insurance Coverage under Government of India"

The last Paragraph of Clause-C of the of the above guidelines issued vide Notification No.17197/H dated, 20.07.2020 (copy enclosed) is hereby replaced and may be read as follows :

"Provided that he/she is tested/detected COVID-19 positive within 30 days from his/her last day of active COVID-19 related duty (the 30 day count is from the last day of COVID-19 duty to the date of swab collection) and subsequently succumbs to COVlD-19 or meets with accidental loss of life on account of COVID-19 related duty."

10. On the basis of the guidelines dated 20.07.2020 and corrigendum dated 29.07.2020 we have heard learned counsel for the appellant extensively as to whether the deceased husband of the appellant satisfies the prescribed criteria. It is clear from the submissions and apparent from the available annexures those are copies of the document sought to be relied upon by the appellant, that the applicant had never produced copy of the application before this Court nor any copy is available with the learned counsel for producing during hearing of the appeal.

11. We have noticed that the judgment under challenge did not give elaborate reasons or dealt with the contentions of the petitioner who is wife of the deceased employee claiming the benefit under Pradhan Mantri Garib Kalyan Yojana. As the facts have not been dealt with in the impugned judgment, consciously considering the nature of grievance raised in the writ petition we have heard the matter at length and dealt with the various factual aspects in the present appeal.

12. This Court has examined the details as indicated above as required for consideration of the claim of benefit and it is noticed that the petitioner has not stated whether the deceased husband of the petitioner was in active line of duty in COVID-19. It is also not indicated in the writ petition that the deceased employee had contact of COVID-19 infection while in active line of duty, it is not stated the deceased employee had tested positive upon being tested for COVID 19 within 30 days from his/her last day of active COVID-19 related duty.

Thereafter, regarding the claim procedure there is no mention whether the proposal of claim under insurance scheme of Govt. of India in Form-I or Form-II was submitted. It is also not mentioned whether the claim was submitted to the Govt. of Odisha in Form-III to the Medical Superintendent of the concerned hospital where the husband of the petitioner succumbed to COVID-19. It is not also stated in the writ petition if applications were submitted in Form-I or Form-II and/or Form-III, if submitted, how it was dealt with by the competent authority.

The consideration by the State as per the scheme is only if the claim is not approved under Govt. of India scheme. This aspect has also not been made clear in the writ petition whether the petitioner had applied in Form-I and/or II to the Govt. of India and if applied what happened to those applications, particularly how they were considered by the Govt. of India.

It is further noticed out of the requirements as specified those have been noted in paragraph-8 above i.e. "G". The documents to be submitted along with claim form that includes ten documents. No particulars have been given in any manner whatsoever as to how many documents were in fact filed either in Form-I or Form-II or Form-III.

13. As a result it has to be concluded that nothing is forthcoming either in the petition nor in the pleadings as to the compliance of the paragraphs B, C, F & G of notification dated 20.07.2020 as has been reproduced above.

In absence of all these, this Court cannot form any opinion regarding claim of the appellant, much less, can direct the authorities to do anything to consider the claim of the petitioner.

14. In view of the above discussions and the reasons stated Writ Appeal challenging the order dated 2.1.2024 passed by the learned Single Judge in W.P.(C) No. 35923 of 2023 is dismissed, the order passed by learned Single Judge is confirmed.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter Appeal dismissed.
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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2025 (III) ILR-CUT-427

Smt. RUBY@BISHNUPRIYA BEURA@SAMAL
V.
PRADEEP KUMAR BEURA

[MATA NO. 363 OF 2023]

18 SEPTEMBER 2025

[MANASH RANJAN PATHAK, J. & MRUGANKA SEKHAR SAHOO, J.]

Issue for Consideration

Whether the procedure followed by the learned judge Family Court is correct in law.

Headnotes

FAMILY COURTS ACT, 1984 – Chapter-IV r/w Order XIV of the Code of Civil Procedure, 1908 r/w and Hindu Marriage Act, 1955 – The appellant/ wife challenges the Judgment and decree passed by the learned Judge, Family Court, Cuttack allowing the petition *ex-parte* against her who was the Defendant/ Opposite Party in the C.P. – The learned Judge, Family Court did not give its reasons, did not frame or settle the issues and did not delve into the evidence on record, passed *ex parte order* – Whether the procedure followed by the learned judge Family Court is correct in law.

Held: No – The correct proposition of law is, even in ex-parte orders/judgments, though no judgment has been passed by the trial court, it is the duty of the trial court to deal with the pleadings, evidence on record, frame and settle the issues and give its finding diligently on each of the aspects. (Para 11)

Having gone through the order (rendered by the learned Judge, Family Court dated 20.07.2009), we have to observe that the judgment does not contain the concise statement of the case – It does not contain point for determination – The order does not contain the decision on the points for determination nor any reasons assigned for such decision – After discussing the pleadings and statement to certain extent made in the plaint before the learned Judge, Family Court, without at all referring to any evidence rendered by the plaintiff and also absolutely without any reasons, the order has been passed containing about three lines only. (Para 13)

In our considered view, the impugned order which is akin to a judgment under Family Courts Act and the Code of Civil Procedure has to be and is hereby set aside and C.P. No.95 of 2009 in the file of the learned Judge, Family Court, Cuttack is directed to be dismissed. (Para 14)

List of Acts

Family Courts Act, 1984; Hindu Marriage Act, 1955; Code of Civil Procedure, 1908.

Keywords

Ex parte order; Procedure; Duty of trial court; Settlement of issue; Frame of issue.

Case Arising From

Order dated 29.09.2023 passed in CMA No.89 of 2015 seeking to set aside the *ex-parte* order dated 20.07.2009 passed by the learned Judge, Family Court, Cuttack in C.P. No.95 of 2009.

Appearances for Parties

For Appellant : Mr. Durga Prasad Pradhan, P.R. Ray
For Respondent : M/s. Rabindra Nath Panda, A.K. Panda, R. Singh & A.K. Rana

Judgment/Order

Judgment

MRUGANKA SEKHAR SAHOO, J.

1. The Appellant wife before this Court challenges the order dated 29.09.2023 which is alien to a judgment and decree passed by the learned Judge, Family Court, Cuttack in C.P. No. 95 of 2009 allowing the petition *ex-parte* against the Appellant who was the Defendant-Opposite Party in the C.P.

2. Pursuant to our order dated 02.09.2025, both the parties are present in person before the Court, i.e. Pradeep Kumar Beura, Respondent-husband in the marriage and Ruby @ Bishnupriya Beura @ Samal, Appellant-wife in the marriage. This Court took note of the fact that till 02.09.2025 the matter is being adjourned repeatedly for no justifiable cause. After the appeal was placed for consideration, for the first time it was listed on 06.04.2024. On the said date, the following order was passed –

> *"1. Mr. Pradhan, learned advocate appears on behalf of appellant and prays for liberty to rectify defect by omission in the petition, in Court.*
>
> *2. Leave is granted for the defect being rectified in Court, to be countersigned by Court Master.*
>
> *3. List on 15th April, 2024."*

3. On 15.04.2025 the following order was passed –

> *"1. Mr. Pradha, learned advocate appears on behalf of appellant-wife. He submits, his client is aggrieved by order dated 29th September, 2023 of the Family Court,*

dismissing the application for setting aside ex-parte order dated 20th July, 2009, dissolving the marriage. The appeal has been filed in time.

2. Appellant will put in requisites for issuance of notice of appeal. The lower Court record be called for.

3. List on 8th May, 2024."

4. The matter was adjourned, as prayed by the learned counsel for the parties, to 22.04.2025. Again similar order was passed at the instance of the learned counsel for both the parties on 30.06.2025. Thereafter the matter was adjourned on the prayer of the learned counsel for the Respondent to 16.07.2025. On 16.07.2025 the learned counsel for both the parties joined to adjourn the matter to 05.08.2025. On 05.08.2025, on being stated by the learned counsel for the parties before us, we have recorded the following order –

"1. It is stated by the learned counsels for the parties that there has been a talk of compromise between the parties to settle the matter amicably.

2. List this matter on 2nd September, 2025, as prayed for."

5. Thereafter, again the learned counsel for the parties sought for adjournment on 02.09.2025. However, the following order was passed –

1. *The matter is pending since April, 2025. The appellant wife has challenged the order passed ex-parte judgment against her by the learned Judge, Family Court, Cuttack in Civil Proceeding No.95 of 2009 and also under challenge by her is the subsequent order dated 29.09.2023 passed in CMA No.89 of 2015, wherein the petition filed by wife-petitioner under Order-9, Rule-13 of the Code of Civil Procedure for setting aside the ex-parte decree was also rejected.*

Despite pendency of the matter for about five months, no steps have been taken by the learned counsel for the parties and the matter is being repeatedly adjourned. On 05.08.2025, the matter was adjourned at the instance of the learned counsel appearing for the appellant on the purported ground of compromise between the parties.

2. *Today, the matter is mentioned at the beginning for adjournment by the learned counsel for the appellant, Mr. Pradhan and Mr. A.K. Rana, learned counsel for the respondent stating that there would be an out of Court settlement between the parties.*

On being asked, what could be the out of Court settlement in the matter, where the wife challenges the ex parte decree of divorce and order rejecting prayer for restoration of the petition for hearing the wife, no response is coming from the learned counsel for the appellant or the respondent.

3. *In such view of the matter, we feel it appropriate the parties should appear before the Court in person on 18th September, 2025 marked at 2.00 pm.*

Registry shall forwarded copy of this order along with the notice to appear in person to the concerned parties by Speed Post as well as through the office of the Court i.e. learned Judge, Family Court, Cuttack.

4. *List this matter on 18th September, 2025, marked at 2.00 pm.*

Learned counsel for the parties are also requested to intimate respective parties the website copy of this order.

Registry shall ensure the records of the C.P. No.95 of 2009 as well as CMA No.89 of 2025 be kept ready for reference by this Court on the next date."

6. Being skeptical about the statement made at the Bar and the general pattern being the matter repeatedly adjourned for about one & half years and since no proposal was coming forth for any settlement repeatedly suggested by the learned counsel for the parties and adjournments being taken on several occasions, we have directed both the parties to remain present in person before this Court. The matter is marked at 2.00 PM and is taken up today.

7. We had interacted with both the Appellant and the Respondent in the language they understand, i.e. Odia. They are identified by their respective counsel and their credentials are also verified by the staff as per the system at entry point of the Court.

8. The appellant Smt. Ruby @ Bishnupriya Beura @ Samal states before this Court, which is also recorded as part of the proceeding in hybrid mode, that she wants to return to her matrimony. Thereafter we interacted with the Respondent-husband in the marriage; he states that, he has been staying separate from the Appellant-wife for the last sixteen years and he does not want to resume the matrimony any further. When we asked about the reasons for staying separate, he referred to the *ex-parte* decree he has obtained against the appellant. He further stated that he does not want to join the matrimony again, as he has been tortured.

9. We have decided to hear the matter finally, as the matter is kept pending being repeatedly adjourned by both the counsels and on many occasions stating before the Court that there is possibility of settlement between the parties. In such manner, the matter cannot be kept pending before the Court being adjourned repeatedly though already taken up by Court on seven occasions over a period of more than seventeen months.

10. We had asked the learned counsel for the Respondent to place the matter before us, as the Respondent was the Petitioner in the petition before the learned Family Court. Learned counsel for the Appellant was not called upon to address argument.

The decree being *ex-parte* granted to the Respondent, we had raised the following queries to be answered by the learned counsel for the Respondent –

(i) Whether Issues have been framed and settled in terms of Order XIV of the Code of Civil Procedure ?

(ii) Whether the evidence adduced by the Petitioner, i.e. Respondent herein, has been evaluated by the learned trial court to grant decree of divorce ?

As a matter of fact, the above gross irregularities are found in the judgment and decree granted *ex-parte*, which is in the form of 'order' dated 20.07.2009. The

reasoning portion of the order passed by the learned Judge, Family Court, Cuttack is reproduced herein –

> *"……On going through the averments of the petitioner and the unchallenged sworn testimony of the petitioner, there is nothing to disbelieve the prayer for decree of divorce. Hence it is ordered.*
>
> *ORDER*
>
> *The case of the petitioner is allowed ex-parte. The marriage between the petitioner and the Opposite Party solemnized on 26.02.2008 is hereby dissolved by a decree of divorce. No cost."*

11. It is, inter alia, contended by the learned counsel for the Respondent that the 'order being passed *ex parte*', the learned trial court did not give its reasons, did not frame or settle the issues, nor did the trial court delve into the evidence on record. In our considered opinion, such proposition of law is incorrect. The correct proposition of law is, even in *ex-parte* orders / judgments, though no judgment has been passed by the trial court, it is the duty of the trial court to deal with the pleadings, evidence on record, frame and settle the issues and give its finding diligently on each of the aspects. The rules framed by the High Court of Orissa, i.e. Special Rules of the High Court of Judicature under the Hindu Marriage Act, 1955, does not provide or contemplate any such procedure as suggested by the learned counsel for the Respondent. The Family Courts Act 1984 being a Special Act provides for the procedure to be followed by the Family Courts, as defined in Section 2(d) and Section 3. Chapter-IV of the Family Court Act provides for the procedure that contains Section 10, which is reproduced hereunder –

> **10. Procedure generally** – (1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)], before a Family Court shall be deemed to be a civil Court and shall have all the powers of such Court.
>
> xx xx xx xx xx
>
> **14. Application of Indian Evidence Act, 1872** – A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).
>
> **15. Record of oral evidence** – In suits or proceedings before a Family Court, it shall not be necessary to record the evidence of witnesses at length, but the Judge, as the examination of each witness proceeds, shall, record or cause to be recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the witness and the Judge and shall form part of the record.
>
> **16. Evidence of formal character on affidavit** – (1) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may

subject to all just exceptions, be read in evidence in any suit or proceeding before a Family Court.

(2) The Family Court may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding summon and examine any such person as to the facts contained in his affidavit.

17. Judgment – Judgment of a Family Court shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision.

12. Though it may somewhat look naïve on our part to reproduce the first principles, but we are doing so because we are presented with a situation where the procedure prescribed by the law is not followed by the learned trial court. We find that the provisions of the Code of Civil Procedure 1908 made applicable by Section 10 of the Family Courts Act, 1984 has not been followed.

Order XX Rule 5 of the C.P.C. provides –

Order-XX, Rule (5). Court to state its decision on each issue –

In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

Order XIV Rules 1, 2, 3 of the C.P.C. provides –

Order – XIV, Rule 1. Framing of issues –

(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of distinct issue.

Regarding applicability of Indian Evidence Act, i.e. Section 14 of the Family Courts Act provides Evidence Act is applicable to arrive at a conclusion from the evidence, i.e. a fact is proved, disproved or not proved. Section 17 of the Family Courts Act provides for judgment, as we have quoted above.

13. Having gone through the order (rendered by the learned Judge, Family Court dated 20.07.2009), we have to observe that the judgment does not contain the concise statement of the case. It does not contain point for determination. The order does not contain the decision on the points for determination nor any reasons assigned for such decision. After discussing the pleadings and statement to certain extent made in the plaint before the learned Judge, Family Court, without at all referring to any evidence rendered by the plaintiff and also absolutely without any reasons, the order has been passed containing about three lines only.

14. In our considered view, the impugned order which is akin to a judgment under Family Courts Act and the Code of Civil Procedure has to be and is hereby set aside and C.P. No.95 of 2009 in the file of the learned Judge, Family Court, Cuttack is directed to be dismissed.

15. Now, coming to the CMA No.89 of 2015 filed under Order 09 Rule 13 of the C.P.C. by the appellant herein arising out of C.P. No.95 of 2009 disposed of by order dated 20.07.2009 has to be dealt with. One of the striking features of this case is that an *ex-parte* judgment and decree in a matrimonial case has been rendered by the court by a single page order. The Court has been honest to the extent that it has not mentioned the said order to be a judgment and decree.

16. Prayer was made by the Appellant invoking the powers under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure to set aside the *ex-parte* order dated 20.07.2009. Since we have already set aside the order dated 20.07.2009 purportedly to have been passed as judgment and decree in C.P. No.95 of 2009, the necessary conclusion would be that the CMA No.89 of 2015 is allowed. The order dated 29.09.2023 in CMA No.89 of 2015 passed by the learned Judge, Family Court, Cuttack is hereby set aside.

Costs reluctantly made easy against the Respondent.

17. Regarding the today's judgment pronounced in the open Court in presence of the learned counsels for both the parties as well as in presence of the Appellant and the Respondent, we have explained both the parties in the language they understand, i.e. Odia, relating to the decisions made in this Appeal. Modified appellate decree be drawn accordingly.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter MATA set aside.
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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2025 (III) ILR-CUT-434

DINABANDHU DEHURY & ORS.
V.
STATE OF ODISHA

[CRA NO. 02 OF 1998]

21 AUGUST 2025

[S.K. SAHOO, J. & CHITTARANJAN DASH, J.]

Issues for Consideration

1. Whether the evidence of eyewitness (P.W. 16) can be discarded on the ground of delay examination.

2. Whether the act of the appellant fall within section 302/149 of I.P.C. or 304 Part II/149 of IPC.

Headnotes

(A) CRIMINAL TRIAL – Delay in recording the statement by Investigating officer – Effect of – The appellants are found guilty U/Ss. 147, 148, 302/149, of the IPC – Prosecution examined as many as nineteen witnesses among them P.W. 1, P.W. 6 and P.W. 15 are the eye witnesses – Learned counsel for the appellants contended that since P.W. 6 was examined by the I.O. at a belated stage and no cogent explanation is coming forth in that respect, his evidence should be viewed with suspicion – Whether the evidence of eyewitness (P.W. 6) can be discarded on the ground of delay examination.

Held: No – We are of the view that the testimony of a witness cannot become unreliable merely because there is a delay in the examination of such witness by police during investigation – Question of delay in examining a witness during investigation is material only when there are concomitant circumstances to indicate and suggest that some unfair practice has been adopted by the investigating agency for the purpose of introducing a witness to falsely support the prosecution case or the investigator was deliberately marking time with a view to decide about the shape to be given to the case – Delay in examination of witnesses is a variable factor which would depend upon a number of circumstances like non-availability of witnesses, the investigating officer being pre-occupied in some serious matters, the investigating officer spending his time in arresting the accused, who were absconding, being occupied in other spheres of investigation of the same case, which may require his attention urgently and importantly etc. (Para 12)

(B) INDIAN PENAL CODE, 1860 – Sections 302/149, 304 Part II/149 – The appellants are found guilty U/Ss. 147,148. 302/149, of the IPC – The post mortem report proved by doctor (P.W. 8) indicates that out of nine injuries, eight injuries were on the non-vital parts of the body – The doctor has stated that there was fracture of humerus bone at its middle and fracture in right second and third metacarpal bones – However none of the injuries has been opined to be individually or collectively sufficient in the ordinary course of nature to cause death – The weapons which were in the hands of the appellants were deadly weapons and they could have easily caused injuries on the vital parts of the body of the deceased – Whether the act of the appellant fall within section 302/149 of I.P.C. or 304 Part II/149 of IPC.

Held: From the evidence and circumstances of the case and the ratio laid down in the aforesaid citations, we are of the view that the appellants do not appear to have had the intention causing the death of the deceased or even causing such bodily injury as was likely to cause death – They can at the best be attributed with the knowledge that their act was likely to cause death or to cause such bodily injury as was likely to cause death – We, therefore, alter the conviction of the appellants from section 302/149 of I.P.C. to section 304 Part-II I.P.C./149 of I.P.C. (Para 15)

Citations Reference

Ganesh Bhavan Patel and another-Vrs.- State of Maharashtra, **(1978) 4 Supreme Court Cases 371;** Muthu Naicker and others -Vrs.- State of Tamil Nadu, **(1978) 4 Supreme Court Cases 385;** Hallu and others -Vrs.- State of M.P., **(1974) 4 Supreme Court Cases 300;** State of Orissa -Vrs.- Brahmananda Nanda, **(1976) 4 Supreme Court Cases 288;** Gunduchi Patnaik and others -Vrs.- State of Orissa, **1985 (I) Orissa Law Reviews 480;** Lahu Kamlakar Patil and another -Vrs.- State of Maharashtra, **(2013) 6 Supreme Court Cases 417;** Nadodi Jayaraman and others -Vrs.- State of Tamil Nadu, **1992 Supp (3) Supreme Court Cases 161;** Masalti -Vrs.- State of U.P., **A.I.R. 1965 Supreme Court 202;** Madan Kanhar @ Mitu -Vrs.- State of Orissa, **(2025) 98 Orissa Criminal Reports 781;** Sunil Kumar -Vrs.- State of Rajasthan, **(2005) 9 Supreme Court Cases 283;** Shyamal Ghosh -Vrs.- State of West Bengal, **(2012) 7 Supreme Court Cases 646;** V.K. Mishra -Vrs.- State of Uttarakhand, **(2015) 9 Supreme Court Cases 588;** Banti @ Guddu -Vrs.- State of M.P., **(2004) 1 Supreme Court Cases 414;** State of U.P. -Vrs.- Satish, **(2005) 3 Supreme Court Cases 114;** State of Maharashtra -Vrs.- Ramlal Devappa Rathod and others, **(2015) 15 Supreme Court Cases 77;** Molu and

others -Vrs.- State of Harayana, **A.I.R 1976 Supreme Court 2499 : (1978) 4 Supreme Court Cases 362;** Chuttan and others -Vrs.- State of Madhya Pradesh, **1994 Criminal Law Journal 2097 (SC) : 1994 Supreme Court Cases (Cri) 1801;** Dilip Kumar Pradhan & Another-Vrs- State of Orissa, **(2000) 18 Orissa Criminal Reports 185;** Kalinder Bharik -Vrs.- State of Himachal Pradesh, **2000 Supreme Court Cases (Cri) 96;** Sudina Prasad and others -Vrs.- State of Bihar, **2003 Supreme Court Cases (Cri) 1692 – referred to.**

List of Acts

Indian Penal Code, 1860.

Keywords

Criminal Trial, Delay in Examination; Corroborating evidence; Unlawful assembly; Sterling Witness; Intention; Knowledge; Bodily injury; Likely cause to death.

Case Arising From

The judgment and order dated 19.12.1997 passed by the Addl. Sessions Judge, Khurda in S.T. No.45/475 of 1996.

Appearances for Parties

For Appellant : Mr. Devashis Panda.

For Respondent : Mr. Jateswar Nayak, AGA

Judgment/Order

Judgment

S.K. SAHOO, J.

A trivial incident of passing lewd comments to a girl during video show in the village followed by protest by the family members of the girl escalated into an uncalled for tragic scenario of murder of girl's father. Glaring examples are there in scripture when the game of dice and subsequent humiliation of Draupadi stood out as a pivotal incident that irrevocably set the stage for Kurukshetra War. It is crucial to discern which minor disagreements have the potential to escalate so that it can be addressed early which would prevent them from snowballing into more significant conflicts or resentment, impacting relationships or broader social systems.

The appellants Dinabandhu Dehury (A-1), Sridhar Behera (A-2), Tikina Pradhan @ Tikam Pradhan (A-3), Gouranga Pradhan (A-4), Gagan Pradhan (A-5) and Madhab Behera (A-6) along with Raja @ Rajkishore Dehuri preferred this appeal, however during pendency of the appeal, Raja @ Rajkishore Dehuri expired and as such, as per order dated 18.12.2000, the Criminal Appeal has been directed to be abated in respect of the said appellant. Thus, this Criminal Appeal survives only

in respect of six appellants, namely, Dinabandhu Dehury (A-1), Sridhar Behera (A-2), Tikina Pradhan @ Tikam Pradhan (A-3), Gouranga Pradhan (A-4), Gagan Pradhan (A-5) and Madhab Behera (A-6).

The appellants along with others, all total sixty four accused persons faced trial in the Court of learned Addl. Sessions Judge, Khurda in S.T. No.45/475 of 1996 for commission of offences under sections 147, 148, 337/149 and 302/149 of the Indian Penal Code (hereinafter 'I.P.C.') on the accusation that on 24.08.1994 at about 8.00 a.m. at village Tandalo under Begunia police station, they were the members of unlawful assembly and committed the offence of rioting being armed with deadly weapons and in prosecution of the common object, they pelted brickbats so rashly and negligently as to endanger human life and thereby caused hurt to Ramesh Naik (P.W.6), Madhu Behera (P.W.15) and one Akhaya Kumar Panda and also committed murder of Jadumani Behera (hereafter 'the deceased') by intentionally causing his death.

Further, A-1 Dinabandhu Dehury, A-2 Sridhar Behera, A-3 Tikina Pradhan @ Tikam Pradhan, A-4 Gouranga Pradhan, A-5 Gagan Pradhan and A-6 Madhab Behera along with accused Tiki Naik and Raja Kishore Dehury (since dead) were charged for the offence under section 302 of I.P.C. for assaulting and committing murder of the deceased by intentionally causing his death and were further charged for commission of the offence punishable under section 337 of I.P.C. for causing hurt to Ramesh Naik (P.W.6), Madhu Behera (P.W.15) and one Akhaya Kumar Panda by pelting brickbats so rashly and negligently so as to endanger human life and personal safety of others.

The learned trial Court vide impugned judgment and order dated 19.12.1997, while acquitting the other accused persons of all the charges as aforesaid, found A-1 Dinabandhu Dehury, A-2 Sridhar Behera, A-3 Tikina Pradhan @ Tikam Pradhan, A-4 Gouranga Pradhan, A-5 Gagan Pradhan and A-6 Madhab Behera and Raja Kishore Dehury (since dead) guilty under sections 147, 148, 302/149 of the I.P.C. and sentenced each of them to undergo rigorous imprisonment for life for the offence under section 302/149 of the I.P.C., but no separate sentence has been awarded for the offences under sections 147 and 148 of the I.P.C.

Prosecution Case:

2. The prosecution case, as per the first information report (hereinafter 'the F.I.R.') (Ext.1) lodged by Madhu Behera (P.W.15), in short, is that on 22.08.1994 at about 8.00 p.m., some children of the village Tandal Bada Sahi were arranging a video show near a mandap and Basanti Behera (P.W.10), who is the daughter of the deceased and also niece of P.W.15 along with other children was witnessing the same. During such video show, A-1 passed some lewd comments to P.W.10 for which P.W.10 left the place of video show and came to report the matter to P.W.13 Mathura Behera, the younger brother of P.W.15, who in turn informed it to the father of A-1 and asked him to settle the matter. Accordingly, in the evening hours

on 23.08.1994, a meeting was convened to settle the matter, but due to quarrel between A-1 and P.W.13, the matter could not be resolved, rather the people of Bada Sahi threw brick bats towards the basti of the informant (P.W.15). It is further stated in the F.I.R. that on that very night, the people of Adivasi Sahi, Tandal Sabarna Sahi, Nua Sahi and Kachera convened a meeting and on the next day morning i.e. on 24.08.1994 at about 8.00 a.m., the people of all those four basti (slum) including the accused persons being armed with deadly weapons like Farsa, Kanta, Katari etc. formed an unlawful assembly, came to the basti of P.W.15, demolished and ransacked the houses of P.W.15 and other persons of their basti and assaulted basti people with the weapons of offence with which they were armed with. Seeing the aggressive mood of the accused persons, the deceased out of fear fled away from his house and took shelter in the house of Pandari Naik (P.W.3) by bolting the door from inside. However accused Bidyadhar Sahu of village Kachera detected the presence of deceased inside the house of P.W.3 and informed it to the other accused persons. Some of the accused persons forcibly entered into the house of P.W.3 being armed with weapons and took the deceased to the nearby paddy field and assaulted him with weapons and after committing murder, they threw his dead body in the paddy field. It is also stated that at the time of such assault, A-1 and A-2 were armed with Katari, A-3 with Tangia, A-4 with Farsa, A-5 with Kunta and A-6 with Farsa.

P.W.16 Girija Prasad Das who was working as C.I. of Police at Khurda received information through V.H.F. from Begunia police station that a rioting had taken place in village Tandal and one man of that village had died in the riot and accordingly, he proceeded to village Tandal with force and reached there at 11.30 a.m. and there on the oral report of Madhu Behera (P.W.15), he drew up a plain paper F.I.R. and it was read over and explained to P.W.15, who affixed his L.T.I. and the written report was sent to Begunia police station where one N.C. Sethy, Officer in-charge of Begunia police station registered Begunia P.S. Case No.95 dated 24.08.1994 under sections 147/148/149/336/337/380/427/307/302 of I.P.C. and P.W.16 himself took up investigation.

3. During the course of investigation, P.W.16 found the dead body of the deceased was kept on the street locally called Jemabanta Dei. He held inquest over the dead body of the deceased in presence of the Addl. Tahasildar, Khurda and witnesses and prepared inquest report Ext.27. On 24.08.1994 he sent the dead body of the deceased for post-mortem examination through a constable as per the dead body challan (Ext.6) also prepared the spot map (Ext.28). On 24.08.1994 he also sent requisitions to Kantabad P.H.C. and Khurda Hospital for medical examination in respect of the injured persons as per Exts.16/2 to 23/2. On 24.08.1994 he also seized the blood-stained earth and sample earth from the paddy field of Padmalav Sahu in presence of the witnesses as per seizure list Ext.11/1. On 24.08.1994 he also made a house search of A-1 and seized a Katari as per seizure list Ext.12/1 in presence of the witnesses. On 24.08.1994 he also searched the house of accused Muralidhar Naik and recovered a ‘gupti’ and seized the same as per seizure list

Ext.13/1. On 24.08.1994 he also seized two aluminium pots (Dekchi) and one leaf of a door from the village danda in front of the house of Manguli Naik as per seizure list Ext.25/1. On 24.08.1994 he also seized 20 nos. of small and big size brick bats and some split bamboos from the village danda of village Jemabanta Dei in presence of the witnesses as per seizure list Ext.4. On 25.08.1994 he sent injury requisition (Ext.29) in respect of the injured Ramesh Naik (P.W.6) to Kantabad P.H.C. and also issued another requisition (Ext.30) in favour of P.W.15 to Begunia hospital. He also issued injury requisition (Ext.31) in respect of the injured Akhaya Kumar Panda, seized a blood-stained lungi, two red coloured towels, one yellow coloured saree on production by Budei Naik at Khurda medical campus as per seizure list Ext.24/1 and sent M.O.I and M.O.II to the Medical Officer (P.W.8), who conducted post mortem examination over the dead body of deceased seeking for opinion as to whether the death of deceased could be possible by such M.Os.

P.W.16 handed over the charge of investigation to P.W.17 Braja Kishore Patra, Circle Inspector of Police, Khurda on 10.11.1994, who arrested some of the accused persons and forwarded them to Court. He also examined some witnesses, arrested more accused persons on 23.01.1995, seized the command certificate from Havildar Balaram Mohanty, who had carried the dead body of the deceased to Government Hospital, Khurda for post mortem examination as per seizure list Ext.9 and on completion of investigation, submitted charge sheet against the appellants along with other accused persons under sections 147/148/302/307/455/380/323 /324/427 read with section 149 of I.P.C.

Framing of Charges:

4. On receipt of the charge sheet, the case was committed to the Court of Session following due procedure, where the learned trial Court framed charges against the appellants as aforesaid. The appellants pleaded not guilty and claimed to be tried and accordingly, the sessions trial procedure was resorted to establish their guilt.

Prosecution Witnesses, Exhibits & Material Objects:

5. In order to prove its case, the prosecution examined as many as nineteen numbers of witnesses.

P.W.1 Jhuni Behera, who is the daughter of the informant (P.W.15), P.W.6 Ramesh Naik and the informant (P.W.15) himself are the eye witnesses to the occurrence and they supported the prosecution case.

P.W.2 Panu Parida stated to have seen the accused persons damaging his house. He further stated that the accused persons had enmity with the villagers of Tandal and his house along with the belongings was also ransacked by the accused persons. He is a witness to the seizure of blood stained earth and sample earth from the land of Padmalav Sahu as per seizure list marked as Ext.11, seizure of blood stained Katuri from the house of Dinabandhu Dehuri as per seizure list marked as

Ext.12 and blood stained Gupti from the house of accused Muli Naik as per seizure list marked as Ext.13.

P.W.3 Pandari Naik, who is a co-villager of the deceased has stated that at the time of occurrence, the appellants along with other accused persons being armed with different deadly weapons, chased the deceased and seeing the violent mood of the accused persons, he fled away through the backside of his house and he came back after three days to his house and found his house to have been razed to the ground by the accused persons.

P.W.4 Budhei Dei, wife of P.W.11 is a co-villager of the deceased and she has stated that she found the accused persons to have assembled at the house of the deceased being armed with different deadly weapons. She further stated that while some accused persons were breaking the house of the deceased, a group of accused persons came to her house, damaged her house and cut the green trees from her bari. She further stated that when she along with her husband Chaitanya (P.W.11) went out of the house, the accused persons rushed towards her husband and accused Kaibalya dealt a Katuri blow on the right side scapula of her husband causing bleeding injury. She further stated that when she went to rescue her husband, accused Bhagaban Behera dealt a lathi blow (thenga) on her head, accused Bilua dealt a lathi blow to the right side wrist and backside of the palm of her hand for which she sustained bleeding injury on her head and fell down on the ground and lost her sense.

P.W.5 Surenda Dehuri, who is a co-villager of the deceased, has stated that he found the accused persons to have assembled at the house of the deceased being armed with deadly weapons. He stated that the accused persons chased the deceased and his family members pelting brick bats and the accused persons in a body went inside the house of Pandari Naik (P.W.3), pulled down his house and damaged the same, which he witnessed from the backside of his house. Thereafter, the accused Bidyadhar Sahu climbed up the roof of P.W.3, pulled out the straws from the roof to find out who had taken shelter there in the house of P.W.3 and all the accused persons went there and participated in the damage and destruction. He has also narrated the reasons of ill-feeling between the villagers of his village as well as the villagers of Bada Saar Sahi and Sabarna Sahi belonging to the accused persons. He further stated that the dispute was pacified on the intervention of Grama Rakhi.

P.W.7 Kulamani Behera, who is the father of the deceased, has stated that while the incident occurred, he had been to the house of Pandari Naik (P.W.3) and on hearing the hue and cry near his house, he came back to his house and found the accused persons to have assembled near his house being armed with lathi, bhali, kanta, pharsa and other deadly weapons. He further stated that while he was going to the rescue of the wife of his youngest son, Mathura, who had delivered a baby prior to the occurrence, accused Maharagia (since dead) pulled him out of his house and accused Jogi Behera dealt a lathi blow to his left forearm and thereafter accused Bhagaban poked two blows to his left scapula, for which he fell down on the ground.

He further stated that all his family members along with children ran to the house of Pandari Naik (P.W.3) to take shelter. He further stated that the accused persons ransacked his grocery shop completely.

P.W.8 Dr. Bholeswar Panda was the Paediatric Specialist of G.B.S. Hospital, Khurda, who conducted post mortem examination over the dead body of the deceased and proved the P.M. report Ext.14.

P.W.9 Dr. Harihar Patnaik, who was the Medical Officer, Kantabad Additional P.H.C. treated the injured persons, namely, Budhei Dei (P.W.4), Kulamani Behera (P.W.7), Chaitan Naik (P.W.11), Basanta Naik (P.W.18), Kumar Naik (P.W.19) and others on police requisition and proved the injury reports. He further stated that all the injuries embodied in the reports were simple in nature. He further stated that though the injured Dama Majhi was referred by the police for medical examination, but he refused to be medically examined. He proved the certificate to that effect vide Ext.23.

P.W.10 Basanti Dei, the daughter of the deceased, has stated regarding the misbehaviour shown to her by A-1 during the video show in the village and there was an altercation between his father and uncle with A-1 in the village meeting. She further stated that she had been to the agriculture field when the incident occurred and on hearing the news regarding the attack on her house by the accused persons, she returned back and found that her deceased father was being chased by the accused persons, being armed with deadly weapons like Katuri, Kanta, Axe and Bhujali.

P.W.11 Chaitan Naik, who is one of the injured, has stated that on the date and time of occurrence, the accused persons after destroying the houses in Sana Sara Sahi, came to his house and started destroying the green trees of his bari. Out of fear, he along with his family members wanted to take shelter in the house of P.W.3, but they were confronted by the some accused persons being armed with deadly weapons. At that time, accused Kaibalya Dehury dealt one blow by means of a Kati on his right foot causing a bleeding injury, accused Tiki Naik dealt another blow by means of a Farsa on his right forearm causing bleeding injury and thereafter, A-3 dealt a tangia blow on his right hand shoulder joint causing serious bleeding injury. He further stated that when his wife Budhei Dei (P.W.4) came to his rescue, she was also assaulted for which she sustained bleeding injuries on her head and on her right palm on the dorsal aspect. He further stated that he saw the deceased running towards the field after coming out of the house of Pandari Naik (P.W.3) being chased by A-1, A-2, A-3, A-4, A-5, Raja Dehuri (dead), Tiki Naik and others being armed with deadly weapons.

P.W.12 Prafulla Majhi, who is a co-villager of the deceased, claimed to have seen the first part of the occurrence regarding demolition of the house of the deceased and chasing the deceased towards the field by the accused persons. He is a witness to the seizure of blood stained clothes produced by Budhei Dei (P.W.4) as per seizure list Ext.24.

P.W.13 Mathura Behera, who is a co-villager of the deceased, has stated regarding the misbehaviour shown to P.W.10 during the video show and he is a witness to the village meeting over the said issue. He further stated that on the date and time of occurrence, he had been to his paddy field and on hearing hue and cry in the village, he rushed to the spot and found that some persons of Bada Saara Sahi were damaging their houses and out of fear, he did not enter into the village, rather rushed to Begunia police station to report the matter and sought police assistance on the issue immediately.

P.W.14 Magi Dehuri is a witness to the seizure of split bamboos and brick bats as per seizure list Ext.4. He is also a witness to the seizure of aluminium pots as per seizure list Ext.25.

P.W.16 Girija Prasad Das, who was the C.I. of Police at Khurda, was the initial Investigating Officer of the case.

P.W.17 Braja Kishore Patra was the C.I. of Police, Khurda, who took over the charge of investigation from P.W.16 and submitted charge sheet against the accused persons.

P.W.18 Basanta Naik is an injured witness who stated that the accused persons came in a body, damaged the houses belonging to different persons of his village and during the occurrence, he was assaulted by Naba Naik, Sarat Naik, Bilua Naik by means of lathi and accused Kailash Naik dealt a katuri blow to his right leg causing bleeding injury.

P.W.19 Kumar Naik is another injured witness to the occurrence who stated that on the date of occurrence, the accused persons came in a body and damaged the houses and other properties of his village and in course of such incident, accused Niranjan Naik assaulted him by means of a lathi to his left ear causing bleeding injury.

The prosecution proved thirty one numbers of documents as exhibits. Ext.1 is the Formal F.I.R, Ext.2 is the Chemical Examination Report, Ext.3 is the Serological Examination Report, Exts.4, 5, 9, 11/1, 12/1, 13/1, 24/1 and 25/1 are the seizure lists, Ext.6 is the dead body challan, Ext.7 is the spot visit report, Ext.8 is the forwarding report of S.D.J.M to State F.S.L., Ext.10 is the command certificate, Ext.14 is the post-mortem report, Ext 15 is the reply to the query by P.W 8, Ext.16 is the injury certificate of Chaitan Naik (P.W.11), Ext.17 is the injury certificate of Kartik Naik, Ext.18 is the injury certificate of Basant Naik (P.W.18), Ext.19 is the injury certificate of Budhei Dei (P.W.4), Ext.20 is the injury certificate of Kumar Naik (P.W.19), Ext.21 is the injury certificate of Kulamani Behera (P.W.7), Ext.22 is the injury certificate of Lochan Behera, Ext.23 is the certificate of Dama Majhi, Ext.26 is the F.I.R., Ext.27 is the inquest report, Ext.28 is the spot map, Ext.29 is the injury requisition of Ramesh Naik (P.W.6), Ext.30 is the injury requisition of Madhu Behera (P.W.15) and Ext.31 is the injury requisition of Akshay Kumar Panda.

The prosecution also proved two numbers of material objects. M.O.I is the Gupti (knife) and M.O.II is the Katuri.

Defence Plea:

6. The defence plea of the appellants is one of complete denial to the prosecution case and they further pleaded to have been entangled falsely in the case due to previous rivalry.

Findings of the Trial Court:

7. The learned trial Court, after assessing the oral as well as documentary evidence on record, came to hold that the evidence of P.Ws.1, 6 and 15 to the effect that on the date of occurrence, the appellant Raj Kishore Dehury (since dead), A-1, A-2, A-3, A-4, A-5 and A-6 being armed with Lathi, Farsa, Kanta and Bhali etc. committed murder of the deceased over the land of Padmalav Sahu, is clear and convincing and it did not find any reason to discard their evidence on this score. While believing the evidence of P.W.3 Pandari Naik, learned trial Court has held that merely because after escaping from the house, he did not go to the police station to report the matter, is not a ground to discard his evidence on this score. The learned trial Court relying on the evidence of P.W.10, has observed that the evidence of P.Ws.1, 6 and 15 find support from the evidence of P.W.10 so far as chasing to the deceased by the accused persons. It was held that simply because P.W.6 was examined four to five days after the occurrence cannot be a ground to discard his evidence particularly when nothing has been brought out in his cross-examination to impeach his testimony. It was further held that the evidence of P.W.6 and P.W.15 indicate that some of the accused persons were also armed with lathi and in such circumstances, the possibility that the injury no.(ix) might have been caused by lathi cannot be ruled out. Relying on the evidence of the eye witnesses, i.e. P.Ws.1, 6 and 15, which finds support from the evidence of other witnesses, the learned trial Court concluded that on the date of occurrence, accused Raj Kishore Dehury (since dead), A-1, A-2, A-3, A-4, A-5 and A-6 formed an unlawful assembly and being armed with deadly weapons, committed murder of the deceased in prosecution of their common object. The learned trial Court further observed that the names of the seven appellants find place in the F.I.R. lodged at the spot within one hour of the occurrence, which rules out possibility of any false implication of these appellants at that stage and accordingly, found them guilty of the offences charged.

The learned trial Court relying on the evidence of P.Ws.7, 9, 18 and 19, came to hold that the evidence of these witnesses cannot be accepted to come to a definite conclusion that at the time of incident, any of the other accused persons except the seven {the present appellants along with Raja @ Rajakishore Dehury (since dead)} referred to above, shared common intention in prosecution of the common object of the unlawful assembly and accordingly, acquitted the other accused persons of all the charges. The learned trial Court held that there is no

evidence that due to pelting of stones by the accused persons, any witness sustained injury and thus, the charge under section 337/149 of I.P.C. fails to the ground.

Contentions of the Parties:

8. Mr. Devashis Panda, learned counsel appearing on behalf of the appellants argued that the learned trial Court found the appellants guilty on the basis of evidence adduced by three eye witnesses i.e. P.Ws.1, 6 and 15, but there are other eye witnesses like P.Ws.2, 3, 4, 5, 7, 10, 11, 12, 13, 18 and 19 who have not impleaded the appellants in the assault of the deceased. He further argued that the evidence of the doctor (P.W.8) who conducted post-mortem examination falsifies the assault made by so many appellants with different weapons. He argued that the places from where the eye witnesses claimed to have seen the assault on the deceased is a doubtful feature and none of the eye witnesses speaks about the presence of the other at the time of assault on the deceased on the land of Padmanav Sahu. He further argued that P.W.6 was examined at a belated stage by the I.O. and no cogent explanation is forthcoming in that respect. P.W.6 has stated to have seen the entire incident sitting near his house, but the spot map would falsify this aspect. He further argued that as per the evidence of P.W.1, P.W.15 had confined himself in the house of Manguli Nayak when the assault was going on, which creates doubt about the evidence of P.W.15 as an eye witness to the occurrence. He argued that according to the evidence of the eye witnesses, the appellants were armed with sharp cutting weapons, but injury no.(ix) is a lacerated wound on the left frontal region above the left eye brow which according to the doctor (P.W.8) was the fatal injury, could not have been caused by any such sharp cutting weapon rather it was possible by fall as stated by P.W.8. He argued that though the deceased had sustained as many as nine injuries, but injuries nos.(i) to (viii) were on the non-vital parts of the body and none of the eye witnesses has stated as to who caused the fatal injury i.e. injury no.(ix) on the head and therefore, even if for the sake of argument, it is accepted that the appellants assaulted the deceased, it is not a case which would come within the purview of section 302/149 of I.P.C. rather it may at best come within culpable homicide not amounting to murder punishable under section 304 Part-II/149 of I.P.C.

In support of his contention, learned counsel placed reliance in the cases of **Ganesh Bhavan Patel and another -Vrs.- State of Maharashtra reported in (1978) 4 Supreme Court Cases 371, Muthu Naicker and others -Vrs.- State of Tamil Nadu reported in (1978) 4 Supreme Court Cases 385, Hallu and others -Vrs.- State of M.P. reported in (1974) 4 Supreme Court Cases 300, State of Orissa -Vrs.- Brahmananda Nanda reported in (1976) 4 Supreme Court Cases 288, Gunduchi Patnaik and others -Vrs.- State of Orissa reported in 1985 (I) Orissa Law Reviews 480, Lahu Kamlakar Patil and another -Vrs.- State of Maharashtra reported in (2013) 6 Supreme Court Cases 417** and **Nadodi Jayaraman and others -Vrs.- State of Tamil Nadu reported in 1992 Supp (3) Supreme Court Cases 161**.

9. Mr. Jateswar Nayak, learned Additional Government Advocate appearing for the State, on the other hand, supported the impugned judgment and urged that the evidence of the three eye witnesses i.e. P.Ws.1, 6 and 15 have not been shattered in the cross-examination rather it is getting corroboration from the medical evidence. As per the evidence of the doctor (P.W.8), the post mortem report shows multiple fatal injuries consistent with assault by sharp-cutting and blunt weapons like Tangia, Katuri, Kanta, Farsa and Lathis as described by the eye witnesses. Learned counsel further submitted that the appellants were armed with deadly weapons and their concerted action in chasing and assaulting the deceased proves their active participation in furtherance of their common object. He further submitted that the individual overt acts of the appellants are not required to be proved separately as long as their membership and participation in the unlawful assembly is established. He further submitted that there is no inconsistency between the ocular and medical version. He argued that the evidence of P.Ws.3, 10, 11 and 12 corroborate the version of the three eye witnesses and they have also impleaded the appellants. The other eye witnesses who had not seen the assault on the deceased on the land of Padmanav Sahu, have deposed about the pelting of brickbats by the accused persons, their own assault or assault on the other injured or the first part of the occurrence when the houses of the villagers were damaged and properties were ransacked, which gives a complete picture about the entire occurrence right from the beginning till end. He argued that nothing has been brought out by way of cross-examination of the three eye witnesses that the places from where they stated to have seen the assault on the deceased are doubtful feature. The three eye witnesses were at three different places when the assault on the deceased was going on and therefore, each of them while focusing on the assault might not have noticed the presence of the others at the time of occurrence. He argued that nothing has been brought on record as to when P.W.6 was examined and no question has also been put to the I.O. for delayed examination of P.W.6 and therefore, the defence cannot take advantage of the same. He further argued that the vague statement of P.W.1 that P.W.15 had confined himself in the house of Manguli Nayak when the assault was going on, cannot be a ground to disbelieve the position of P.W.15 at the time of occurrence or his evidence as an eye witness to the assault on the deceased on the land of Padmanav Sahu. He argued that the cause of death of the deceased was not only the head injury which caused laceration of the brain matter but associated with multiple injuries on different parts of body as per the evidence of the P.M. doctor (P.W.8) and therefore, the learned trial Court has rightly held that the case falls within section 302/149 of I.P.C. The appellants were the members of unlawful assembly and committed rioting being armed with deadly weapons and thus the learned trial Court has rightly held the appellants guilty under sections 147/148/302/149 of the I.P.C.

In support of such submissions, learned counsel for the State has placed reliance on the decisions of the Hon'ble Supreme Court in the cases of **Masalti - Vrs.- State of U.P. reported in A.I.R. 1965 Supreme Court 202**.

Whether the deceased died of a homicidal death?:

10. Adverting to the contentions raised by the learned counsel for the respective parties, let us first examine whether the prosecution has successfully established that the deceased met with a homicidal death or not.

Apart from the inquest report (Ext.27), it appears that P.W.8 conducted the post-mortem examination over the dead body of the deceased on 25.08.1994 and noticed the following injuries:

> "(i) Cut injury at the middle of right upper arm cutting the skin and underlying muscle. There was fracture of humerus bone at the middle, size of the injury was ½" x 3" x ½";
>
> (ii) Cut injury at the middle of left upper arm cutting the skin and underline muscle. The size of the injury is 3" x ½";
>
> (iii) Cut injury 2" below lower angle of right scapula cutting skin and muscle. The size of the injury is 3" x ½";
>
> (iv) Cut injury on the anterior aspect of right leg 4" below the right knee joint cutting skin and muscle. The size of the injury is 2" x ½";
>
> (v) Cut injury on the anterior aspect of right leg 3" above right knee joint cutting the skin. The size of the injury is 1" x ½";
>
> (vi) Cut injuries at three places on right foot of size varying from 1" to 3" long and ½" wide. There is fracture of right second and third metacarpal bones;
>
> (vii) Cut injury on the middle of the left leg cutting skin. The size of the injury is 2" x ½";
>
> (viii) Cut injury on the inner aspect of left foot skin deep. The size of the injury is 2" x ½" x skin deep;
>
> (ix) Lacerated injury on the left frontal region 1" above the left eye brow causing fracture to the underling frontal bone. The size of the injury is 2" x ½".

The doctor further stated that on dissection, he found that the left frontal lobe of the brain matter and its three layers of dura, pia and archnoid matter were lacerated. He opined that the injuries noted in the report were ante mortem in nature and the cause of death was due to laceration of the brain matter and associated by multiple injuries on different parts of the body and the time of death was within 16 to 24 hours of the post-mortem examination. The doctor proved the post-mortem report marked as Ext.14. He also examined the weapons of offence (one Katuri and one Gupti) which were sent to him by the I.O. for a query regarding possibility of the injuries sustained by the deceased with such weapons and he answered vide Ext.15 that the external injury nos.(i), (vi) and (ix) could be caused by Katuri and the rest of the external injuries could be caused by Gupti. He further stated that the injuries were sufficient in ordinary course of nature to cause death.

In view of the inquest report (Ext.27) and findings in the post-mortem report (Ext.14) coupled with the evidence of the doctor (P.W.8) who conducted post-mortem examination, which has remained unchallenged in the cross-examination

and other evidence on record, we are of the humble view that the learned trial Court is quite justified in holding that the prosecution has successfully proved that the deceased met with homicidal death.

Whether the evidence of eye witnesses P.Ws.1, 6 & 15 can be acted upon?:

P.W.1 Jhuni Behera:

11. P.W.1 Jhuni Behera is the daughter of the informant (P.W.15). The deceased was her elder father. She stated that on the date of occurrence, when the accused persons were being armed with deadly weapons like Bhali, Kanta and Pharsa started damaging their house from 8 a.m. onwards, she herself, her father (P.W.15), her elder father (deceased) and others fled away to the house of P.W.3 out of fear to save their lives. They took shelter in the house of P.W.3. Accused Bidyadhar climbed over the thatch of P.W.3 and made a hole taking out the straw and also shouted that the family of the deceased had taken shelter in the house of P.W.3. The other accused persons were standing in front of the house of P.W.3 and they started breaking the door of the house of P.W.3. The deceased tried to escape through the back door of the house of P.W.3 and he was chased by the appellants and other accused persons. She specifically stated that A-1 was holding Katari, A-2 was holding Katari, A-3 was holding Tangia, A-4 was holding Pharsa, A-5 was holding Kanta and A-6 was holding Pharsa and the other accused persons were holding lathi and other deadly weapons. She further stated that the deceased was overpowered on the land of Padmanav Sahu. Raj Dehury (Dead) attacked on the right shoulder of deceased by Pharsa, A-1 assaulted the deceased by katari on the right hand, A-3 dealt blows on the right leg of the deceased by Tangia and other appellants assaulted the deceased with the weapons with which they were armed and the appellants had also surrounded the deceased. She stated that coming out of the house of P.W.3, she came close to a mango tree which was about 40 yards from the spot, stood there and watched the assault by different accused persons on the deceased. She further stated that after half an hour of the assault, she came from underneath the mango tree and went to the land of Padmanav Sahu and found the deceased was lying dead with bleeding injuries all over his body which were on the right scapula, right leg, right hand, left hand, left leg and right frontal bone.

In the cross-examination, she has stated to have been examined by the police on the date of the occurrence itself. She further stated that her father (P.W.15) had confined himself inside the house of Manguli Naik, when the deceased was assaulted on the land of Padmanav. She further stated that no other villagers was standing near her and witnessing the incident of assault on the deceased. She further stated that by the time the police came to the spot, they had shifted the deceased from the land of Padmanav to a place which was in the front of the house of Pandari Naik (P.W.3) and kept the body under a coconut tree.

It has been confronted to her and proved through the I.O. (P.W.16) that he had not stated before police that her father and elder father had taken lease of govt.

land and that she came out of the house of P.W.3 and stood under a mango tree to witness the assault on the deceased and that she saw a cut injury above the right eye brow of the deceased.

Apart from such minor contradictions, nothing has been brought out in the cross-examination of P.W.1 to affect her credibility. She was underneath a mango tree which was about 40 yards from the spot and watching the assault on the deceased which might not have been noticed by the other two eye witnesses. Her evidence appears to be very natural and her position at the time of the assault on the deceased was such that it could not be said that she was at such a distance that it would not have been possible on her part to mark the assault. The evidence of P.W.1 is also getting ample corroboration from the medical evidence. Thus, we are of the view that the learned trial Court has rightly placed reliance on her evidence.

P.W.6 Ramesh Naik:

12. He stated that on the occurrence day, he was at a distance of 25 ft. from the house of the deceased and the house of P.W.3 was at a distance of 50 ft. from his house. While returning from his cultivable land, he found the accused persons were armed with deadly weapons and assembled at the house of the deceased and completely demolished his house. He further stated that then the accused persons came to his house and started demolishing the same and when he protested, he was assaulted by two accused persons, namely, Brundaban Dehury and Niranjan. He further stated that when accused Bidyadhar Sahu climbed up the roof of P.W.3, made a hole on the thatched roof, located the deceased and his family members inside the house of P.W.3 and then shouted and drew the attention of the co-accused persons about the presence of the deceased inside. He further stated that the accused persons started demolishing the house of P.W.3 for which the deceased fled away through the backdoor and all the appellants along with appellant Raja Dehury (dead) chased the deceased being armed with Katuri, Farsa, Kanta, Tangia and lathi. The deceased ran towards the land of Padmanav Sahu where he was overpowered. The appellants brutally assaulted the deceased with the arms, which they were holding.

In the cross-examination, P.W.6 has stated that he was examined by the I.O. between four to six days. He stated that he was sent to the hospital by the police for medical examination on the following day of the incident. He further stated that he could not say which of the accused assaulted on which part of the body of the deceased. He further stated to have witnessed the entire incident sitting near his house.

It has been confronted to him and proved through the I.O. (P.W.16) that he had not stated before police that the accused persons demolished the house of the deceased and he had also not stated that accused Bidyadhar told the other accused persons to come to the house of P.W.3 stating that the deceased had concealed his presence there and that he had also not stated that the other accused persons apart from the appellants chased the deceased.

Learned counsel for the appellants contended that since P.W.6 was examined by the I.O. at a belated stage and no cogent explanation is coming forth in that respect, his evidence should be viewed with suspicion.

On the other hand, the learned counsel for the State argued that there is no evidence on record as to when P.W.6 was examined by the I.O. and no question has been put to the I.O. for delayed examination of P.W.6 and thus, the defence cannot take any advantage of the delayed examination, if any.

It appears that not a single question has been put by the defence to the I.O. (P.W.16) as to when he examined P.W.6 and why there was delay in recording his statement.

Learned counsel for the appellants for canvassing his point on delayed disclosure emphatically placed reliance in the case of **Ganesh Bhavan Patel** (supra), wherein the Hon'ble Supreme Court has held as follows:-

> "15……Delay of a few hours, simpliciter, in recording the statements of eye witnesses may not, be itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eye witnesses to be introduced."

In the case of **Brahmananda Nanda** (supra), the Hon'ble Supreme Court held as follows:-

> "2……..Though according to this witness, she saw the murderous assault on Hrudananda by the respondent and she also saw the respondent coming out of the adjoining house of Nityananda where the rest of the murders were committed, she did not mention the name of the respondent as the assailant for a day and a half. The murders were committed in the night of June 13, 1969 and yet she did not come out with the name of the respondent until the morning of June 15, 1969. It is not possible to accept the explanation sought to be given on behalf of the prosecution that she did not disclose the name of the respondent as the assailant earlier than June 15, 1969 on account of fear of the respondent. There could be no question of any fear from the respondent because in the first place, the respondent was not known to be a gangster or a confirmed criminal about whom people would be afraid, secondly, the police had already arrived at the scene and they were stationed in the clubhouse which was just opposite to the house of the witness and thirdly, A.S.I. Madan Das was her nephew and he had come to the village in connection with the case and had also visited her house on June 14, 1969. It is indeed difficult to believe that this witness should not have disclosed the name of the respondent to the police or even to ASI Madan Das and should have waited till the morning of June 15, 1969 for giving out the name of the respondent. This is a very serious infirmity which destroys the credibility of the evidence of this witness."

In the case of **Gunduchi Patnaik** (supra), a Division Bench of this Court has held as follows:-

> "14. We would next come to the evidence of P.W.7. Neither P.W.7 had spoken about the presence of P.Ws.2 and 6 on the spot nor P.Ws.2 and 6 had spoken about the presence of P.W.7 at the time of occurrence. It would be seen from the evidence of the Investigating Officer that this witness was examined in the course of investigation as

late as on August 25, 1979. There was no evidence that he had disclosed the occurrence to any one until his belated examination in the course of investigation. If the police officer had come to the scene of occurrence on August 12, 1979 and P.W.7 had witnessed the occurrence, he could have volunteered a statement to the Investigating Officer. No explanation whatsoever had been given by P.W.7 as to why he did not disclose the occurrence to anyone. He could not have had a sense of loss after the Investigating police officer had come to the scene. There was no evidence that any of the accused persons had threatened him at the time of assault on the person of the deceased not to disclose the occurrence to anyone. The learned Sessions Judge has observed that the general tendency of the people of the present day is to remain away from police interrogation and dusty law courts' one of which was being presided over by him at the trial. No reasonable explanation had been offered by P.W.7 as to why he made a late disclosure about the occurrence at the stage of investigation. In such circumstances, it would be unsafe and hazardous to accept the evidence of P.W.7 with regard to the occurrence."

In the case of **Lahu Kamlakar Patil** (supra), the Hon'ble Supreme Court held as follows:-

"22. From the aforesaid grounds, the primary attack of the learned Counsel for the Appellants is that there has been delay in the examination of the said witness and he has contributed for such delay and, hence, his testimony should be discredited.

23. In **Mohd. Khalid -Vs.- State of W.B. : (2002) 7 Supreme Court Cases 334**, a contention was raised that three witnesses, namely, P.Ws.40, 67 and 68, could not be termed to be reliable. Such a contention was advanced as regards P.W.68 that there had been delay in his examination. The Court observed that mere delay in examination of the witnesses for a few days cannot in all cases be termed fatal so far as prosecution is concerned. There may be several reasons and when the delay is explained, whatever the length of delay, the Court can act on the testimony of the witnesses, if it is found to be cogent and credible.

xxx xxx xxx

26. From the aforesaid pronouncements, it is vivid that witnesses to certain crimes may run away from the scene and may also leave the place due to fear and if there is any delay in their examination, the testimony should not be discarded. That apart, a Court has to keep in mind that different witnesses react differently under different situations. Some witnesses get a shock, some become perplexed, some start wailing and some run away from the scene and yet some who have the courage and conviction come forward either to lodge an F.I.R. or get themselves examined immediately. Thus, it differs from individuals to individuals. There cannot be uniformity in human reaction. While the said principle has to be kept in mind, it is also to be borne in mind that if the conduct of the witness is so unnatural and is not in accord with acceptable human behaviour allowing of variations, then his testimony becomes questionable and is likely to be discarded."

In the case of **Madan Kanhar @ Mitu -Vrs.- State of Orissa reported in (2025) 98 Orissa Criminal Reports 781**, this Bench has observed as follows:

"13. In the instant case, the testimony of P.W.5, the supposed eyewitness, fails to meet the standard of a 'sterling witness', as laid down by the Hon'ble Supreme Court. The Court has held that, an eyewitness must be of the highest quality and credibility, and their version should be so unimpeachable that it can be accepted at its face value without hesitation. A sterling witness must provide a natural and consistent account that

> withstands rigorous cross-examination and aligns with the overall case of the prosecution. A major flaw in P.W.5's statement is her delayed disclosure. She claims to have witnessed the Appellant assaulting the deceased with an axe and even heard the victim cry out, "MITU HANI DELA." Despite allegedly seeing such a brutal act, she failed to inform anyone about it until six days after the incident. This delay in disclosure raises serious doubts about the credibility of her testimony. If she had genuinely witnessed a murder, her silence is highly unnatural and unexplained. The reason given that she was threatened by the Appellant appears weak, as she was in the company of two others, who were also not examined as witnesses. Their absence in the trial further weakens her statement, as the prosecution failed to bring forward independent witnesses to substantiate her claims. There is no evidence on record that the Appellant was having criminal background. The police was coming to the village from the date of occurrence in connection with the investigation of the case. Therefore, it is difficult to accept that, on account of threats given by the Appellant, there was delayed disclosure. If, in spite of presence of the police in the village, she was in a state of fear as the Appellant had not been arrested, then how her fear dispersed when she gave her statement to police six days after the occurrence, as by that time the Appellant was in large, which creates doubt about the truthfulness of her version."

After going through the decisions cited by the learned counsel for the appellants to discard the evidence of P.W.6 on the ground of his delayed examination, we are of the view that the testimony of a witness cannot become unreliable merely because there is a delay in the examination of such witness by police during investigation. Question of delay in examining a witness during investigation is material only when there are concomitant circumstances to indicate and suggest that some unfair practice has been adopted by the investigating agency for the purpose of introducing a witness to falsely support the prosecution case or the investigator was deliberately marking time with a view to decide about the shape to be given to the case. Delay in examination of witnesses is a variable factor which would depend upon a number of circumstances like non-availability of witnesses, the investigating officer being pre-occupied in some serious matters, the investigating officer spending his time in arresting the accused, who were absconding, being occupied in other spheres of investigation of the same case, which may require his attention urgently and importantly etc. However, in a case where commission of crime is alleged to have been seen by witnesses who are easily available, a prudent investigator would give to the examination of such witnesses precedence over the evidence of other witnesses. (Ref: **(2005) 9 Supreme Court Cases 283: Sunil Kumar -Vrs.- State of Rajasthan**;**(2012) 7 Supreme Court Cases 646: Shyamal Ghosh -Vrs.- State of West Bengal**; **(2015) 9 Supreme Court Cases 588: V.K. Mishra -Vrs.- State of Uttarakhand**)

The prosecution is under obligation to offer explanation for the delay in recording the statement of an important witness and if the explanation is reasonable and plausible, testimony of the witness cannot be considered unacceptable because of his delayed interrogation. Apart from this, the defence must put specific questions to the investigating officer for the delay in recording the statement and must seek explanation from him. The Hon'ble Supreme Court in the case of **Banti @ Guddu -**

Vrs.- State of M.P. reported in (2004) 1 Supreme Court Cases 414 and **State of U.P. -Vrs.- Satish reported in (2005) 3 Supreme Court Cases 114** has held that unless the investigating officer is categorically asked as to why there was delay in examination of the witnesses, the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness, the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the Court accepts the same as plausible, there is no reason not to accept the version and rely on it if it is trustworthy.

Therefore, in the case in hand, when P.W.6 has stated that he was examined by the I.O. between four to six days and no questions have been put to the I.O. (P.W.16) regarding delayed examination of P.W.6 and there is no evidence on record as to actually when P.W.6 was examined by the I.O., we are not able to accept the challenge made by the learned counsel for the appellant regarding the acceptability of the evidence of P.W.6 on the ground of his delayed examination. P.W.6 is an independent witness and he was having no hostility with the appellants or any of the accused persons to depose falsely against them. His evidence has not been shaken in spite thorough and rigorous cross-examination.

There are no such major contradictions in the evidence of P.W.6.

The learned counsel for the appellants argued that P.W.6 claimed to have witnessed the entire incident sitting near his house as he was dealt a lathi blow by accused Niranjan on his right scapula, but the spot map (Ext.28) would indicate that there are houses in front of his house on the other side of the road and spot as shown in Ext.28 was at such a place that it could not have been possible on the part of P.W.6 to notice the assault on the deceased sitting near his house.

The entire argument on this score falls to the ground as nothing has been brought out by way of cross-examination that sitting near his house, P.W.6 could not have witnessed the assault rather P.W.6 has stated that his house situates at a distance of 50 to 60 feet away from the land of Padmanav Sahu.

It is argued by the learned counsel for the appellants that though P.W.6 has stated that accused Niranjan dealt a lathi blow to his right scapula for which he sat down due to pain, but there is no medical evidence to that effect.

We found from the evidence of the I.O. (P.W.16) that he issued requisition (Ext.29) for medical examination of P.W.6 to Kantabad P.H.C. On perusal of the other side of Ext.29, it is mentioned by the doctor in the report that no external injury noticed. However, the doctor has not been examined.

Thus, we are of the view that even though no injury report is there to corroborate the evidence of P.W.6 that accused Niranjan dealt a lathi blow to his right scapula, but the same cannot be a ground to disbelieve his entire evidence. The learned trial Court has rightly relied upon the evidence of P.W.6.

P.W.15 Madhu Behera:

13. P.W.15 is the informant in the case and he is the brother of the deceased. He stated that on the date of occurrence, he was sitting on the varandah of his house where the deceased was also residing. Apart from deposing that the accused persons being armed with deadly weapons, damaged his house and ransacked the properties, he stated that the seeing the violent mood of the accused persons, he along with his family members so also the deceased and his family members left the house out of fear and took shelter in the house of P.W.3. He further stated that accused Bidyadhar Sahu came over the thatch of the house of P.W.3 and pulled out the thatch and announced to the other accused persons that the deceased had taken shelter there. Out of fear, they opened the back door and tried to escape, but the deceased was chased by the accused persons. He named all the appellants to be armed with weapons like Thenga, Bhali, Kunta, Pharsa and Katuri while chasing the deceased. The deceased ran towards the paddy field of Padmanav Sahu where he fell down and there he was assaulted brutally by the appellants.

He further stated that he was assaulted by accused Brundaban Dehuri and Gouranga Dehuri by brickbats and sustained bleeding injury in his both the legs for which he could not come out to the rescue of his deceased brother. He stated to have struck up in the bari of Manguli Naik because of assault on him. He specifically stated that the land of Padmanav Sahu (spot of assault) was clearly visible to him from the bari of Manguli Naik which was at a distance of 200 cubits from the bari of Manguli Naik.

He further stated that when the accused persons dispersed, his family members came to the land of Padmanav Sahu and brought the deceased and placed him near a coconut tree close to the house of P.W.3, but by then the deceased was dead. He stated that the proximate cause of the incident was the video show where A-1 passed some ugly comments to P.W.10 for which a meeting was convened in the village, but nothing could be settled. He stated to have lodged the oral report before police when they came to the spot which was reduced to writing.

In the cross-examination, he has stated that neither he was present in the video show nor attended the meeting. He stated that when he got struck up in the bari of Manguli Naik, the family members of Manguli Naik shifted him to the front side of their house. He stated that paddy was sown on the land of Padmalochan Sahu and it was muddy then and paddy sapling had come up. He stated that the deceased was not assaulted by any of the accused persons before he fell down on the land of Padmanav. He has denied the suggestion given by the defence that the deceased died as because he fell down on the land of Padmanav and that no one had assaulted him after he fell down there.

The evidence of this witness was challenged by the learned counsel for the appellants on the ground that his daughter (P.W.1) has stated that her father (P.W.15) had confined himself inside the house of Manguli Naik when the deceased

was assaulted on the land of Padmanav and therefore, his evidence as an eye-witness to the occurrence is a doubtful feature. This submission is not acceptable as P.W.15 himself states that he was struck off in the bari of Manguli Naik and the land of Padmanav Sahu was clearly visible to him from the bari of Manguli Naik which was at a distance of 200 cubits. P.W.1 might not be in a position from the place where she was standing underneath a mango tree to mark where her father was at the time of assault on the deceased and she might be thinking that her father had confined himself inside the house of Manguli Naik at the time of assault on the deceased. We are of the view that on the basis of the statement of P.W.1, the evidence of P.W.15 as an eye witness to the occurrence cannot be disbelieved.

The next ground of attack on the evidence of P.W.15 by the learned counsel for the appellants is that though he stated to have been assaulted by two of the accused persons by means of brickbatting, i.e., Brundaban Dehuri and Gouranga Pradhan (A-4) and sustained bleeding injuries on both his legs and further stated that he had also told the police that he had been assaulted and got injured due to brickbatting, but there is no medical evidence to corroborate that he was an injured witness rather it has been proved through the I.O. (P.W.16) that he had not stated to have received injuries due to brickbatting.

Such submission is very difficult to be accepted as the I.O. (P.W.16) has stated that he issued requisition (Ext.30) in favour of P.W.15 to Begunia Hospital. On the other side of Ext.30, the injuries sustained by P.W.15 are mentioned, however the concerned doctor from Begunia Hospital could not be examined to prove it.

The evidence of P.W.15 as an eye witness to the assault on the deceased cannot be doubted merely because he failed to state before the I.O. that he himself sustained injury due to brickbatting or that his injury report could not be proved. The evidence given by this witness relating to the assault on the deceased is getting corroboration from the medical evidence. No doubt the doctor (P.W.8) has stated that external injury no.(ix) could be caused by fall but the contention of the learned counsel for the appellants that all the injuries were possible by fall is not acceptable, as those were cut injuries on different parts of the body like left upper arm, right scapula, right leg, right knee, right foot, right leg and left foot of different sizes.

Thus, we are of the view that the learned trial court has rightly placed reliance on the evidence of P.W.15.

Corroborating evidence to the evidence of three eye witnesses:

14. The learned counsel for the appellants contended that apart from P.Ws.1, 6 and 15, the other eye witnesses like P.Ws.2, 3, 4, 5, 7, 10, 11, 12, 13, 18 and 19 have not impleaded the appellants in the assault of the deceased, whereas the learned counsel for the State argued that the other eye witnesses who had not seen the assault on the deceased on the land of Padmanav Sahu have stated about the other aspects of the prosecution case and moreover, the evidence of P.Ws.3, 10, 11 and 12

corroborate the version of the three eye witnesses regarding the participation of the appellants in the occurrence.

As is revealed from the sequence of events that transpired, on the date of occurrence in the morning at about 8 a.m., the accused persons assembled near the house of the deceased being armed with different weapons, damaged the house of the deceased and ransacked the properties. They also caused similar activities in respect of the houses of some other villagers. When the deceased and his family members leaving their house, entered inside the house of P.W.3 Pandari Naik out of fear to take shelter, one of the accused namely, Bidyadhar Sahu came over the thatch of P.W.3, pulled out the thatch to make a hole on the thatched roof, located the deceased inside the house of P.W.3, announced the presence of the deceased for which some accused persons started breaking and demolishing the house of P.W.3. The deceased tried to escape through the back door of the house of P.W.3, but the appellants chased him being armed with different weapons, overpowered him on the land of Padmanav Sahu and then assaulted him to death.

Apart from the eye witnesses P.Ws.1, 6 and 15 whose evidence we have already discussed, the following witnesses also state about the various roles played by the appellants on the date of occurrence.

P.W.3 Pandari Naik has stated that he was in his house at the time of occurrence which took place at 8 a.m. The accused persons broke and damaged the house of the deceased and P.W.15, chased them and their family members to his house. The family members of the deceased got panicked and rushed to his house to take shelter and shut themselves inside a room and closed the front door. He further stated that A-1 was armed with a Katuri, A-2 was armed with a Pharsa, A-3 was armed with a Tangia, A-4 was armed with a Katuri, A-5 was armed with a Kanta, A-6 was armed with a Pharsa and appellant Raja Dehuri (dead) was armed with a Pharsa. The other accused persons were armed with thenga, lathi and different kinds of lethal weapons. He further stated that seeing the violent mood of the accused persons, he fled away through the back side of the house.

P.W.10 Basanti Dei, the daughter of the deceased has stated that her house was razed to the ground, her father was chased by A-1, A-2, A-3, A-4, A-5, A-6 and appellant Raja Dehuri (dead) towards the land of Padmanav Sahu being armed with deadly weapons like Katuri, Kanta, Axe and Bhujali, but she could not go to the rescue of her father.

P.W.11 Chaitan Naik has stated that on the date of occurrence, after he and his wife were assaulted, he saw the deceased was running towards Gahira after coming out of the house of P.W.3 being chased by A-1, A-2, A-3, A-4, A-5, appellant Raja Dehuri (dead) armed with deadly weapons.

P.W.12 Prafulla Majhi has stated that accused Bidyadhar climbed on the thatch roof of P.W.3, made a peep hole and announced that the deceased had taken shelter there, as a result of which some of the accused persons started breaking the

house of P.W.3. He further stated that the deceased escaped towards Gahira and he was chased by appellant Raja Dehuri (dead), A-1, A-2, A-3, A-4, A-5, A-6 being armed with weapons.

While assessing the evidence of the eye witnesses P.Ws.1, 6 and 15 regarding the participation of the appellants in the assault of the deceased and other corroborating evidence of P.Ws.3, 10, 11 and 12, we have kept in view the ratio laid down by the Hon'ble Supreme Court in the case of **Muthu Naicker** (supra), wherein it is held as follows:-

> "6. Where there is a melee and a large number of assailants and number of witnesses claim to have witnessed the occurrence from different places and at different stages of the occurrence and where the evidence as in this case is undoubtedly partisan evidence, the distinct possibility of innocent being falsely included with guilty cannot be easily ruled out. In a faction-ridden society where an occurrence takes place involving rival factions, it is but inevitable that the evidence would be of a partisan nature. In such a situation to reject the entire evidence on the sole ground that it is partisan is to shut one's eyes to the realities of the rural life in our country. Large number of accused would go unpunished if such an easy course is charted. Simultaneously, it is to be borne in mind that in a situation as it unfolds in the case before us, the easy tendency to involve as many persons of the opposite faction as possible by merely naming them as having been seen in the melee is a tendency which is more often discernible and is to be eschewed and, therefore, the evidence has to be examined with utmost care and caution. It is in such a situation that this Court in **Masalti -Vrs.- State of U.P. : A.I.R. 1965 S.C. 202** adopted the course of adopting a workable test for being assured about the role attributed to every accused."

The Hon'ble Supreme Court in the case of **Masalti** (supra) has held as follows:-

> "15…..Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of person armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault."

In the case of **State of Maharashtra -Vrs.- Ramlal Devappa Rathod and others reported in (2015) 15 Supreme Court Cases 77**, it is held as follows:-

> "24. The liability of those members of the unlawful assembly who actually committed the offence would depend upon the nature and acceptability of the evidence on record. The difficulty may however arise, while considering the liability and extent of culpability of those who may not have actually committed the offence but were members of that assembly. What binds them and makes them vicariously liable is the common object in prosecution of which the offence was committed by other members of the unlawful assembly. Existence of common object can be ascertained from the attending facts and circumstances. For example, if more than five persons storm into the house of the victim where only few of them are armed while the others are not and the armed persons open an assault, even unarmed persons are vicariously liable for the acts committed by those armed persons. In such a situation it may not be difficult to ascertain the existence of common object as all the persons had stormed into the house

> of the victim and it could be assessed with certainty that all were guided by the common object, making every one of them liable. Thus when the persons forming the assembly are shown to be having same interest in pursuance of which some of them come armed, while others may not be so armed, such unarmed persons if they share the same common object, are liable for the acts committed by the armed persons."

Thus the learned counsel for the State is right in his submission that the evidence of P.Ws.3, 10, 11 and 12 corroborate the version of the three eye witnesses P.Ws.1, 6 and 15 regarding the participation of the appellants in the occurrence. In the face of such clear, consistent and cogent evidence on record, we are of the view that on the date of occurrence, the appellants being armed with deadly weapons formed an unlawful assembly, forcibly damaged the house of P.W.3, chased the deceased who tried to escape through the back door of the house of P.W.3 and overpowered him on the land of Padmanav Sahu and assaulted him with weapons as a result of which the deceased succumbed to the injuries. Scrutinising the evidence cautiously, we found that it is not a case of mere presence of the appellants in the unlawful assembly as members of the unlawful assembly or as curious spectators but it indicates their participation in the commission of the offence by overt act or knowing that the offence which was committed was likely to be committed by any member of the unlawful assembly in prosecution of the common object of the unlawful assembly and that they becoming or continuing to remain members of the unlawful assembly and their participation by the overt act is satisfactorily established.

The learned counsel for the appellants argued that the weapons held by the appellants were sharp cutting weapons and therefore, the injury no.(ix) as per the post mortem report which is a lacerated injury could not have been possible by any of such weapons. He placed reliance in the case of **Hallu** (supra), the Hon'ble Supreme Court held as follows:-

> "11. The post-mortem report prepared by Dr. N. Jain shows that on the body of Jagdeo were found three bruises and a haematoma. On the body of Padum were found four lacerated wounds and two bruises. According to the eye witnesses, the two men were attacked with lathis, spears and axes but that clearly stands falsified by the medical evidence. Not one of the injuries found on the person of Jagdeo and Padum could be caused by a spear or an axe. The High Court however refused to attach any importance to this aspect of the matter by saying that the witnesses had not stated that "the miscreants dealt axe blows from the sharp-side or used the spear as a piercing weapon." According to the High Court, axes and spears may have been used from the blunt side and therefore, the evidence of the eyewitnesses could safely be accepted. We should have thought that normally, when the witness says that an axe or a spear is used, there is no warrant for supposing that what the witness means is that the blunt side of the weapon was used. If that be the implication, it is the duty of the prosecution to obtain a clarification from the witness as to whether a sharp-edged or a piercing instrument was used as a blunt weapon."

In the case in hand, the doctor (P.W.8) has noticed eight cut injuries on different parts of the deceased which were possible by sharp cutting weapons. The doctor has specifically stated that injury no.(ix) could be caused by Katuri and he

has stated that M.O.II was the Katuri produced before him for his opinion. Therefore, the oral evidence and post mortem report findings in the case of **Hallu** (supra) and the case in hand is completely different.

Whether the act of the appellants fall within 302/149 I.P.C. or 304 Part-II/149 I.P.C.:

15. The post-mortem report (Ext.14) proved by P.W.8 indicates that out of the nine injuries, eight injuries were on the non-vital parts of the body like left upper arm, right scapula, right leg, right foot, left leg, left foot and only one injury was on the left frontal region. Of course, the doctor has stated that there was fracture of humerus bone at its middle and fracture of right second and third metacarpal bones. However, none of the injuries has been opined to be individually or collectively sufficient in the ordinary course of nature to cause death. The weapons which were in the hands of the appellants were deadly weapons and they could have easily caused injuries on the vital parts of the body of the deceased and more in numbers had they got intention to commit murder of the deceased. There is no evidence as to who caused the fatal injury on the head. Though the cause of death was opined due to laceration of the brain matter and associated by multiple injuries on different parts of the body, but the doctor admits in the cross-examination that he had not mentioned in Ext.14 that the death of the deceased was due to shock and cumulative effect of all the injuries. In Ext.14, it is mentioned that the death was due to injury to head causing laceration of brain matter.

In the case of **Nadodi Jayaraman** (supra), the Hon'ble Supreme Court held as follows:

> "19.....A critical analysis of the injuries received by the deceased, which have been extracted elsewhere in the judgment, goes to show that the deceased had suffered 15 lacerations, 12 bruises and five contusions. Injuries 1 to 11 had been caused on his legs, knees, ankle etc., while injuries 26 to 29 were on the thigh and lower part of the abdomen. Injuries 12 to 17 and 32 had been caused on the forearm, elbow and the possibility of those injuries having been received by the deceased while trying to ward off the blows on the vital parts of his body cannot be ruled out. The remaining injuries were two bruises on the front and on the right side of the chest and two lacerations of 2 x 1 cms. near the right side of the nose and the inner end of the right eyebrow. There were two lacerations on the right temporal region and one on the right occipital region. It was only injury No.22 viz. "laceration on the back of the left side of the frontal region, 5 x 2 cms. bone deep, fissured fracture 10 cms. vertical of frontal bone, extending to base with commentated fracture of the left orbital place", which was found to be sufficient to cause death in the ordinary course of nature. According to the medical witness, all the injuries, except injury No.22, were simple in nature and could not have by themselves caused death but those injuries could have precipitated the death. Since, the evidence of the prosecution unmistakably asserts that injuries had been caused to the deceased by all the six accused and some injuries had been caused exclusively by A-2 and A-3 alternatively, during the third part of the occurrence, it cannot be said with certainty that the intention of the accused was to cause death of Pratap Chandran deceased. This is more so because according to the medical evidence, the deceased had

died "due to shock and haemorrhage on account of multiple injuries", and according to the prosecution version all the seven accused had caused the injuries and not only A-2 and A-3. The accused party was armed according to the prosecution evidence, with iron rods and pipes and not with any other lethal weapon. If the accused had the intention to cause death of the deceased, they would have probably come armed with more formidable weapons. Again, looking to the nature of injuries, which except for injury No. 22, were only simple and no other grievous injury was even caused, it appears to us that the accused possibly wanted to chastise the deceased for his trade union activities. The seat of the injuries as also their nature fortifies our view. According to the prosecution case itself, after Pratap Chandran had fallen down in the third part of the incident, none of the accused took advantage and caused any other injury to him. Most of the injuries, as already noticed, were on non-vital parts of the body. From the evidence and circumstances of the case, the appellants do not appear to have had the intention causing the death of the deceased or even causing such bodily injury as was likely to cause death. They can at the best be attributed with the knowledge that their act was likely to cause death or to cause such bodily injury as was likely to cause death, since a number of injuries had been caused and injury No.22 was sufficient in the ordinary course of nature to cause death. It is not as if A-2 and A-3 alone were armed with iron rods and pipes, with which the injuries were caused and their acquitted co-accused were unarmed. The acquitted co-accused, according to the prosecution evidence, were also armed with iron rods and pipes and as such it would be hazardous to guess as to which blow was caused by which accused. If common intention to cause death had been established in the case, the prosecution would not have been required to prove which of the injuries was caused by which accused to sustain the conviction of the accused with the aid of Section 34 I.P.C., but in a case like this, where five of the co-accused stand acquitted and the common intention to cause death is not established beyond a reasonable doubt, the prosecution must establish the exact nature of the injuries caused to the deceased by the accused with a view to sustain the conviction of that accused for inflicting that particular injury. The evidence on the record does not lead to the conclusion that A-2 and A-3 alone caused all the injuries to the deceased with the intention to cause his death. The broad circumstances of the case impel us to hold that the common intention of A-2 and A-3 was not to cause the death of the victim and therefore, neither of them can be held guilty of the offence under Section 302/34 IPC. Since, the deceased did succumb to the injuries, caused collectively, the appellants can only be held guilty of committing culpable homicide not amounting to murder. The act can be said to have been committed by the accused with the knowledge that it was likely to cause death or to cause such bodily injury as was likely to cause death of Pratap Chandran. Learned Counsel for the appellants have not been able to persuade us to subscribe to the view that A-2 and A-3 can only be clothed with the intention of causing grievous hurt, punishable under Section 325/34 IPC. The offence of the appellants would, in our opinion, squarely fall under Section 304 Part II IPC. Thus, setting aside the conviction of the appellants for an offence under Section 302/34 IPC, we alter their conviction and hold them both guilty of the offence under Section 304 Part II IPC."

In the case of **Molu and others -Vrs.- State of Harayana reported in A.I.R 1976 Supreme Court 2499 : (1978) 4 Supreme Court Cases 362**, it has been held that in a situation where the multiple injuries were caused on the deceased by lathis and were of minor character and there was no material to show that the accused did not intend to cause deliberate murder, the accused is said to have

committed an offence under Section 304, Part-II, I.P.C and not under Section 302, I.P.C.

In the case **Chuttan and others -Vrs.- State of Madhya Pradesh**, **reported in 1994 Criminal Law Journal 2097 (SC) : 1994 Supreme Court Cases (Cri) 1801**, it has been held that where the accused person inflicted injuries on the deceased by stick portion of the spear on any vitals part of the body, the accused had no intention to cause the death or to cause such injuries, which were sufficient in ordinary course of nature to cause death, but had knowledge of causing such injuries they are likely to cause death of the deceased, the accused can be convicted under section 304, Part-II, I.P.C.

In the case of **Dilip Kumar Pradhan & Another -Vrs- State of Orissa reported in (2000) 18 Orissa Criminal Reports 185,** this Court has observed as follows:

> "10. xxx xxx xxx
>
> From the evidence on record, it appears that there were no previous enmity between the parties and the assault was started after there was same altercation with regard to return of the radio-cum-tape recorder to the deceased by the accused persons which, he delivered to them, for purchase. According to the eye-witnesses, the injuries were inflicted by a lathi and a web belt by both the accused-appellants. In the circumstances, the accused persons cannot be imputed with the intention of causing death of the deceased, but however, knowledge could be imputed to the accused that their act was likely to cause death. Law is well settled that where the multiple injuries received by the deceased were caused by blunt weapons like lathi and the injuries were not on any vital part of the body and there in nothing to show that the accused intended to cause the deliberate murder of the deceased, the offence attributable to the accused persons will be under Section 304, Part-II and not under Section 302, I.P.C.....
>
> 11. In the case at hand, it has not been proved that anyone of the injuries inflicted on the deceased by the accused-appellants were sufficient in the ordinary course of nature to cause death, but the cumulative effect of the injuries inflicted was the cause of death. The ocular evidence coupled with the medical evidence shows that the blows with lathi and web belt were given on different parts of the body including in the palatine region and there was no premeditation and it all happened because of the allegation against the accused that the tape recorder-cum-radio sought to be sold its a stolen property and return of the same on demand by the deceased, the accused person fall under Section 304, Part-II, I.P.C. From the nature of the injuries and the weapons used like lathi and web belt and the place of the injuries on the body of the deceased, it cannot be said that the accused-appellants intended to cause death. The knowledge that their act was likely to cause death of the deceased however can be attributed and as such, we are of the considered opinion that in the facts and circumstances of the case, the accused-appellants have committed an offence under Section 304, part-II/34, I.P.C. and their conviction under Section 302/34, I.P.C. cannot be sustained. In view of what has been discussed in the proceeding paragraphs and the evidence on record, the conviction recorded by the learned Sessions Courts has to be confirmed."

In the case of **Kalinder Bharik -Vrs.- State of Himachal Pradesh reported in 2000 Supreme Court Cases (Cri) 96**, the Hon'ble Supreme Court has held as follows:

> "7. None of the injuries can be said to be individually or collectively sufficient in the ordinary course of nature to cause death. This is a case where death became the consequence because of excessive bleeding. Therefore, it is not a case which can be brought under any one of the four clauses under section 300 I.P.C. It would remain only within the range of culpable homicide not amounting to murder.
>
> 7. We therefore, alter the conviction to section 304 Part II IPC."

In the case of **Sudina Prasad and others -Vrs.- State of Bihar reported in 2003 Supreme Court Cases (Cri) 1692**, the Hon'ble Supreme Court has held as follows:

> "5. Learned counsel for the appellants felt that it is more prudent to focus his arguments on the aspect of altering conviction from section 302, IPC. For supporting his contention, learned counsel brought to our notice two important features in the evidence; one is that A-1 Sudina Prasad was armed with a gun which was a live gun and accused Vashisht Gope was armed with a pistol. In spite of such possession of lethal weapons, neither of them used it. Learned counsel contended that if the intention was murder the deceased, at least A-1 would have fired the gun.
>
> 6. The second feature is that 11 out of 12 injuries did not cause any damage to the internal organs. It is the horizontal bruise on the left side of the back, which possible would have caused the fracture of the ribs.
>
> 7. We feel that the aforesaid arguments based on the abovementioned two broad features is a strong circumstance for us to think that the common intention of the assailants was only to thrash the deceased and to inflict him with injuries. The grievous injury caused need not necessarily have been intended by them. Nonetheless they should have been credited with the knowledge that such injuries could possibly result in his death.
>
> 8. For the aforesaid reasons, we are inclined to accept the arguments of the learned counsel for the appellant. We, therefore, alter the conviction from Section 302 IPC to Section 304 Part-II, IPC. Hence, we therefore, convict the appellant for the said offence read with Section 149 IPC instead of 302 IPC."

From the evidence and circumstances of the case and the ratio laid down in the aforesaid citations, we are of the view that the appellants do not appear to have had the intention causing the death of the deceased or even causing such bodily injury as was likely to cause death. They can at the best be attributed with the knowledge that their act was likely to cause death or to cause such bodily injury as was likely to cause death. We, therefore, alter the conviction of the appellants from section 302/149 of I.P.C. to section 304 Part-II I.P.C./149 of I.P.C. There are enough materials on record that the appellants were not only the members of unlawful assembly as defined under section 142 of I.P.C., but they have used force or violence in prosecution of the common object of such assembly and thus committed offence of rioting as defined under section 146 of I.P.C. punishable under section 147 of I.P.C. and they were armed with deadly weapons and thus there is no error in

the impugned judgment of the learned trial Court in convicting the appellants under sections 147 and 148 of I.P.C.

The appellants were taken into judicial custody in connection with the case on August 1994 and were released from judicial custody on bail 19.05.1997 and after pronouncement of judgment by the learned trial Court on 19.12.1997, they were again taken into judicial custody and were enlarged on bail by this Court vide order dated 06.03.2000 in this CRLA and as such they have remained in custody for a period of five years. A-1, A-2 and A-4 are now aged more than 60 years and A-3, A-5 and A-6 are now aged more than 55 years. No adverse report has been produced against any of the appellants though they are on bail for more than 25 years. The occurrence in question took place in the year 1994 and in the meantime, more than 30 years have passed. Therefore, we are of the view that no useful purpose would be served in sending the appellants to custody again. Keeping in view all the facts and circumstances of the case, while altering the conviction of the appellants from Section 302/149 of I.P.C. to Section 304 Part-II I.P.C./149 of I.P.C., the sentence of imprisonment is directed to be reduced to the period already undergone.

Conclusion:

16. In the result, the Criminal Appeal is allowed in part. The conviction of the appellants under section 302/149 of the I.P.C. is altered to one under section 304 Part-II/149 of the I.P.C. and the sentence of imprisonment is reduced to the period already undergone. No separate sentence is awarded for the conviction of the appellants under sections 147 and 148 of I.P.C.

17. Before parting with the case, we would like to put on record our appreciation to Mr. Devashis Panda, learned counsel for his preparation and presentation of the case before the Court and rendering valuable help in arriving at the decision above mentioned. This Court also appreciates the valuable help and assistance rendered by Mr. Jateswar Nayak, learned Additional Government Advocate for the State.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
CRA allowed in part.

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2025 (III) ILR-CUT-463

DUKHA @ KRUSHNA BEHERA
V.
STATE OF ODISHA

[CRA NO. 326 OF 1998]

25 SEPTEMBER 2025

[S.K. SAHOO, J. & CHITTARANJAN DASH, J.]

Issue for Consideration

Whether the appellant ought to have been charged U/s. 301 of IPC instead of 302, IPC, which provides for punishment of culpable homicide when death is caused to a person other than the one intended.

Headnotes

(A) INDIAN PENAL CODE, 1860 – Sections 300, 301 & 302 – A quarrel ensued between the Appellant and P.W. 15 and in a fit of anger, Appellant threatened to crush P.W. 15 under the wheels of the truck and left the spot – Thereafter, the appellant drove the truck, while driving the vehicle at a very high speed, rammed it into a group of people standing in front of the shop, allegedly targeting P.W. 15, who managed to jump aside and escaped – However, the truck ran over the four persons, who died at the spot and also caused severe injuries to four others – Whether the appellant ought to have been charged U/s. 301 instead of 302 IPC which provides for punishment of culpable homicide, when death is caused to a person other than the one intended.

Held: – The Appellant's act of driving a heavy truck at high speed directly into a group of people after having issued a threat to crush P.W.15 under its wheels evinces an unmistakable intention to cause such bodily injuries sufficient in the ordinary course of nature to cause death – That the intended victim escaped is of no avail to the Appellant, for Section 301 makes him equally culpable for the deaths of the others who actually sustained the injuries – Therefore the Appellant's conduct is covered within Clause *3rd* of Section 300, and the offence made out against him is murder punishable under Section 302 IPC. (Para 24)

(B) INDIAN PENAL CODE, 1860 – Section 301 – Distinction between an accidental death and death caused by transfer of malice – Discussed. (Paras 17-21)

Citations Reference

Varun Choudhry vs. State of Rajasthan, **(2011) 12 SCC 545;** Ashok Saxena vs. The State of Uttarakhand etc., **2025 LiveLaw (SC) 163 – referred to.**

List of Acts

Indian Penal Code, 1860.

Keywords

Intention; Knowledge; Murder; Culpable; Homicide; Transfer; *Dolus eventualis. Malice; Fit of anger; Accidental death*

Case Arising From

Judgment of conviction dated 25.11.1998, passed by 2nd Addl. Sessions Judge, Cuttack, in S. T. No.78/1996 (6/96)

Appearances for Parties

For Appellant : Mr. Devashis Panda
For Respondent : Mr. Aurobinda Mohanty, ASC

Judgment/Order

Judgment

CHITTARANJAN DASH, J.

1. This Appeal is directed against the judgment and order dated 25.11.1998 passed by the learned 2nd Additional Sessions Judge, Cuttack in S.T. Case No.78 of 1996 (6/96), wherein the Appellant having been found guilty in the offences under Section 302/307 of IPC has been sentenced to undergo imprisonment for life for the offence under Section 302 of IPC while no separate sentence has been imposed for the offence under Section 307 of IPC.

2. The brief facts giving rise to the present Appeal are that the Appellant, being the driver of a Mini Truck bearing Registration No. OR-05C-1646, is alleged to have intentionally caused the death of four persons, namely, Alekha Samal, Rajib Narayan Das, Hrushikesh Rout, and Golakha Chandra Nayak, by crushing them under the wheels of the said truck, which he drove rashly and rammed into the footpath in front of certain shops at the market, where people had assembled for marketing. The further charge against the Appellant is that he attempted to commit murder of Kalia @ Sukanta Patra (P.W.15), Dharua Sahu (P.W.10) Rabindranath Sahu (P.W.8) and Bula @ Sridhar Behera (P.W.9). It further appears that the Appellant had married to Kuni Behera (P.W.11), but their matrimonial life was strained, owing to which his wife often stayed in her parental home. The Appellant suspected that Kalia @ Sukanta Patra (P.W.15), a distant uncle of his wife, had developed an illicit relationship with her. Despite several efforts by the Appellant to bring back his wife to the matrimonial home, the same proved futile, and he attributed this failure to the alleged interference of P.W.15. On 30.03.1995, the date of occurrence, the Appellant drove the aforesaid Mini Truck to Pira Bazar from Cuttack, got down, and made enquiries from some persons regarding his dispute in securing the return of his wife. At that time, he came across P.W.15 who was present there, and abused him alleging that he was responsible for the discord in his

matrimonial life. A quarrel ensued between the Appellant and P.W.15, during which the Appellant, in a fit of anger, threatened to crush P.W.15 under the wheels of the truck and left the spot. Thereafter, the Appellant drove the truck towards Salipur but soon returned to Pira Bazar and, while driving the vehicle at a very high speed, rammed it into a group of people standing in front of the shop of one Jyoti Mohapatra @ Chandia, allegedly targeting P.W.15, who managed to jump aside and escaped. However, the truck ran over the aforesaid four persons, who died at the spot, and also caused severe injuries to four others. The Appellant then abandoned the truck in a nearby field. On the basis of these allegations, one Prakash Chandra Behera (P.W.19) lodged a written report on the same day, whereupon Jagatpur P.S. Case No.32 of 1995 was registered on 30.03.1995.

In course of the investigation, the police arrived at the spot, held inquest over the dead bodies, sent them for post-mortem examination, issued injury requisitions for the injured persons, examined witnesses, seized the vehicle, obtained the M.V.I. report, apprehended the Appellant, and upon completion of investigation, submitted charge-sheet.

3. The plea of the Appellant is one of complete denial and false allegations. The Appellant also pleaded that on the relevant day, he was not driving the Mini truck in question but kept the same in the field whereupon it was seized by the police.

4. To bring home the charges, the prosecution examined twenty witnesses in all. While P.W.1 is the betel shop owner, situated at Pira bazaar and occurrence witness, P.W.2 is an occurrence witness, being a teacher in Madrasa. P.W.3 is a local person and is also an eye witness to the occurrence present at the spot. P.W.4 too is a businessman, having his garage at Pira bazar and an occurrence witness. P.W.5 is also an occurrence witness so also P.W.6, P.W.7, P.W.8, P.W.9. P.W.9 and P.W.10 are the injured witnesses, P.W.11 is the occurrence witnesses, P.W.12 is the witnesses to the seizure, P.W.13 is the doctor who conducted autopsy over the dead bodies of Rajib Narayan Dash, Alekha Samal, Hrusikesh Rout and Golokha Chandra Nayak. P.W.14 is the witness to the inquest, P.W.15 is Kalia @Sukanta Kumar Patra, a distant relative of the wife of the Appellant allegedly to have illicit affair with the wife of the Appellant, P.W.16 is the scientific officer, P.W.17 is the Assistant Surgeon who conducted medical examination in respect to the injured Sridhar Behura, P.W.18 is the MVI, P.W.19 is a contractor and an occurrence witness and P.W.20 is the I.O.

5. The learned trial court, having assessed the evidence found the Appellant to have driven the vehicle in a rash and negligent manner intentionally to crush over the persons present in the market while targeting to do away with the life of P.W.15, based on the evidence of the eye witness account as well as the circumstances appearing in the relevant time. The court also held the death of the deceased to be homicidal in nature.

6. In course of hearing, Mr. Devashis Panda, learned counsel for the Appellant, assailed the impugned judgment and order and submitted that the evidence of P.W.15 assumes great importance in this case, as the Appellant allegedly bore ill feeling towards him on suspicion of having an illicit relationship with his wife (P.W.11), who had been staying at her parental house for about a year. According to Mr. Panda, the testimony of P.W.15 is wholly unreliable, inasmuch as it finds no corroboration from any other witness, including the injured witnesses, who were allegedly taken by him to the hospital. P.W.11, the estranged wife of the Appellant, admitted that P.W.15 was her agnatic uncle and was casually visiting her parents' place. However, the Appellant had objected to his presence. It was argued that the alleged motive for commission of the crime, namely the supposed amorous relationship between P.W.11 and P.W.15, has not been proved, as no other witnesses including P.Ws.8, 9, and 10 supported the claim of a quarrel between the Appellant and P.W.15 prior to the incident.

Mr. Panda further submitted that although P.W.15 claimed to have received injuries, but this was not corroborated by any of the occurrence witnesses, nor has any medical evidence been adduced to prove the same. None of the eyewitnesses present at the scene stated that P.W.15 sustained any injury or attributed the Appellant as the driver of the offending vehicle. Thus, neither the alleged motive nor the version of P.W.15 can be safely relied upon. It was argued that the evidence on record indicates that the Appellant had no intention to cause the death of the deceased persons, who succumbed to the injuries sustained after being hit by the Mini Truck. Therefore, the charge under Section 302 IPC is not sustainable. Instead, the Appellant ought to have been charged under Section 301 IPC, which provides for punishment of culpable homicide when death is caused to a person other than the one intended.

Assailing the conviction, Mr. Panda further argued that the injured witnesses never attributed the accident to the Appellant. He pointed out that no tyre marks were seized from the spot for comparison with the tyres of the Mini Truck, which was allegedly used in the crime. He relied upon the decision in ***Varun Choudhry vs. State of Rajasthan***, reported in ***(2011) 12 SCC 545***, wherein it was held that unless tyre marks are seized from the spot and compared with those of the vehicle, it cannot be conclusively held that the recovered vehicle was used for commission of the offence. In the present case, no such comparison was made, and therefore the use of the Mini Truck by the Appellant is not established. Mr. Panda also submitted that had P.W.15 really been the target of the Appellant, he would have at least suffered some injuries. The absence of any injury on his person renders his version unnatural and untrustworthy. His conduct in neither reporting the incident immediately to the police, nor undergoing medical examination, and remaining untraceable on 03.04.1995, further casts serious doubt on his testimony.

Placing reliance on the cross-examination of the MVI (P.W.18), who admitted that mechanical failure of the vehicle could not be ruled out, Mr. Panda contended that the prosecution case is further weakened. He argued that the evidence

makes it apparent that the Appellant had no intention to cause the death of the four deceased persons i.e. Rajib Narayan Dash, Alekha Samal, Hrushikesh Rout, and Golakha Chandra Nayak. At best, the prosecution case is that the Appellant intended to target P.W.15, which, even if accepted, would attract Section 301 IPC and not Section 302 IPC.

As regards the conviction under Section 307 IPC, Mr. Panda submitted that it was based on the alleged injuries sustained by Rabindranath Sahu (P.W.8), Sridhar Behera (P.W.9), and Dharinidhar Sahu (P.W.10), as well as P.W.15 who allegedly managed to escape. However, P.W.8, though testifying that he had sustained injuries on his head and ear and was admitted to SCB Medical College & Hospital, did not speak of P.W.15's presence. P.W.9 stated that he sustained a fracture in his right leg and was admitted in the same hospital, but again did not speak of P.W.15's presence. Both witnesses were declared hostile. The doctor (P.W.17) proved the admission of P.Ws.8 and 9, but the injury of P.W.9 was limited to pain over his right knee. No injury report was ever proved for P.W.15.

According to Mr. Panda, the absence of corroboration regarding the presence of injury of P.W.15, coupled with the failure to collect tyre marks from the spot, establishes that P.W.15 is a got-up witness and his testimony is unreliable and as such infirm evidence, the conviction of the Appellant cannot stand. Therefore, it was submitted that the impugned judgment of the learned trial court is based on no evidence and is liable to be set aside, and the Appellant is entitled to an acquittal.

7. Mr. Aurovinda Mohanty, learned counsel for the State, on the other hand, submitted that the prosecution has clearly established that the Appellant was driving the offending vehicle, i.e., the Mini Truck bearing Registration No. OR-05C-1646, which crushed four persons to death and caused injuries to four others. He relied upon the testimony of P.Ws.3, 4, 6, 8, and 15, which, according to him, unequivocally prove the presence of the Appellant at the wheel. He contended that P.W.15 is a natural and trustworthy witness whose presence at Pira Bazar was neither doubtful nor unexpected. The statement of P.W.15, both in examination-in-chief and in cross-examination, substantially corroborates his presence at the scene and his account of the quarrel with the Appellant. His testimony establishes that the Appellant, being enraged during the quarrel, threatened to crush him under the wheels of the truck, left the place, and soon returned to drive the vehicle at great speed towards the footpath where P.W.15 and others were standing. This version, according to Mr. Mohanty, goes uncontroverted and directly implicates the Appellant as the driver of the vehicle and the author of the crime.

It was further argued that all the eyewitnesses, including P.Ws.2, 3, 4, 5, 6, 8, 9, and 15, have consistently described the manner and sequence of the occurrence and specifically identified the Appellant as the driver who drove the vehicle into the footpath, resulting in multiple deaths and injuries. The prosecution case is further reinforced by the evidence of P.W.18, the Motor Vehicle Inspector, who categorically deposed that the offending vehicle had no mechanical defect and was

in good running condition, thereby ruling out the possibility of accidental failure. According to Mr. Mohanty, this proves beyond doubt that the Appellant drove the truck with the requisite intention to cause the death of P.W.15, and in the process caused the death of four persons and injuries to others. Finally, Mr. Mohanty contended that the testimonies of the eyewitnesses are cogent, reliable, and consistent with each other and with the medical and scientific evidence. The cumulative effect of the evidence leads to the inescapable conclusion that the Appellant acted with full knowledge and intention, making him liable for the offence of murder. The learned trial court, therefore, rightly held him guilty, and no interference with the impugned judgment is warranted.

8. Having heard the learned counsel for both the Parties, at the outset, it is necessary to examine the medical evidence in order to ascertain the cause of death of the deceased and the nature of injuries sustained by the injured witnesses. From the testimony of P.W.13, Dr. Minati Patnaik, it stands established that four persons, namely Rajib Narayan Dash, Alekha Samal, Hrushikesh Rout, and Golakha Chandra Nayak, died on account of injuries sustained by them, which were opined to be ante-mortem in nature and caused by hard and blunt force impact. The doctor further opined that such injuries were fatal in the ordinary course of nature and could jointly and severally be occasioned in a case of dashing by a running vehicle.

In so far as the injured witnesses are concerned, P.W.20, the Investigating Officer, issued requisition for their medical examination and obtained the bed-head tickets of P.W.8 and P.W.9. P.W.17, the Assistant Surgeon in the Accident Unit of the Orthopaedics Department, SCB Medical College, Cuttack, deposed that on 30.03.1995, P.W.8 was admitted with complaints of pain in both knees and the left elbow. He proved the bed-head ticket under Ext.10, showing that P.W.8 remained under treatment as an indoor patient from 30.03.1995 to 07.04.1995.

Consequently, it is significant to note that the defence has not disputed either the nature of the injuries sustained by the injured witnesses (except in relation to P.W.15) or the death of the four deceased persons named above. In view of such admitted position, we consider it unnecessary to burden this judgment with further elaboration on this aspect, as the fact of homicidal death and the injuries sustained by the injured stand established beyond controversy.

9. The entire prosecution case rests substantially on the account of the eyewitnesses. The prosecution examined P.Ws.2, 3, 4, 6, 7, 8, 9, 10, and P.W.15 as occurrence witnesses. However, it is pertinent to note that P.Ws.2, 3, 4, 6, 8, 9, and 10 did not support the prosecution case in material particulars and were declared hostile, thereby necessitating their cross-examination by the prosecution.

10. In this backdrop, the primary issue that arises for consideration before this Court is whether the death of the deceased persons was the result of an intentional act on the part of the Appellant, done with the intention of causing death or of causing such bodily injury as the Appellant knew to be likely to cause death, or whether the incident was the result of any other circumstance short of such intention.

11. In order to appreciate the rival contentions and to examine whether the prosecution has succeeded in proving its case beyond reasonable doubt, it becomes necessary to advert to the evidence of the material witnesses, as follows –

P.W.2 deposed that he knew the deceased persons, namely, Alekha Samal, Rajib Das, Hrushikesh Rout, and Golakha Nayak, but he did not know either the injured Kalia @ Sukanta Patra or the Appellant. He stated that the occurrence took place more than a year back at Jagatpur Peer Bazar. His house being situated at Peer Bazar, on hearing commotion, he came to the road and found four dead bodies lying there, having been crushed by a vehicle. He, however, expressed no knowledge about how the incident had occurred. Consequently, the witness was declared hostile by the learned Public Prosecutor. He denied all suggestions put to him in relation to the circumstances of the case.

P.W.3, a co-villager, stated that he knew the Appellant as the driver of the Mini Truck bearing Registration No. OR-05C-1646. He also knew the deceased persons, namely Alekha Samal, Rajib Das, Hrushikesh Rout, and Golakha Nayak, but did not know the injured Kalia @ Sukanta Patra. He deposed that the incident had occurred more than a year ago. In the evening, the Appellant came driving the aforesaid Mini Truck from the Salipur side, swerved to the side of the road in front of the shop of P.W.1, where the aforesaid four deceased persons and others were standing, and ran over them under its wheels. As a result, the deceased persons succumbed to their injuries and three more persons sustained injuries in the incident. The deceased and the injured were taken to SCB Medical College & Hospital, Cuttack. Thereafter, the witness was declared hostile by the learned Public Prosecutor and denied the suggestions put to him with regard to the circumstances of the case.

P.W.4 stated that he knew the Appellant but did not know his wife, Kuni. He knew the deceased persons, though he did not know the injured Kalia @ Sukanta Patra. He runs a garage at Peer Bazar and explained the occurrence in the same manner as P.Ws.2 and 3, namely that the deceased and the injured were standing in front of the shop of P.W.1 when the incident occurred. They were later taken to SCB Medical College & Hospital, Cuttack. He added that he could not say whether Kalia @ Sukanta Patra was present there, as he did not know him.

P.W.6 stated that he knew the Appellant, P.W.11-Kuni, the deceased persons, and the injured P.W.15. He further stated that there were differences between the Appellant and his wife Kuni, as a result of which she had gone to reside at her parental home in Gopinathpur. On the date of the occurrence, he was at the shop of P.W.1 when the incident took place. He described the occurrence in the same manner as P.Ws.2 and 3, stating that the deceased and others were standing in front of the shop of P.W.1. He further deposed that he had caught hold of the Appellant. Thereafter, he was declared hostile by the learned Public Prosecutor.

P.W.7 stated that he knew the Appellant, who had married Kuni, the daughter of Mani Behera of their village. He deposed that Kuni was residing in her

parental home due to strained relations with the Appellant. He did not know Kalia @ Sukanta Patra. He further stated that the occurrence took place more than a year ago at Pira Bazar in front of the shop of P.W.1. At the relevant time, he was at his house and came to the spot on hearing commotion. On arrival, he found four persons crushed under a vehicle in front of the shop of P.W.1. The vehicle was parked in a nearby field on the right side of the road, and the Appellant had been caught hold of and detained by local people. He also witnessed the police conducting inquest over the dead bodies of the deceased, namely Alekha Samal, Rajib Narayan Das, Hrushikesh Rout, and Golakha Nayak at SCB Medical College & Hospital, Cuttack. However, he clarified that he did not witness the inquest over the bodies of Alekha Samal and Rajib Narayan Das.

P.W.8, a co-villager, deposed that the incident occurred at about 7.30 p.m. on 30.03.1995 at Pira Bazar in front of the shop of P.W.1. At that time, the deceased persons, namely Alekha Samal, Rajib Narayan Das, Hrushikesh Rout, and Golakha Nayak, were standing near the said shop, while P.W.8 was selling vegetables nearby. The Appellant came driving the Mini Truck from the Salipur side at a break-neck speed, ploughed it into the group, and crushed them under its wheels. In the process, P.W.8 and two others also sustained injuries. P.W.8 suffered a fracture in both legs, his left hand, and injuries on the left side of the head near the ear, for which he was admitted to SCB Medical College & Hospital, Cuttack. Thereafter, the witness was declared hostile by the learned Public Prosecutor. In cross-examination, however, he confirmed the registration number of the Mini Truck driven by the Appellant.

P.W.9 deposed that he knew the Appellant, his wife Kuni, and P.W.15. He stated that the Appellant had disturbances with his wife, owing to which she was residing at her parental house. On the date of occurrence, P.W.9 had gone to Pira Bazar for marketing, when the Appellant came driving the Mini Truck from the Salipur side at a break-neck speed, ran it over the aforesaid persons, and crushed them under its wheels. While the deceased persons died on the spot, P.W.9, along with P.W.8, sustained injuries. He suffered injury to his right leg and was taken to SCB Medical College & Hospital, Cuttack for treatment.

P.W.10, an injured witness, stated that he knew the Appellant and his wife, P.W.11. He corroborated the evidence of P.Ws.8 and 9 and further stated that he had sustained injury on his right leg in the occurrence. He too was declared hostile by the learned Public Prosecutor.

P.W.15 is an eyewitness, whom the Appellant accused of having an illicit relationship with his wife. He is the agnatic uncle of the Appellant's wife. In his sworn testimony, P.W.15 stated that on the date of occurrence, he had gone to Pira Bazar, where the Appellant arrived in a truck bearing Registration No. OR-05C-1646, parked it in front of the shop of P.W.1, and started hurling abuses at him in obscene language while accusing him of having an illicit relationship with his wife. The Appellant then threatened to kill him and drove away towards Salipur. About ten minutes later, the Appellant returned, driving the truck at a break-neck speed, while P.W.15 was conversing with the deceased Rajib Das in front of the shop of

P.W.1. The Appellant drove the truck towards them, swerving to the extreme left of the road up to the betel shop of P.W.1, with the intention of crushing P.W.15 under its wheels. P.W.15, however, managed to jump aside and escaped with minor injury. In the process, the truck struck and ran over Rajib Das, Alekha Samal, Golakha Nayak, and Hrushikesh Rout, who succumbed to their injuries. Rabindra Sahu and two others also sustained injuries as the accused swerved the truck from the left to the right side of the road before driving it into a nearby field, where he stopped the vehicle. P.W.15, along with others present at the spot, carried the injured persons to SCB Medical College & Hospital, Cuttack. He further stated that the Officer-in-Charge of Jagatpur P.S. arrived at the spot by about 8:30 p.m., and that one Prakash Chandra Behera, who was present there, lodged the FIR at Jagatpur P.S.

12. As rightly argued by the learned counsel for the Appellant, the culpability of the accused in the present case may, at first blush, appear to be covered under Section 301 of the Indian Penal Code, inasmuch as the intention of the Appellant, as alleged, was to cause the death of P.W.15, but the fatal consequence ensued in respect of four other individuals. It is therefore necessary to examine the scope and applicability of Section 301 IPC. For better appreciation, the provision is reproduced below:

> **301. Culpable homicide by causing death of person other than person whose death was intended**.—If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

13. The question of culpability under Section 301 IPC must be approached with care. Superficially identical facts may give rise either to culpable homicide not amounting to murder or to murder, depending on the state of mind of the accused at the relevant time and the precise manner in which the statutory tests are satisfied.

Section 301 IPC deals with the situation in which a person, by doing anything which he intends or knows to be likely to cause death, causes the death of a person other than the one he intended or knew himself to be likely to cause. The statutory objective is clear that the identity of the actual victim is not decisive of the degree of the offender's culpability; rather, what is determinative is the quality of the *mens rea* with which the act was done and the natural consequences of the act as known or intended by the actor. In short, Section 301 operates to "transfer" the legal character of the offence; the culpable homicide produced by the offender is of the same description as it would have been had the intended victim died. The scope of Section 301 is therefore limited and specific. It does not create a new or separate category of homicide, it simply transfers the malice, as in where an accused does an act with the requisite intention or knowledge directed at one person but death ensues to another, the culpability is to be assessed as if the intended person had been killed. This means that Section 301 does not operate to lessen the degree of the offence by

reason of mistaken identity of the victim. If, by virtue of the accused's intention or knowledge, the act falls within the definition of murder under Section 300, then the fact that some other person and not the intended person dies will not convert the offence into a lesser form of culpable homicide, the offence remains murder and punishable accordingly. Conversely, if the mental element established is one that falls short of Section 300, the offender's liability will be measured by the nature of culpable homicide established.

14. This leads to the necessary probe of the distinction between "culpable homicide" and "murder" under the Penal Code. Section 299 supplies the statutory definition of culpable homicide, while Section 300 circumscribes those kinds of culpable homicide which amount to murder typically by reference to the presence of intention to cause death. For better appreciation, both the provisions are reproduced below –

> **299. Culpable homicide**.—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.
>
> **300. Murder**.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—
>
> *2ndly*.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—
>
> *3rdly*.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—
>
> *4thly*.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

15. The statutory language of Section 300 (of course, read with the exceptions), therefore, operates as the primary test for whether a culpable-homicide-type act is to be treated as murder; where that threshold is crossed the resulting offence attracts the consequences of murder. The jurisprudence emphasise that the limbs of Section 300 must be read with precision, for the difference between culpable homicide and murder is not merely semantic but carries momentous differences in substantive penal consequence.

16. A fulcral issue in applying Sections 300 and 301 is the correct understanding and application of mens rea i.e. the subjective mental element of intention and knowledge. Indian criminal law treats "intention" and "knowledge" as distinct though related modes of culpability: intention signifies a conscious purpose to bring about a particular consequence, whereas knowledge connotes awareness that a particular result is likely to follow from the act. The courts have long

recognised that these are not just abstract categories but factual inferences to be drawn from the totality of evidence in the conduct of the accused before, during and after the act, any overt threats or declarations, the weapon or means availed and its likely effect, the speed, direction and targeting of the assault, and other attendant circumstances. The doctrine of *dolus eventualis* i.e. 'the accused foreseeing and reconciling himself to the probable consequence' has been treated as subsumed within the concept of "knowledge" for the purposes of Section 300; where the accused appreciated that his act was so imminently dangerous that it must in all probability cause death, the requisite knowledge for murder may be inferred.

17. It is also necessary to observe the effect of statutory exceptions and recognised defences on the interplay between Sections 300 and 301. The exceptions to Section 300, for instance, sudden and grave provocation, acts done in good faith in the exercise of right of private defence, or by consent in some circumstances, operate to reduce what would otherwise be murder to culpable homicide not amounting to murder. These exceptions are factual defences and, insofar as they are established on the materials, they operate irrespective of whether the actual victim was the intended target or not; transfer of malice under Section 301 does not nullify an otherwise available exception. That said, the burden of proof for an exception lies where the law prescribes, and whether an exception applies depends on the temporal sequence of events and on whether there was time for the passion to cool, or whether the force used was proportionate and necessary. Hence, a careful, fact-sensitive evaluation of both mens rea and possible exceptions is indispensable before any determination that an offence amounts to murder under Section 302 by reason of Section 301.

18. The Hon'ble Apex Court, in the matter of ***Ashok Saxena vs. The State of Uttarakhand etc***., reported in ***2025 LiveLaw (SC) 163,*** in this regard has further clarified the position of law, as follows –

> **37.** From the perusal of the provision of Section 301 of the IPC, it becomes manifest that Section 301 embodies what the English authors describe as the doctrine of transfer of malice or the transmigration of motive. Under the Section, if A intends to kill B, but kills C whose death he neither intends nor knows himself to be likely to cause, the intention to kill C is by law attributed to him. If A aims his shot at B, but it misses B either because B moves out of the range of the shot or because the shot misses the mark and hits some other person C, whether within sight or out of sight, under Section 301, A is deemed to have hit C with the intention to kill him. What is to be noticed is that to invoke Section 301 of the IPC, A shall not have any intention to cause the death or the knowledge that he is likely to cause the death of C. This Section lays down that culpable homicide may be committed by causing death of a person whom the offender neither intended nor knew himself to be likely to kill. If the killing takes place in the course of doing an act which a person intends or knows to be likely to cause death, it must be treated as if the real intention of the killer had been actually carried out.

38. Having noticed salutary principles on which Section 301 of the IPC is based, it would be instructive to refer to law on the point as laid down by this Court. In *Gyanendra Kumar* v. *State of U.P.*, reported in AIR 1972 SC 502 the accused was deliberately trying to shoot at a fleeing man who had criticized his father in a School Committee Meeting, but unfortunately, his own maternal uncle came in between him and the intended victim and thus got killed. This Court has held that the act of the accused was nothing but murder under Section 302 read with Section 301 of the IPC.

39. In *Hari Shankar Sharma* v. *State of Mysore* reported in 1979 UJ 659 (SC), the intention of the accused was to kill prosecution witness No. 15 by firing a shot at him, but the accused shot the fire and killed the deceased. A plea was raised before this Court that the appellant would be guilty of offence under Section 304-A or 307 of the IPC. While negativing the said plea, this Court has held as under:

"This appeal under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act is directed against the judgment of the Mysore High Court convicting the appellant under Section 302 and sentencing him to imprisonment for life. Detailed facts of the case have been narrated in the judgment of the High Court and it is not necessary for us to reproduce the same here. The main allegation against the appellant was that he had shot the deceased Nazirunnissa and Killadher. So far as the facts are concerned both the Sessions Judge and the High Court have concurrently found that the case was fully proved. The Sessions Judge was of the opinion that the first appellant wanted to kill PW. 15, but as PW. 15 was not available at that time, Nazirunnissa come in between and she was shot, therefore the appellant could be guilty of an offence under Section 304(A) or under Section 307 IPC. This view of the learned Sessions Judge was legally erroneous as rightly pointed out by the High Court. Section 301 furnishes a complete answer to the view taken by the Sessions Judge. It is obvious that the appellant has the intention to kill PW.15 and if with this intention, he kills somebody also, he is undoubtedly guilty of committing murder. There is evidence of PWs. 13, 14 and 15 to show that A.1 fired that shot and killed the deceased. There is no escape from conclusion that the appellant committed an offence under Section 302 of the IPC. In these circumstances, the High Court was right in correcting the error of law committed by the Learned Sessions Mr. Udayarathnam, tried to bring the case of the appellant within the ambit of Section 304(a) or Section 307 but on the fact found it is not possible for us to accede to her contention. For the reasons given above, there is no merit in the appeal, which is accordingly, dismissed."

40. In *Jagpal Singh* v. *State of Punjab* reported in AIR 1991 SC 982: 1991 CrLJ 597, appellant Jagpal had shot at Surjit Kaur even though he aimed at only Kapur Singh. After applying doctrine of transfer of malice as contemplated under Section 301 of the IPC, this Court has held that Jagpal had made himself punishable under Section 302 of the IPC.

41. In *Abdul Ise Suleman* v. *State of Gujarat* reported in 1995 CrLJ 464, it was the case of the prosecution that the accused had fired freely towards the fleeing complainant party and the first shot had injured one person whereas second shot had resulted into death of ten year old son of the complainant. It was noticed that firing was resorted to in a commercial locality. The Sessions Court had acquitted the accused, but acquittal appeal was allowed by the High Court and the appellant was convicted under Section 302 read with Section 301 and other provisions of the IPC. It was submitted before this Court that the facts and circumstances of the case and

> evidence led by the prosecution did not establish that the appellant had any intention to commit murder of an innocent boy aged ten years with whom there was no question of having any enmity or any occasion to take a revenge. According to the learned Counsel of the appellant, even from the evidence, it was possible to hold that such death of the boy was absolutely unintentional and at best it could be held that such firing was a rash and negligent action on the part of the appellant. It was argued by the learned Counsel of the appellant that act committed by the appellant was not murder under Section 302 read with Section 301 of the IPC as held by the High Court, but was an offence under Section 304A of the IPC. Negativing the said contention, this Court has held that gun was not fired in the air just to frighten the complainant and his companions, but the gun was fired by the appellant towards fleeing person even when by the first shot one of such person was injured. According to this Court, such firing was resorted to in a locality where there were number of shops and provision of Section 301 of the IPC was clearly attracted in the facts and circumstances of the case. Ultimately, the conviction of the appellant under Section 302 read with Section 301 of the IPC was upheld by this Court.
>
> **42.** In view of the principles laid down by this Court in above quoted decisions, it is evident that even if it is held for the sake of argument that the appellant had no intention to cause death of the deceased, it will have to be held that doctrine of transfer of malice, as contemplated under Section 301, is applicable to the facts of the present case and that the appellant would be guilty under Section 302 of the IPC.

19. In view of the above decision, to sum up the doctrinal position for application to the present appeal, Section 301 ensures that an accused cannot evade the legal consequences of an intention or knowledge directed at one person simply because another person, by fortuitous circumstance, becomes the victim; but Section 301 does not itself create culpability out of nothing; it operates only when the precursory mental element i.e. intention or knowledge of a kind that would make the act murder under Section 300 is established.

20. How these principles operate in the context of Section 301 is plain in principle, apropos, where the accused, with an intention to kill or with knowledge that his act was likely to cause death in the sense used in Section 300, directs his act towards A but the act results in the death of B, the mens rea being the moving force of the offence is transferred to B and the offence retains the quality it would have had if A had died. Thus, the court's exercise is a single, integrated inquiry into (i) the mental element of the accused at the time of the act (did he intend death or know the act to be likely to cause death?), and (ii) the physical act and its consequences (was death caused and to whom?). If the answer to (i) satisfies the criteria of Section 300, the conclusion under Section 301 will be that the offender is guilty of murder just as he would have been had the intended victim died. Conversely, if the mens rea established is of a lesser grade, for example negligence, rashness or a lack of knowledge that the act was likely to cause death, then Section 301 cannot be invoked to upgrade the offence to murder. The evidence must, therefore, be

scrutinised to determine not only who was killed, but what the accused intended or knew at the moment he set his hand to the act.

21. We find it pertinent to clarify here the distinction between an accidental death and a death caused by transfer of malice under Section 301 IPC is of considerable significance. In cases of accidental death, the act of the accused lacks the essential mens rea, as in there is no intention to cause death, nor knowledge that death is a likely consequence. The fatality occurs as an unintended result of negligence, rashness, or sheer chance, and liability, if any, is confined to the lesser offence of causing death by negligence under Section 304A IPC. From the perspective of the victim, an accidental death is one which occurs without the intervention of intention or method. In such a case, the victim is simply at the wrong place at the wrong time, and the fatality is the result of negligence, rashness, or an unforeseen mishap. Such deaths are generally regarded as "accidental" in law and most commonly arise in the context of insurance claims, motor vehicle compensation proceedings, or statutory reliefs, where the focus is on compensation rather than criminal culpability.

In contrast, death by transfer of malice under Section 301 IPC is conceptually distinct. Here, the act is committed with the requisite homicidal mens rea, an intention to cause death, or to cause such bodily injury as is sufficient in the ordinary course of nature to cause death, or at the very least, knowledge that death is a likely consequence. If, by fortuitous circumstance, the actual victim turns out to be someone other than the intended target, the law "transfers" the culpability to the person killed, treating the homicide as if it were committed against the intended victim. Thus, while accidental death is marked by the absence of mens rea and is largely addressed in compensatory regimes, death by transfer of malice is rooted in intention or knowledge and carries the full penal consequences of murder under Section 302 IPC where the requirements of Section 300 are satisfied.

22. Coming to the culpability of the Appellant in the present case, the central issue is whether his conduct falls within the definition of "murder" as set out in Section 300 of the Indian Penal Code. On a careful scrutiny of the materials, we are persuaded to hold that the act of the Appellant is squarely covered under the third clause of Section 300 i.e. *3rdly*. The clause provides that culpable homicide is murder *if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death*. The emphasis here is on the intention to cause a particular bodily injury coupled with the sufficiency of that injury to cause death in the ordinary course of nature.

23. In the present case, it is established by cogent evidence that the Appellant, following a quarrel with P.W.15 whom he suspected of having an illicit relationship with his wife (P.W.11) threatened to crush him under the wheels of his truck. About ten minutes thereafter, he returned, driving the truck at a very high speed, swerved it towards the group of people standing in front of the shop of P.W.1, and in the

process, ran over four individuals, causing their instantaneous death. The evidence of P.W.15, supported by the hostile but partial admissions of other witnesses, establishes that the act was not an accident but a deliberate manoeuvre aimed at inflicting bodily harm of the most grievous kind, namely running heavy vehicle wheels over human bodies. It requires no elaboration to state that such an act, by its very nature, is sufficient in the ordinary course to cause death. Thus, the requirement of Clause *3rdly* is satisfied that the Appellant intended the bodily act, and the bodily injury caused was such as would inevitably lead to death.

Learned counsel for the Appellant, Mr. Panda, had argued that even if the Appellant harboured animosity towards P.W.15, the death of the other four persons was unintended, and at best the case would fall under Section 301 IPC, making the offence one of culpable homicide not amounting to murder. He emphasised that P.W.15 himself did not sustain any serious injury and that the hostile witnesses did not attribute rash or intentional conduct to the Appellant. On the other hand, learned counsel for the State, Mr. Mohanty, contended that the act of the Appellant clearly reveals an intention to cause bodily injury of such severity that death was a certain consequence. He highlighted that the accused had threatened P.W.15 in precision with the mode of assault verbatim and had thereafter executed the said threat by driving the vehicle into the crowd. According to him, the absence of injury on P.W.15 is inconsequential, for Section 301 ensures that the liability for murder is transferred to the actual victims, and once the mental element is shown, the identity of the person killed is immaterial.

24. Having considered the rival submissions, and the proper application of the relevant provisions, we are unable to accept the contention of the defence that the offence stands reduced to mere culpable homicide not amounting to murder. The Appellant's act of driving a heavy truck at high speed directly into a group of people after having issued a threat to crush P.W.15 under its wheels evinces an unmistakable intention to cause such bodily injuries sufficient in the ordinary course of nature to cause death. That the intended victim escaped is of no avail to the Appellant, for Section 301 makes him equally culpable for the deaths of the others who actually sustained the injuries. Therefore, the Appellant's conduct is covered within Clause *3rdly* of Section 300, and the offence made out against him is murder punishable under Section 302 IPC.

25. With regard to the conviction of the Appellant under Section 307 IPC, learned counsel for the Appellant, argued that the essential ingredient of an "attempt to murder" is absent, inasmuch as P.W.15, the alleged target, escaped without sustaining any serious injury, and none of the injured witnesses attributed their injuries to an attempt directed against him. It was also contended that there is no medical evidence to support the claim that P.W.15 suffered any hurt. On the other hand, learned counsel for the State contended that the act of the Appellant in driving a heavy vehicle directly into a group of persons after threatening to crush P.W.15

under its wheels constitutes a clear attempt on his life, and the survival of the intended victim cannot absolve the Appellant of liability under Section 307.

The law under Section 307 IPC is well settled, that it is not the injury, but the intention or knowledge coupled with the overt act which determines liability under the circumstances of the case. Once the accused, armed with the requisite mens rea, directs his act towards the victim in a manner sufficient to cause death, the attempt is complete regardless of whether the intended victim survives unhurt. Herein, the prior threat, the deliberate act of driving the truck into the crowd where P.W.15 was standing, and the fatal injuries caused to others while executing that modus, leave no doubt that there was an attempt to cause the death of P.W.15. The absence of medical corroboration of injury on him is of no consequence. Moreover, P.W.8 is an injured witnesses who implicated the Appellant driving a mini truck from Salipur side in breakneck speed, not only crushed the deceased persons under the wheels of the truck but also caused injuries to him and others. The doctor (P.W.17) treated P.W.8 in the Accident Unit, Dept. of Orothopaedic of SCBMCH, Cuttack where he was admitted on 30.03.1995 and discharged on 02.05.1995 as per the Bed Head ticket (Ext.10). We, therefore hold that the conviction of the Appellant under Section 307 IPC is legally tenable.

26. Furthermore, Mr. Panda argued that this circumstance seriously undermines the prosecution case, as the hostile witnesses did not attribute any overt act to the Appellant or support the presence of P.W.15 at the scene. Mr. Mohanty, for the State, however, argued that hostile testimony does not efface itself from the record and that the Court is entitled to rely upon such parts of the testimony as find corroboration in other reliable evidence.

It is apparent that a number of eyewitnesses, including P.Ws.2, 3, 4, 6, 8, 9, and 10, were declared hostile. However, among the hostile witnesses, there are consistent admissions as to the presence of the Mini Truck at the spot, the deaths caused by its running over the victims, and the presence of the accused at the scene. These admissions, coupled with the testimony of P.W.15, the medical evidence and the evidence of MVI, provide sufficient corroboration to sustain the prosecution case. Therefore, the hostile nature of certain witnesses does not detract from the overall reliability of the prosecution evidence.

27. As regards the argument advanced on behalf of the Appellant that mechanical failure of the vehicle could not be ruled out. The learned counsel for the Appellant argued that in the absence of seizure of tyre marks or conclusive mechanical inspection, the prosecution case of intentional homicidal use of the truck is doubtful.

Herein, the mere suggestion that mechanical failure “could not be ruled out” does not, by itself, displace the positive evidence of deliberate conduct, particularly in light of the eyewitness account and the preceding threat issued by the Appellant. The defence of mechanical failure is speculative, unsupported by material evidence, and stands contradicted by the circumstances and ocular testimony.

P.W.18, the M.V.I. has specifically stated that there was no mechanical failure to the vehicle contributing to the accident. The brake system of the vehicle was intact at the time of examination. The bulbs of the Head lights of the vehicle were damaged due to collusion. The hand brake and steering of the vehicle were in order. Thus, the failure to apply brakes by the Appellant, who was a driver by profession and driving the truck towards the extreme left of the road to the betel shop of P.W.1 and crushing so many persons under the wheels speaks a volume against his conduct, intention and knowledge.

28. In view of the foregoing discussion, we are of the considered opinion that the conviction of the Appellant under Section 302 IPC is well-founded, as his act falls squarely within Clause *3rdly* of Section 300 IPC and stands further attracted by the operation of Section 301 IPC. The deaths of the four victims were the direct result of the deliberate and intentional act of the Appellant, and the finding of guilt recorded by the learned trial court under Section 302 IPC warrants no interference.

We also find that the conviction of the Appellant under Section 307 IPC is legally sustainable, inasmuch as his overt act, preceded by a clear threat to P.W.15, constituted an attempt to cause his death, though the intended-victim escaped which also caused injuries to P.W.8 for which he was treated as an indoor patient for more than a month. However, since the Appellant has already been sentenced to undergo imprisonment for life under Section 302 IPC, no separate sentence under Section 307 IPC is called for and the same has been rightly not imposed by the learned trial court.

29. As a result, the conviction and sentence of the Appellant passed by the learned 2nd Additional Sessions Judge, Cuttack in S.T. Case No.78 of 1996 vide judgment and order dated 25.11.1998 under Section 302 IPC are hereby confirmed, along with the conviction under Section 307 IPC, without separate sentence.

30. The Appellant, being on bail, is directed to surrender before the learned trial court within a period of four weeks, to serve out the remainder of his sentence, failing which the learned trial court shall take necessary steps to secure his custody in accordance with law.

Accordingly, the Appeal is hereby dismissed.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter Appeal is dismissed.
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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2025 (III) ILR-CUT-480

LALA NALINI KUMAR RAY
(DEAD, HIS LEGAL HEIRS) & ORS.
V.
SHRI JAGANNATH MAHAPRABHU
BIJE-SRIKHETRA, PURI & ANR.

[IA NO. 109 OF 2024]
(ARISING OUT OF RVWPET NO. 176 OF 2008)

10 SEPTEMBER 2025

[K.R. MOHAPATRA, J. & MISS SAVITRI RATHO, J.]

Issues for Consideration

1. Whether an Interim application for implementation of direction/ order passed in disposed of Review petition or Writ petition is maintainable.

2. Whether applicants are entitled to the benefit passed in Review petition pursuant to a *lis* pendense development vide resolution dated 13th July 2017.

Headnotes

(A) CONSTITUTION OF INDIA, 1950 – Article 226 – The Applicants filed an Interim Application seeking a direction to the Administrator of the managing committee of Shri Jagannath Mahaprabhu Bije-Srikhetra, at Puri to execute the sale deed in favour of the applicants pursuant to an order passed in Review Petition – After disposal/rejection of intervention petition filed in Review petition, Special leave petition was filed before the Hon'ble Supreme Court – The Hon'ble Supreme Court vide Order dated 28/10/2016 directed to maintain status quo in respect of the case land – Special Leave Petitions were dismissed as withdrawn – During pendency of the Special Leave Petition, one resolution was passed in consonance with direction of the Hon'ble Supreme Court in other matter – Pursuant to the order passed by the Hon'ble Supreme Court the temple Administration took a decision that, the case land being on the side of the Badadanda could not be handed over to any private individual – Whether an Interim Application for implementation of direction/order passed in disposed of Review Petition or Writ Petition is maintainable.

Held: No – In view of the subsequent developments after disposal of the Review Petition, the ratio in the case of K.A. Ansari (supra) is not applicable to the case at hand, as subsequent significant developments have taken place in the interest of the pilgrims in particular and public at large – In the light of the resolution passed by the Managing Committee of the Temple

Administration (Annexure-R/1), the relief sought for in the IA is no more available to be considered for simple implementation of the order passed in Review Petition and subsequent Misc. Case No.205 of 2016. As such, the IA is not maintainable in the eye of law. (Para 8.2)

The writ jurisdiction of the High Court under Article 226 of the Constitution is wide in scope – It is also well-established by umpteen number of judicial pronouncements that the High Courts may in exercise of this power, issue not only final writs but also interim directions to safeguard rights during pendency of the proceedings – But once a writ petition is disposed of, the Court is deemed to be *functus officio* and an interim application is normally not entertained, unless it is for correction of arithmetical or clerical errors and occasionally for clarification of the judgment – An interim application may be entertained if it has been filed for pursuing and getting implemented the relief granted in the writ petition – The same principle would apply in a review petition – But the scope of entertaining an interim application in a disposed of review petition, is further narrowed as the matter has already been tested and decided by the Court twice. (Para 13)

(B) CONSTITUTION OF INDIA, 1950 – Article 226 – During pendency of special leave petition before the Hon'ble Supreme Court, the managing Committee of Shri Jagannath Temple issued a resolution dated 13th July, 2017 – After dismissal of SLP, the applicants filed the present Interim Application seeking a direction to execute the sale deed in their favour pursuant to the order passed in the Review Petition – The applicant never challenged resolution dated 13th July 2017 – Whether applicants are entitled to the benefit passed in Review petition in view of the *lis* pendense development and resolution dated 13th July 2017.

Held: No – Fact remains, situation is not the same at present, which was prevailing on the date of disposal of the Review Petition, i.e., 18th June, 2016 or subsequent orders dated 5th August, 2016 passed in Misc. Case No.205 of 2016 – A resolution dated 13th July, 2017 has been passed by the Managing Committee of the Temple Administration for construction of a guest house over the case land – The Applicants being aware of the same did not prefer to challenge the same – They have also not raised any objection at the time of disposal of SLPs(C) by Hon'ble Supreme Court taking note of the aforesaid resolution – Thus, in view of the aforesaid facts and circumstances, we are not inclined to entertain the IA. (Para 9)

The Uniform Policy issued by the Law Department, Government of Odisha for alienation of immovable properties of Shri Jagannath Mahaprabhu Bije- Srikhetra at Puri (in short "Uniform Policy"), had been framed keeping the interest of the deity-Lord Jagannath as well as the

persons in long possession of such land – Orders for sale of the case land had been passed pursuant to the said policy – The Uniform Policy does not give any absolute right to a person to possess or purchase any land belonging to Lord Jagannath – The interest of Lord Jagannath has to be paramount – Any alienation has to be in the interest of Lord Jagannath, the deity – In the present case, during pendency of the SLPs before the Supreme Court, the resolution has been passed by the competent authority of the temple management on 13.07.2017 – Such a resolution is in the interest of Lord Jagannath. (Para 28)

Citations Reference

K.A. Ansari and Another Vs. Indian Airlines Limited, **(2009) 2 SCC 164;** Mrinalini Padhi Vs. Union of India and Others; **AIR OnLine 2019 SC 1353;** Shri Jagannath Temple Managing Committee Vs. Sidhamath (Civil Appeal No.7729 of 2009), **(2015) 16 SCC 542;** Jaipur Vidyut Vitran Nigam Ltd., and Others vs Adani Power Rajasthan Ltd. and Another, **2024 SCC OnLine SC 313;** Ajay Kumar Jain vs The State of Uttar Pradesh and Another, **2024 INSC 958 – referred to.**

List of Acts

Constitution of India, 1950.

Keywords

Perpetual minor; Interim application against disposed of case; *Functus officio;* Deity property; *Status Quo;*

Arising From

Arising out of RVWPET No.176 of 2008 disposed of on18th June, 2016.

Appearances for Parties

For Applicants : Miss Deepali Mahapatra

For Opp. Parties : Mr. Ananda Chandra Swain, (O.P No.1)
Mr. Manmaya Ku. Dash, A.S.C. (O.P. No. 2)

Judgment/Order

Judgment

K.R. MOHAPATRA, J.

1. This matter is taken up through hybrid mode.

2. This Interlocutory Application has been filed by the Applicants [Opposite Party Nos.1(a) and 1(b) in RVWPET No.176 of 2008 disposed of on 28th June, 2016] with a prayer to direct the Administrator of the Managing Committee of Shri Jagannath Mahaprabhu Bije-Srikhetra at Puri (for brevity 'Temple Administration') to execute the sale deed in favour of the Applicants pursuant to order dated 28th

June, 2016 and subsequent order dated 5th August, 2016 passed in the said Review Petition being RVWPET No.176 of 2008.

3. Relevant facts in brevity necessary for adjudication of the IA are stated hereunder:-

3.1 One Lala Nalini Kumar Ray, the predecessor of the Applicants herein had filed OJC No.1483 of 2000 with a prayer to direct the Temple Administration and Chairman, Puri Municipality (Opposite Party Nos.2 and 3 respectively therein) to settle the land pertaining to Sabik Plot No.228 under Khata No.75 in mouza Talabania (Kundheibenta Sahi), Unit-28, corresponding to Hal Plot Nos.133 and 133/1538 to an extent of Ac.0.120 decimal under Hal Khata No.41 (Ka) and 41 (Kha) respectively (for brevity 'the case land') in his favour within a stipulated period by accepting the proportionate amount determined by the competent authorities pursuant to the Uniform Policy issued by the Law Department, Government of Odisha for alienation of immovable properties of Shri Jagannath Mahaprabhu Bije-Srikhetra at Puri. During pendency of the writ petition, the Petitioner died and the present Applicants were substituted in his place vide order No.7 dated 5th July, 2006. The Writ Petition was disposed of vide order dated 6th August, 2008 with the following observation and direction:-

> *"Heard learned counsel for the parties.*
>
> *Learned counsel for the State produces the notification giving details of the market value for sale of land within Puri town including the land involved in this writ petition.*
>
> *Learned counsel for the Temple Administration submits that if the petitioner is agreeable to take the property in the value fixed by the Law Department, Government of Orissa, they have no objection to sell the same.*
>
> *Mr. R.N.Acharya, learned counsel for the State also states that they do not have any objection for the same.*
>
> *Mr. R.K.Mohanty, learned counsel for the petitioners submits that the petitioners are ready and willing to pay the market value as fixed by the Government in Law Department vide Notification No.12430 dated 08.08.2005 and so far as Mouza-Kundheibenta Sahi is concerned, where the land involved in this case is situated, the rate fixed by the Government is Rs.4,62,600/- per acre and the property involved in this case is to the extent of Ac.0.120 decs. in Mouza- Kundheibenta Sahi, Khata No.75, Plot No.228.*
>
> *Accordingly, if the petitioners deposit proportionate amount for extent of land under their possession, i.e., Ac.0.120 decs. as per the market value of the property, within a period of one month from today before the Temple Administration, the same shall be accepted and a registered sale deed shall be executed in favour of the petitioners within a period of one month thereafter. Accordingly, all the records shall be corrected by recording the land in favour of the petitioners within Sthitiban status by the Tahasildar, Puri.*
>
> *This order is passed on the consent of the learned counsel for both the parties. It goes without saying that the stamp duty will be paid by the petitioners.*
>
> *The writ petition is accordingly disposed of."*

3.2 The said order though passed on consent, was sought to be reviewed by the Temple Administration in RVWPET No.176 of 2008. The said Review Petition was disposed of on 28th June, 2016 with the following order.

> *"Heard.*
>
> *Writ Petition bearing W.P.(C) No.1483 of 2000 out of which the present Review Petition arose was disposed of on 06.08.2008, wherein this Court had directed that in case the petitioners deposit the proportionate amount for the extent of land under their possession, i.e., Ac.0.120 decimal as per the market value of the property within a period of one month from the date of the order of disposal of the writ petition before the Temple Administration, the same shall be accepted and a registered sale deed shall be executed in favour of the petitioners within a period of one month thereafter. Accordingly, all the records shall be corrected by recording the land in favour of the petitioners with Stitiban status by the Tahasildar, Puri.*
>
> *The above order was passed on consent of the learned counsel for both the parties. However, opposite party No.2 has filed the Review Petition taking a stand that the value of the land is higher than the rate reflected in order dated 06.08.2008 in view of proceedings of the Land Committee (State Level) held on 12.07.2005 for approval of valuation of sale of land of Shree Jagannath Temple, Puri (communicated by the Deputy Secretary of Law Department, vide letter No.12430 dated 08.08.2005 addressed to the Chief Administrator, Shree Jagannath Temple Administration, Puri) with regard to sale of land relating to Daitapada Sahi and Kundhei Benta Sahi, Puri town, which has fixed Rs.53,00,000/- per acre instead of price fixed at Rs.4,62,600/- per acre.*
>
> *However, the opposite parties 1(a) and 1(b) are ready and willing to pay the said higher price as per the affidavit dated 03.12.2015 during pendency of the Review Petition.*
>
> *In view of such affidavit, and the fact that the review petitioners are ready and willing to alienate the property on the said price, we dispose of the Review Petition modifying the earlier order dated 06.08.2008 passed in O.J.C. No.1483 of 2000 to the extent that if the petitioners deposit Rs.6,36,000/- @ Rs.53,00,000/- per acre as per the aforesaid notification within a period of six weeks, the sale deed shall be executed by the Temple Administration as directed earlier."*

3.3 After disposal of the Review Petition, the Applicants sought to deposit the amount by way of Bank Draft, but the Temple Administration did not accept the same for which the Applicants had filed Misc. Case No.205 of 2016 for a direction to the Temple Administration to accept the amount sought to be deposited by the Applicants. The said Misc. Case was disposed of vide order dated 5th August, 2016 with a direction to the Temple Administration to accept the bank draft of Opposite Party No.1(a) and 1(b) (Applicants herein) on or before 10th August, 2016. It was also directed *inter alia* that in the event the Applicants deposit the bank draft, Temple Administration will proceed with the same as directed by order dated 28th June, 2016 and to complete the process and execute the sale deed by end of October, 2016. Subsequently, the Temple Administration filed Misc. Case No.288 of 2016 with a prayer to modify the time stipulated vide order dated 5th August, 2016 passed in Misc. Case No. 205 of 2016 and to grant extension of time for six months to comply with order dated 5th August, 2016.

3.4 In the interregnum, one Ms. Bhabani Panda alias Dash had also filed Misc. Case No.121 of 2009 for intervention in this Review Petition. The said intervention petition was rejected vide order dated 28th June, 2016. Said Bhabani Panda alias Dash filed Special Leave to Appeal (C) Nos.33066-33068 of 2016 challenging the order dated 6th August, 2008 passed in OJC No.1483 of 2000 and order dated 28th June, 2016 passed in Misc. Case No.121 of 2009 (arising out of RVWPET No.176 of 2008). She also filed interim applications bearing CC No.20178-20180 of 2016 therein. Considering the interim prayer, Hon'ble Supreme Court, vide order dated 28th October, 2016, directed to maintain status quo in respect of the case land. Said Special Leave Petitions were finally dismissed as withdrawn on 12th February 2024 with the following order.

> *"In view of the statement made by learned counsel for the petitioner that nothing survives for consideration in the Special Leave Petition in view the subsequent development, especially, the Resolution dated 13.07.2017, the Special Leave Petitions are dismissed as having become infructuous."*

Thus, after disposal of the aforesaid Special Leave Petitions, the Applicants filed the present IA before this Court for implementation of order dated 6th August, 2008 (passed in OJC No.1483 of 2000) and orders dated 28th June, 2016 as well as 5th August, 2016 (in RVWPET No.176 of 2008) indicating therein that the Applicants had already deposited the bank draft as per order dated 5th August, 2016 passed in Misc. Case No.205 of 2016, which is lying with the Temple Administration.

4. Miss Mahapatra, learned counsel for the Applicants submitted that an interim application is maintainable for implementation of orders passed by this Court. In support of her submissions, she relied upon the ratio in the case of ***K.A. Ansari and another Vs. Indian Airlines Limited***; reported in (2009) 2 SCC 164, relevant paragraphs of which are quoted below.

> *"20. It is manifest that in direction No. (ii), the learned Single Judge had clearly directed that the writ petitioners would be entitled `to be posted to a post in equivalent scale held by them when the letter dated 23rd April, 2003 was issued.' The respondent - Indian Airlines was obliged to obey and implement the said direction. If they had any doubt or if the order was not clear; it was always open to them to approach the court for clarification of the said order. Without challenging the said direction or seeking clarification, Indian Airlines could not circumvent the same on any ground whatsoever. Difficulty in implementation of an order passed by the Court, howsoever, grave its effect may be, is no answer for its non- implementation.*
>
> *21. In our opinion, in the miscellaneous application, no fresh relief, on the basis of a new cause of action, had been sought. It was an application filed for pursuing and getting implemented the relief granted in the writ petition, namely, placement in appropriate grade in which he was placed at the time when letter dated 23rd April, 2003, was issued. This was precisely done by the learned Single Judge vide his order dated 4th March, 2005.*
>
> *22. Without examining those factual aspects of the matter, in our judgment, the Division Bench was in error in holding that after the disposal of the writ petitions, miscellaneous*

application was not maintainable and the only remedy available to the appellant was to approach the authorities and if his interpretation was not acceptable to them, then he could file a fresh writ petition.

23. For the foregoing reasons, we allow the appeal and set aside the order of the Appellate Bench and restore the order passed by the learned Single Judge on 4th March, 2005, directing the respondent to implement the main order, dated 11th October, 2004. In the circumstances of the case, the parties shall bear their own costs."

She, therefore, submitted that the IA being for a direction to implement the order passed earlier either in the Writ Petition or in the Review Petition, no fresh relief being claimed in the present I.A., no new cause of action arises for adjudication of the same. As such, the IA is maintainable

5. Miss Mahapatra, learned counsel for the Applicants arguing on merit of the I.A. submitted that the issue before the Hon'ble Supreme Court was to set aside the final orders passed both in the Writ Petition as well as Review Petition together with a prayer to set aside the orders passed in Misc. Case rejecting the prayer for intervention. The SLPs(C) were dismissed as infructuous. Thus, upon dismissal of the SLPs(C) filed by said Bhabani Panda alias Dash before the Hon'ble Supreme Court as infructuous, the order dated 28th June, 2016 passed in the Review Petition got revived, as no other proceeding against the said order has been filed or pending. Pursuant to the direction in RVWPET and interim applications filed therein by the Applicants, the Applicants have also deposited the amount with the Temple Administration through bank draft. Thus, the Temple Administration is under legal obligation to execute the sale deed as directed by this Court. She, therefore, submits that the Temple Administration should not make any further delay in executing the sale deed in respect of the case land.

6. Mr. Swain, learned counsel appearing for the Temple Administration objecting to the contentions raised by Miss Mahapatra, learned counsel for the Applicants, submitted that the instant interim application is not maintainable on fact and law. Hence, the same deserves dismissal.

6.1 It was submitted that the Hon'ble Supreme Court, while recording an order of dismissal of the SLPs(C) as infructuous, took note of the resolution dated 13th July, 2017. By virtue of said resolution, the Temple Administration took a decision to construct a guest house for pilgrims. Said resolution was passed in consonance with direction of the Hon'ble Supreme Court in ***Mrinalini Padhi Vs. Union of India and others;*** AIR OnLine 2019 SC 1353 keeping in mind the difficulty faced by the visitors, pilgrims, exploitative practices deficiencies in management, maintenance of hygiene, proper utilization of offerings and protection of assets etc. issued certain guidelines taking into consideration suggestions given by learned District Judge, Puri and the Amicus Curiae. Relevant portion of the judgement in ***Mrinalini Padhi*** **(supra)** is quoted below:-

"20. The issue of difficulties faced by the visitors, exploitative practices, deficiencies in the management, maintenance of hygiene, proper utilization of offerings and protection

> *of assets may require consideration with regard to all Shrines throughout the India, irrespective of religion practiced in such shrines. It cannot be disputed that this aspect is covered by List III Item 28 of the Seventh Schedule to the Constitution of India and there is need to look into this aspect by the Central Government, apart from State Governments."*

Thus, an administrative decision was taken to construct a guest house to provide accommodation to the pilgrims at a subsidized rate. In view of the developments, Petitioner before the Hon'ble Supreme Court, namely, Ms. Bhabani Panda alias Dash withdrew the SLPs(C) as infructuous. Applicants who were also parties to the said SLPs(C) and were contesting, did not raise any objection to the same. Thus, in view of subsequent developments, the direction in Review Petition has become otiose and is no more available to be implemented. Further, the amount stated to have been deposited by the Applicants pursuant to the direction of this Hon'ble Court was never accepted or encashed by the Temple Administration. In view of the interim order of *status quo* passed by Hon'ble Supreme Court, the Temple Administration could not have accepted the bank draft so deposited and acted upon it. The ratio in the case of ***K.A. Ansari*** (supra) has no application to the case at hand. In the instant case, subsequent developments have taken place after the order dated 28th June, 2016 passed in RVWPET No.176 of 2008 and subsequent order dated 5th August, 2016 passed in Misc. Case No.205 of 2016. He, therefore, prays for dismissal of the IA.

7. Mr. Dash, learned ASC supported the stand taken by Mr. Swain, learned counsel appearing for the Temple Administration.

8. Heard learned counsel for the parties; perused the materials on record as well as the case laws cited. Considering the rival contentions of the parties, following issues are cropped up for consideration.

> i) Whether the IA in the present form is maintainable in a disposed of Review Petition?
>
> ii) Whether the Applicants are entitled to any relief in view of withdrawal of the SLPs(C) as infructuous?

8.1 ***Issue No. (i)-Maintainability of the IA***

Admittedly, the Review Petition, i.e., RVWPET No.176 of 2006 filed by the Temple Administration was disposed of on 28th June, 2016 with certain direction as quoted above modifying the order dated 6th August, 2008 passed on consent in OJC No.1483 of 2000. Subsequently, entertaining an interim application (Misc. Case No.205 of 2016) filed by the present Applicants to accept the bank draft and to execute the sale deed in their favour, this Court, vide order dated 5th August, 2016, directed as under:-

> *"Considering the same, we direct the review petitioner to accept the draft of the opposite parties 1 (a) and 1(b) and for the convenience we fix the date for filing of such draft along with a forwarding application on or before 10.08.2016. In such event, the*

review petitioner will proceed with the same as directed by the order dated 28.06.2016, complete the process and execute the sale deed by end of October, 2016.

The Misc. Case is accordingly disposed of.

Issue urgent certified copy."

When the matter stood thus, the Hon'ble Supreme Court entertaining SLP(C) Nos.33066-33068 of 2016 filed by said Bhabani Panda alias Dash, passed an interim order of *status quo* on 28th October, 2016. As such, the matter could not proceed thereafter. There is also no material on record to show that the bank draft stated to have been submitted by the Applicants was ever encashed.

8.2 On perusal of the resolution dated 13th July, 2017 (Annexure-R/1 to the objection filed by the Temple Administration), it reveals that pursuant to the order passed by the Hon'ble Supreme Court in ***Shri Jagannath Temple Managing Committee Vs. Sidhamath*** (Civil Appeal No.7729 of 2009); *(2015) 16 SCC 542*, the Temple Administration took a decision that the case land being on the side of the Badadanda could not be handed over to any private individual. Further, a decision was taken in the interest of the public and pilgrims to construct a guest house for pilgrims to provide accommodation at subsidized rate instead of alienating the same to any private individual. If further appears that in view of the interim order of *status quo* passed by this Court, the Temple Administration filed Misc. Case No.288 of 2016 for extension of time to comply with the order passed in the Review Petition and subsequent Misc. Case No.205 of 2016. After disposal of SLP(C) Nos.33066-33068 of 2016 filed by said Ms. Bhabani Panda, a Bhakta Niwas (guest house) for pilgrims has already been constructed over the case land. In view of the subsequent developments after disposal of the Review Petition, the ratio in the case of ***K.A. Ansari*** (supra) is not applicable to the case at hand, as subsequent significant developments have taken place in the interest of the pilgrims in particular and public at large. In the light of the resolution passed by the Managing Committee of the Temple Administration (Annexure-R/1), the relief sought for in the IA is no more available to be considered for simple implementation of the order passed in Review Petition and subsequent Misc. Case No.205 of 2016. As such, the IA is not maintainable in the eye of law.

8.3 ***Issue No.2-Entitlment of Applicants pursuant to disposal of SLPs(C);***

Hon'ble Supreme Court, while dismissing the SLP(C) Nos. 33066-33068 of 2016, took note of the resolution dated 13th July, 2017. In view of the resolution of the Managing Committee of the Temple Administration, said Ms. Bhabani Panda did not want to proceed with the said SLPs(C) and prayed for withdrawal of the same. Hon'ble Supreme Court accepting such prayer, vide order dated 12th February, 2024, dismissed the SLPs(C) as infructuous by accepting the said resolution dated 13th July, 2017 of the Managing Committee of Sri Jagannath Temple. The Applicants who were contesting the said SLPs(C), did not raise any objection to the same. In view of the subsequent developments more particularly the resolution of the Managing Committee of the Temple Administration dated 13th July, 2017, which

is in the public interest, an individual interest of the Petitioners has become redundant. Admittedly, the resolution dated 13th July, 2017 has not been challenged by the Applicants. Further, it is submitted by Mr. Swain, learned counsel of the Temple Administration that after dismissal of the SLPs(C), a guest house has already been constructed over the case land to provide shelter to the pilgrims at a subsidized rate. It is of course disputed by Miss Mahapatra, learned counsel for the Applicants submitting that Bhakta Niwas has not been constructed over the case land. The same being a disputed question of fact we are not inclined to delve into the same in the present IA, which is filed in a disposed of Review Petition.

9. Fact remains, situation is not the same at present, which was prevailing on the date of disposal of the Review Petition, i.e., 18th June, 2016 or subsequent orders dated 5th August, 2016 passed in Misc. Case No.205 of 2016. A resolution dated 13th July, 2017 has been passed by the Managing Committee of the Temple Administration for construction of a guest house over the case land. The Applicants being aware of the same did not prefer to challenge the same. They have also not raised any objection at the time of disposal of SLPs(C) by Hon'ble Supreme Court taking note of the aforesaid resolution. Thus, in view of the aforesaid facts and circumstances, we are not inclined to entertain the IA.

10. Accordingly, the IA being not maintainable so also being devoid of any merit, stands dismissed.

SAVITRI RATHO, J.

11. I have carefully gone through the well-reasoned judgment of my esteemed brother Justice K.R.Mohapatra and whole heartedly agree with it. I wish to supplement the judgment on account of two settled positions of law :-

> i) An application for modification and clarification of the order of disposal in a writ petition lies only in rare cases.
>
> ii) The deity is a perpetual minor, for which its interests have to be safeguarded by the State as well as the Courts.

12. The relevant facts have been stated by my esteemed brother and hence are not necessary to be reiterated except where I thought it was absolutely necessary.

13. The writ jurisdiction of the High Court under Article 226 of the Constitution is wide in scope. It is also well-established by umpteen number of judicial pronouncements that the High Courts may in exercise of this power, issue not only final writs but also interim directions to safeguard rights during pendency of the proceedings. But once a writ petition is disposed of, the Court is deemed to be *functus officio* and an interim application is normally not entertained, unless it is for correction of arithmetical or clerical errors and occasionally for clarification of the judgment. An interim application may be entertained if it has been filed for pursuing and getting implemented the relief granted in the writ petition. The same principle would apply in a review petition. But the scope of entertaining an interim

application in a disposed of review petition, is further narrowed as the matter has already been tested and decided by the Court twice.

14. The operative portion of the decision in ***K.A. Ansari*** (supra), relied on by the learned counsel for the petitioners in this interim application, has already been quoted by my learned brother, but after going through the judgment, I feel it is imperative to extract paragraph 17 of the judgment, which is as follows:-

> *"17. It is trite that a party is not entitled to seek a review of a judgment merely for the purpose of rehearing and a fresh decision of the case. It needs little emphasis that when the proceedings stand terminated by final disposal of the writ petition, it is not open to the Court to reopen the proceedings by means of miscellaneous application in respect of a matter which provides fresh cause of action. If this principle is not followed, there would be confusion and chaos and the finality of proceedings would cease to have any meaning. (**See: State of Uttar Pradesh Vs. Brahm Datt Sharma & Anr.1(1987) 2 SCC 179**). At the same time, there is no prohibition on a party applying for clarification, if the order is not clear and the party against whom it has been made is trying to take advantage because the order is couched in ambiguous or equivocal words."*

15. In the case of ***Jaipur Vidyut Vitran Nigam Ltd., and others vs Adani Power Rajasthan Ltd. and Another; 2024 SCC OnLine SC 313***, where the Supreme Court was dealing with an interim application filed after disposal of the Special Leave Petition, it has been observed as follows: -

> *"We felt it necessary to examine the question about maintainability of the present application as we are of the view that it was necessary to spell out the position of law as to when such post-disposal miscellaneous applications can be entertained after a matter is disposed of. This Court has become functus officio and does not retain jurisdiction to entertain an application after the appeal was disposed of by the judgment of a three-Judge Bench of this Court on 31.08.2020 through a course beyond that specified in the statute. This is not an application for correcting any clerical or arithmetical error. Neither it is an application for extension of time. A post disposal application for modification and clarification of the order of disposal shall lie only in rare cases, where the order passed by this Court is executory in nature and the directions of the Court may become impossible to be implemented because of subsequent events or developments.*
>
> *The factual background of this Application does not fit into that description."*

16. Recently, in the case of ***Ajay Kumar Jain vs The State of Uttar Pradesh and another; 2024 INSC 958***, relying on the decision in ***Jaipur Vidyut Vitran Nigam Ltd*** (supra), the Supreme Court has held as follows: -

> *"17. Thus, this Court made it abundantly clear that a miscellaneous application filed in a disposed of proceedings would be maintainable only for the purpose of correcting any clerical or arithmetical error. The Court further clarified that a post disposal application for modification or clarification of the order would lie only in rare cases where the order passed by this Court is executory in nature and the directions of the Court may have become impossible to be implemented because of subsequent events or developments.*
>
> *18. The Registry shall not circulate any miscellaneous application filed in a disposed of proceedings unless and until there is a specific averment on oath that the filing of the*

miscellaneous application has been necessitated as the order passed in the main proceedings being executory in nature and have become impossible to be implemented because of subsequent events or developments."

17. This is the second interim application filed by the applicants Opposite Parties No.1 (a) and 1(b) in RVWPET No.176 of 2008 disposed of on 28th June, 2016.

18. Misc. case No. 121 of 2009 for intervention had been filed in the Review Petition by one Bhabani Panda @ Dash stating *inter alia* that she was in possession of the property for more than fifty years, and was therefore a necessary party in the case. Her application for intervention was dismissed on 28th June 2016.

19. After disposal of the Review Petition, Misc Case No. 205 of 2016 had been filed by the applicants in the present I.A., for a direction to the Temple Administration to accept the Bank Draft, which they wanted to deposit as the same was not being accepted. This Court entertained the interim application and by order dated 5th August, 2016, directed the Temple Administration to accept the bank draft of the applicants on or before 10th August, 2016 and it was also inter alia directed that the sale deed shall be executed before end of October 2016.

20. In fact, after passing of the orders on 28th June, 2016 and 5th August, 2016 in this Review Petition, *much water has flown down the Mahanadi*, as there have been many developments thereafter.

21. An interim application – Misc. Case No.288 of 2016 was filed in this Review Petition by the Temple Administration for extension of time of six months for compliance of the order of the High Court, stating *inter alia* that Bhabani Panda had filed O.J.C. No. 2434 of 2000 for settlement of the land in her favour and the writ petition had been disposed of directing the Temple Authority to consider her grievance along with the claim of Lala Nalini Kumar Ray, petitioner in OJC No. 2434 of 2000. A proceeding- Case No. 22/ 2001 had been instituted and after hearing the parties, it had been directed to put the land to public auction. Thereafter, she had filed O.J.C. No.16236 of 2001 while Lala Nalini Kumar Ray had filed O.J.C. No.15005 of 2001. While the writ petition filed by Bhabani Panda was disposed of on 9th January, 2008 granting liberty to her to file appeal, the writ petition filed by Lala Nalini Kumar Ray was disposed of directing the Temple Administration to execute sale deed. Bhabani Panda filed Appeal No.1 of 2009 before the Appellate Authority. After disposal of Review Petition, Bhabani Panda had filed W.P.(C) No. 18944 of 2008 for a direction for settlement of the land in her favour. This writ petition was disposed directing for disposal of the Appeal filed by her within two months and not to alienate the land till disposal of the appeal. No order has been passed on this Misc Case. It was also stated that in the meantime the said Bhabani Panda has preferred S.L.P(Civil) against the order passed in Review Petition No. 176/2008 before the Hon'ble Supreme Court of India and had prayed not to sell the land in question till disposal of the S.L.P(Civil).

22. Bhabani Panda @ Dash who had filed Misc Case No.121 of 2009 for intervention in this Review Petition which had been rejected by this Court on 28th June, 2016, had filed ***Special Leave to Appeal (C) Nos.33066-33068 of 2016*** challenging the order dated 6th August, 2008 passed in OJC No.1483 of 2000 as well as the order dated 28th June, 2016 passed in Misc. Case No.121 of 2009 (arising out of RVWPET No.176 of 2008), along with interim application - **CC No.20178-20180 of 2016.**

23. The Supreme Court, vide order dated 28th October, 2016, directed to maintain status quo in respect of the case land.

24. In view of the developments which had taken place during pendency of **Special Leave to Appeal (C) Nos.33066-33068 of 2016** before the Supreme Court, especially the resolution dated 13th July, 2017, on the submission of the learned counsel for the petitioners therein, on 12th February, 2024, the Appeals were dismissed by the Supreme Court as infructuous. The petitioners in this interim application, did not raise any objection at that time.

25. It has been stated in the affidavit filed in this interim application by the Temple Administration, that the Temple Administration has passed a resolution on 13th July, 2017, earmarking the suit land for construction of a guest house meant for pilgrims and devotees.

26. A guest house to provide accommodation at subsidized rates to the devotees who come to Puri and are in need of accommodation, would undisputedly be in the interest of the deity - Lord Jagannath. The resolution in this regard is also in consonance with the directions and decisions of the Supreme Court in ***Shri Jagannath Temple Managing Committee*** (supra) and ***Mrinalini Padhi*** (supra).

27. The Supreme Court in the case of ***A.A. Gopalakrishnan vs. Cochin Devaswom Board and others; AIR 2007 SC 3162,*** has held as under:-

> *"10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/ shebaits/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."*

28. The Uniform Policy issued by the Law Department, Government of Odisha for alienation of immovable properties of Shri Jagannath Mahaprabhu Bije-Srikhetra at Puri (in short "Uniform Policy"), had been framed keeping the interest of the deity- Lord Jagannath as well as the persons in long possession of such land. Orders for sale of the case land had been passed pursuant to the said policy. The

Uniform Policy does not give any absolute right to a person to possess or purchase any land belonging to Lord Jagannath. The interest of Lord Jagannath has to be paramount. Any alienation has to be in the interest of Lord Jagannath, the deity. In the present case, during pendency of the SLPs before the Supreme Court, the resolution has been passed by the competent authority of the temple management on 13.07.2017. Such a resolution is in the interest of Lord Jagannath.

29. In view of the developments subsequent to passing of orders dated 28th June, 2016 and 5th August 2016 in this Review Petition it is not a simple case where the present I.A. has been filed *"for pursuing and getting implemented the relief granted in the writ petition."*

30. In view of the decisions of the Hon'ble Supreme Court referred to above and as it is the duty of the Court to safeguard the interest of Lord Jagannath who is a perpetual minor and construction of the guest house for his devotees is in the interest of Lord Jagannath, I do not find any reason to entertain the interim application where prayer has been made for execution of the sale deed and to hand over the case land.

31. For the aforesaid reasons, I agree with the decision of my esteemed brother that there is no reason as to why we should entertain this interim application and direct the authorities to execute the sale deed and hand over possession of the case land.

32. The IA stands dismissed as apart from being not maintainable, it is bereft of any merit.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter IA dismissed.
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

—— o ——

2025 (III) ILR-CUT-494

M/s. UTKAL ALUMINA INTERNATIONAL LTD., (UAIL), DORAGUDA
V.
THE PRESIDING OFFICER, LABOUR COURT, JEYPORE & ORS.

[IA NO. 6063 OF 2025]
(ARISING OUT OF W.P.(C) NO. 23261 OF 2024)

25 SEPTEMBER 2025

[K.R. MOHAPATRA, J. & MISS SAVITRI RATHO, J.]

Issues for Consideration

1. Whether the direction for "absorption" can be treated as "reinstatement".

2. What are the necessary requirements to be satisfied before grant of benefit U/s. 17-B of the Industrial Disputes Act?

Headnotes

(A) INDUSTRIAL DISPUTES ACT, 1947 – Section 17-B – Industrial dispute was raised by the Workmen – It was referred to the Labour Court – Learned Labour Court answered the reference vide award dated 30th March 2024 and directed the management to absorb the workmen into its regular establishment – The management has filed the writ petition assailing the award – The workmen filed the interim application to extent the benefit U/s. 17-B of the Act during pendency of the writ petition – The learned counsel for the management argued that the provision U/s. 17-B of the Act has no application as the impugned award has been passed directing absorption of workman not to reinstatement him – Whether the direction of absorption can be treated as reinstatement.

Held: Yes – Section 17-B of the Act being a beneficial provision for the Workmen without employment during pendency of the proceedings before the High Court, it should be given a liberal interpretation so that a Workman gets benefit, of course, on fulfilling the three conditions as narrated above – Thus, the term 'reinstatement' should be given a broader interpretation to include the term 'absorption' – In fact, the term 'reinstatement' is not exclusive; it also connotes any act to give a meaning of putting the Workman in the post/job from which he was terminated or disengaged. (Para 14)

(B) INDUSTRIAL DISPUTES ACT, 1947 – Section 17-B – Benefits under the section – Necessary requirements to obtain such benefits – Discussed. (Para 10.1)

Citations Reference

Bharat Singh Vs. Management of New Delhi Tuberculosis Centre, New Delhi and others, **(1986) 2 SCC 614;** Regional Authority, Dena Bank Vs. Ghanshyam; **(2001) 7 SCC 169;** SAIL and others Vs. National Union Waterfront Workers Union, **(2001) 7 SCC 1;** Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (E.ED.) and others; **(2013) 10 SCC 324 – referred to.**

List of Acts

Industrial Disputes Act, 1947.

Keywords

Industrial Dispute; Reference; Award; Reinstatement; Absorption; *"Expressio unius est exclusion alterius";* Payment of Full wage

Case Arising From

This Interlocutory Application has been filed by the Workmen-Opposite Party under Section 17-B of the Industrial Disputes Act, 1947.

Appearances for Parties

For Petitioner : Mr. Biraja Prasad Tripathy

For Opp. Parties : Mr. Swayambhu Mishra, ASC (O.P. No. 1),
Mr. Durga Prasad Nanda, Sr. Adv.,
Mr. Purna Chandra Das (O.P. Nos 2 to 13)

Judgment/Order

Order

K.R. MOHAPATRA, J.

1. This matter is taken up through hybrid mode.

2. This Interlocutory Application has been filed by the Workmen-Opposite Party Nos.2 to 13 (in the Writ Petition) (for brevity 'the Workmen') under Section 17-B of the Industrial Disputes Act, 1947 (for brevity, 'the Act').

3. Short narration of facts necessary for proper adjudication of the IA are that Industrial Dispute was raised by the Workmen was referred to the Labour Court, Jeypore (for brevity 'the Labour Court') to answer the following reference:-

> *"Whether the contract between M/s. Sri Ram Constructions, Indira Nagar, Line, Near Ring Road, Rayagada-765001, Odisha (Contractor) and M/s. Utkal Alumina International Ltd., At. Doraguda. PO. Kuchipadar, Rayagada-765015, Odisha (Principal Employer) was genuine or it was ruse/sham and whether the workmen namely Sri Bhabani Charan Satapathy and 11 others, whose services were terminated w.e.f. 01.04.2017 are entitled to be absorbed on the rolls of M/s. Utkal Alumina International Ltd. w.e.f. 01.04.2017?"*

3.1 On receipt of reference, ID Case No.1 of 2018 was registered on the file of Labour Court, Jeypore. Learned Labour Court answered the reference vide award dated 30th March, 2024 (Annexure-6) as under:-

> *"The reference be and the same, is answered on contest against both the Managements. The Management no.l is directed to absorb the present workmen into its regular establishment from the date of their disengagement/termination i.e 01.04.2017, along with 50% back wages and all the consequential service benefits as that of a regular employee is getting, within two months from the date of publication of this award by the Appropriate Govt. No order as costs."*

3.2 The Management No.1, namely, M/s Utkal Alumina International Limited (UAIL) has filed this Writ Petition assailing the award under Annexure-6. The Workmen on their appearance filed the present IA to extent the benefit under Section 17-B of the Act during pendency of the Writ Petition.

4. Mr. Nanda, learned Senior Advocate appearing for the Workmen submitted that Section 17-B of the Act is a beneficial legislation enacted to protect the Workmen from starvation and destitution while the employer chooses to challenge an award of reinstatement in a superior Court. The underlying object is to ensure that the Workmen, who have been found to have illegally terminated and have been favoured with an award of reinstatement/restitution in employment are not left without means of subsistence during prolonged litigation in superior Courts. Although the Workmen were engaged through Contractor, namely, M/s Sri Ram Construction, Indira Nagar-Opposite Party No.14-Management No.2 by virtue of an agreement, but said agreement was found to be sham and camouflage in the impugned award. Thus, in effect, the Management No.1-principal employer becomes the real employer from the date of their initial employment/engagement. The word 'reinstatement' used in Section 17-B of the Act is inclusive in nature, which includes a direction to absorb the Workmen in the post from which they were terminated, as in the instant case. Mr. Nanda, learned Senior Advocate also drew attention to the English Dictionary meaning of the word 'reinstatement'. Referring to Cambridge Dictionary, it is submitted that the word 'reinstatement' means "*the act of giving someone back their job or making something exist again*". As per Collins Dictionary, the synonyms of the word '*reinstatement*' means and includes "*Restoration, Bringing Back, re-establishment, re-institution, re-installation, rehabilitation*". He, thus, submitted that the impugned award under Annexure-6 has created /established a jural relationship of employer and employee between the Petitioner and the Opposite Party Nos.2 to 13-Workmen. Thus, absorption as directed by learned Labour Court in the impugned award for all practical purposes means and includes reinstatement in service.

4.1 He also referred to the following case laws:-

i) ***Bharat Singh Vs. Management of New Delhi Tuberculosis Centre, New Delhi and others***; (1986) 2 SCC 614;

ii) ***Regional Authority, Dena Bank Vs. Ghanshyam***; (2001) 7 SCC 169;

iii) ***SAIL and others Vs. National Union Waterfront Workers Union***; (2001) 7 SCC 1

He, thus, submitted that the Workmen should not suffer for the prolonged litigation at the instance of the Management and the Workmen are entitled to the benefit under the Section 17-B of the Act during pendency of the litigation before this Court.

5. Mr. Tripathy, learned counsel for the Management No.1 refuting the contentions raised by Mr. Nanda, learned Senior Advocate, submitted that a detailed objection has been filed to the Interlocutory Application under Section 17-B of the Act. The principal objection of Mr. Tripathy, learned counsel for Management No.1 is that the Workmen are not entitled to the benefit under Section 17-B of the Act during pendency of the present Writ Petition, as there is no direction to reinstate them in service in the impugned award under Annexure-6. Thus, he questioned the maintainability of the IA filed by the Workmen with prayer to extend the benefit under the aforesaid provision.

5.1. Elaborating his submission, Mr. Tripathy, learned counsel strenuously argued that the impugned award has been passed directing absorption of Workmen with Management No.1 along with 50% of back wages. There is no direction by the learned Labour Court for reinstatement of the Workmen. Thus, *ex facie*, the provision under Section 17-B of the Act has no application to the instant case.

6. Mr. Tripathy, learned counsel further submitted that in order to extend the benefit under Section 17-B of the Act to the Workmen, three ingredients are to be satisfied; *firstly*, there must be an award directing reinstatement of any Workman; *secondly*, the employer must have preferred proceeding against such an award in the High Court or Supreme Court; and *thirdly* the Workmen have not been gainfully employed in any establishment during pendency of the proceeding in the superior Court and files an affidavit to that effect before such Court.

6.1 In the instant case, award has been passed under Annexure-6 with a direction to absorb the Workmen from the date of their termination by the Management No.1. There is no direction for reinstatement of the Workmen.

6.2 Admittedly, the Workmen were not directly employed by the Petitioner-Management No.1. They were engaged through Management No.2-Contractor (Opposite Party No.14) by virtue of an agreement between the Management No.1 and Management No.2. The said agreement was held to be sham and camouflage by learned Labour Court. Correctness of such direction is a matter of consideration in the Writ Petition. Learned Labour Court consciously used the word '*absorption*' and has not directed for '*reinstatement*' of the Workmen. As such, the Workmen are not entitled to the benefit under Section 17-B of the Act during pendency of the instant Writ Petition.

7. Benefit under Section 17-B of the Act cannot be claimed by the Workmen as a matter of right in absence of any direction for their reinstatement. In support of his submission, Mr. Tripathy, learned counsel for Management No.1 relied upon the case

of ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (E.ED.) and others***; (2013) 10 SCC 324. He thus submitted that the award of '*absorption*' by the learned Labour Court may not be construed as a relief of reinstatement. He also distinguished the ratio in the case of ***Bharat Singh*** (supra) and ***National Union Waterfront Workers Union*** (supra). It was his submission that when an agreement between the employer and Contractor is declared sham/ruse, the Workman does not become entitled to the relief of reinstatement automatically. Taking into consideration the facts and circumstances of the case, learned Labour Court directed for absorption of the Workmen which is, of course, the subject matter of adjudication. Even for the sake of argument, it is assumed that the Workmen are the employees of the Management No.1 then also the word '*absorption*' cannot take the place of word '*reinstatement*' in view of the legal maxim "*expressio unius est exclusion alterius*", which means to express or include one thing implies the exclusion of the other or of the alternative. When learned Labour Court used the word '*absorption*' any other interpretation to the word '*absorption*' is excluded.

8. It is also submitted by Mr. Tripathy, learned counsel that one Bhabani Charan Satapathy (Opposite Party No.2) for himself and for and on behalf of Opposite Party Nos.3 to 13 has stated at paragraph-5 of the IA that the Workmen are unemployed, but the provision under Section 17-B requires that individual affidavit to be filed indicating unemployment during pendency of the Writ Petition. But in the instant case, even if it is assumed that the Opposite Party No.2 had filed the affidavit on behalf of the Workmen, but it will be confined to Opposite Party No.2 only. Thus, the interim application is not maintainable and is liable to be dismissed.

9. Heard learned counsel for the parties.

10. In order to analyse the rival contentions of the parties, the provision under which the IA has been filed, requires a close reading. Section 17-B of the Act reads as under.

> *"**17-B. Payment of full wages to workman pending proceedings in higher courts.—** Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:*
>
> *Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."*

10.1 Thus, from a close reading of the provision, it is apparent that three conditions are to be satisfied to grant a benefit under Section 17-B of the Act.

Firstly, there must be an award of a Labour Court, Tribunal or National Tribunal; *secondly*, there must be a direction in the said award for reinstatement of any Workman; and *thirdly*, the employer prefers any proceeding against the award in the High Court or Supreme Court. There is another condition to be satisfied, which is consequent upon satisfaction of the aforementioned three conditions and the same is that the Workman has not been employed in any establishment during pendency of the proceeding either before the superior Court challenging such award, and an affidavit by such Workman had been filed before such Court. In the instant case, the first and third conditions are satisfied. There is an award of the learned Labour Court, Jeypore and the said award is under challenge before this Court in the present Writ petition. But fact remains, a direction has been made for absorption of the Workmen with the Management No.1 (the Petitioner) from the date of their disengagement/termination. Thus, the issue that arises for consideration in this IA is whether the direction for absorption can be treated as or includes reinstatement or not.

11. To start the discussion with dictionary meaning, it would be proper to refer some dictionaries.

> i) As per Oxford English Dictionary Vol-II (3rd edition), the word '*reinstate*' means to reinstall or re-establish (a person or thing in a place station condition etc.); to restore to its proper or original state; to reinstate afresh and the word '*reinstatement*' means the action of reinstating; reestablishment.
>
> ii) As per Law Lexicon (2nd edition), the word '*reinstate'* means to reinstall; to re-establish; to place again in a former state condition or office; to restore to a state or position from which the object or person had been removed and the word '*reinstatement*' establishing in former condition, position or authority (as reinstatement of a deposed prince.
>
> iii) As per Merriam-Webster Dictionary, the word '*reinstate*' means to place again (as in possession or in a former position), to restore to a previous effective state.
>
> iv) As per Black's Law Dictionary (6th edition), the word *'reinstatement'* means to reinstall; to re-establish; to place again in a former state condition or office; to restore a state or position from which the object or person had been removed.

11.1 A word used in an order or judgment should be interpreted in the context it is used. In the instant case, the Workmen (Opposite Party Nos. 2 to 13) were working with the Management No.1 (the Petitioner) through different Contractors and lastly under Management No.2, namely, M/s Sri Ram Constructions, Indira Nagar-Management No.2 **(**Opposite Party No.14). The contract by virtue of which Workmen were working with the Management No.1 has been held to be sham and bogus by the learned Labour Court. In the case of ***National Union Waterfront Workers Union*** (supra), a Constitution Bench while discussing the broad principles of law on the contract labour system, held as under :-

> *"107. An analysis of the cases, discussed above, shows that they fell in three classes;*
>
> *(i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the*

Industrial adjudicator/Court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act no automatic absorption of the contract labour working in the establishment was ordered;

(ii) ***where the contract was found to be sham and nominal rather a camouflage in which case the contract labour working in the establishment of the principal employer was held, in fact and in reality, the employees of the principal employer himself.*** *Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited,*

(iii) where in discharge of a statutory obligation of maintaining canteen in an establishment the principal employer availed the services of a contractor and the courts have held that the contract labour would indeed be the employees of the principal employer." (***emphasis supplied***)

The instant case falls in category *(ii)*, where the contract is held to be sham and bogus. In such cases, the contract labourers working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer itself. Of course, finding of learned Labour Court that the contract was sham and nominal one is a matter to be adjudicated in the writ petition. The said issue is therefore not required to be answered in the present I.A.

11.2 It is also held at paragraph-105 of the case of ***National Union Waterfront Workers Union*** (supra) that the beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended. Of course, it does not extend to reading of the provisions of the Act what the Legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the Legislature. Mr. Tripathy, learned counsel for the Petitioners argued that the legal maxim "*expressio unius est exclusion alterius*" is applicable to interpret the word '*reinstatement'.* He thus submitted that the word '*termination*' does not expressly or impliedly includes the term '*absorption'.* Interpreting the legal maxim, he submitted that the same means "to express or include one thing implied the exclusion of the other or of the alternative". It is his submission that terms '*termination*' and '*absorption'* connote different meaning. The Workmen were never in the roll of the Management No.1, but by virtue of the impugned award they were directed to be absorbed as the employees of the principal employer, namely, the Petitioner. Mr. Nanda, learned Senior Advocate appearing for the Workmen Opposite Party Nos.2 to 13, however, refuted the same and submitted that the word '*absorption*' in the facts and circumstances of the case, means and includes '*reinstatement'*. It was his submission that the Labour Court directed absorption of the Workmen from the date of their termination/disengagement with 50% of the back wages. Thus, it necessarily connotes that the Workmen will be reinstated in their job/post from which they were disengaged/terminated.

12. In the case of ***Bharat Singh*** (supra), Hon'ble Supreme Court had the occasion to interpret the provision under Section 17-B of the Act. It is observed therein that the provision under Section 17-B of the Act was brought into the statute

book with effect from 21st August, 1984. The object and reason behind enacting the provision is as under:-

> *"When Labour Courts pass award of reinstatement, these are often contested by an employer in the Supreme Court and High Courts. It was felt that the delay in the implementation of the award causes hardship to the workman concerned. It was, therefore, proposed to provide the payment of wages last drawn by the workman concerned, under certain conditions, from the date of the award till the case is finally decided in the Supreme Court or High Courts."*

It is also held at paragraph-10 that the object and reason give an insight into the background of Section 17-B, which is as under**;**

> *"10. The objects and reasons give an insight into the background why this Section was introduced. Though objects and reasons cannot be the ultimate guide in interpretation of statutes, it often times aids in finding out what really persuaded the legislature to enact a particular provision. The objects and reasons here clearly spell out that delay in the implementation of the awards is due to the contests by the employer which consequently cause hardship to the workmen. If this is the object, then would it be in keeping with this object and consistent with the progressive social philosophy of our laws to deny to the workmen the benefits of this Section simply because the award was passed, for example just a day before the Section came into force? In our view it would be not only defeating the rights of the workman but going against the spirit of the enactment.* ***A rigid interpretation of this Section as is attempted by the learned counsel for the respondents would be rendering the workman worse off after the coming into force of this Section. This section has in effect only codified the rights of the workmen to get their wages which they could not get in time because of the long drawn out process caused by the methods employed by the Management. This Section, in other words, gives a mandate to the Courts to award wages if the conditions in the Section are satisfied****."* (***emphasis supplied***)

Keeping in view the aforesaid object and purpose of the provision being introduced in the statute, it can be safely held that Section 17-B of the Act being a beneficial legislation for the Workmen, should be interpreted in a manner to give it a literal meaning to protect the Workmen from hardship and penury during pendency of the proceedings either before the High Court or in the Supreme Court. If the provision is given a different meaning by interpreting it in a hyper-technical manner, it would frustrate the object and purpose for which it was introduced. Thus, the term *'absorb'* has to be given a purposive interpretation taking into consideration the effect of such direction in the impugned award, of course, keeping in mind the legal maxim *expressio unius est exclusion alterius*.

13. If ultimately the award is implemented, the Workmen would be restored to their job/employment at the time of termination, but under the Management No.1. In the case of *National Union Waterfront Workers Union* (supra), it is in clear terms held that where the contract was found to be sham and nominal rather a camouflage in which case, the contract labour working in the establishment of the principal employer was held, in fact and in reality, the employees of the principal employer himself. Thus, for all practical purposes, the Workmen would be reinstated in their

service/employment. Since they were contract labour engaged with the Management No.1 through Management No.2, the word *'absorb'* has been used.

14. Section 17-B of the Act being a beneficial provision for the Workmen without employment during pendency of the proceedings before the High Court, it should be given a liberal interpretation so that a Workman gets benefit, of course, on fulfilling the three conditions as narrated above. Thus, the term '*reinstatement*' should be given a broader interpretation to include the term '*absorption*'. In fact, the term '*reinstatement*' is not exclusive; it also connotes any act to give a meaning of putting the Workman in the post/job from which he was terminated or disengaged. In the instant case, the Labour Court in the impugned award, intended and directed to put the Workmen, namely, Opposite Party Nos.2 to 13 in their position from which they were terminated/disengaged. Thus, for all purposes, the word '*absorption*' in the instant case includes and means '*reinstatement'* of the Workmen in their post/job from which they were terminated/disengaged. The legal maxim *expressio unius est exclusion alterius,* in the facts and circumstances of the case as well as discussions made above, cannot restrict the inclusive definition of the term '*reinstatement*'.

15. There cannot be any quarrel with the principles decided in the case of ***Deepali Gundu Surwase*** (supra) relied upon by Mr. Tripathy, learned counsel for the Management No.1, but it is of no assistance to him.

15.1 In view of the discussions made above, this Hon'ble Court has no hesitation to hold that the benefit under Section 17-B of the Act should be extended to the Workmen, namely, Opposite Party Nos.2 to 13 during pendency of the writ petition.

15.2 However, the Opposite Party Nos.2 to 13 have not yet complied the 4th condition, i.e., filing of affidavits by each of the Workmen before this Court that they are not gainfully employed during pendency of the writ petition.

16. In view of the above, the IA is disposed of with a direction that in the event, the Opposite Party Nos. 2 to 13 file individual affidavits before this Court that they are not gainfully employed, they shall be extended with benefit under Section 17-B of the Act from the date the impugned award was passed and they shall also be released with arrear dues within a period of eight weeks from the date of filing of such affidavit(s) before this Court.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter I.A. disposed of.
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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2025 (III) ILR-CUT-503

Md. USMAN KHAN
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 17429 OF 2025]

WITH

[W.P.(C) NOS. 43137 OF 2023, 708, 1785 OF 2024,
17936 & 19436 OF 2025]

08 SEPTEMBER 2025

[DIXIT KRISHNA SHRIPAD, J.]

Issue for Consideration

Whether the decision of the government regarding revocation/ cancellation of Muslim marriage Registrar licenses can be regarded as faltered one.

Headnotes

ORISSA MUHAMMEDAN MARRIAGES AND DIVORCES REGISTRATION ACT, 1949 & ORISSA MUHAMMEDAN MARRIAGES AND DIVORCES REGISTRATION RULES, 1976 r/w ORISSA CIVIL SERVICES (CLASSIFICATION, CONTROL & APPEAL) RULES, 1962 – The petitioners are the teachers of Government/Aided Schools – They were performing as Registrar of Muslim Marriage – Petitioners have filed the present writ petition challenging decision of government in revoking/rescinding licenses granted to them for registering Muslim marriage/divorce and for maintaining concerned official records – Whether the decision of government regarding revocation/ cancellation of such licenses can be regarded as faltered one.

Held: No – In registering marriage/divorce or refusing to register, he exercises quasi-judicial power vide Section 9 of the Act read with Rules 26, 27, 34, 35, 36 & 37 of 1976 Rules – These Registrars work under the supervision of District Registrars and the Inspector General of Registration to whom they are answerable – They have to maintain and update several Registers/Books – They have to examine parties and witnesses – At times, they have to travel to other places for the discharge of their duties – Rule 49 provides for their personal appearance along with Registers/Records, if the Courts summon them – That being the position, how will they be able to discharge their duty as teachers with absolute commitment in the Government Schools, is a big question – Teaching is a noble profession – It is teachers in general and primary/secondary school teachers in particular, who inculcate civilizational values & culture in the young minds – Therefore,

our ancient scriptures chant *'Guru Saakshaat Parabrahma'* literally likening teacher to God – As such, the impugned decision of the Government, regardless of certain arguable defects therein, cannot be faltered.

[Para 4.3(ii)]

Citations Reference

Julius v. Bishop of Oxford, **1880-5 AC 214;** Keshavananda Bharati v. State of Kerala, **AIR 1973 SC 1461 – referred to.**

List of Acts

Orissa Muhammedan Marriages and Divorces Registration Act, 1949; Orissa Muhammedan Marriages and Divorces Registration Rules, 1976; Orissa Civil Services (Classification, Control & Appeal) Rules, 1962.

Keywords

Muslim Marriage; Registration; Registrar; License; Revocation/cancellation of license; Divorce; Quasi judicial power; Doctrine of separation of power; Distributive Justice; Judicial Review

Case Arising From

Challenging the decision of Government revoking/rescinding licenses granted to the petitioners.

Appearances for Parties

For Petitioner : M/s. R.C. Jena & M.Padhi, [WP(C) No. 17429/2025]
Mr. B. Bhuyan, Sr. Adv & Mr. Md. Gulam Madani, [W.P.(C) Nos. 43137/2023 & 708/2024]
M/s. U.C. Mishra, A. Mishra, J.K. Mahapatra, D. Debadarshani & S. Dash, [W.P.(C) No. 1785/2024]
M/s. R.Jena & M. Padhi, [W.P.(C) No. 17936/2025]
M/s. P. Pattnaik, K.N. Muduli, D. Sahoo & S.K. Swain, [W.P.(C) No. 19436/2025].

For Opp. Parties: Mr. S.K. Jee, A.G.A (in All Writ Petitions)

Judgment/Order

Judgment

DIXIT KRISHNA SHRIPAD, J.

All these petitions, by the teachers of Government/Aided Schools, are presented to the Writ Court essentially grieving against the decision of answering OPs in revoking/rescinding licenses granted to them for registering Muslim marriage/divorce and for maintaining certain official records in that connection, as provided under the provisions of Orissa Muhammedan Marriage and Divorce

Registration Act, 1949 and Orissa Muhammedan Marriage and Divorce Registration Rules, 1976.

2. Learned advocates appearing for the petitioners vehemently argue that the impugned action is unsustainable, inasmuch as their clients have been discharging the statutory duties, as licensees under the 1949 Act read with 1976 Rules, since years without compromising their duties as teachers; there is absolutely no complaint from any quarters in general and from the community of taught in particular; all of a sudden the impugned decision has been taken on an erroneous assumption to the contrary; there is absolutely no prohibition either in the 1949 Act or in any other statute, including the Conduct Rules, and therefore, the impugned decision in cutting short their rights needs to be voided, coupled with a direction to continue/renew their licenses. Learned advocates took the Court through the provisions of 1949 Act, 1976 Rules & also the Conduct Rules applicable to Government servants.

3. Learned AGA appearing for the OPs vehemently resists the petitions making submission in justification of the impugned decision and also the rationale, on which it has been taken. He contends that the impugned decision is not punitive; petitioners being the public servants and more particularly civil servants of the State holding public office of teacher, and they are drawing salary in the prescribed pay scales; the registration of Muslim marriages & divorces and maintaining the official records in that connection would certainly affect discharge of their duties as teachers and that, in turn, would make adverse impact on the interest of pupils. So contending he seeks dismissal of writ petitions.

4. Having heard the learned counsel for the parties and having perused the petition papers, this Court declines indulgence in the matter for the following reasons:

4.1. A THUMB NAIL DESCRIPTION OF STATUTORY FRAME WORK:

(i) The 1949 Act was enacted by the State Legislature providing 'for the voluntary registration of Muhammedan marriages & divorces'. It is a short enactment comprising of 27 Sections and a schedule. Section 1(2) of the Act extends the same to the entire State and it came into force advance. Section 2 is the dictionary clause of the Act; it has only 4 items, which are not relevant to the case at hand. Section 3 provides for grant of license to any person, who is a Muslim, and thereby authorizes him to register Muslim marriage and divorce. For that, an application shall be made to him. Government has also power to revoke or suspend such license. Section 6 enjoins the duty to these licensees to keep up certain books and registers relating to marriage and divorce. This stationery is provided by the State Government under Section 5.

(ii) Sections 8 & 9 of the Act prescribe the modalities, powers and procedures for registration of marriage/divorce. Section 10 enables Muhammedan Registrar to receive gratuity, in excess of the fee, if voluntarily tendered. Section 11 specifies the

persons, who have to sign in the forms prescribed in the Schedule to the Act. Section 12 states that copies of entries to be furnished to every applicant for registration, free of cost. Section 13 provides for indexing of registers and section 14 prescribes what these indices should contain. Section 15 provides for inspection of registers and taking up copies of entries, which shall contain seal and signature of these registrars. Section 16 prescribes fees in that connection. Section 17 vests supervisory control in the District Registrar over the Muhammedan Registrar.

(iii) Section 18 provides for general superintendence at the hands of Inspector General of Registration and he is empowered to make regulations for the guidance of these registrars. However, approval of the State Government is prescribed as a pre-condition for their taking effect. Section 20 provides for refusing to register marriage/divorce for reasons to be recorded in the prescribed book. Section 21 provides for appeal against the same. Sections 22 & 23 provide for up-keeping of registers and making them over to the Registrars of Districts by these Registrars. Section 24 delegates rule making power to the State Government. Section 25 makes Muhammedan Registrars public servants and their duty to be public duties. Section 26 is validation provision and Section 27 provides for repeal and savings.

(iv) The State Government has promulgated 1976 Rules in exercise of power under Section 24 of the Act. Rule 2A(1), with effect from 18.09.2006, is brought on the Rule Book and it prescribes a limitation period of thirty days for the registration of marriages. Rule 2A(2) provides for delayed registration of marriage/divorce with a penalty of Rs.20/-. Rule 3 prescribes certain qualifications for becoming Muhammedan Registrar. He should have acquaintance with the Arabic language and Muhammedan law of marriage and divorce; he should have good moral character. It also gives a list of Muhammedans, who will have preference for the post/privilege in question.

(v) Rule 4 empowers the District Registrar to nominate Muhammedan Registrars for issuing license. Rule 5 prescribes modalities of application for such nomination. Under Rule 7, the District Registrar has to forward the applications and its accompaniments to the State Government, which takes a decision to issue license. Rule 8 empowers the Government to prescribe examination to the licensees or to the applicants in matters, such as Arabic language, Muhammedan law of marriage and divorce, etc. Licenses will be granted in From-B, says Rule 9. Rule 10 provides for Muhammedan Registrar to give up his license after reporting to the Inspector General of Registration through the District Registrar. Rule 12 speaks of leave and absence. Rule 14 specifically states that these persons are not Government servants.

(vi) Rule 16 enlists the register/books to be furnished to the Muhammedan Registrars along with seal and ink from the Government stores at cost price. Rule 18 prescribes table of fees and Rule 19 enables Muhammedan Registrars to retain their lawful remuneration from the fees received. Rest, he has to remit to the District Registrar, who, in turn, shall credit it to the Government. Rules 20 to 31 provide for elaborate procedure for application, attendance of parties and registration of

marriage/divorce. Rule 32 empowers Muhammedan Registrar to effect corrections of errors in the registers with his endorsement on the margin. Rule 34 specifies the circumstances wherein registration may be refused. Rule 36 mandates furnishing of reasons for such refusal to register. Rules 37 & 38 provide for refund of fees paid under Section 9 in certain circumstances.

(vii) Rules 39 to 47 mention about maintenance and destructions of Registers/Records and indices by Muhammedan Registrars and District Registrars, with the previous sanction of the Inspector General. Rule 48 provides for applications for search in the records and for copies of extracts. Procedure is also prescribed therein. Rule 49 empowers the Court for summoning of Registers/Records and inspection by Government Officers. The production of Registers/Records before the Court shall be by the Muhammedan Registrars or any Officer as may be deputed by the District Registrar.

4.2. MUHAMMEDAN REGISTRARSHIP, RIGHT OR PREVILEGE:

(i) The text and context of Section 3 of the Act does not give any absolute right to get license and thereby become Muhammedan Registrar of marriages/divorces. The section employs the term "It shall be lawful for the State Government to grant a license to any person….". This expression is explained by the English Court in ***Julius v. Bishop of Oxford;***[1] wherein it has been observed as under:-

> *"The words 'it shall be lawful' are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and they do not of themselves do more than confer a faculty or power."*

(ii) The expression "to any person" is of a wider expanse and choice lies with the Government. Rule 3 of 1976 Rules accords preference to ex-Kazis, Muslim Government pensioners, Maulavies, Khandkars & Mullas. Therefore, the serving Government servants, such as the petitioners cannot claim license as a matter of right. The Government has abundant discretion. Of course, the same has to be exercised in accordance with *Rules of Reason and Ju*stice. The vehement submission of learned advocates appearing for the petitioners that their clients have been discharging the duties as Muhammedan Registrars of marriage/divorce since very long, does not create any vested right for renewal or extension. After all, a license of the kind does not create any interest in any office. It is more or less a matter of privilege.

4.3. MUHAMMEDAN REGISTRAR BEING A PUBLIC OFFICER/OFFICE:

(i) The text and context of various provisions of the Act and the Rules leave no manner of doubt that the Registrar of Muhammedan marriages/divorces holds a public office, to which certain powers and duties are attached. This is not only not

[1] 1880-5 AC 214

disputed by the petitioners but asserted. The functions of this office have implications on the status of parties to the marriage or divorce, as the case may be. A public office like that of Muhammedan Registrar may not be an office of profit in the light of Election Jurisprudence; however, nevertheless, it is a public office. Section 25, which has the following text, adumbrates this view:-

> *"Every Muhammedan Registrar shall be, and be deemed to be, a public servant and his duties under this Act shall be deemed to be public duties."*

(ii) Several onerous duties are attached to the Office of Muhammedan Registrar. As already mentioned, his functions have far reaching evidentiary consequences on the status of marriage/divorce of Muhammedans. In registering marriage/divorce or refusing to register, he exercises *quasi-judicial* power vide Section 9 of the Act read with Rules 26, 27, 34, 35, 36 & 37 of 1976 Rules. These Registrars work under the supervision of District Registrars and the Inspector General of Registration to whom they are answerable. They have to maintain and update several Registers/Books. They have to examine parties and witnesses. At times, they have to travel to other places for the discharge of their duties. Rule 49 provides for their personal appearance along with Registers/Records, if the Courts summon them. That being the position, how will they be able to discharge their duty as teachers with absolute commitment in the Government Schools, is a big question. Teaching is a noble profession. It is teachers in general and primary/secondary school teachers in particular, who inculcate civilizational values & culture in the young minds. Therefore, our ancient scriptures chant '*Guru Saakshaat Parabrahma'* literally likening teacher to God. As such, the impugned decision of the Government, regardless of certain arguable defects therein, cannot be faltered.

4.4. The vehement submission of learned counsel for the petitioners that the OCA (CCA) Rules, 1969 nor the 1949 Act nor 1976 Rules prohibit the serving Government servants from becoming Muhammedan Registrars of Marriage/Divorce and therefore, the impugned order is vulnerable for challenge, cannot be countenanced. The Government is the appointing authority for the posts of teacher in its schools. Again, it is the Government, which is empowered to grant license to become Muhammedan Registrars. It has first-hand experience and information as to the nature of functions the teachers do and the Muhammedan Registrars accomplish. Government, in its accumulated wisdom, is of the opinion that the performance of teaching would be materially affected, if teachers become Muhammedan Registrars. A Writ Court cannot run a race of opinions with the Executive. It has to respect the decisions of co-ordinate organs of the State consistent with the *Doctrine of Separation of Powers,* which is held to be a *basic feature* of the Constitution, vide ***Keshavananda Bharati v. State of Kerala,*[2]**.

4.5. The vehement submission of learned counsel appearing for the petitioners that the impugned order proceeds on a wrong legal premise that the presence of Kazi

[2] AIR 1973 SC 1461

is *sin qua non* for a valid Muslim marriage, is arguably true. Such a sentence appears in the impugned order. Fizee in Outlines of Muhammadan Law, First Edition 1949, Oxford Publication at para-7 says:

> "Marriage may be constituted without any ceremonial; there are no special rites, no proper officiants. The essential requirements are offer (*ijab*) and acceptance (*qubul*)….As to the form, the following conditions are necessary: (1) declaration or offer (*ijab*) on the part of the one; (2) acceptance (*qubul*) by the other (or by guardians, as the case may be); (3) before sufficient witnesses (i.e. in Hanafi law, two; in Shiite law witnesses are not necessary)…The *kazi* is ordinarily present. The *kazi* in India is the mere keeper of a register of marriage. His function is purely evidentiary. It is a mistake to suppose that he joins the couple in marriage; the marriage takes effect on the contract being completed between the parties."

Merely because certain wrong things are mentioned by the authorities, their decisions, that are otherwise valid in their purport & intent, cannot be invalidated. A decision being wrong *per se* does not make it unsustainable, the issue of sustainability being central point of adjudication. It hardly needs to be stated that what ordinarily the Writ Court focuses, is the decision making process and not decision itself. More is not necessary to specify.

4.6. There is one more aspect to the matter: all these petitioners are admittedly civil servants and they are in permanent employment with settled families. They are being taken by them is insufficient for the livelihood of their families, and that they would have extra income if they are permitted to function as Muhammadan Registrars. On the other side of the spectrum, they have been thousands of persons in the Muslim Community, who do not have employment or that they are underemployed. Such persons may be preferred for the grant of license to function as Muhammadan Registrars of marriage & divorce, so that a penny or two would fall into their pockets on discharge of duties. That would be consistent with the idea of distributive justice enacted in Article 39(b) & (c) of the Constitution of India.

In the above circumstances, these petitions, being devoid of merits, are liable to be dismissed and accordingly they are, costs having been made easy.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ Petition dismissed.

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2025 (III) ILR-CUT-510

UDAYANATH SAHOO (DEAD)
REPRESENTED BY LRS. & ANR.
V.
STATE OF ODISHA & ORS.

[EXECUTION CASE NO. 2 OF 1997]

08 SEPTEMBER 2025

[DIXIT KRISHNA SHRIPAD, J.]

Issue for Consideration

Whether the settlement is bound to the judgment debtors who are not signatories/party to it.

Headnotes

CODE OF CIVIL PROCEDURE, 1908 – Order XLV Rule 15 r/w Article 144 of Constitution of India, 1950 – A settlement was arrived between the two license forest contractors in terms of which Civil Appeal No. 62 of 1979 came to be disposed of by the Apex Court vide common order dated 27.03.1992 – The said settlement was essentially between the decree holders (two contractors) – Whether the settlement is bound to the judgment debtors who are not signatories/party to it.

Held: It is true that the said settlement, was essentially between Decree Holders – However, without certain things being accomplished from the side of Judgement Debtors, the said settlement would lose its efficacy – Therefore, the Apex Court, after examining the same, specifically imposed certain obligations on the Judgment Debtors, they having not objected to – On the contrary, they became parties to the same tacitly accepting the settlement. (Para 7.3[i])

Our Constitution, vide Article 144 obligates every civil authority to act in aid of the decisions of Apex Court, whether *party eo nomine* or not. This applies with more vigor here, inasmuch as civil authorities are none other than the Judgment Debtors, being parties to the proceedings who were in so many words directed to give effect to the settlement recorded in the order dated 27.03.1992, whereby subject Civil Appeals were disposed off. (Para 7.3[ii])

Citations Reference

The General Manager of the Raja Durbhunga v. Maharaja Coomar Ramaput Sing, **1872 SCC OnLine PC 16;** Rahul S. Shah v. Jitendra Kumar Gandhi, **(2021) 6 SCC 418;** Dr. Poornima Advani & Anr. v. Government of NCT & Anr., **2025 INSC 262;** Jai Narain Ram Lundia v. Kedar Nath Khetan, **AIR 1956 SC 359;** Ganga Saran v. Ram Charan Ram Gopal, **AIR 1952 SC 9;**

Haji Sk. Subhan v. Madhorao, **AIR 1962 SC 1230;** C.F. Angadi v. Y. S. Mrannayya, **AIR 1972 SC 239;** Bhavan Vaja v. Solanki Hanuji, **AIR 1972 SC 1371;** Jugalkishore Saraf v. Raw Cotton Co. Ltd., **AIR 1955 SC 376;** Godavarman Thirumulkpad v. Union of India, **(1997) 2 SCC 267;** DAVIS v. MILLS, **194 US 451 (1904) – referred to.**

List of Acts

Code of Civil Procedure, 1908; Constitution of India, 1950; Forest Conservation Act, 1980; Wildlife Protection Ac, 1972; Forest Contract Rules, 1966

Keywords

Compromise; Privity of contract; Doctrine of frustration; Decree; *Party eo nominee*; Execution of decree

Case Arising From

Execution of common order dated 27.03.1992 in Civil Appeal No. 62/1979 passed by the Hon'ble Supreme Court of India.

Appearances for Parties

For Decree Holders : Mr. G. Mukharjee, Sr. Adv. with
M/s. P. Mukharjee, B. Mishra, J. Rath,
S. Pattnaik, M.K. Majumdar,
N.K. Shit & S. Panigrahi.

For Judgment Debtors : Mr. D. Lenka, A.G.A.

Judgment/Order

Judgment

DIXIT KRISHNA SHRIPAD, J.

Way back in the year 1872, the Privy Council in ***The General Manager of the Raja Durbhunga v. Maharaja Coomar Ramaput Sing,***[1] observed that the actual difficulties of a litigant in India begin, when he has obtained a decree. The unhappy scenario has not much changed since then to this day. The Apex Court in ***Rahul S. Shah v. Jitendra Kumar Gandhi***,[2] has expressed its anguish against enormous delay being brooked, more particularly in cases relating to execution of decrees. In the case at hand, nearly five decades having lapsed in the court corridors, not even a fig leaf has fallen into the pocket of Decree Holders. Delayed justice is egregious form of human rights violation. At least, as a concession to shortness of human life, litigation longevity needs to be shortened, by devising new techniques. It is high time that the stakeholders converge their ideas to achieve it.

2. The prayer column in the Execution Case is coined as under:

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1 1872 SCC OnLine PC 16

2 (2021) 6 SCC 418

"It is therefore prayed that the Judgment Debtors may be called upon to implement the directions given by the Hon'ble Supreme Court by identifying the incut trees and in the event this Hon'ble Court is pleased to hold that the trees so identified by the Judgment Debtors should not be cut to avoid ecological imbalance, the Judgment Debtors may be directed to supply equal quantity of logs to the Decree Holders from any of the Depots of the Forest Department in the State. Costs of the execution may also be ordered to be recovered from the Judgment Debtors;"

3. Foundational fact matrix:

3.1. This case has a checkered history and there is no need to pen all that here, since it is only the title facts that give rise to rights & obligations; therefore, the same are concisely stated. It is pertinent to prelude that the episode began before the Forest Conservation Jurisprudence was being evolved by the Apex Court, precedent by precedent, vide Godavarman Thirumulkpad cases. Even, the Forest Conservation Act, 1980 was yet to be enacted.

3.2. One Shri Udayanath Sahoo and another Shri R.S. Bhatia, were the licensed forest contractors. This was way back in the second half of 1970s. Bhatia had taken lease of 'Dudhiani F.S. 3 WC Coupe No.III, Lot No.4' vide D.L. No.76 of 1975-76, being the highest bidder in a public auction held by Divisional Forest Officer, Karanjia Division, as it then was. He having committed default, the contract was terminated and thereafter in a subsequent public auction, the same was awarded to Sahoo vide D.L. No.60 of 1977-78. Accordingly, lease was also confirmed in his favour. Bhatia challenged termination of his contract and its award to Sahoo in OJC No. 826 of 1977, which came to be allowed, vide order dated 26.04.1978. As a consequence, Shri Bhatia regained his contract, yielding nothing to Shri Sahoo.

3.3. Being aggrieved, Sahoo filed Civil Appeal No.62 of 1979 and the State too moved Civil Appeal No. 63 of 1979 laying a challenge to the above order of this Court. A settlement was arrived at between Sahoo & Bhatia, in terms of which Civil Appeal No. 62 of 1979 came to be disposed of by the Apex Court vide Common Order dated 27.03.1992, Civil Appeal No. 63 of 1979 having been negatived.

3.4. Shri Sahoo & Shri Bhatia filed Contempt Petition Nos.273 & 274 of 1993 seeking compliance of the above order of Apex Court, their representations to the State Government & its officials made in that respect having borne no fruit. The State moved I.A. Nos.2 & 3 of 1993 in the disposed of Civil Appeals seeking modification of the order dated 27.03.1992 contending that the felling of trees inside a sanctuary was impermissible under Section 29 of the Wildlife Protection Act, 1972. The Contempt Petitions & these two Applications, having been heard together, came to be negatived vide order dated 28.01.1994. The operative portion of same has the following text:

"We do not propose to proceed any further in these contempt petitions. Proceedings are dropped, contempt petitions are dismissed and I.A. No.2 & 3 are rejected. Parties may work out their rights in the appropriate forum."

3.5. Shri Sahoo & Shri Bhatia have filed this Execution Case at hand for enforcing the Apex Court order dated 27.03.1992 against the State & its officials. A Coordinate

Bench of this Court, vide order dated 04.11.1997, directed issuance of notice. Sahoo having died, his LRs are brought on record. After personal service of notice on 20.07.1998, the Judgment Debtors entered appearance through the learned AGA. OP No.2 filed his affidavit on 03.12.2021. OP No.3 has filed his affidavit on 20.08.2025, pursuant to another Coordinate Bench order dated 14.07.2025.

4. Submissions made on behalf of Decree Holders:

4.1. The Apex Court order dated 27.03.1992 is founded on a settlement between the parties and at no point of time during the pendency of Civil Appeal Nos.62 & 63 of 1979, any objections were raised by the Judgment Debtors and therefore, the obligation arising under the settlement binds them. It is more so because their Application Nos.1 & 2 of 1993, that were filed for the modification of said order on the ground that the settlement could not be implemented, in view of the bar enacted in the Wild Life Protection Act, 1972 & the Forest Conservation Act, 1980, came to be rejected vide order dated 28.01.1994.

4.2. The Apex Court dismissed Decree Holders' Contempt Petitions by the same order specifically stating that they should work out their rights in appropriate forum. Their Execution Case No.3 of 1995 came to be rejected by the learned Civil Judge, Karanjia vide order dated 22.02.1997 allowing Judgment Debtors' Miscellaneous Case No.1 of 1996. There is absolutely no impediment, legal or factual for implementing the Apex Court order through this execution.

4.3. It is the constitutional duty of every authority to facilitate the implementation of Apex Court order, whether it is a party or not. When party, it has no option but to comply with. If specific execution is not possible, alternate relief may be granted to the Decree Holders to restore their faith in the judicial process. Lastly, costs of the execution process should also be reimbursed to them.

5. Contentions advanced on behalf of Judgment Debtors:

5.1. The Execution Petition in its present form & substance is not maintainable. To the settlement on which Apex Court order dated 27.03.1992 is founded, Judgment Debtors are not signatories and therefore, they are not bound by it. A decree founded on compromise is nothing more than a contract with the seal of Court and therefore, the doctrine of privity of contract is invokable.

5.2. The Apex Court order has become incapable of enforcement, because of *nova causa interveniens*, i.e., the Forest Conservation Act, 1980 coupled with ***T.N. Godavarman*** rulings that prohibit felling of trees. The Judgment Debtors, in all fairness, had offered to pay back Decree Holders' money; however, they refused to accept the same.

5.3. The subject order requires certain compliances as preconditions to levy execution. The Decree Holders having not complied the same, i.e., failing to pay the amount, the order is not enforceable.

5.4. The time being essence of contract in terms of Rule 7 of the Forest Contract Rules, 1966, the lapse on the part of Decree Holders disentitles them to execution. Even otherwise, there is frustration of contract on which the subject order is structured and therefore, the petition should be dismissed.

6. Both the sides, having filed brief Written Submissions, relied upon the following rulings in support of their respective stand:

6.1. Rulings pressed into service by the learned counsel appearing for the Decree Holders:

(i) Dr. Poornima Advani & Anr. v. Government of NCT & Anr., 2025 INSC 262.

(ii) Rahul S. Shah v. Jitendra Kumar Gandhi, (2021) 6 SCC 418.

6.2. Rulings pressed into service by the learned counsel appearing for the Judgment Debtors:

(i) Jai Narain Ram Lundia v. Kedar Nath Khetan, AIR 1956 SC 359

(ii) Ganga Saran v. Ram Charan Ram Gopal, AIR 1952 SC 9

(iii) Haji Sk. Subhan v. Madhorao, AIR 1962 SC 1230

(iv) C.F. Angadi v. Y. S. Mrannayya, AIR 1972 SC 239

(v) Bhavan Vaja v. Solanki Hanuji, AIR 1972 SC 1371

(vi) Jugalkishore Saraf v. Raw Cotton Co. Ltd., AIR 1955 SC 376

7. I have heard learned counsel for the parties. I have perused the petition papers. I have also adverted to relevant of the rulings. Having done that exercise, I am inclined to grant indulgence in the matter as under and for the following reasons:

7.1. AS TO MAINTAINABILITY OF EXECUTION CASE:

(i) Decree Holders had earlier approached the Court of learned Civil Judge, Karanjia in Execution Case No.3 of 1995. However, that came to be rejected vide order dated 22.02.1997 allowing Judgment Debtors' Miscellaneous Case No.1 of 1996. It was on the ground of jurisdiction. Therefore, they have instituted this Execution Case under the provisions of Order XLV Rule 15 of CPC 1908. Rule 1 of this Order reads as under:

> *"**R.1. "Decree" defined**.- In this Order, unless is something repugnant in the subject or context, the expression "decree" shall include a final order."*

Obviously, the order made by the Apex Court on 27.03.1992, while disposing off C.A. No.62 of 1979 filed by the first Decree Holder Sahoo & C.A. No.63 of 1979 filed by the Judgment Debtors, cannot be disputed to be a 'final order' within the meaning of Rule 1, inasmuch as post order, nothing remained pending. Under this rule, it partakes the character of 'decree' by legal fiction. Added to this, Sub-Rule (1) of Rule 15 of this Order has the following text:

> *"**R. 15. Procedure to enforce orders of the Supreme Court**.-(1) Whoever desires to obtain execution of any decree or order of the Supreme Court shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to the Supreme Court, was preferred.*

(ii) The very language of above Sub-Rules leaves no manner of doubt that both the decrees and orders of the Apex Court are executable by the Court from which the appeal arose. There is no dispute that Civil Appeal No.62 & 63 of 1979 arose from the final order dated 26.04.1978 of this Court in OJC No.826 of 1977 filed by Bhatia. Therefore, the contention of learned AGA that this Execution Case is not maintainable cannot be countenanced. Such a contention ill lies in the mouth of Judgment Debtors, who had successfully resisted Decree Holders' Contempt Petition Nos.273 & 274 of 1993 which came to be dismissed by the Apex Court vide order dated 28.01.1994, whereby parties were given liberty to *'work out their rights in the appropriate forum'*. If contention of the kind is agreed to, then the Decree Holders have nowhere to go and Judgment Debtors eventually would escape from their obligation with impunity, eternally. That would strike at reason, at law & at justice. Nothing more is required to bruise the Rule of Law, which is held to be a *basic feature* of the Constitution of India vides Kesavananda,[3] a historic decision. After all, Court Orders are not for photo framing, but are made for implementation.

7.2. AS TO SETTLEMENT BETWEEN THE PARTIES:

(i) The facts stated in paragraph 3 above are not in dispute. Both the Decree Holders were licensed forest contractors and their *inter se* dispute came to be resolved by a settlement that was made the Rule of Apex Court vide order dated 27.03.1992 in Civil Appeal No.62 of 1979. The operative portion of this order reads as under:

> *"This appeal stands disposed of in view of the settlement between the two contractors, parties herein, duly signed by their counsel, placed on record. Contained therein is an obligation on the State of Orissa to identify the uncut trees. We direct the State to fulfil this obligation towards working out the settlement. No costs."*

Because of recording of this settlement in C.A. No.62 of 1979, the independent challenge to OJC order of this Court by the Judgment Debtors in C.A. No. 63 of 1979 came to be dismissed.

(ii) To better appreciate what was the settlement between the parties, the terms of Memorandum of Settlement dated 27.03.1992 are reproduced below:

> *"1. Since the marking of the trees are not visible now, the State of Orissa should be directed to mark the balance standing trees afresh with Forest Department.*
>
> *2. The four instalments required to be paid should be paid as under i.e. 50% by the appellant and 50% by the respondent. Payments already made by the parties should be adjusted against their respective shares.*
>
> *3. The felling operation of the trees etc. may be done through ORISSA FOREST DEVELOPMENT CORPORATION Ltd. Which is a State Govt. undertaking concerned and the operation expenses will be borne by the Appellant and respondent equally.*
>
> *4. After operation of the coupe, the timbers and firewood will be divided equally after taking into account the quantity of timber fire wood already removed by the Appellant Uday Nath Sahu and the appellant and respondent will take delivery of the materials and they will*

[3] (1973) 4 SCC 225

remove their forest materials on the strength of coupe permits to be issued by Forest Department in favour of appellant and respondent separately."

7.3. AS TO DOCTRINE OF PRIVITY OF CONTRACT:

(i) It is true that the said settlement, was essentially between Decree Holders. However, without certain things being accomplished from the side of Judgement Debtors, the said settlement would lose its efficacy. Therefore, the Apex Court, after examining the same, specifically imposed certain obligations on the Judgment Debtors, they having not objected to. On the contrary, they became parties to the same tacitly accepting the settlement. Added, they suffered dismissal of their CA No.63 of 1979 by virtue of said common order which specifically mentioned "…. Contained therein is an obligation on the State of Orissa…." Coupled with this, a further specific direction was also given to them observing "…. the State to fulfil this obligation towards working out the settlement." Therefore, the first contention of learned AGA as to absence of *privity of contract* falls to the ground.

(ii) The above apart, what is being sought to be performed is not a contract between two private parties, pure & simple, but the order of the highest Court of the country. Our Constitution, vide Article 144 obligates every civil authority to act in aid of the decisions of Apex Court, whether *party eo nomine* or not. This applies with more vigor here, inasmuch as civil authorities are none other than the Judgment Debtors, being parties to the proceedings who were in so many words directed to give effect to the settlement recorded in the order dated 27.03.1992, whereby subject Civil Appeals were disposed off.

(iii) The proposition that a compromise decree is nothing but a contract between the parties with the seal of court superadded, has several shades of meanings. However, none of them would suggest that such a decree is unenforceable against the parties who are bound by it, not by virtue of its terms *per se*, but the direction of Apex Court to implement the same. In the absence of such a direction, contention of the kind could have arguably been sustained. Learned counsel for the petitioner is right in submitting that there is no difference between a decree obtained on compromise and a decree secured after full-fledged trial, when it comes to their execution/enforcement, subject to all just exceptions, into which argued case of the Judgment Debtors does not fit. Much is not necessary to specify.

7.4. AS TO DOCTRINE OF FRUSTRATION OF CONTRACT:

(i) The passionate contention of Mr. Lenka that in view of the Forest (Conservation) Act, 1980, as progressively interpreted by the Apex Court in Godavarman decisions in series that developed Forest Conservation Jurisprudence precedent by precedent, the order/decree has become in executable in its present form & substance, does not merit full acceptance. 1980 Act was already there, as 1972 Act well was, when C.A. Nos.62 & 63 of 1979 were disposed off only on 27.03.1992. The former was ten-year old and the later 20 years, as on that date. Thus, it is not a new development that was not within the contemplation of court & parties, when the final

order was made. Secondly, Judgment Debtors' I.A. No.2 & 3 of 1993 seeking modification of the settlement, as recorded in the order, which is already discussed, were negatived. Therefore, this contention is nothing but an afterthought intended to defeat the decree, if not defraud the Decree Holders. It hardly needs to be stated that the doctrine of frustration focuses *post contractu* scenario and not *ex-post facto.* Chitty on Contracts, 25th Edition at paragraph 1521 writes:

> "*The doctrine of frustration is relevant when it is alleged that a change of circumstances after the formation of the contract has rendered it physically or commercially impossible to fulfill the contract or has transformed performance into a radically different obligation from that undertaken in the contract. The doctrine is not concerned with initial impossibility which may render a contract void ab initio"*

(ii) The doctrine of frustration vociferously argued by the learned AGA is largely confined to the realm of law of contract. It is true that a compromise decree is a contract between the parties with seal of the court superadded. This Court is not sure that the doctrine of frustration obtaining in the realm of law of contract would readily apply to the enforcement of court orders/decrees. The Apex Court in ***C.F. Angadi v. Y.S. Mrannayya***,[4] observed that although a contract is not any the less a contract because it is embodied in a judge's order, it is something more than a contract and that different considerations would apply when it is so embodied. Further, a party invoking equitable doctrine like this has to show its *bona fide*, which remains militantly lacking here. Now, arguably there may be some road block.

(iii) Forest Conservation Jurisprudence started evolving with T.N. *Godavarman Thirumulkpad v. Union of India,*[5]. Over the period, it has moved from April to May, and now is in the June of its life, is true. Arguably, felling of trees in the fast depleting forests, is neither permissible nor desirable, forests being the lifeline of Mother Earth. It is not the case of Judgment Debtors that post disposal of Civil Appeals in question, no trees in the State forests that fell on their own, were not removed & auctioned during the period between 27.03.1992 and the Godavarman *supra*. Why during that interregnum the Judgment Debtors did not take steps to implement the settlement in question despite Apex Court Order/Decree remains a mystery wrapped in enigma. This apart, there was no case of complete embargo on the disposal of fallen trees in the forest even for years. There was abundant opportunity for obeying the court order. Apathy to the courts & their judgments is writ large, to say the least.

7.5. AS TO SUBSTITUTED REMEDY:

(i) The above, however, is not the end of road to the Decree Holders, who have been relentlessly fighting this legal battle since decades. The first Decree Holder is dead & gone and his LRs, having brought on record in his stead, are continuing these proceedings. Orders/decrees of courts, more particularly of the highest Court of the country, cannot go unimplemented by the Judgment Debtors with impunity. They ought to be enforced, when parties fail to implement the same. Mere showing ritualistic respect

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4 1972 SCR (2) 515

5 (1997) 2 SCC 267

to courts, is not sufficient. A party victorious in the legal battle has to reap the fruits of litigation, and nothing short of that would satisfy him.

(ii) In a changed circumstance, if primary rights under the decree for some reason cannot be enforced, then their secondary rights have to be recognized & enforced by way of granting substituted remedy. It is the duty of Executing Court to make all endeavours in this direction. It was Justice Oliver Wendell Holmes, who in ***DAVIS v. MILLS***,[6] observed as under:

> *"Constitutions are intended to preserve practical and substantial rights, not to maintain theories…"*

What he said more than a century ago equally applies to the Legal System. The State and its functionaries conduct themselves as model litigants. When a citizen wins a legal battle, State should rejoice it. That spirit is not seen nowadays. At times, State functionaries take ego trip. That drives the citizens to think, if State is their first enemy. This does not auger well to the good governance.

7.6. AS TO NON-PAYMENT BY THE DECREE HOLDERS:

(i) Learned AGA next contended that the Decree Holders had not come forward to make the payments in terms of contract awarded to them, the time prescribed for compliance being essential to the arrangement vide Rule 7 of OFC Rules, 1966. This contention too, is liable to be rejected on the admitted position that the Judgment Debtors were holding the money of Decree Holders and that they had offered to return the same, that too by giving a newspaper advertisement. Nothing is on record to show that what amount was due from the Decree Holders and when they were called upon to remit the same, at least after Judgment Debtors' I.A. Nos.2 & 3 of 1993, filed in C.A. No.62 of 1979, were rejected on 28.01.1994.

(ii) His reliance on the letter No.7759 dated 01.10.1977 issued by DFO of Karanjia Division, would not come to the rescue of Judgment Debtors, in view of a lot of subsequent developments, namely, the subject OJC, Civil Appeal Nos.62 & 63 of 1979, I.A. Nos.2 & 3 of 1993, Contempt Petitions, etc. Learned counsel for the Decree Holders submitted and I agree that the contracts are entered into, not for committing breach but for discharge of obligations undertaken, *pacta sunt servanda*, being the foundational principle of social organization. Learned counsel appearing for the Decree Holders very fairly submits that even whatever amount is payable, shall be paid immediately if indicated by the Judgment Debtors. Of course, this has to be with interest, so that the equities are adjusted, more particularly when rupee value has slided down over the years.

7.7. AS TO RULINGS CITED AT THE BAR:

The propositions that the Executing Court cannot go behind the decree, Executing Court ordinarily should take the decree as it is, all endeavors should be made

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[6] 194 US 451 (1904)

by the Courts for expeditious execution of decrees, an agreement contrary to law or policy of the State is null & void, by the change of law a contract may be frustrated and even a decree founded on a compromise may be rendered in-executable by the happening of subsequent events have been well settled, and no one at the Bar controverted the same. The decisions cited in the case broadly reflect these elementary principles. Therefore, discussing them individually is avoided, so that this judgment does not become a thesis. However, a few of them are referred to, as of judicial propriety.

In the above circumstances, this Execution Case having been favoured the following directions are issued:

(i) The Judgment Debtors shall supply to the Decree Holders the quantity of logs of wood under the forest contract in question in terms of settlement as recorded by the Apex Court in Civil Appeal No.62 & 63 of 1979 disposed of vide common order dated 27.03.1993 through the Orissa Forest Development Corporation or such other State Agency within three months, subject to deficit of stipulated payments being made good by the Decree Holders with simple interest @ 6% per annum reckoned from 22.02.1997, i.e., the date on which their Execution Case No.3 of 1995 was dismissed by the learned Civil Judge, Karanjia. This payment shall be made within four weeks.

(ii) Alternatively, the Judgement Debtors shall pay to the Decree Holders within three months the present market value of the quantity of logs of the nature, minus the deficit payment with interest component to be computed (payable by the Decree Holders), as mentioned in the immediately preceding direction (i).

(iii) The Judgment Debtors shall pay to the Decree Holders within three months a sum of Rs.2,00,000/- (rupees two lakh) only by way of exemplary costs, since they are responsible for a slew of avoidable litigations which the Decree Holders were driven to fight for decades. This amount may be recovered from the erring officials in accordance with law.

(iv) It is open to the parties to move appropriate applications, if needed for giving effect to this order or for any clarification or for removing the difficulties that may be encountered in its implementation.

Web copy of this judgment to be acted upon by all concerned.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Execution Case allowed.

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2025 (III) ILR-CUT-520

BADRINARYAN MISHRA
V.
STATE OF ODISHA (HOME DEPTT.) & ORS.

[W.P.(C) NO. 1462 OF 2024]

12 SEPTEMBER 2025

[B.P. ROUTRAY, J.]

Issue for Consideration

Whether the orders of the statutory authorities warrant any interference.

Headnotes

ARMS ACT, 1959 – Suspension/ Revocation of License – The confirming order of the Appellate authority is under challenge – Two criminal cases against the petitioner is pending – Authority after giving opportunity of hearing has suspended the license on the ground of public safety, security and peace – Petitioner pleaded that, pendency of criminal cases have no relevance to possession of the Arms license and such weapon have not been misused in any circumstances – Subjective satisfaction of the statutory authority – Scope and interference of the Writ Court – Whether in the circumstances above the confirming order of the statutory authorities warrant any interference.

Held: No – In the instant case when the criminal cases are still pending against the Petitioner the assertions made on his part that it would no way affect the use of fire arms to disturb public safety is not found convincing – At the same time it needs to be mentioned here that when the licensing authority having considered all such materials on record has satisfied about the threat posed by the Petitioner for possessing the fire arms to the public peace and safety it would not be wise on the part of this court to interfere with the same on the facts that the conduct of the Petitioner is not justifying such action on the part of the licensing authority – Therefore the impugned order under Annexure-4 and confirmation of the same by the appellate authority under Annexure-8 does not warrant any interference – The writ petition is dismissed. (Para 13)

Citations Reference

Barium Chemicals Ltd vs- Company Law Board, **AIR 1967 SC 295;** State of Maharashtra v. Bhaurao Punjabrao Gawande, **(2008) 3 SCC 613;** CIT v. Mahindra and Mahindra Ltd., **(1983) 4 SCC 392 – referred to.**

List of Acts

Arms Act, 1959.

Keywords

Arms license; Suspension; Revocation; Pendency of criminal case; Public safety & security,; Subjective satisfaction of the statutory authority; Judicial interference; Decision of statutory authority; Judicial review; Public peace.

Case Arising From

Order of the authority dated 3rd September, 2020 and confirming order dated 8th January, 2024

Appearances for Parties

For Petitioner : Mr. P.K. Nanda
For Opp. Parties : Mr. S.K. Rout, ASC

Judgment/Order

Judgment

B.P. ROUTRAY, J.

1. Heard Mr. P.K. Nanda, learned counsel for the Petitioner and Mr. S.K. Rout, learned ASC for State – Opposite Parties.

2. The Petitioner, who was holding Arms Licence No. 257/2002/ Cuttack, has approached this court against the order of the authority dated 3rd September, 2020 under Annexure-4 thereby suspending his arms licence with direction to surrender the arms. The said order of the authority under Annexure-4 having been challenged before the appellate authority, has been confirmed vide order dated 8th January, 2024 under Annexure-8. Both the orders are challenged in the present writ petition.

3. The facts of the case are that the Petitioner was the holder of Arms Licence No.257/2002/Cuttack granted by the Collector and Arms Magistrate, Cuttack vide order dated 22nd October, 2001. The Petitioner by profession is a businessman and after availing arms licence in his favour he possessed two fire arms, one a .32 bore revolver along with ammunitions and another a .32 bore NPB pistol along with ammunitions.

4. Before grant of licence in the year 2002, the Petitioner was involved in Kharavelanagar P.S. Case No.250 dated 1st October, 2001 registered under Section 47(a) of the Bihar and Odisha Excise Act for illegal possession of huge quantity of IMFL liquor. Subsequently he was also involved in Bhubaneswar EOW P.S. Case No.22 dated 31st October, 2018 registered for commission of offences under Section 420/467/468/471/406 of I.P.C. on the report lodged by the Bank authority.

5. After coming to know about involvement of the Petitioner in criminal cases and considering the report of the Deputy Commissioner of Police, the Commissioner of Police, Bhubaneswar-Cuttack vide his order dated 3rd September, 2020 suspended the arms licence of the Petitioner in exercise of his power under Section 17(3) of the Arms Act after considering the show cause reply submitted by the Petitioner. Being

aggrieved by the same, the Petitioner preferred appeal which was also rejected under Annexure-8.

6. It is submitted on behalf of the Petitioner that though his involvement in two criminal cases, as stated above, are not disputed but the fact remains that none of such cases alleges misuse of fire arms in committing those offences. It is further submitted that the Petitioner is having a licensed IMFL shop at Bhubaneswar and therefore, his involvement for alleged commission of offence under the Bihar and Odisha Excise Act would have no connection with possession of the fire arm. Secondly, the case of fraud as alleged by the Bank authority in EOW P.S. Case No.22/2018 has also no connection with possession of the fire arm with the Petitioner and in fact said case has been negotiated with the Bank authorities in the meantime. Therefore the apprehension raised by the authority to suspend his arms license is without any basis and unsupported by substantial material.

7. As seen from the impugned order under Annexure-4, the competent authority in exercise of his discretion under Section 17(3) of the Arms Act has suspended the license of the Petitioner as the same was considered essential in public interest. Clause (b) of sub-Section (3) of Section 17 authorizes the licensing authority to suspend the arms license for such period or to revoke the license, if the licensing authority deems it necessary for the security of public peace or for public safety. For better appreciation Section 17(3) is reproduced bellow:-

> "17. Xx .. xx ….
>
> (3) The licensing authority may by order in writing suspend a licence for such period as it thinks fit or revoke a licence-
>
> (a) if the licensing authority is satisfied that the holder of the licence is prohibited by this Act or by any other law for the time being in force, from acquiring, having in his possession or carrying any arms or ammunition, or is of unsound mind, or is for any reason unfit for a licence under this Act; or
>
> (b) if the licensing authority deems it necessary for the security of the public peace or for public safety to suspend or revoke the licence; or
>
> (c) if the licence was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of applying for it; or.
>
> (d) if any of the conditions of the licence has been contravened; or
>
> (e) if the holder of the licence has failed to comply with a notice under sub-section (1) requiring him to deliver-up the licence."

8. A plain reading of the provisions contained in clause (b) of Sub Section (3), as stated above, shows the discretion of the licensing authority about his subjective satisfaction regarding public peace, security and safety. In ***Barium Chemicals Ltd vs- Company Law Board, AIR 1967 SC 295***, it is held that the expressions '*is satisfied*', '*is of the opinion*', or '*has reasons to believe*' are indicative of subjective

satisfaction, though it is true that the nature of power has to be determined on a totality of consideration of all relevant provisions.

9. In ***State of Maharashtra v. Bhaurao Punjabrao Gawande, (2008) 3 SCC 613***, it has been observed as follows:-

> "**38.** Subjective satisfaction being a condition precedent for the exercise of the power of preventive detention conferred on the executive, the court can always examine whether the requisite satisfaction is arrived at by the authority; if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad.
>
> **39.** A court cannot go into correctness or otherwise of the facts stated or allegations levelled in the grounds in support of detention. A court of law is "the last appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based". That, however, does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. By judicial decisions, courts have carved out areas, though limited, within which the validity of subjective satisfaction can be tested judicially.".

10. Further, in ***CIT v. Mahindra and Mahindra Ltd., (1983) 4 SCC 392***, Hon'ble Supreme Court has observed that;

> "**11.** By now, the parameters of the Court's power of judicial review of administrative or executive action or decision and the grounds on which the Court can interfere with the same are well settled and it would be redundant to recapitulate the whole catena of decisions of this Court commencing from Barium Chemicals case [*Barium Chemicals Ltd. v. Company Law Board*, AIR 1967 SC 295 : 1966 Supp. SCR 311 : (1966) 36 Com Cas 639] on the point. Indisputably, it is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to or has been arrived at by the authority misdirecting itself by adopting a wrong approach or has been influenced by irrelevant or extraneous matters the Court would be justified in interfering with the same. This Court in one of its later decisions in *Shalini Soni v. Union of India* [(1980) 4 SCC 544 : 1981 SCC (Cri) 38 : AIR 1981 SC 431 : (1981) 1 SCR 962] has observed thus: "It is an unwritten rule of the law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote". Suffice it to say that the following passage appearing at pp. 285-86 in Prof. de Smith's treatise *Judicial Review of Administrative Action* (4th Edn.) succinctly summarises the several principles formulated by the Courts in that behalf thus:
>
> "The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. *It must*

act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories; failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account; and where an authority hands over its discretion to another body it acts ultra vires. Nor, is it possible to differentiate with precision the grounds of invalidity contained within each category."

11. In the case at hand, the impugned order under Annexure-4 speaks that before getting his satisfaction for a direction to suspend the licence the authority had called for a show cause reply from the Petitioner and after going through the same and considering all such materials on record regarding the profession of the Petitioner and his necessity to possess the fire arm, has found it appropriate to revoke the arms licence of the Petitioner in the interest of public safety. When an statutory authority is exercising his power after his satisfaction on the subject considering the materials brought on record thereof, this court has the limited scope to interfere with the same**.**

12. The fact of involvement of the Petitioner in two criminal cases having not been disputed, his reasons assigned for challenging the impugned order that none of the offences do allege involvement or use of any fire arm could not be a satisfactory answer in reply to the satisfaction on the part of the authority.

13. In the instant case when the criminal cases are still pending against the Petitioner the assertions made on his part that it would no way affect the use of fire arms to disturb public safety is not found convincing. At the same time it needs to be mentioned here that when the licensing authority having considered all such materials on record has satisfied about the threat posed by the Petitioner for possessing the fire arms to the public peace and safety it would not be wise on the part of this court to interfere with the same on the facts that the conduct of the Petitioner is not justifying such action on the part of the licensing authority. Therefore the impugned order under Annexure-4 and confirmation of the same by the appellate authority under Annexure-8 does not warrant any interference. The writ petition is dismissed. However, as prayed by the petitioner he is at liberty to apply for renewal of licence before the authority after disposal of the criminal cases pending against him.

Headnotes prepared by: *Result of the case:*
Shri Jnanendra Ku. Swain, Judicial Indexer Writ Petition dismissed.
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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2025 (III) ILR-CUT-525

DEBA BISI
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 28320 OF 2022]

16 SEPTEMBER 2025

[B.P. ROUTRAY, J.]

Issues for Consideration

1. Whether as per the preferential clause, preference would be given to a candidate securing less mark than the candidate securing more mark, on the ground of domicile to a particular district.

2. Whether revision of the selection list subsequent to preparation of the merit list is permissible.

Headnotes

(A) SERVICE JURISPRUDENCE – Appointment – Preference clause – Petitioner was an applicant in respect of the advertisement under U.R. category for the post of B.A. B.Ed. Trained Graduate Teacher – The petitioner's contention is that when the advertisement provides preference to the candidates of Nabarangpur district, removal of his name from the revised merit list & giving appointment to a candidate outside Nabarangpur is against the preference clause and therefore his name should be included in the merit list – Whether as per the preferential clause, preference would be given to a candidate securing less mark than the candidate securing more mark, on the ground of domicile to the district of Nabarangpur.

Held: No – So at no circumstance, the merits of candidates can be compromised to give preference to a candidate securing less marks – The interpretation of the entire clause-6 has depicted in the advertisement to indicate that the said preference would be subject to the merits of the candidates – Therefore, what is clarified in the letter of the Government under Annexure-5 that the preference will come only if two candidates secure same mark cannot be said unjustified. (Para 10)

(B) SERVICE JURISPRUDENCE – Revision of select list – The petitioner applied in respect of the post of B.A. B.Ed Teacher – Pursuant to the selection process a provisional select list was published showing the name of petitioner – Thereafter the revised merit list of qualified candidates was published on the basis of guideline issued by the Government of Odisha in SC and ST

Development department where petitioner's name was not found – Whether the revision of the selection list subsequent to preparation of the merit list is permissible.

Held: Yes – As seen from the facts brought on record that Annexure-5, the clarification of the Government, was issued on 13th September 2022 after noticing some conflicting approach taken by different district authorities in selection of the candidates – Thus, to avoid the ambiguity, it was clarified that preferential clause will only apply when two or more candidates tie at the same merit by securing same marks – Therefore no illegality is seen in such approach to revise the merit list in terms of Annexure-6 series to give higher place to the candidates securing more marks. (Para 13)

Citations Reference

Shankarsan Dash v. Union of India, **(1991) 3 SCC 47**; Union Territory of Chandigarh v. Dilbagh Singh, **(1993) 1 SCC 154;** Taj Prakash Pathak & Others vrs. Rajasthan High Court and Others, **(2013) 4 SCC 540;** Ankita Thakur and Others Vrs. H.P. Staff Selection Commission and Others, **2023 SCC OnLine SC 1472;** State of U.P. and Others vrs. Om Prakash and Others, **(2006) 6 SCC 474 – referred to.**

List of Acts

Constitution of India, 1950

Keywords

Advertisement; Selection; Selection process; Preference; Preferential clause; Revision of merit list; Change of the rules of selection; Provisional merit list; Domicile;

Case Arising From

Challenging the Revised merit list published on 15th October, 2022.

Appearances for Parties

For Petitioner : Mr. R.K. Sarangi
For Opp. Parties : Mr. G. Tripathy, A.G.A.
Mr. K. Swain (O.P. 5)

Judgment/Order

Judgment

B.P. ROUTRAY, J.

1. Heard Mr.Sarangi, learned counsel for the Petitioner and Mr. Swain, learned counsel for Opposite Party No.5 as well as Mr. Tripathy, learned Additional Government Advocate for the State.

2. The Petitioner is an applicant for the post of B.A. B.Ed. Trained Graduate Teacher pursuant to the advertisement dated 26th December 2021 (Annexure-2) published by the Office of Collector and District Magistrate, Nabarangpur. In the said advertisement under Annexure-2, several teaching posts were advertised and the Petitioner applied in respect of the post of B.A. B.Ed Teacher. Total number of vacancies were 11 for the said posts where 4 posts are under U.R. Category, 1 post for U.R. (W), 1 post for S.C. and 1 post for S.C. (W), 3 posts for S.T. and 1 post for S.T.(W).

3. Pursuant to the selection process undertaken, the provisional select list was published on 2nd September 2022 under Annexure-4 showing the name of the Petitioner (Deba Bisi), securing 50.00 marks under U.R. Category. Thereafter the revised merit list of qualified candidates was published on 15th October 2022 on the basis of guideline issued by the Government of Odisha in SC & ST Development Department in order dated 13th September 2022 under Annexure-5. As per the said guideline issued under Annexure-5, the Government clarified the selection procedure as has been provided in the Draft Model Advertisement suggesting the fact that selection of suitable candidates should be based on the basis of results of written examination and marks secured in the said written examination. In cases of two or more candidates securing the same marks, the candidates belonging to the district should be given preference over other candidates and thereafter if the tie still continues, then the preference should be given as indicated in para 6(i)(ii) and (iii) of the Draft Model Advertisement.

4. According to the revised merit list dated 15th October 2022, the Petitioner's name was not found as selectee in respect of B.A. B.Ed. Trained Graduate Teacher post and the last selected candidate in the U.R. Category secured 53.50 marks.

5. The Petitioner challenges the same in present writ petition and it is submitted by Mr.Sarangi, learned counsel for the Petitioner that when the advertisement under Annexure-2 speaks for preference to the candidates of Nabarangpur district, removal of his name from revised merit list giving appointment to a candidate outside Nabarangpur district is against the principles of preference narrated in the advertisement and therefore his name should be included in the merit list. He further submits that though total number of 11 posts in B.A. B.Ed. Category was advertised for, but as per the revised merit list only 7 posts out of the same were filled up, leaving four other posts vacant and against such posts the Petitioner can be appointed without disturbing the selection of the present Opposite Party No.5.

6. It needs to be stated here that the present Opposite Party No.5 is the candidate belonging to Subarnpur district who secured 54 marks and selected against U.R.-3 post in B.A. B.Ed. Category.

7. Opposite Party No.5 as well as the State-Opposite Parties have filed their respective counter affidavits denying the claim of the Petitioner to be appointed in

the post on the preference claimed by him for belonging to the district of Nabarangpur. It is submitted by the Opposite Parties that the preference as stated in the advertisement under Annexure-2 cannot be compromised with merits of the candidates.

8. As per the admitted facts, the Petitioner was an applicant in respect of the advertisement under U.R. Category in respect of the post of B.A. B.Ed Trained Graduate Teacher, and the advertisement was issued in respect of Nabarangpur district. Clause 6 of said advertisement dated 28th December 2021 (Annexure-2) is reproduced below:

> "6. **Selection Procedure:**
>
> All selection of teaching staffs shall be done through written examination (Multiple Choice Question) comprising of 100 marks based on OMR. Eligible candidates who meet all the requisite qualification and criteria shall be shortlisted for appearing in the written examination. The Selection will be made by the District Selection Committee headed 'by the District Collector, Nabarangpur with Inspector of Schools (SSD) arid District Welfare Officer (Member Convenor) as members of the Committee as per Notification No. - S.R.O. No. - 1169 / 93 / Dt. 13,12.1993 of ST & SC Development Department. The Selection Committee shall prepare the list of suitable candidates on the basis of the results of written examination. The names of the candidates shall be arranged according to the marks secured in the written examination. Minimum cut-off mark for UR category is 35 and for Reserved Category is 30 out of the total 100 marks. Preference will be given to the candidates belonging to the same district.
>
> (i) In case of two or more candidates secured the same marks the candidate older in age will be placed above in the rank.
>
> (ii) If there is further tie, the higher percentage of marks secured in training qualification will be taken in to account.
>
> (iii) Higher Education will not be given any weightage during preparation of merit list in all categories."

9. The subsequent revised select list is dated 2nd September 2022 and it is based on the guideline issued by the Government dated 13th September 2022 as per the Draft Model Advertisement. It is true that in the first selection list under Annexure-4 though name of the Petitioner was found place but in the revised merit list his name was removed having secured less mark than the last selected candidate. The reason of revision as per the Opposite Parties is wrong interpretation of the preferential clause. As per the clarification under Annexure-5, the selection of suitable candidates should be based on the basis of marks secured in the written examination. In this context, if Clause 6 of the advertisement under Annexure-2 is looked into again, it is found that preference will be given to the candidates belonging to the same district. Here Clause-6 does not clarify that such preference will be over and above the merit of the candidates. But the simple reading is that "*preference will be given to the candidates belonging to the same district*".

10. It is true that inclusion of the name of the Petitioner in the select list does not confer any right upon him to be appointed and this proposition is well settled in law. The Hon'ble Supreme Court has consistently held that inclusion of a candidate's name in the merit list does not confer any indefeasible right to be appointed. (See ***Shankarsan Dash v. Union of India***, **(1991) 3 SCC 47** and ***Union Territory of Chandigarh v. Dilbagh Singh***, **(1993) 1 SCC 154)**

The question is, as per the preferential clause mentioned in Annexure-2, is it to be interpreted that such preference would be given in respect of a candidate securing less mark than the other, securing more marks, only for the reason that he belongs to the same district? In other words, a candidate belonging to same district even if secured less mark than another candidate of outer district would be given preference according to the contentions raised by the Petitioner? Such a proposition is not conceivable of course. It is for the reason that while delineating the preference clause in the advertisement, nothing is stated to compromise on the merits of the candidates. So at no circumstance, the merits of candidates can be compromised to give preference to a candidate securing less mark. The interpretation of the entire clause-6 has depicted in the advertisement to indicate that the said preference would be subject to the merits of the candidates. Therefore, what is clarified in the letter of the Government under Annexure-5 that the preference will come only if two candidates secure same mark cannot be said unjustified.

11. Mr. Sarangi, learned counsel for the Petitioner submits that changing the rules of selection after the selection process was complete is impermissible as held by a catena of decision of the Hon'ble Supreme Court. He refers the decision in ***Taj Prakash Pathak and others vrs. Rajasthan High Court and others,*** **(2013) 4 SCC 540** and ***Ankita Thakur and others Vrs. H.P.Staff Selection Commission and others,*** **2023 SCC OnLine SC 1472.**

12. With due respect, it is stated here that all such decisions refered by the counsel for the petitioner are not applicable in present facts. As stated earlier, in the case at hand, the Petitioner secures 50.00 marks whereas Opposite Party No.5 has secured 54.00 marks and the last selected candidate as per the revised select list has secured 53.75 marks in the U.R. Category. Therefore, it is clear that the Petitioner is found less meritorious not only than Opposite Party No.5 but also the last selected candidate in the U.R. Category. Thus at this stage he cannot take advantage of the preferential clause for being a resident of Nabarangpur district to be selected above the other candidates securing more marks than him in the selection tests. In ***State of U.P. and others vrs. Om Prakash and others,*** **(2006) 6 SCC 474**, it is held as follows:

> "**18.** This Court again considered the same question in *Secy., A.P. Public Service Commission v. Y.V.V.R. Srinivasulu* [(2003) 5 SCC 341 : 2003 SCC (L&S) 681] and held at SCC pp. 348-49, para 10 as under:
>
> "The word 'preference' in our view is capable of different shades of meaning taking colour from the context, purpose and object of its use under the scheme of things

envisaged. Hence, it is to be construed not in an isolated or detached manner, ascribing a meaning of universal import, for all contingencies capable of an invariable application. The procedure for selection in the case involves a qualifying test, a written examination and an oral test or interview and the final list of selection has to be on the basis of the marks obtained in them. The suitability and all-round merit, if had to be adjudged in that manner only, what justification could there be for overriding all these merely because, a particular candidate is in possession of an additional qualification on the basis of which, a preference has also been envisaged. The Rules do not provide for separate classification of those candidates or apply different norms of selection for them. The 'preference' envisaged in the Rules, in our view, under the scheme of things and contextually also cannot mean, an absolute en bloc preference akin to reservation or separate and distinct method of selection for them alone. A mere rule of preference meant to give weightage to the additional qualification cannot be enforced as a rule of reservation or rule of complete precedence. Such a construction would not only undermine the scheme of selection envisaged through the Public Service Commission on the basis of merit performance but also would work great hardship and injustice to those who possess the required minimum educational qualification with which they are entitled to compete with those possessing additional qualification too, and demonstrate their superiority merit wise and their suitability for the post. It is not to be viewed as a preferential right conferred even for taking up their claims for consideration. On the other hand, the preference envisaged has to be given only when the claims of all candidates who are eligible are taken for consideration and when any one or more of them are found equally positioned, by using the additional qualification as a tilting factor, in their favour vis à-vis others in the matter of actual selection."

19. In the instant case, the requisite academic qualification for the post of Medical Officer of Homeopathy as prescribed in the advertisement was a recognised degree in homeopathy or a recognised diploma in homeopathy. A proviso has been added that preference will be given to degree-holders. This would mean that a recognised diploma in homeopathy prescribed in the advertisement is also a required minimum educational qualification with which they are entitled to compete with those candidates possessing the degree. The word "preference" would mean that when the claims of all candidates who are eligible and who possess the requisite educational qualification prescribed in the advertisement are taken for consideration and when one or more of them are found equally positioned, then only the additional qualification may be taken as a tilting factor, in favour of candidates vis-à-vis others in the merit list prepared by the Commission. But preference does not mean en bloc preference irrespective of inter se merit and suitability."

13. The next question comes to examine is whether revision of the selection list subsequent to preparation of the merit list would be valid in the given facts of the present case. As seen from the facts brought on record that Annexure-5, the clarification of the Government, was issued on 13th September 2022 after noticing some conflicting approach taken by different district authorities in selection of the candidates. Thus, to avoid the ambiguity, it was clarified that preferential clause will only apply when two or more candidates tie at the same merit by securing same marks. Therefore no illegality is seen in such approach to revise the merit list in

terms of Annexure-6 series to give higher place to the candidates securing more marks.

Mr. Sarangi, learned counsel for the Petitioner further argues that restricting selection to a particular district or by calling names through the Employment Exchange is not unconstitutional or arbitrary and therefore, the preferential selection based on residence of the candidate cannot be said as illegal. Such argument put forth on behalf of the Petitioner *de hors* the established principles of law, as settled in various decisions of the Hon'ble Supreme Court as well as this Court, is found unacceptable.

14. So far as the contention of the Petitioner regarding appointment to the vacant posts left in terms of the advertisement under Annexure-2 is concerned, the same is also not found convincing to this Court. It is for the reason that the posts, which were not filled up, are meant for the ST candidates according to the advertisement. The Petitioner though belongs to SCBC Category, but has been considered under U.R. Category for there having no posts reserved for SCBC Category, cannot claim a post reserved for ST candidates. Therefore, the prayer of the Petitioner to consider his appointment in any such vacant posts meant for ST candidates cannot be considered in favour of the Petitioner.

15. In view of the discussions made above, the writ petition, being devoid of merit, is dismissed.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter Writ Petition dismissed.
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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2025 (III) ILR-CUT-532

**THE DIVISIONAL MANAGER,
M/s. ICICI LOMBARD GENERAL INSURANCE
COMPANY LTD., BHUBANESWAR
V.
ASHALATA BARIK & ANR.**

[FAO NO. 31 OF 2025]

19 AUGUST 2025

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

Issues for Consideration

1. Whether the jurisdiction of the High Court under Section 30 of Employee's Compensation Act is akin to Section 96 of the C.P.C.

2. Whether insurance company is liable to pay penalty under the Employee's Compensation Act.

Headnotes

(A) EMPLOYEE'S COMPENSATION ACT, 1923 – Section 30 – Appeal before the High Court – Jurisdiction – Whether the jurisdiction of the High Court under Section 30 is akin to section 96 of the C.P.C.?

Held: No – In this regard, the Supreme Court in *North East Karnataka Road Transport Corpn. v. Sujatha* observed that the High Court's jurisdiction under Section 30 is not akin to a first appeal under Section 96 of C.P.C. and that it is confined only to substantial questions of law. (Para 11)

(B) EMPLOYEE'S COMPENSATION ACT, 1923 – Section 4A(3)(b) – Penalty – Whether insurance company is liable to pay penalty.

Held: No – The legal position on this point is well settled – In *Ved Prakash Garg v. Premi Devi*, the Supreme Court observed that the Insurance Company, so far as the question of penalty is concerned, would not be liable under the provision of the Workmen's Compensation Act, 1923. (Para 15)

While the insurer is liable to indemnify the employer for the compensation and interest payable under Section 4A(3)(a), the penalty imposed under Section 4A(3)(b) is on account of the personal fault of the employer and does not fall within the scope of indemnification – The insurer cannot, therefore, be made liable for penalty. (Para 16)

Citations Reference

North East Karnataka Road Transport Corpn. v. Sujatha, **(2019) 11 SCC 514;** Ved Prakash Garg v. Premi Devi, **(1997) 8 SCC 1-referred to.**

List of Acts

Employee's Compensation Act, 1923.

Keywords

Appeal; Jurisdiction of High Court; Application of CPC under Employee Compensation Act; Substantial question of law; Penalty; Liability of insurance company.

Case Arising From

Judgment dated 07.12.2024 passed in E.C. Case No. 235 of 2023 by the learned Divisional Labour Commissioner-cum-Commissioner for Employees' Compensation, Cuttack.

Appearances for Parties

For Appellant : Mr. G.P. Dutta

For Respondents : Mr. Bijayananda Samantaray

Judgment/Order

Judgment

Dr. S.K. PANIGRAHI, J.

1. The Appellant, being aggrieved by the judgment dated 07.12.2024 passed in E.C. Case No. 235 of 2023 by the learned Divisional Labour Commissioner-cum-Commissioner for Employees' Compensation, Cuttack, has preferred the present appeal.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

(i) On 10.08.2023, at about 4:00 A.M., one Ronit Barik, the deceased, was travelling in a TATA ACE vehicle bearing registration number OD-02-CH-8537, which was proceeding towards Cuttack from Bhubaneswar. The driver of the said vehicle parked it on the left side of the road near the Government Timber Depot on the Puri Bypass Road to attend to a call of nature.

(ii) While the deceased was inside the cabin, a Hywa vehicle coming from the opposite direction collided head-on with the TATA ACE and fled the scene. The deceased sustained grievous injuries and was shifted to Capital Hospital, Bhubaneswar, where he was declared dead on the same day.

(iii) In connection with the accident, Badagada P.S. Case No. 434 dated 10.08.2023 was registered.

(iv) Subsequently, E.C. Case No. 235 of 2023 was instituted by the claimants seeking compensation on account of the death of the deceased, alleged to have arisen out of and in the course of employment. The Respondent No. 1 filed a written statement admitting the occurrence of the accident and the death, and further stating that a monthly sum of ₹12,000 was being paid to the deceased.

(v) The present appellant filed a written statement denying the material averments in the claim application.

(vi) On the basis of the pleadings, the learned Commissioner framed three issues for adjudication. Upon consideration of the materials on record, the learned Commissioner directed the appellant to pay a sum of ₹15,49,329 within 40 days from the date of the order, failing which the amount would carry a penalty of 50 percent along with interest at 12 percent per annum.

(vii) Aggrieved by this, the appellant has preferred the present appeal.

II. SUBMISSIONS ON BEHALF OF THE APPELLANT:

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

(i) The Learned Commissioner acted illegally and with material irregularity in holding that the deceased was a helper in the offending vehicle and that his death arose out of and in the course of employment, despite the fact that he was the son of the vehicle's owner. The claimants, by perpetuating fraud, impleaded the father as O.P. No. 1 to claim compensation. The judgment is thus unsustainable and liable to be set aside.

(ii) The Police Report in Badagada P.S. Case No. 434 of 2023 clearly shows that the deceased was the son of O.P. No. 1 and was travelling in the TATA ACE bearing No. OD-02-CH-8537 with the driver and another person on the date of the accident. Nowhere in the Police papers is there any mention of the deceased being employed as a helper under O.P. No. 1. By falsely portraying him as a helper, the claimants secured illegal compensation. The judgment is therefore unsustainable and liable to be set aside.

(iii) The final form reveals that the deceased, Ronit Barik, son of O.P. No. 1, had gone to Bhubaneswar with his friend Jayaram Sahu and driver Sarat Chandra Mallick without informing their families. While returning to Cuttack, both Ronit and Jayaram fell asleep beside the driver. Near the Timber Depot at Kesura, the driver stopped the vehicle to attend to the call of nature. At that time, a Hywa truck coming from the wrong side hit the stationary TATA ACE and fled. The driver also fled the scene out of fear, as the trip was unauthorized and not disclosed to the owner. These facts were brought before the Learned Commissioner through the testimony of a witness and documents. However, without any discussion of this evidence, the Learned Commissioner erroneously fixed liability on the appellant. Given the clear indication of fraud, the judgment is unsustainable and liable to be set aside.

(iv) The claimants, by perpetuating fraud during the course of evidence, developed the case that the deceased was staying separately at the time of the

alleged accident, despite there being no such plea in the claim application. The judgment is therefore unsustainable and liable to be set aside.

(v) The claimants have admitted in the police papers that three persons were travelling in a goods vehicle, which is a clear violation of the Motor Vehicles Act. As the deceased was an unauthorized passenger, the appellant is not liable to pay any compensation. Despite this, the Learned Commissioner, in a cryptic manner, fastened liability on the appellant.

(vi) The Learned Commissioner acted illegally and with material irregularity in not holding that the deceased, being the son of the owner, had an insurable interest in the vehicle. In such circumstances, the claim application is not maintainable.

(vii) The Learned Commissioner acted illegally in accepting that the deceased was 21 years old and earning ₹12,000 per month at the time of the accident, despite the absence of any documentary evidence. It is well settled that minimum wages and reliable proof of age must form the basis for determining compensation. The findings being unsupported by evidence, the judgment is unsustainable and liable to be set aside.

(viii) The Learned Commissioner acted illegally and with material irregularity in saddling the liability on the appellant, particularly when the owner had not registered the deceased as a workman under the provisions of the Motor Transport Workers Act in relation to the alleged offending vehicle.

(ix) The direction of the Learned Commissioner to deposit the awarded amount within 30 days, failing which a 50% penalty and further 12% interest shall be imposed, is unsustainable. It is settled law that in cases under the Workmen's Compensation Act, the insurer is not liable to pay interest or penalty in the absence of a contractual obligation under the policy. Moreover, such directions cannot form part of the main judgment. The impugned order is therefore contrary to binding precedents and is liable to be set aside.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

4. The Learned Counsel for the Respondents earnestly made the following submissions in support of his contentions:

(i) The principal ground of challenge raised by the appellant is that the deceased, being the son of the owner of the offending vehicle, could not have been employed as a helper. This submission is untenable as there exists no legal bar preventing a son from working as a helper on a vehicle owned by his father. The Learned Commissioner, upon appreciation of the evidence, rightly found that the deceased was working in that capacity, and such an arrangement is permissible under law. The mere relationship between the deceased and the owner does not negate the possibility of a valid employer–employee relationship.

(ii) In the present case, although the owner of the offending vehicle is the father of the deceased, it has been brought on record that they were living separately, with the claimants residing in a different household along with the deceased. The owner himself appeared as a witness and filed a written statement, categorically stating in his deposition that the deceased was employed as a helper on

the vehicle and was earning ₹12,000 per month. The accident, which occurred on 10.08.2023 at about 4:00 A.M., clearly arose in the course of such employment.

(iii) Under the provisions of the Employee's Compensation Act, 1923, an appeal lies only on a substantial question of law. The existence of an employer–employee relationship in the present case is a pure finding of fact, and the relationship between the deceased and his father does not constitute a substantial question of law so as to maintain the present appeal.

(iv) The appellant did not adduce any evidence before the learned Commissioner to disprove the case of the claimants. No effort was made to establish that the deceased was not working as a helper under the owner of the vehicle, nor was the factum of the accident itself ever disputed. Raising such a plea for the first time in appeal, that the deceased was not employed and that his death did not occur in the course of employment, is neither tenable nor maintainable in law.

IV. FINDINGS OF THE DIVISIONAL LABOUR COMMISSIONER-CUM-COMMISSIONER FOR EMPLOYEES' COMPENSATION, CUTTACK

5. The Divisional Labour Commissioner-cum-Commissioner for Employees' Compensation, Cuttack, framed four issues on the basis of the pleadings: (i) whether the deceased was an employee within the meaning of the Act; (ii) whether the accident arose out of and in the course of his employment as helper; (iii) whether the applicants were entitled to compensation and, if so, to what quantum; and (iv) which of the opposite parties was liable to pay such compensation.

6. In support of the claim, the mother of the deceased was examined as P.W.1 and produced police papers including the FIR, final form, inquest and post-mortem reports. The owner of the vehicle (O.P.W.1) also entered appearance and in his deposition admitted that the deceased was employed as a helper on his TATA ACE and was being paid monthly wages of ₹12,000, excluding fooding allowance. The occurrence of the accident and the resultant death on 10.08.2023 stood established through oral as well as documentary evidence. The insurer, Opposite Party No. 2, denied the claim but adduced no evidence to disprove the employment of the deceased or the occurrence of the accident.

7. Upon appreciation of the evidence, the Learned Commissioner recorded findings that the deceased was employed as a helper under Opposite Party No. 1 and that his death occurred in an accident arising out of and in the course of such employment. The age of the deceased was accepted as 21 years on the basis of the post-mortem report, and his wages were assessed at ₹12,000 per month in view of the consistent statements of P.W.1 and O.P.W.1. Applying the relevant factors under the Act, 50% of the monthly wages was multiplied by the relevant factor of 222.71, resulting in a compensation figure of ₹13,36,260. Interest at 12% per annum from the date of accident was awarded, amounting to ₹2,13,069, thereby bringing the total compensation to ₹15,49,329.

8. On the issue of liability, the Learned Commissioner found that the offending vehicle was duly insured with Opposite Party No. 2, ICICI Lombard General Insurance Company Ltd., under a valid policy covering the date of accident, and accordingly fastened the liability upon the insurer to deposit the awarded sum within 30 days of the order. It was further directed that in the event of default, the insurer would be liable to pay 50% penalty in addition to interest at 12% per annum under Section 4A of the Act.

V. THE COURT'S REASONING AND ANALYSIS:

9. Heard learned counsel for the parties and perused the material on record.

10. At the outset, it is necessary to bear in mind the statutory framework under which the present appeal has been preferred. Section 30 of the Employees' Compensation Act, 1923 provides for an appeal to this Court only against the specific orders enumerated in clauses (a) to (e) of the section and further subjects such appeal to the condition that it must involve a substantial question of law.

11. In this regard, the Supreme Court in ***North East Karnataka Road Transport Corpn. v. Sujatha***[1] observed that the High Court's jurisdiction under Section 30 is not akin to a first appeal under Section 96 CPC and that it is confined only to substantial questions of law. The relevant extract is reproduced hereinunder:

> *"9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependants of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident, etc. are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and he/his LRs sue(s) his employer to claim compensation under the Act.*
>
> *10. The aforementioned questions are essentially the questions of fact and, therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact.*
>
> *11. The appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner lies only against the specific orders set out in clauses (a) to (e) of Section 30 of the Act with a further rider contained in the first proviso to the section that the appeal must involve substantial questions of law.*
>
> *12. In other words, the appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner is not like a regular first appeal akin*

[1] (2019) 11 SCC 514.

to Section 96 of the Code of Civil Procedure, 1908 which can be heard both on facts and law. The appellate jurisdiction of the High Court to decide the appeal is confined only to examine the substantial questions of law arising in the case."

12. In the present case, the Commissioner, upon appreciation of oral and documentary evidence, found that the deceased was employed as a helper under Opposite Party No. 1, was 21 years of age at the time of his death, and was earning ₹12,000 per month. These findings were based not merely on the testimony of the claimants but also on the categorical admission of the owner of the vehicle, who deposed that the deceased was working as his helper and was being paid wages of ₹12,000. The police papers and post-mortem report further corroborated the age and occurrence of the accident. No evidence was led by the present appellant-insurer to dislodge these findings. Such conclusions, being rooted in evidence and not shown to be perverse, cannot be reopened in appeal. The attempt of the appellant to assail these findings amounts to seeking a re-appreciation of facts, which is impermissible within the narrow compass of Section 30 jurisdiction.

13. The plea that the deceased, being the son of Opposite Party No. 1, could not be his employee does not raise any substantial question of law. The existence of an employer–employee relationship is a pure question of fact, determined by the Commissioner on the basis of evidence, including the owner's own admission.

14. However, one aspect of the Commissioner's order does raise a substantial question of law, namely, the fastening of liability on the insurer not only to pay compensation and interest but also the penalty under Section 4A(3)(b) of the Act.

15. The legal position on this point is well settled. In ***Ved Prakash Garg v. Premi Devi***[2]**,** the Supreme Court observed that the Insurance Company, so far as the question of penalty is concerned, would not be liable under the provision of the Workmen's Compensation Act, 1923.

16. While the insurer is liable to indemnify the employer for the compensation and interest payable under Section 4A(3)(a), the penalty imposed under Section 4A(3)(b) is on account of the personal fault of the employer and does not fall within the scope of indemnification. The insurer cannot, therefore, be made liable for penalty.

17. In light of the above legal position, while the award of compensation and interest at the rate of 12% per annum from the date of accident as determined by the Commissioner is affirmed, the direction fastening liability on the appellant-insurer to pay penalty under Section 4A(3)(b) cannot be sustained and is accordingly set aside. The liability to pay penalty, if any, shall rest exclusively on Opposite Party No. 1, the employer.

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[2] (1997) 8 SCC 1.

VI. CONCLUSION:

18. In view of the foregoing discussion, this Court finds no infirmity in the findings of fact recorded by the learned Commissioner with respect to the employment of the deceased, the circumstances of the accident, his age, or his monthly wages. Those findings are supported by evidence and cannot be reopened in the limited jurisdiction under Section 30 of the Employees' Compensation Act, 1923.

19. However, fastening liability upon the appellant-insurer to pay penalty under Section 4A(3)(b) of the Act is unsustainable in law. While the insurer is liable to indemnify the employer in respect of the compensation together with statutory interest under Section 4A(3)(a), the liability to pay penalty rests solely upon the employer.

20. The impugned judgment dated 07.12.2024 passed by the learned Commissioner is modified to the extent that the appellant-insurer shall remain liable to pay the compensation of ₹13,36,260/- (Rupees Thirteen Lakhs Thirty Six Thousand Two Hundred Sixty only) together with interest at the rate of 12% per annum from the date of accident till realization. The direction to pay penalty under Section 4A(3)(b) is set aside insofar as it concerns the appellant-insurer. The liability to pay penalty, if any, shall rest exclusively with the employer.

21. Accordingly, the appeal is partly allowed in the above terms.

22. Interim order, if any, passed earlier stands vacated.

Headnotes prepared by:
Shri Jnanendra Ku. Swain, Judicial Indexer
(Verified by : Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
FAO allowed in part.

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2025 (III) ILR-CUT-540

NAMITA SWAIN & ANR.
V.
UNION OF INDIA
(G.M., SOUTH EASTERN RAILWAY, KOLKATA)

[FAO NO. 528 OF 2020]

10 SEPTEMBER 2025

[Dr. SANJEEB KUMAR PANIGRAHI, J.]

Issue for Consideration

Whether the plea of negligence and bona fide passengership is sustainable once the alleged incident is proved from the testimony of co-passenger and from the medical as well as police record.

Headnotes

RAILWAYS ACT, 1989 – Section 123(C) (2) r/w Section 124 A – Compensation on account of untoward Incidents – Death of a child – Denial of compensation – A child aged about three and half years while travelling with his mother accidentally fell & died – The Railway Claims Tribunal dismissed the claim application holding that the deceased child was not bonafide passenger for want of ticket and death occurred due to contributory negligence of Appellant/mother – Mandatory requirements of section 124A not satisfied – Testimony of Co-passenger and medical as well as police record established that the death was occurred due to such untoward incident – Whether the plea of negligence and bonafide passengership is sustainable once the alleged incident is proved from the testimony of co-passenger and from the medical as well as police record.

Held: No – At the outset, it is necessary to examine the statutory framework – Section 124A of the Railways Act enacts a regime of strict liability – Once it is established that death or injury has occurred as a result of an 'untoward incident,' the Railway Administration is bound to pay compensation, unless the case falls within the narrowly defined exceptions of suicide, self-inflicted injury, criminal act, intoxication, or natural cause – Negligence, even gross negligence, is not among these exceptions – This position was firmly settled in *Union of India v. Prabhakaran Vijaya Kumar*, where the Supreme Court held that fault or negligence is irrelevant under the no-fault scheme of Section 124A. (Para 12)

On the question of bona fide passengership, the Tribunal laid undue emphasis on the non-production of a ticket – The law on this issue stands settled in *Union of India v. Rina Devi*, wherein the Supreme Court

recognised that in train accident cases, tickets are frequently lost, misplaced, or destroyed during the incident or subsequent medical treatment. It was held that bona fide passenger status may be established by circumstantial or oral evidence, and non-recovery of a ticket cannot by itself be fatal to a claim. (Para 13)

The absence of ticket recovery, or the suggestion of contributory negligence, does not dislodge the claim within the framework of Section 124A – The incident falls squarely within the definition of an "untoward incident," and none of the statutory exceptions are attracted. (Para 16)

Citations Reference

Union of India v. Prabhakaran Vijaya Kumar, **(2008) 9 SCC 527;** Union of India v. Rina Devi, **(2018) 3 SCC 319;** Jameela v. Union of India, **(2010) 12 SCC 443 – referred to.**

List of Acts

The Railways Act, 1989; Railway Claims Tribunal Act, 1987.

Keywords

Untoward Incidents; Claim of Compensation; Denial of compensation; Bona fide passenger; Contributory negligence; Statutory exceptions; Suicide; Self-inflicted injury; Criminal Act; Intoxication; Natural cause.

Case Arising From

Order dated 31.10.2019 passed by the Railway Claims Tribunal, Bhubaneswar in Case No. OA/IIU/332/2025.

Appearances for Parties

For Appellant : Mr. Ajit Kumar Rout
For Respondents : Mr. Alok Kumar Mohanty, Sr. PC

Judgment/Order

Judgment

Dr. S.K. PANIGRAHI, J.

1. In the present appeal, the Appellants challenge the judgment and order dated 31.10.2019 passed by the Railway Claims Tribunal, Bhubaneswar in Case No. OA/IIU/332/2025, which dismissed their claim application for compensation arising out of the death alleged to have occurred in an 'untoward incident' within the meaning of Section 124A of the Railways Act, 1989.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

(i) On 12.04.2015, the deceased child Chiranjib Swain, aged about three and a half years, was travelling along with his mother and his aunt on the strength of a valid general class journey ticket purchased from Chakradharpur Railway Station for travel up to Rourkela by the Tatanagar–Itwari Passenger Train.

(ii) As the train was approaching Rourkela, the mother of the child was preparing to get down at the destination station and had moved towards the gate. At that juncture, due to a sudden jerk caused by the application of brakes and the push and pull of other passengers, the child accidentally slipped from her hands and fell from the running train.

(iii) The deceased sustained grievous multiple bleeding injuries and was immediately shifted with the help of co-passengers to IGH Hospital for treatment. Despite such efforts, the child succumbed to his injuries on the same day.

(iv) The appellants thereafter instituted Original Application No. 332 of 2015 before the Railway Claims Tribunal, Bhubaneswar under Section 16 of the Railway Claims Tribunal Act, 1987, seeking compensation under Section 124A of the Railways Act, 1989 on account of the death of the child in the untoward incident.

(v) On the basis of the pleadings of the parties, the Learned Tribunal framed five issues for consideration and, upon detailed examination, concluded that the victim was not a bona fide passenger. The claim application was accordingly dismissed, though without imposing any cost.

(vi) Being aggrieved by the judgment and order dated 31.10.2019 passed in Original Application No. 332 of 2015 by the Railway Claims Tribunal, Bhubaneswar, the appellants have preferred the present appeal.

II. SUBMISSIONS ON BEHALF OF THE APPELLANTS:

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

(i) The Appellants submitted that the dismissal of the Original Application by the Railway Claims Tribunal, Bhubaneswar in respect of the alleged untoward incident resulting in the death of the deceased is against the weight of the evidence on record, suffers from misappreciation of the material facts, and is bad in law. Hence, the impugned judgment and order is liable to be set aside.

(ii) The Appellants contended that when several documents issued by the Government Railway Police clearly establish the death of the deceased on account of the untoward incident, which occurred in the course of the journey before the arrival of Rourkela Station, the question of reporting the incident to any Station Master does not arise in such accidental circumstances, where a child aged three and a half years fell and sustained fatal injuries in the presence of his mother and the train itself came to a halt due to the alarm chain being pulled. Without taking judicial notice of these circumstances, the rejection of the claim application on the ground that no report was lodged before the Station Master is bad in law, perverse, unsustainable in law, and liable to be struck down.

(iii) The Appellants contended that the statements of the Train Guard and the Passenger Pilot recorded during the course of the DRM’s inquiry reveal that the

train in question was suddenly halted for three minutes, just before entering Rourkela Station, on account of the Alarm Chain being pulled. However, the concerned coach was not identified and the Alarm Chain was reset to its original position before the arrival of the Train Guard, after which the train resumed its journey. This demonstrates sheer negligence on the part of the railway personnel in ascertaining the truth. The reasons for such stoppage remain unexplained, and accordingly, the evidentiary value of these statements cannot be relied upon and deserves to be rejected outright.

(iv) The Appellants asserted that the Tribunal erred in attributing negligence to the mother of the deceased by presuming that she had pulled the Alarm Chain for her personal convenience and attempted to de-board near her residence, thereby causing the child to slip from her hands. Such a finding rests on conjecture and is wholly untenable in law. The evidence of Appellant No. 1 as AW-1, both in her examination-in-chief and cross-examination, makes it clear that she was only preparing to alight at the next scheduled stoppage, which was not disproved by the respondents. Likewise, the statements of the mother and the aunt before the Inquiry Authority were merely rebuttable and could not be treated as proved in the absence of corroboration by independent oral or documentary evidence. The reliance placed by the Tribunal on these statements is unsustainable, and the dismissal of the claim on that basis cannot be upheld.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENT:

4. The Learned Counsel for the Respondent earnestly made the following submissions in support of his contentions:

(i) In cases of untoward incidents, the initial burden to establish the claim always lies upon the claimant. In the present case, the appellants have failed to discharge this burden. The alleged death of the child is neither corroborated by reliable oral nor documentary evidence, and the circumstances indicate that it occurred due to the negligent conduct of his mother. Such conduct brings the case within the exception to Section 124A of the Railways Act, 1989, for which the respondents cannot be held liable.

(ii) The evidence of A.W.1, the mother of the deceased, and A.W.2 suffers from material contradictions and is not trustworthy. The Tribunal rightly rejected their testimony, which appeared motivated by mala fide intention to secure compensation.

(iii) The appellants have also failed to establish that the deceased was a bona fide passenger travelling with a valid ticket at the time of the occurrence. In the absence of proof of bona fide passengership, the mandatory requirement for invoking Section 124A is not satisfied, and the claim is not maintainable.

IV. FINDINGS OF THE RAILWAY CLAIMS TRIBUNAL, BHUBANESWAR:

5. The Railway Claims Tribunal, Bhubaneswar Bench heard the parties, perused the documents on record, and upon the basis of the pleadings framed five issues for consideration.

6. On Issues 1, 2, and 3, which were taken up together, the Tribunal observed that the initial burden lay upon the applicants to establish that the deceased was a bona fide passenger and that his death resulted from an "untoward incident" within the meaning of Section 123(c)(2) read with Section 124A of the Railways Act, 1989. The Tribunal found that no journey ticket was produced or recovered in the inquest or investigation proceedings, and the applicants' evidence (A.W.1 and A.W.2) was inconsistent and unreliable. It further noted that the statutory investigation report, the statement of the train guard, and the inquiry findings suggested that the mother of the deceased attempted to alight near her residence for her personal convenience when the train had stopped due to the Alarm Chain Pulling, and in that process the child slipped from her hands and fell, resulting in his death. The Tribunal held that such circumstances demonstrated negligence on the part of the mother and not an accidental fall from the train, and therefore the occurrence was not an "untoward incident."

7. The Tribunal concluded that the sine qua non of compensation under Section 124A had not been established. It accordingly held that the deceased was not a bona fide passenger, that the incident was not an "untoward incident," and that the Railways stood protected under the exception clause of Section 124A.

8. Consequently, Issues 1, 2, and 3 were answered against the applicants. In view of such findings, the Tribunal considered it unnecessary to examine Issues 4 and 5 relating to dependency and relief. The claim application was thus dismissed.

V. COURT'S REASONING AND ANALYSIS:

9. Heard learned counsel for the parties and perused the material on record.

10. The central questions that arise for consideration are: (i) whether the deceased child was a bona fide passenger; (ii) whether the incident amounts to an 'untoward incident' within the meaning of Section 123(c)(2) read with Section 124A of the Railways Act, 1989; and (iii) whether the Railway Administration stands absolved of liability by reason of any of the exceptions under Section 124A.

11. The Tribunal found that no ticket was produced or recovered during investigation, that the testimony of AW-1 and AW-2 was unreliable, and that the incident was attributable to the negligence of the mother, who, according to the inquiry findings, attempted to alight near her residence when the train had stopped following an alarm chain pull.

12. At the outset, it is necessary to examine the statutory framework. Section 124A of the Railways Act enacts a regime of strict liability. Once it is established that death or injury has occurred as a result of an 'untoward incident,' the Railway Administration is bound to pay compensation, unless the case falls within the narrowly defined exceptions of suicide, self-inflicted injury, criminal act, intoxication, or natural cause. Negligence, even gross negligence, is not among these exceptions. This position was firmly settled in ***Union of India v. Prabhakaran***

Vijaya Kumar[1], where the Supreme Court held that fault or negligence is irrelevant under the no-fault scheme of Section 124A.

13. On the question of bona fide passengership, the Tribunal laid undue emphasis on the non-production of a ticket. The law on this issue stands settled in ***Union of India v. Rina Devi***[2], wherein the Supreme Court recognised that in train accident cases, tickets are frequently lost, misplaced, or destroyed during the incident or subsequent medical treatment. It was held that bona fide passenger status may be established by circumstantial or oral evidence, and non-recovery of a ticket cannot by itself be fatal to a claim.

14. In the present case, the applicants produced the Police Information Report, the inquest report, the dead-body challan, and the post-mortem report, all of which record that the child fell from a train and sustained fatal injuries. AW-1, the mother, deposed that a general ticket had been purchased at Chakradharpur for travel up to Rourkela, and AW-2, the aunt, corroborated the journey. These are direct testimonies of co-passengers, supported by contemporaneous police and medical records. The respondents did not adduce any cogent material to rebut this evidence, apart from speculative statements in the DRM's inquiry.

15. The reliance placed by the Tribunal on the alleged negligence of the mother also warrants scrutiny. The statutory inquiry suggested that the mother attempted to alight for personal convenience near her residence. However, the train guard admitted that he had received no report of any fall during the stoppage. Such conjectural reasoning cannot displace the statutory presumption once the basic fact of an accidental fall is established. In ***Jameela v. Union of India***[3], the Supreme Court made it explicit that even if a passenger stands at the open door of a train and falls, the occurrence constitutes an 'untoward incident' and compensation is payable. To deny relief on the ground of negligence would be to introduce a defence not contemplated by the proviso to Section 124A.

16. Weighing the evidence, the Court finds that the applicants have adduced sufficient material to establish that the deceased was travelling with his mother and aunt on a valid journey, that he fell accidentally from the train before reaching Rourkela, and that he succumbed to injuries sustained in the fall. The absence of ticket recovery, or the suggestion of contributory negligence, does not dislodge the claim within the framework of Section 124A. The incident falls squarely within the definition of an "untoward incident," and none of the statutory exceptions are attracted.

17. Before parting with the record, it is necessary to acknowledge the tragedy at the core of this case. A child of barely three and a half years, undertaking a simple

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1 (2008) 9 SCC 527.

2 (2018) 3 SCC 319.

3 (2010) 12 SCC 443.

journey with his mother, lost his life in a sudden and tragic accident. The anguish of a mother who sees her child slip from her hands in a crowded train and pass away the same day is beyond measure. Beneficial legislation such as the Railways Act must be applied with a humane perspective, for its object is to extend relief and support to victims of accidents, not to compound their suffering through rigid or hyper-technical denials. To deny compensation in such circumstances would amount to inflicting injustice upon grief.

VI. CONCLUSION:

18. In view of the foregoing discussion, this Court is satisfied that the appellants have established that the deceased was a bona fide passenger and that his death occurred as a result of an "untoward incident" within the meaning of Section 123(c)(2) read with Section 124A of the Railways Act, 1989. None of the statutory exceptions under the proviso to Section 124A are attracted.

19. The impugned judgment and order dated 31.10.2019 passed by the Railway Claims Tribunal, Bhubaneswar in Original Application No. 332 of 2015 is set aside.

20. The appeal is, therefore, **allowed**.

21. The appellants are entitled to compensation of ₹8,00,000 (Rupees eight lakhs) with interest at 6% per annum from the date of filing of the claim application until payment. The respondent Railways shall deposit the amount before the Tribunal within three months, whereupon it shall be disbursed to the appellants in accordance with law.

22. Interim order, if any, passed earlier stands vacated.

Headnotes prepared by:
Shri Jnanendra Ku. Swain, Judicial Indexer
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Appeal allowed.

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2025 (III) ILR-CUT-547

SURENDRA KUMAR SAHU
V.
STATE OF ODISHA (VIG.)

[CRLMC NO. 1345 OF 2025]

02 SEPTEMBER 2025

[MISS SAVITRI RATHO, J.]

Issue for Consideration

Whether the order of cognizance taken by the learned trial court needs any interference.

Headnotes

PREVENTION OF CORRUPTION ACT, 1988 – Sections 7 & 12 – Offence under the section – In the present case the order of cognizance under sections 7 & 12 of the P.C. Act is under challenge – Trap case – Bribe/tainted money recovered from the co-accused not from the petitioner – The statement of co-accused revealed that as per the instruction of the petitioner he has received the bribe money – The petitioner/accused pleaded that inculpatory confession/confession of co-accused is not a substantive evidence against the another co-accused, hence the order of cognizance is not maintainable – The confession of co-accused is not the only incriminatory material against the petitioner but the fact demand of bribe is proved from the statement of the co-accused – Essentials of section 7 of the Act are attracted – Whether the order of cognizance taken by the learned trial court needs any interference.

Held: No – In the present case, the confession of the co-accused is not the only incriminatory material against the petitioner – Nor is it the case of the prosecution that the co accused demanded the bribe on behalf of the petitioner – It is the other way around – The allegation of the informant is that the petitioner demanded the bribe of Rs 50,000/- which was subsequently reduced to Rs 35,000/- and the petitioner asked the informant to pay it through the co accused – The co-accused confirmed the demand of bribe by the petitioner and accepted the bribe. (Para 13)

To constitute an offence under Section 7 of the PC Act, the accused must be or expecting to be a public servant and had accepted, agreed to accept or attempted to obtain gratification from a person, which was not due to him as remuneration as a motive or reward for doing something. In the present case, the petitioner is alleged to have demanded gratification from the informant for not initiating proceedings against him for placing him under suspension – He had allegedly threatened the petitioner that if the gratification was not paid he would be suspended. (Para 14)

The materials collected by the prosecution are enough to form a prima facie opinion that the accused-petitioner made demand for illegal gratification and asked the informant to pay it to the co-accused, threatening to initiate departmental proceedings against him in case of non-payment – The co accused confirmed that he had been instructed by the petitioner to accept the bribe amount of Rs.35,000/- from the informant on his behalf. This amount was thereafter received by the co accused and recovered from him and he stated before the witnesses that he had taken the money on the direction of the petitioner – A prima facie case under Section 7 of the Prevention of Corruption (Amendment) Act, 2018 is thus made out against the petitioner – Absence of the petitioner from the spot and his presence at a meeting at the time of acceptance of the gratification is not relevant as the amount was to be paid to the co accused as per the instructions of the petitioner. (Para 15)

Citations Reference

State of Haryana v. Ch. Bhajan Lal, **AIR 1992 SC 604 :1992 SCC (SUPP)1 335**' D. Velayutham vs State represented by Inspector of Police,(**2015) 12 SCC 348: AIR 2015 SC 2506;** Amit Kapoor v. Ramesh Chander, **(2012) 9 SCC 460**; Supriya Jain v. State of Hariyana, **(2023) 7 SCC 711**; Gulam Mustafa v. State of Karnatak, **2023 SCC Online SC 603**; State of Orissa v. Pratima Mohanty, **(2021) SCC Online 1222**; CBI v. Aryan Singh, **(2023) SCCOnline SC 379;** Dharam Beer Kumar Singh v. State of Jharsuguda, **2024 SCC Online SC 1894**; Ranjeet Mittal v. State of Madhya Pradesh, **2024 SCC Online SC 2926**; Rajeev Kourav v. Baisahab & Ors., **(2020) 3 SCC 317**; D. Velayutham vs. State, **(2015) 12 SCC 348: AIR 2015 SC 2506;** Devinder Kumar Bansal vs The State of Punjab, **2025 INSC 320;** Periyaswami Moopan & Anr. vs. Unknown, **AIR 1931 Mad. 177;** Suresh Budharmal Kalani vs. State of Maharashtra, **(1998) 7 SCC 337;** Dipak Bhai Jagdishchandra Patel vs. State of Gujarat & Another, **(2019) 16 SCC 547;** P. Krishna Mohan Reddy vs. State of Andhra Pradesh, **2025 SCC OnLine SC 1157: 2025 INSC 725 – referred to.**

List of Acts

Prevention of Corruption Act, 1988.

Keywords

Offence under corruption Act; Demand of bribe; Acceptance of bribe; Trap case; Tainted money; Confession of co-accused; Cognizance of offence; Quashing of cognizance; Public servant; Acceptance of illegal gratification; Attempt to obtain illegal gratification; Motive.

Case Arising From

Order dated 11.02.2025 passed in V.G.R. Case No. 04 of 2021 by the learned Special Judge (Vigilance), Sundargarh.

Appearances for Parties

For Petitioner : Mr. Devashis Panda

For Opposite Party : Mr. N. Maharana, Addl. Standing Counsel (Vigilance)

Judgment/Order

Judgment

SAVITRI RATHO, J.

This CRLMC has been filed for quashing the order dated 11.02.2025 passed in V.G.R. Case No. 04 of 2021 by the learned Special Judge (Vigilance), Sundargarh taking cognizance of offences punishable under Sections 7 and 12 of the Prevention of Corruption Act (in short "the P.C. Act") and issuing notice to the petitioner for commission of offence under Section 7 of the P.C. Act.

BRIEF FACTS

2. Written report was submitted by Narayan Bagh, Headmaster of Sahaspur Primary School, Sundargarh on 03.03.2021 before the S.P. Vigilance, Rourkela Division stating that the Petitioner who was posted as Block Education Officer, Hemgir Block and co-accused Biranchi Khilei who was posted as Jr. Asst. in that office were harassing him and demanding illegal gratification of Rs. 35,000/- for not having submitted 'utilization certificate' relating to expenditure of funds from the Block Education Officer (in short "the BEO") B.E.O's office under various government schemes at the end of each fiscal year when during 2005-2012. The informant who was posted as Headmaster of Kutabaga Primary School stated that the Petitioner had called him to his office in January and told him that utilization certificates for the year 2010 were pending with him and instructed him to submit it early. The informant verified all documents and submitted a utilization certificate for Rs. 2200/- (Rupees Two thousand & two hundred only) in February, 2021. After receiving it, the Petitioner accused the informant of negligence saying that as the certificate was pending since long, a departmental proceeding would be initiated against the informant. He demanded a bribe of Rs. 50,000/- for not taking any action against the informant. On 03.03.2021, the petitioner called him to the B.E.O office and threatened to suspend him, if he did not pay the amount. After many requests, he asked the informant to contact Clerk Biranchi Khilei, who had been instructed and to make payment of at least Rs. 35,000/- to him to 04.03.2021. The informant contacted co accused Biranchi Khilei who told him that the petitioner had told him and that the informant should make the payment to him the next day near Garjanbahal Chhaka, when he would be coming to the Hemgiri BEO Office. The informant thereafter approached the Superintendent of Police Vigilance on the same day, i.e 03.03.2021 with his complaint and the SP Vigilance directed the OIC Vigilance Police Station, Rourkela Vigilance Division to register a case. The DSP Vigilance was directed to investigate into the case. FIR was registered on 03.03.2021 and Rourkela Vigilance P.S. Case No 4 of 2021 against the petitioner and co accused Biranchi Khilei under Section 7 and 12 of the P.C. Act.

3. A trap was laid by the Trap laying Officer (in short "the T.L.O.") where informant produced seventy currency notes of Rs. 500/- denomination each, in presence of trap witnesses which were treated with phenolphthalein powder and

handed over to the informant with advice to give a signal by brushing his head with both his hands after the transaction was over. Preparation was over at 7.15 am, on 04.03.2021. At 07:15 am, the trap party left for Garjanbahal Chhaka and took up their positions. At about 09:20 am, co-accused Biranchi Khilei reached the spot on a motorcycle. After a discussion with the informant he left. He was followed by the trap party and at Durubaga Chhak, co-accused stopped and signaled to the informant to stop. The informant Narayan Bagh went to him. On receiving the pre-arranged signal from the informant, the trap party surrounded the co-accused who confessed about the entire arrangement as agreed between him, the informant and Petitioner. The accompanying witnesses also confirmed demand and acceptance of bribe. The co-accused admitted that the petitioner had asked him to receive cash of Rs 35,000/- from the informant. On testing his fingers, they turned to pink colour. The bribe amount was recovered from his back pack which he brought out. The Petitioner was apprehended at B.S. High School, Sundargrah, where he had gone for a meeting. After completion of investigation Petitioner and co-accused chargesheet was filed under Section – 7 and 12 of the P.C. Act against the petitioner and the co accused.

EARLIER ORDER OF COGNIZANCE

4. On 23.02.2023, cognizance order had been passed by the learned Special Judge (Vigilance), Sundargarh. Challenging the said order, the petitioner had approached this Court in CRLMC No. 3489 of 2024, which had been disposed of on 28.11.2024, setting aside order dated 23.02.2023, observing that the trial Court has not applied its mind while taking cognizance and relegating the matter to the learned trial court "*to pass appropriate order on cognizance bytaking into consideration the materials form part of the charge sheet placed before it*."

IMPUGNED ORDER

5. The learned Special Judge (Vigilance), Sundargarh, has observed in the impugned order that he has "*gone through the materials i.e. the charge sheet No.5 dated 24.5.2022 and other documents such as FIR, case diaries, statement of witnesses U/s 161, Cr.P.C. & 164, Cr.P.C. preparation report, detection report, seizure lists, zimanama, spot map, C.E. Report, sanction order and other connected papers on record. I am satisfied that prima facie materials for the offence U/s 7/12 P.C. (Amendment) Act, 2018 are well established against the accused persons namely, Surendra Kumar Sahu, Ex.BEO, Hemgir Block, District - Sundargarh and Biranchi Khilei, Ex. Junior Clerk, office of the BEO, Hemgir, District - Sundargarh. Hence, cognizance of the offences U/s 7/12 (Amendment) Act, 2018 is taken against the above named accused persons. Issue notice to the accused Surendra Kumar Sahu for the offence U/s 7 of the P.C. (Amendment) Act, 2018 and to the accused Biranchi Khilei for the offence U/s 7 / 12 of the P.C.(Amendment) Act, 2018.*

SUBMISSIONS

6. I have heard Mr. Devashis Panda learned counsel for the petitioner and Mr. Niranjan Maharana learned Additional Standing Counsel, Vigilance. I have gone

through the notes of submission filed by the counsel, the FIR, copy of the chargesheet dated 24.05.2022, statement of the informant recorded under Section-161 Cr.P.C; his statement and statement of Biswajit Bhoi recorded under Section 164 Cr.P.C as well as Annexure 4 and Annexure 5 to the CRLMC.

7. Mr. Panda, learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case. He further submitted that the Petitioner is not connected with the case and has neither demanded any gratification nor accepted any gratification from the informant. There has not been any recovery of the tainted notes from him. He had no knowledge about the alleged demand of bribe which has allegedly been paid to the co- accused at his behest. He was not present in his office when the alleged occurrence took place. He had gone to attend a meeting in B.S. Govt. High School, Sundargarh and was arrested from there. The basis of his implication is the statement of co-accused which is not admissible in evidence. The informant in his statement recorded under Section 164 of the Cr.P.C., on 18.03.2021, has not stated about any demand by the Petitioner. The informant having been transferred to another school, the alleged demand from him is improbable. The impugned order, so far as it relates to him is therefore liable for interference. He has relied on the decision of the Supreme Court in the case of ***State of Haryana v. Ch. Bhajan Lal : AIR 1992 SC 604 :1992 SCC (SUPP)1 335,*** in support of his submission that a prima facie case under Section 7 of the PC Act is not made out against the petitioner for which the process issued against him and the proceedings as far as the petitioner is concerned should be quashed.

8. Mr. N. Maharana, learned Additional Standing Counsel vehemently opposed the submissions of the learned counsel for the Petitioner stating that in order to escape detection, the Petitioner had asked the informant to pay the bribe to the co-accused and this had been confirmed by the co-accused. The informant has clearly stated about the demand for bribe by the petitioner in his FIR and his statement recorded under Section 161 Cr.P.C. and this is supported by the statements of the other witnesses, for which cognizance of the offence under Section 7 and 12 of the PC Act has rightly been taken by the learned trial Court and notice has been issued against the petitioner for the offence under Section 7 of the PC Act. The tainted notes had been paid and recovered from the co-accused who has stated that the Petitioner had asked him to accept the amount and it was to be paid to the Petitioner. The effect of the statement of the co-accused will be considered by the learned trial court. He has further submitted that in exercise of power under Section 482 of the Cr.P.C, this Court should not conduct a mini trial by examining the discrepancies in the statements of the witnesses. He has relied on the decision of the Supreme Court in the case of ***D. Velayutham vs State represented by Inspector of Police : (2015) 12 SCC 348: AIR 2015 SC 2506,*** in support of his submissions. He has mentioned in his written note that the decisions in the following cases, support the prosecution case : -

(***i) Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460;***

(ii) Supriya Jain v. State of Hariyana, (2023) 7 SCC 711;
(iii) Gulam Mustafa v. State of Karnatak, 2023 SCC Online SC 603
(iv) State of Orissa v. Pratima Mohanty, (2021) SCC Online 1222;
(v) CBI v. Aryan Singh, (2023) SCCOnline SC 379
(vi) Dharam Beer Kumar Singh v. State of Jharsuguda, 2024 SCC Online SC 1894;
(vii) Ranjeet Mittal v. State of Madhya Pradesh, 2024 SCC Online SC 2926;
(viii) Rajeev Kourav v. Baisahab & Ors., (2020) 3 SCC 317

STATUTORY PROVISIONS

9. Section 7 of the P.C. Act and Section 30 of the Indian Evidence Act , which are relevant for deciding this case are extracted below: -

> ***"Section 7. Offence relating to public servant being bribed.*** *Any public servant who,-*
> *(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or*
>
> *(b)obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or*
>
> *(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.*
>
> *Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper. Illustration.—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.*
>
> *Explanation 2.—For the purpose of this section,— (i) the expressions "obtain" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means; (ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party."*
>
> *"**Section 30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.** When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.*
>
> *Explanation.—"Offence," as used in this section, includes the abetment of, or attempt to commit, the offence.*
>
> *Illustrations*

(a) A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C". The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said —"A and I murdered C". This statement may not be taken into consideration by the Court against A, as B is not being jointly tried."

JUDICIAL PRONOUNCEMENTS

10. Some of the decisions relied on by the learned Additional Standing Counsel are not relevant for deciding this CRLMC. The decisions which I thought were relevant for deciding this CRLMC are extracted below :-

In the case ***Ch. Bhajan Lal*** (supra ***) ,*** *the Supreme Court* has given the categories of the cases by way of illustration , where power under Section 482 of the Cr.P.C could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice , which are as under *:*

"(1) Where the allegations made in the first information report of the complaint even if they are taken at their face value and accepted their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the Fit or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

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

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

In the case of ***D. Velayutham vs. State: (2015) 12 SCC 348: AIR 2015 SC 2506,*** the Supreme Court has held as follows : -

"14. Though this Court has stressed the need and significance of phenolphthalein as a trap device in corruption cases, so as to allay doubts about the actual receiving of bribes by accused persons, there may be cases where there are multiple demanders in a common or conjoint bribe demand, and for whatsoever reason, only one receives the sum on their behalf, and is entrapped in consequence. Depending on strength of the

remainder of evidence, in these cases, constructive receipt by co-accused persons is open to establishment by the prosecution, in order that those who intermediately obtain bribes be latched with equal culpability as their co- accused and entrapped receivers. This will, of course, discount those cases where the trap is successful only against one and not the other official, the latter having refused to accept the bribe tendered. In this case, the trap would have clearly failed against such an official, and there could be no question of the application of constructive receipt. If the receipt and handling of bribe money by Accused 2 so convincingly and inexorably points towards his custodianship of part of the same bribe amount on behalf of his superior officer, namely Accused 1, then Accused 1 cannot rely on mere non-handling/non-receipt of the bribe money, as his path to exculpation. This Court's construal of anti-corruption cases is sensitive even to these byzantine methods of bribe-taking, and where an evader escapes a trap, constructive receipt has to be an alternate means of fastening criminal culpability."

"17……Contrarily, in the case before us, Accused 1's absence from the office at the time of the trap strengthens, rather than weakens, the claim that his junior officer, Accused 2, was receiving part of the bribe amount as a custodian on his behalf."

In its recent decision in the case of ***Devinder Kumar Bansal vs The State of Punjab : 2025 INSC 320***, the Supreme Court has observed that:-

"11. Thus, in an offence under Section 7 of the Act, 1988, the points requiring proof are:
(i) that, the accused at the time of the offence was, or expected to be, a public servant;
(ii) that, he accepted or retained or agreed to accept, or attempted to obtain from some person a gratification;
(iii) that, such gratification was not remuneration due to him; a legal
(iv) that, he accepted such gratification as a motive or reward, proof of which is essential for
(a) doing or forbearing to do an official act, or
(b) showing or forbearing to show favour or disfavour to someone in exercise of his official functions, or
(c) rendering or attempting to render any service, or someone, with the legislative or disservice to executive government, or with any public servant.

12. Further it is seen that, Section 7 speaks of the "attempt" to obtain a bribe as being in itself an offence. Mere demand or solicitation, therefore, by a public servant amounts to commission of an offence under Section 7 of the P.C. Act. The word "attempt" is to imply no more than a mere solicitation, which, again may be made as effectually in implicit or in explicit terms.

13. Actual exchange of bribe is an essential requirement to be prosecuted under this law. Further, those public servants, who do not take a bribe directly, but, through middlemen or touts, and those who take valuable things from a person with whom they have or are likely to have official dealings, are also punishable as per Sections 10 and 11 of the Act 1988 respectively."

The Privy Council in the case of ***Emperor vs. Lalit Mohan Chuckerbutty*** has held that confession of a co-accused can only be used to "*lend assurance to other evidence against a co-accused* ".

In the case of ***In Re Periyaswami Moopan & Anr. vs. Unknown : AIR 1931 Mad. 177, the Privy Council*** it has been observed as follows : -

"the provision goes no further than this--where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in section 30 may be thrown into the scale as an additional reason for believing that evidence."

In ***Suresh Budharmal Kalani vs. State of Maharashtra : (1998) 7 SCC 337,*** it has been held by the Supreme Court that under Section 30 of the Evidence Act, a confession of an accused is relevant and admissible against a co-accused if both are being tried together in one trial for the same offence. But confessional statements of an accused cannot be used against a co-accused in terms of Section 30 of Evidence Act, for the purpose of framing charges in the absence of any other evidence to do so.

In ***Dipak Bhai Jagdishchandra Patel vs. State of Gujarat & Another : (2019) 16 SCC 547,*** the Supreme Court has held that before a confession of a co accused can be used , it has to be proved against the maker and it has to be clearly established that such confession is neither vitiated either by Section 24 of the Evidence Act nor barred by Section 25 and this can only be established by leading cogent evidence in the course of trial.

In its recent decision ***P. Krishna Mohan Reddy vs. State of Andhra Pradesh : 2025 SCC OnLine SC 1157: 2025 INSC 725,*** the Supreme Court referring to many of its earlier decisions, has concluded as follows: -

"*53. From the above exposition of law, the following emerges: - (i) A person who is accused of an offence or named in the first information report, can be examined by the police and his statement may be recorded under Section 161 of the Cr.P.C., as held in* ***Nandini Satpathy*** *(supra).*

(ii) A statement of an accused under Section 161 of the Cr.P.C, would ordinarily be of two kinds, it may be inculpatory in nature or may be exculpatory in nature.

(iii) An inculpatory statement again may be in the form of an admission or a confession. If such statement admits either a gravely incriminating fact or substantially all the facts which constitute the offence, respectively, as held in ***Pakala Narayana Swami*** *(supra), then it amounts to confession.*

(iv) Where such police statement of an accused is confessional statement, the rigour of Section(s) 25 and 26 respectively will apply with all its vigour. A confessional statement of an accused will only be admissible if it is not hit by Section(s) 24 or 25 respectively and is in tune with the provisions of Section(s) 26, 28 and 29 of the Evidence Act respectively. In other words, a police statement of an accused which is in the form of a confession is per se inadmissible and no reliance whatsoever can be placed on such statements either at the stage of bail or during trial. Since such confessional statements are rendered inadmissible by virtue of Section 25 of the Evidence Act, the provision of Section 30 would be of no avail, and no reliance can be placed on such confessional statement of an accused to implicate another co-accused.

(v) A confessional statement of one accused implicating another co accused may be taken into consideration by the court against such co accused in terms of Section 30 of the Evidence Act, only at the stage of trial, where (1) the confession itself was relevant and admissible in terms of the Evidence Act; (2) was duly proved against the maker; (3)

such confessional statement incriminates the maker along with the co accused and; (4) both the accused persons in question are in a joint trial for the same offence.

(vi) Furthermore, because such confessional statements are not "evidence" in terms of Section 3 of the Evidence Act as held in ***Bhuboni Sahu*** *(supra), such a confession as held in* ***Kashmira Singh*** *(supra) can only be pressed into consideration by the court as a rule of prudence, to lend assurance to the other evidence against such co-accused, provided that aforesaid ingredients or conditions of Section 30 read with Section(s) 24 to 29 of the Evidence Act, are fulfilled.*

(vii) Where the police statement of an accused is in the form of an admission, such inculpatory statement even if it implicates another co-accused cannot be taken into consideration against such co-accused in terms of Section(s) 17 read with 21 of the Evidence Act, as doing so would militate against the general principle, that an admission may be given as evidence against the maker alone. The exceptions to the aforesaid general principle carved out under the Evidence Act, do not permit the usage of such admission against a co-accused in any scenario whatsoever.

(viii) Where the police statement of the accused is an exculpatory statement i.e., it is neither a confession nor an admission, the statement being one under Section 161, would immediately attract the bar under Section 162 of the Cr.PC., and the same may be used only for the very limited purpose provided in the Proviso for the purpose of contradiction or re-examination of such accused person alone, as held in ***Mahabir Mandal*** *(supra). Even if such exculpatory statement of one accused, implicates another co-accused, the same cannot be taken into consideration against such co-accused, as there can be no credibility attached to an exculpatory statement of an accused implicating another co-accused, more particularly because it is neither required to be given on oath, nor in the presence of the co-accused, the same cannot be tested by cross examination and the exculpatory nature of such statement militates against the foundational principle that permits taking into consideration a statement of one accused person against another co-accused as explained in* ***Bhuboni Sahu*** *(supra), i.e., 'when a person admits guilt to its fullest extent either to a certain incriminating fact or substantially all the facts which constitute the offence, and in doing so exposes himself and in the process other co-accused persons to the pain and penalties provided for the guilt, there exists a sincerity and semblance of sanction for the truthfulness of such statement'.*

(ix) Although a handful of decisions of this Court such as ***Indresh Kumar*** *(supra) and* ***Salim Khan*** *(supra) have held that statements under Section 161 of the Cr.P.C. ought to be looked into by the courts at the stage of anticipatory or regular bail for the purpose of ascertaining whether a prima-facie case has been made out against the accused and the nature and gravity of the allegations, yet the aforesaid rule only applies insofar as such statements under Section 161 were made by witnesses and not accused persons. A statement of an accused under Section 161 of the Cr.P.C. stands on a completely different footing from a police statement of a witness. As already discussed in the foregoing paragraphs, if the police statement of an accused is inculpatory in nature, its more in the form of a confession or admission rather than a statement, and the relevant provisions of Section(s) 17 to 30 of the Evidence Act, will apply with all its vigour. Where such statement of the accused is exculpatory in nature, the same can be looked into by the courts only for the limited purpose of either culling out the stance of the accused person qua the allegations or for contradicting the accused, if the accused chooses to be examined as a witness in terms of Section 315 of the Cr.P.C.. However, such exculpatory statement in so far as it implicates another accused person cannot be*

looked into by the courts, as such statements by their nature cannot be tested by cross-examination if such accused person declines to be a witness in the trial in terms of Section 315 of the Cr.P.C., and because such exculpatory statement has no credibility as explained in ***Bhuboni Sahu*** *(supra).*

(x) Before the court looks into the police statement of any person under Section 161 of the Cr.P.C for the purpose of anticipatory or regular bail, the court must first ascertain whether such person is actually a witness or an accused person, or likely to be an accused person in respect of the offence(s) alleged. This is because, there may be situations where a person while giving his statement under Section 161 of the Cr.P.C may not be an accused, but later arrayed as one. In such a scenario the courts must be mindful of the fact that because the investigation is still ongoing, it is more likely for a person who was originally a witness to happen to be later arrayed as an accused person. If the court was to blindly place reliance on statement of such a person merely because he is not named in the first information report, without first seeing whether such person is likely to be arrayed as an accused or not, it would lead to an absurd situation where the statement of such a person may be relied upon up until such person is arrayed as an accused. We also caution the courts, where it emerges from the material on record, that such a person is likely to be arrayed as an accused, the courts should refrain from expressing any such opinion so that the investigation is not prejudiced in any manner."

ANALYSIS AND REASONING

11. From a careful reading of the decisions referred to above it is apparent that where a confession is inculpatory (as it is in the present case), it cannot be used against a co accused unless it is proved in a joint trial. That stage has not arrived in this case as the order taking cognizance and issuing process to the petitioner has been challenged.

12. There can be no quarrel over the settled position of law that if the only incriminatory material against an accused is statement of the co accused, the proceedings can be quashed. A confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used as corroboration. In the absence of any substantive evidence it would not be proper to convict an accused solely on the basis of the confession or statement of the co accused.

13. In the present case, the confession of the co-accused is not the only incriminatory material against the petitioner. Nor is it the case of the prosecution that the co accused demanded the bribe on behalf of the petitioner. It is the other way around. The allegation of the informant is that the petitioner demanded the bribe of Rs 50,000/- which was subsequently reduced to Rs 35,000/- and the petitioner asked the informant to pay it through the co accused. The co-accused confirmed the demand of bribe by the petitioner and accepted the bribe.

14. To constitute an offence under Section 7 of the PC Act, the accused must be or expecting to be a public servant and had accepted, agreed to accept or attempted to obtain gratification from a person, which was not due to him as remuneration as a motive or reward for doing something. In the present case, the petitioner is alleged

to have demanded gratification from the informant for not initiating proceedings against him for placing him under suspension. He had allegedly threatened the petitioner that if the gratification was not paid he would be suspended.

15. The materials collected by the prosecution are enough to form a prima facie opinion that the accused-petitioner made demand for illegal gratification and asked the informant to pay it to the co-accused, threatening to initiate departmental proceedings against him in case of non-payment. The co accused confirmed that he had been instructed by the petitioner to accept the bribe amount of Rs.35,000/- from the informant on his behalf. This amount was thereafter received by the co accused and recovered from him and he stated before the witnesses that he had taken the money on the direction of the petitioner. A prima facie case under Section 7 of the Prevention of Corruption (Amendment) Act, 2018 is thus made out against the petitioner. Absence of the petitioner from the spot and his presence at a meeting at the time of acceptance of the gratification is not relevant as the amount was to be paid to the co accused as per the instructions of the petitioner.

16. I am not satisfied that the case comes within any of the categories of the cases indicated in the case of ***Ch. Bhajan Lal*** (supra). I also do not consider it proper to conduct a mini trial in exercise of power under Section 482 of the Cr.P.C. to assess the worth of the materials relied on by the prosecution. There are bound to some variations in the statement of the complaint recorded under Section 161 Cr.P.C. and his statement recorded under Section 164 Cr.P.C., due to lapse of time. The effect of any variation(s) can best be examined at the appropriate stage by the learned trial Court.

CONCLUSION

17. In view of the above discussion and the decisions referred to above, I am not satisfied that the impugned order taking cognizance of the offences under Section 7 and 12 of the P.C. Act and issuing summons to the petitioner under Section 7 of the P.C. Act calls for any interference in exercise of power under Section – 482 of the Cr.P.C.

18. The CRLMC is accordingly dismissed.

19. Copy of the order be sent to the learned Special Judge Vigilance, Sundargarh forthwith.

Headnotes prepared by: *Result of the case:*
Shri Jnanendra Kumar Swain, Judicial Indexer CRLMC dismissed.
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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2025 (III) ILR-CUT-559

AJAY SINGH
V.
STATE OF ODISHA

[CRLREV NO.312 OF 2022]

02 SEPTEMBER 2025

[R.K. PATTANAIK, J.]

Issue for Consideration

Whether the accused's indefeasible right to default bail under Section 167(2) Cr.P.C. survives after filing of the charge sheet when no application was made within the statutory period.

Headnotes

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 – Section 20(b)(ii)(C) and 36A(4) r/w section 167(2) of Code of Criminal Procedure, 1973 – Petitioner was arrested on 9-4-2021 for possession of commercial quantity of ganja – Investigation could not be concluded within 180 days – Charge sheet was filed on 7-10-2021 (182nd day) without chemical examination report – No application for default bail filed by accused between expiry of statutory period and submission of charge sheet – Trial court rejected plea for default bail holding that right stood extinguished after filing of charge sheet – Whether the accused's indefeasible right to default bail under section 167(2) Cr.P.C stands extinguished upon filing of the charge sheet, when no application for such bail was made within the statutory period?

Held: No – In the present case, the learned court below was unaware of any such consequence to follow and simply waited to respond upon receiving the preliminary charge sheet (to be treated as a final charge sheet, since investigation was not pending in real terms) under the impression that the right of the petitioner for default bail stood extinguished thereby – A duty cast upon the learned Court below to inform the petitioner to go on bail was not sincerely discharged when a complete charge sheet was not filed within the stipulated period – Since, the right to go on statutory bail under Section 167(2) Cr.P.C. was not informed to the petitioner any time before receiving the charge sheet on 7th October, 2021, in the considered view of the Court, where was occasion for him to avail the remedy making an application demanding release – That apart, the learned Court below was under the impression that the right of default bail is lost after filling of the charge sheet and as the investigation is complete – According to the Court, an investigation could be challenged for being not over or incomplete in

absence of a chemical examination report since an opinion is to be formed that the seized article to be a contraband substance – Such a question, as earlier stated, is still pending decision of the Apex Court in SLP (Cri.) No. 5724 of 2023 with batch of matters – Nevertheless, the learned court below was required to inform the petitioner regarding the right to be released on bail in terms of Section 167(2) Cr.P.C. immediately after expiry of the period – Such right of an accused being a fundamental right, according to the Court, is required to be zealously guarded without any breach – Notwithstanding the delay in demanding release, the learned Court below was to consider the same since further detention without statutory compliance infringed upon the petitioner's fundamental right guaranteed under the Constitution of India. (Para 18)

After a threadbare discussion taking judicial notice of the settled position of law, the irresistible conclusion of the Court is that the learned Court below failed in its solemn duty to let the petitioner know about him having the right to go on default bail and that apart, was oblivious of the consequence of receiving a charge sheet in a case of present nature without a chemical examination report, which could lead to an impression that the investigation is inchoate, hence, further detention would be unauthorized – The petitioner has been in custody from 9th April, 2021 and in similar cases, the Apex Court pending decision in the SLPs, directed release of some of the accused persons on interim bail on account of for long detention – In any view of the matter, regard being had to the discussions held herein before, the Court reaches at a conclusion that the petitioner, who is in custody since 9th April, 2021 and though involved in a case leading to recovery and seizure of commercial quantity of contraband Ganja, deserves to be released on bail under Section 167(2) Cr.P.C. as a right to go on default bail accrued to him, which could not be availed of, as he was not informed about it upon expiry of the statutory period, a duty, which is not only cast upon the Courts but even to the extent including the investigating agency as held in *Satender Kumar Antil (supra)*. (Para 19)

Citations Reference

Amar Nath & others Vrs. State of Haryana & Others, **AIR 1977 SC 2185;** Honnaiah T.H. Vrs. State of Karnataka, **2022 Live Law (SC) 672;** Ritu Chhabaria Vrs. The Union of India & Others, **2023 SCC Online (SC) 502;** Rohtash @ Raju Vrs. State of Haryana, **CRR No.933 of 2022 (O&M) dated 1st June, 2022;** Thallury Chakrabarty Vrs. State of Odisha, **(CRLMC No.2799 of 2023) order dated 5th September, 2023 of this Court;** Lambodar Bag Vrs. State of Odisha, **(2018) 71 OCR 31;** Central Bureau of Investigation, Special Investigation Cell-I Vrs. Anupam J. Kulkarni, **AIR 1992 SC 1768;** Uday Mohanlal Acharya Vrs. State of Maharashtra, **(2001) 5 SCC 453;** Manubhai Ratilal Patel Tr. Ushaban Vrs. State of Gujrat & others, **2013**

1 SCC 314; Rakesh Kumar Paul Vrs. State of Assam, **(2017) 15 SCC 67;** autam Navlakha Vrs. National Investigation Agency, **(2022) 13 SCC 542;** R.K. Nabachandra Singh Vrs. Manipur Administration, **AIR 1964 Munipur 39;** Rajani Kanta Meheta Vrs. State of Orissa, **1975 CriLJ 83;** Ishwar Singh Vrs. Panney Singh & others, **1983 WLN (UC) 297;** Fakhrey Alam Vrs. State of UP Live Law, **2021 SC 165;** Hussainara Khatoon & others Vrs. Home Secretary, State of Bihar, **1979 AIR (SC) 1377;** Hitendra Vishnu Thakur & others Vrs. State of Maharashtra & others, **AIR 1994 SC 2623;** Sanjay Dutt Vrs. State of Maharashtra through CBI, **AIR 2013 SC 2687;** Union of India through Central Bureau of Investigation Vrs. Nirala Yadev @ Raja Ram Yadev @ Deepak Yadav, **(2014) 9 SCC 457;** Mohd. Iqbal Madar Sheikh Vrs. State of Maharashtra, **1996 (1) SCC 722;** Punjab and Haryana High Court in Rohtash @ Raju Vrs. State of Haryana, **CRR No. 933 of 2022 (O&M) disposed of on 1st June, 2022;** Mohammad Arbaz & others Vrs. State of NCT of Delhi, **SLP (Cri.) No. 8164-8166 of 2021;** Satender Kumar Antil Vrs. CBI and another, **(2022) 10 SCC 51 – referred to.**

List of Acts

Narcotic Drugs and Psychotropic Substances Act, 1985; Code of Criminal Procedure, 1973.

Keywords

Default bail; Indefeasible right; Extinguishment of right; Incomplete investigation; Preliminary charge sheet; Chemical examination report; Commercial quantity; Failure to inform accused; Statutory right to bail; Personal liberty; Article 21; Duty of court; Procedural lapse; Unauthorized detention; Fundamental right.

Case Arising From

Order 18.06.2022 passed in connection with C.T. Case No.23 of 2021 by the learned Additional Sessions Judge-cum-Special Judge at Balliguda corresponding to Tumudibandha P.S. Case No.24 of 2021.

Appearances for Parties

For Petitioner : Mr. Tirtha Kumar Sahu

For Opp.Party : Ms. B. Dash, ASC

Judgment/Order

Judgment

R.K. PATTANAIK, J.

1. Instant revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.') is at the behest of the petitioner assailing correctness, legality and judicial propriety of the impugned order as at Annexure-1 dated 18th June, 2022 passed in connection with C.T. Case

No.23 of 2021 by the learned Additional Sessions Judge-cum-Special Judge at Balliguda corresponding to Tumudibandha P.S. Case No.24 of 2021, whereby, an application seeking default bail in terms of Section 167(2) Cr.P.C. read with Section 36A(4) of the N.D.P.S. Act was disposed of and declined.

2. The facts pleaded on record revealed that on 9th April, 2021, on a written report received, Tumudibandha P.S. Case No.24 of 2021 was registered under Section 20(b)(ii)(C) of the NDPS Act, whereafter, the investigation was commenced. It is pleaded that on 9th April, 2021, on the requisition of the I.O., the learned court below, without receiving the case diary, illegally forwarded the petitioner for having committed the alleged offence, which is in clear violation of Section 167 (1) Cr.P.C., following which, on 9th April, 2021, the application for bail was filed but it was rejected on 19th April, 2021 primarily considering the nature of allegations and recovery of commercial quantity of Ganja, whereafter, he preferred BLAPL No.5131 of 2021 before this court but it was withdrawn on 22nd July, 2021 so as to renew the prayer for bail on completion of investigation and submission of charge sheet. The further pleading is that the I.O failed to file the charge sheet within the stipulated period of 180 days and on 7th October, 2021 i.e. 182nd day without the chemical examination report, the preliminary charge sheet was filed against the petitioner before learned court below under Section 20(b)(ii)(C) of NDPS Act and by not considering the fact that the charge sheet is incomplete, in absence of such report, unlawfully took cognizance of the offence and for that matter, it failed to inform the petitioner his indefeasible right to go on bail under Section 167(2) Cr.P.C. and finally, on 2nd July, 2022, the application for default bail was moved but it was declined vide Annexure-1. Since, the charge sheet was not submitted within the stipulated period of 180 days and thereafter, it was filed without a chemical examination report, the petitioner was, hence, entitled to default bail in terms of Section 167(2) Cr.P.C.

3. Heard Mr. Sahu, learned counsel for the petitioner and Ms. Dash, learned ASC for the State.

4. Mr. Sahu, learned counsel for the petitioner cited the following decisions, such as, **Amar Nath & others Vrs. State of Haryana & others AIR 1977 SC 2185**; **Honnaiah T.H. Vrs. State of Karnataka 2022 Live Law (SC) 672**; **Ritu Chhabaria Vrs. The Union of India & others 2023 SCC Online (SC) 502**; **Rohtash @ Raju Vrs. State of Haryana** in CRR No.933 of 2022 (O&M) dated 1st June, 2022 and an order dated 5th September, 2023 of this Court in **Thallury Chakrabarty Vrs. State of Odisha** (CRLMC No.2799 of 2023) and furthermore, referring to the citation in **Lambodar Bag Vrs. State of Odisha (2018) 71 OCR 31** contends that the petitioner is eligible and entitled to go on bail as per Section 167(2) Cr.P.C. with the submission that the charge sheet was not filed within the stipulated period of 180 days and with the preliminary charge sheet received by the learned court below, it was not accompanied with the chemical examination report but when the default bail was applied on 2nd June, 2022, later to the taking

cognizance of the offence under Section 20(b)(ii)(C) of the NDPS Act, it was not entertained. The contention is that an indefeasible right accrued in favour of the petitioner to go on bail on account of the default in filing the charge sheet on or before 5th October, 2021 as it was received on 7th October, 2021 i.e. on 182nd day and that too, without the chemical examination report. Referring to the dates and events, it is submitted by Mr. Sahu, learned counsel that the FIR was lodged on 9th April, 2021 and on the same day, the petitioner was arrested and forwarded and within 180 days completed on 5th October, 2021, the charge sheet was not filed and the preliminary charge sheet was received on 7th October, 2021, whereupon, the order of cognizance for the alleged offence was passed and on 3rd February, 2022, the charge was framed against him and lastly, on 2nd June, 2022, such an application under Section 167(2) Cr.P.C was moved and rejected on 18th June, 2022 vide Annexure-1 and since, the preliminary charge sheet was filed beyond the stipulated period and without the chemical examination report in respect of the contraband Ganja, he should have been granted default bail under Section 167(2) Cr.P.C.

5. Ms. Dash, learned ASC for the State, on the other hand, submits that the petitioner did not make any application under Section 167(2) Cr.P.C. at any time before 7th October, 2021 and therefore, the right to go on default bail stood extinguished. It is further submitted that even though, the preliminary charge sheet was not filed at any time before 5th October, 2021 and received with a delay of two days i.e. on 7th October, 2021, the learned court below having taken cognizance of the offence under Section under Section 20(b)(ii)(C) of the NDPS Act on 7th October, 2021 itself and framed the charge against the petitioner on 3rd February, 2022 and thereafter, proceeded with the trial, the petitioner since failed to file any such application under Section 167(2) Cr.P.C. within the default period between 5th October, 2021 and 7th October, 2021, the right of demanding default bail is no more available as it stood extinguished.

6. In course of hearing, Mr. Sahu, learned counsel for the petitioner in addition to the case laws referred to herein before placed reliance on the following citations, such as, **Central Bureau of Investigation, Special Investigation Cell-I Vrs. Anupam J. Kulkarni AIR 1992 SC 1768**; **Uday Mohanlal Acharya Vrs. State of Maharashtra (2001) 5 SCC 453**; **Manubhai Ratilal Patel Tr. Ushaban Vrs. State of Gujrat & others 2013 1 SCC 314**; **Rakesh Kumar Paul Vrs. State of Assam (2017) 15 SCC 67**; **Gautam Navlakha Vrs. National Investigation Agency (2022) 13 SCC 542**; **R.K. Nabachandra Singh Vrs. Manipur Administration AIR 1964 Munipur 39**; **Rajani Kanta Meheta Vrs. State of Orissa 1975 CriLJ 83**; and **Ishwar Singh Vrs. Panney Singh & others 1983 WLN (UC) 297** to further contend that the charge sheet having not been filed within time, the petitioner was to be allowed to go on default bail. Apart from the above, the decisions, namely, **Fakhrey Alam Vrs. State of UP Live Law 2021 SC 165**; **Hussainara Khatoon & others Vrs. Home Secretary, State of Bihar 1979 AIR (SC) 1377**; and **Hitendra Vishnu Thakur & others Vrs. State of**

Maharashtra & others AIR 1994 SC 2623 are relied upon by Mr. Sahu, learned counsel while advancing an argument that due to default in filing the charge sheet within the stipulated period, the petitioner was entitled to be released on bail under Section 167(2) Cr.P.C.

7. To consider and appreciate the rival contentions, the Court is inclined to examine the plea, whether, such a right of default bail under Section 167(2) Cr.P.C. was lost upon filing of the preliminary charge sheet on 7th October, 2021. It is claimed that the investigation was not over and complete since the chemical examination report was not filed along with the preliminary charge sheet within the time stipulated expired on 5th October, 2021. Under such circumstances, the question is, whether, the petitioner is entitled to default bail? In course of hearing, Ms. Dash, learned ASC for the State refers to the decision of the Apex Court in **Sanjay Dutt Vrs. State of Maharashtra through CBI AIR 2013 SC 2687** to contend that the indefeasible right of an accused is enforceable only up to the filing of a charge sheet and does not survive thereafter and since, he failed to apply for default bail under Section 167(2) Cr.P.C. any time after 5th October, 2021 but before 7th October, 2021, the learned court below did not commit any error or illegality in denying the same.

8. In **Sanjay Dutt** (supra), the Apex Court made it clear that the indefeasible right accrued to the accused is enforceable only prior to the filing of the charge sheet and it does not survive or remain enforceable thereafter, if not already availed of. In other words, it has been held therein that the right of default bail continues till the filling of the challan and stands extinguished referring to the decision in **Hitendra Vishnu Thakur (**supra), wherein, it is concluded that a right which accrues and is enforceable by the accused is only from the time of default till the filing of the challan and it does not remain to be enforced on the challan being filed. It is further held therein that if the accused applies for bail on expiry of 180 days or the extended period, as the case may be, in that case, he has to be released on bail forthwith under Section 167(2) Cr.P.C. though, subsequent to such release, he may be rearrested and committed to custody according to the provisions of the Cr.P.C. It is also held that the right of the accused to be released on bail after filing of the challan notwithstanding the default in filing it within the time allowed is governed from the time of filing of the challan by the provisions relating to grant of bail applicable at that stage.

9. In **Rakesh Kumar Paul (**supra), the Apex Court observed that it had the occasion to review the entire case laws on the subject in **Union of India through Central Bureau of Investigation Vrs. Nirala Yadev @ Raja Ram Yadev @ Deepak Yadav (2014) 9 SCC 457** and in that decision, reference was made to **Uday Mohanlal Acharya** (supra) and reached at a conclusion that on expiry of the stipulated period, an indefeasible right accrues in favour of the accused for being released on bail on account of default in the completing the investigation within the period prescribed and hence, the accused is entitled to be released on bail, if he is

prepared and furnished the bail as directed by the Court. It is further held therein that if the charge sheet is not filed and the right for default bail has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext and the accused can avail his liberty by filing an application pleading that the time stipulated to file the same has expired and therefore, an indefeasible right has accrued in his favour and furthermore, he is prepared to furnish the bail bond. In the above decision, the Apex Court also observed that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the Courts play a part and referred to an earlier decision in **Mohd. Iqbal Madar Sheikh Vrs. State of Maharashtra 1996 (1) SCC 722**, wherein, it was observed that some Courts keep the applications for default bail pending for some days, so that, in the meantime, the charge sheets are filed. In so far as, the case at hand is concerned, the petitioner has admittedly not filed any such application under Section 167(2) Cr.P.C. after expiry of the stipulated period and any time before the filing of the chargesheet on 7th October, 2021.

10. In **Lambodar Bag** (supra), this Court, while dealing with a matter of default bail under Section 167(2) Cr.P.C. concluded that such right is enforceable, if within the stipulated period extended for completion of investigation, the chargesheet is not filed. In the said case, the charge sheet was not filed within 180 days as prescribed under Section 36A(4) of the NDPS Act and since, the investigation could not be completed, the prosecution moved an application on 22nd July, 2017 seeking extension and even within the extended period expired on 20th September, 2017, the prosecution report was not filed, which was received on 26th September, 2017, whereafter, the Court below took cognizance of the offence under Section 20(b)(ii)(C) of the NDPS Act on 7th October, 2017 and the Court reached at a conclusion that the Court concerned committed illegality in granting extension for a further period of 60 days to conclude the investigation without issuing any notice to the petitioners therein to have their say and hence, such extension was not in accordance with law and therefore, the remand order dated 22nd September, 2017 is illegal and custody becomes unauthorized and that apart, such right to go on bail on account of the alleged default having not been informed, due to non-submission of the charge sheet, they are entitled to be released on bail and at that time, the gravity of offence merits no consideration or for that matter, the bar under Section 37 of the NDPS Act.

11. Since, the extension to complete the investigation was allowed without notice to the accused persons and even within the extended period, the prosecution report was not filed and received, under such circumstances, this Court in the case (supra) held that the continued detention has been unlawful and as a necessary corollary, the remand order and as a result, invoked Section 167(2) Cr.P.C. to release them on default bail. As far as, the case of the petitioner herein is concerned, no such application was moved seeking extension of investigation on expiry of the stipulated period on 5th October, 2021 and shortly thereafter, the preliminary charge

sheet was filed on 7th October, 2021 and the point is, whether, the detention during the interregnum is illegal and hence, he was entitled to go on default bail under Section 167(2) Cr.P.C. Any such custody beyond 5th October, 2021 since the charge sheet was not filed entitled the petitioner to make him eligible to apply for default bail before 7th October, 2021. As earlier stated, it is not a case seeking extension of investigation. It is assumed that since such extension to complete the investigation was not applied on or before 5th October, 2021, the petitioner was immediately to be released on 181st day i.e. on 6th October, 2021 in terms of Section 167(2) Cr. P.C. But, it is not in dispute that the petitioner had not filed the application under Section 167(2) Cr.P.C. before the preliminary charge sheet was filed on 7th October, 2021. Again the question is, under the above circumstances, whether, the petitioner was required to be released on bail forthwith? The further question is, if upon receiving the preliminary charge sheet on 7th October, 2021, any such right accrued in favour of the petitioner and enforceable on 6th October, 2021 or any time before filing of the same on 7th October, 2021 really existed?

12. In **Fakhrey Alam** (supra), the Apex Court held and observed that default bail under Section 167(2) Cr.P.C. is a fundamental right not merely a statutory and such indefeasible right is a part of the procedure established by law under Article 21 of Constitution of India. In **Hussainara Khatoon** (supra), a celebrated judgment of the Apex Court, it is held that an UTP is entitled to be released on bail after being produced before a Magistrate and if he has been in detention for more than the stipulated period prescribed. In **Rakesh Kumar Paul (**supra), it has been observed that the legislative intent is and always has been to complete the investigation into an offence within the stipulated period, or else, the accused is entitled to default bail under Section 167(2) Cr.P.C., which is an indefeasible right and held further that in the matter concerning personal liberty, it is the obligation of the Court to inform the accused that he is entitled to free legal assistance and finally concluded that it is the duty and obligation of a Magistrate before whom a person accused of committing a cognizable offence is produced to make him fully aware that he has a right to consult and be defended by a legal practitioner and in case, he has no means to engage a lawyer of his choice, one would be provided to him for legal aid at the expense of the State and such right flows from Articles 21 and 22(1) of the Constitution of India and it needs to be strictly enforced and adopting the same principle, it would equally be the duty and responsibility of a Court on coming to know that the accused before it is entitled to default bail or at least to apprise him of the indefeasible right and any contrary view would diminish the respect for personal liberty, on which, so much emphasis has been laid time and again. It does mean that the accused should be made aware of the right to go on default bail upon expiry of the stipulated period so as to enable him to make an application in that regard like in the case when he is produced before a Magistrate and is unrepresented. Referring to the decision in **Sanjay Dutt** (supra), the legal position was discussed therein and it is also affirmed that the release of the accused by default bail would be subject to availing the remedy with an application filed. The requirement for making

application seeking enforcement of the right under Section 167(2) Cr.P.C. has been recognized in several cases and in fact, in **Mohd. Iqbal Madar Sheikh** (supra), the Apex Court rejected the claim for statutory bail on ground that no application was made demanding the same. It is, hence, an admitted position of law that unless an application has been made or request received on behalf of the accused, there is no question of him being released on default bail. Rather, it is settled law that such a right under Section 167(2) Cr.P.C cannot be exercised anymore after the chargesheet is filed and received and cognizance is already taken of the offence leaving it to be governed by other provisions of the Cr.P.C.

13. In **Hitendra Vishnu Thakur (**supra), it is held that an accused seeking bail under Section 20(4) of the TADA has to make an application to the Court for grant of bail on the ground of default of the prosecution and the Court shall release him on bail after notice to the Public Prosecutor uninfluenced by the gravity of the offence as Section 20(8) thereof does not control the grant of bail as both the provisions operate in separate and independent field. In fact, the conclusion therein is that an application of bail is required to be filed by an accused for enforcement of his indefeasible right said to have been accrued on account of the default in completion of investigation within the stipulated period and upon receiving the same, the Court must dispose it of forthwith and such prompt action on its part is absolutely necessary to frustrate any such ploy of the prosecution destroying the right already accrued and the purpose being to advance the legislative mandate of an accused being released on bail forthwith and in case, he is unable to furnish the bail bond, then on a conjoint reading of Explanation I and proviso to sub-section (2) of Section 167 Cr.P.C., the continued custody even beyond the specified period would not become unauthorized and if during that period, the investigation is completed and the charge sheet is filed, then, the so called indefeasible right stands extinguished. It has been reiterated that the expression 'if not already availed of' used in **Sanjay Dutt** (supra) must be understood to mean when the accused files an application and is prepared to furnish bail on being directed. In other words, on expiry of the stipulated period, if the accused moves an application for bail and offers to furnish the bail bond, it has to be held that he has availed the right even though the Court has not considered the same and has not indicated the terms and conditions of bail. It is also held therein that the right to default bail is a fundamental right and therefore, it is the duty of the counsel representing the accused, whether, paid or legal aid counsel to inform him that on expiry of the statutory period, he is entitled to bail and the Magistrate should equally to not encourage wrongful detention and must inform of his right and in case, the accused still does not exercise the right to go on bail, he shall remain in custody but if he chooses to exercise such right and willing to furnish bail bond, he must have to be released forthwith.

14. Turning to the facts of the case, the plea of the petitioner is that illegality has been committed from the time of his remand. Mr. Sahu, learned counsel

appearing for him contends that for all such illegalities, the petitioner's remand is illegal. But, on perusal of record, it is made to understand that at such stages, from the time of remand, the petitioner never ever raised any objection. Undeniably, the preliminary charge sheet was filed two days after expiry of the stipulated period and again, the challenge to the same has been delayed. According to the Court, it is the duty of a Court to ensure strict compliance of law instead of pushing an accused to a corner blaming him entirely on account of delay and laches. In the case of the petitioner, admittedly, the request for default bail has been from him long after filling of the charge sheet. Even though, it is stated to be preliminary chargesheet, according to the Court, the same is final for the reason that the investigation was almost over by then. It is, therefore, not to be a case of investigation pending and therefore, extension was to be sought for. Rather, the ground herein is that the investigation to be inchoate without the chemical examination report being received along with the preliminary charge sheet. Against the aforesaid backdrop, the detention of the petitioner is alleged to be unauthorized as the investigation without such report shall have to be held as incomplete. The Court is of the view that either casually the preliminary charge sheet was filed under the impression that the investigation is completed with all major exercises being over or the intent could be to prevent release of the petitioner by default bail as the period had already expired. Is it a final charge sheet for all intent and purpose? Or was it an exercise which by no means held to be a completed investigation? It may be alleged that without the chemical examination report, in a case of the present nature, there is no prima facie conclusion one could reach at that the recovery is of a contraband substance. Therefore, a Court, upon receiving a charge sheet, is to examine, whether, the materials do reveal and make out a case involving a contraband substance, recovery of which, is a punishable offence under the N.D.P.S. Act. In the instant case, the learned Court below did not appear to be serious enough to examine the said aspect after receiving the preliminary charge sheet in anticipation and believing that the chemical examination report is to formally obtained and filed. According to the Court, a Court must have to be vigilant and meticulous while dealing with a preliminary charge sheet filed which is almost final but is not received along with the chemical examination report. It could lead to a disastrous consequence, if upon receipt of the report, the substance is found not to be contraband resulting thereby the detention of the accused to be illegal.

15. As far as the petitioner is concerned, he has been detained even after the preliminary chargesheet under the impression that the seizure from him is of a contraband substance. Such a situation could have been avoided had there been a direction to the I.O. to file the chemical examination report along with the chargesheet. It is made to suggest that the preliminary charge sheet was filed hurriedly as the prescribed period to submit the same had expired and it could lead to release of the petitioner by default bail. The learned Court below should have been vigilant in dealing with the situation to dispel any kind of impression of miscarriage of justice to have resulted thereby or to scuttle any kind of misadventure

of the investigating agency at times purposefully employed to delay and frustrate the right of an accused to be released on bail under Section 167(2) Cr.P.C. As such a situation has been alleged at present, it could legitimately be ground demanding default bail as with the preliminary charge sheet, no chemical examination report was filed and as such, the investigation may rightfully be alleged as incomplete.

16. In one of such cases, the Punjab and Haryana High Court in **Rohtash @ Raju Vrs. State of Haryana** in CRR No. 933 of 2022 (O&M) disposed of on 1st June, 2022 concluded that the accused therein is entitled to default bail under Section 167(2) Cr.P.C. referring to the Apex Court's order in SLP (Cri.) No. 8164-8166 of 2021 (**Mohammad Arbaz & others Vrs. State of NCT of Delhi**) and batch of matters, while dealing with a question, whether, a charge sheet is complete without the chemical examination report, hence, the accused persons are entitled to default bail, wherein, pending decision thereon by a Larger Bench in SLP (Cri.) No. 5724 of 2023 directed their release on interim bail.

17. In so far as, the plea of the petitioner that the learned Court below was to inform about his rights to go default bail, is concerned, the decision in **Lambodhar Bag (supra)** is referred to by Mr. Sahu, learned counsel to contend that upon expiry of the stipulated period, such was the responsibility to be discharged by the learned Court below but instead, the preliminary charge sheet was accepted followed by the order of cognizance. In **Hitendra Vishnu Thakur** (supra), the Apex Court, while recognizing the rights of the accused was not impressed with the argument that on expiry of the period during which the investigation is required to be completed under Section 167 Cr.P.C. read with Section 20(4) TADA, the Court must release him on bail on its own motion even without any application received on his offering to furnish bail, rather, he is to apply for the same, if wishes to be released on account of the default of the investigating agency and once such an application is received, to consider it with a notice to the prosecution. In **Uday Mohanlal Acharya** (supra), it is held that the indefeasible right is to be availed of at the time when an application is made for enforcement of the right under section 167(2) Cr.P.C. and the accused offers to abide by the terms and conditions of bail. In the same breath, for the decision in **Rakesh Kumar Paul** (supra), it is not to be lost sight of the fact that such a right is to be apprised to the accused forthwith on expiry of the stipulated period so as to enable him to submit an application seeking default bail adopting the same principle referable to the duty and obligation of a Magistrate before whom a person accused of committing a cognizable offence is produced and the duty to make him fully aware about his right to consult and be defended by a legal practitioner. In **Ritu Chhabaia** (supra), the Apex Court discussing the legal position reiterated in **Satender Kumar Antil Vrs. CBI and another (2022) 10 SCC 51**, wherein, it has been held that as a consequence of the right flowing from Section 167(2) Cr.P.C., the Courts are to give due effect of it and any detention beyond the period would certainly be illegal being an affront to the liberty of the person concerned and therefore, it is not only the duty of the Courts but also the

investigating agency to ensure that an accused receives the benefit of such provision and at last concluded that this right of statutory bail is extinguished, if the charge sheet is filed within the stipulated period and the question of resorting to supplementary charge sheet under Section 173(8) Cr.P.C. only arises after the main charge sheet has been filed, as such, a supplementary charge sheet, wherein, it is explicitly stated that the investigation is pending, cannot under any circumstances, be used to scuttle the right of default bail, for then, the entire process of statutory bail is frustrated and filling of a charge sheet or supplementary charge sheet becomes a mere formality and a tool to crush such a right, which has already accrued.

18. In the present case, the learned court below was unaware of any such consequence to follow and simply waited to respond upon receiving the preliminary charge sheet (to be treated as a final charge sheet, since investigation was not pending in real terms) under the impression that the right of the petitioner for default bail stood extinguished thereby. A duty cast upon the learned Court below to inform the petitioner to go on bail was not sincerely discharged when a complete charge sheet was not filed within the stipulated period. Since, the right to go on statutory bail under Section 167(2) Cr.P.C. was not informed to the petitioner any time before receiving the charge sheet on 7th October, 2021, in the considered view of the Court, where was occasion for him to avail the remedy making an application demanding release. That apart, the learned Court below was under the impression that the right of default bail is lost after filling of the charge sheet and as the investigation is complete. According to the Court, an investigation could be challenged for being not over or incomplete in absence of a chemical examination report since an opinion is to be formed that the seized article to be a contraband substance. Such a question, as earlier stated, is still pending decision of the Apex Court in SLP (Cri.) No. 5724 of 2023 with batch of matters. Nevertheless, the learned court below was required to inform the petitioner regarding the right to be released on bail in terms of Section 167(2) Cr.P.C. immediately after expiry of the period. Such right of an accused being a fundamental right, according to the Court, is required to be zealously guarded without any breach. Notwithstanding the delay in demanding release, the learned Court below was to consider the same since further detention without statutory compliance infringed upon the petitioner's fundamental right guaranteed under the Constitution of India.

19. After a threadbare discussion taking judicial notice of the settled position of law, the irresistible conclusion of the Court is that the learned Court below failed in its solemn duty to let the petitioner know about him having the right to go on default bail and that apart, was oblivious of the consequence of receiving a charge sheet in a case of present nature without a chemical examination report, which could lead to an impression that the investigation is inchoate, hence, further detention would be unauthorized. The petitioner has been in custody from 9th April, 2021 and in similar cases, the Apex Court pending decision in the SLPs, directed release of some of the

accused persons on interim bail on account of for long detention. In any view of the matter, regard being had to the discussions held herein before, the Court reaches at a conclusion that the petitioner, who is in custody since 9th April, 2021 and though involved in a case leading to recovery and seizure of commercial quantity of contraband Ganja, deserves to be released on bail under Section 167(2) Cr.P.C. as a right to go on default bail accrued to him, which could not be availed of, as he was not informed about it upon expiry of the statutory period, a duty, which is not only cast upon the Courts but even to the extent including the investigating agency as held in **Satender Kumar Antil** (supra).

20. Accordingly, it is ordered.

21. In the result, the revision petition stands allowed. As a logical sequitur, the impugned order as at Annexure-1 dated 18th June, 2022 passed in C.T. Case No.23 of 2021 by the learned Additional Sessions Judge-cum-Special Judge at Balliguda corresponding to Tumudibandha P.S. Case No.24 of 2021 is hereby set aside with a direction for immediate release of the petitioner in connection therewith subject to suitable conditions imposed.

Headnotes prepared by:
Shri Hara Prasad Padhy, Editor-in-Chief, I/C

Result of the case:
Revision Petition allowed.

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2025 (III) ILR-CUT-571

LINGARAJ BEHERA
V.
STATE OF ODISHA

[CRLREV NO. 666 OF 2024]

09 SEPTEMBER 2025

[R.K. PATTANAIK, J.]

Issue for Consideration

Whether the petitioner, having been convicted for offences relating to counterfeit currency, is entitled to suspension of sentence and release on bail under Section 389(1) of the Cr.P.C. pending disposal of his criminal appeal.

Headnotes

CODE OF CRIMINAL PROCEDURE, 1973 — Section 389(1) – Petitioner was found in possession of counterfeit currency worth ₹31,27,500/-

and convicted under Sections 489-B and 489C of Penal Code – Application under section 389(1) of Cr.P.C for suspension of sentence and bail during pendency of appeal rejected – Plea of procedural lapses, lack of corroboration, and prolonged custody raised in revision – Whether the Petitioner is entitled to suspension of sentence and release on bail under section 389(1) of Cr.P.C, pending disposal of appeal?

Held: **No** – Admittedly, a large number of fake currency notes found from the exclusive and conscious possession of the petitioner prima facie proved by the seizure carried out with no any explanation received back from him as revealed from his statement recorded under Section 313 Cr.P.C except a reply that a false case has been foisted and with such evidence on record and forensic report i.e. Ext.21, it may not be proper to allege that the order of conviction is indefensible and hence, in view of the above discussion, the irresistible conclusion of the Court is that the learned court below did not err in denying suspension of execution of sentence under Section 389(1) Cr.P.C. disallowing the petitioner to go on bail by the impugned order i.e. Annexure-5 despite his custody ever since 2023 especially when the conditions of release suspending sentence post-conviction are distinctly different with the plea of presumption of innocence is not available to a convict anymore. (Para 21)

At last, before winding up, it is made clear that the Court has not discussed the evidence on merit, rather, made an endeavor to assess the materials on record objectively to examine whether a case is made out for suspension of sentence and hence, the learned court below shall have to consider disposal of appeal on merit and according to law without being influenced by any of its observations made and discussed herein above but within a stipulated period since in the words of the Apex Court in **Bhagwan Rama Shinde Gosai** (supra), the invaluable right of appeal becomes a futile exercise by passage of time. (Para 22)

Citations Reference

Hussainara Khatoon and Others Vrs. Home Secretary, State of Bihar, **(1980) 1 SCC 81; O**mprakash Sahni Vrs. Jai Shankar Chaudhary & Another, **(2023) 91 OCR (SC) 84;** State of Himachal Pradesh Vrs. Jai Lal & Others, **(1999) Supp. 2 SCR 318;** B.R. Kapur Vrs. State of T.N. & Another, **(2001) 7 SCC 231;** Kishori Lal Vrs. Rupa & Others, **(2004) 7 SCC 638;** Sidhartha Vashisht @ Manu Sharma Vrs. State (NCT of Delhi), **(2008) 5 SCC 230;** Bhagwan Rama Shinde Gosai & Others Vrs. State of Gujarat, **(1999) 4 SCC 421;** Ash Mohammad Vrs. Shiv Raj Singh @ Lalla Babu & Another, **(2012) 9 SCC 446 – referred to.**

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973;

Keywords

Counterfeit currency; Suspension of sentence; Bail pending appeal; Procedural lapses; Lack of corroboration; Forensic evidence; Presumption of innocence; *Mens rea*; Prolonged custody.

Case Arising From

Order dated 2nd September, 2024 passed by the Additional Sessions Judge, Titilagarh in Criminal Appeal No. 06 of 2024 arising out of S.T Case No.28/1 of 2023-24.

Appearances for Parties

For Petitioner : Mr. Tirth Kumar Sahu
For Opp. Party : Mr. P.K. Ray, AGA

Judgment/Order

Judgment

R.K. PATTANAIK, J.

1. Instant revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.') is filed by the petitioner assailing the impugned order dated 2nd September, 2024 passed in connection with Criminal Appeal No. 06 of 2024 as at Annexure-5 by learned Additional Sessions Judge, Titilagarh arising out of S.T. Case No.28/1 of 2023-24, whereby, an application seeking suspension of sentence under Section 389 Cr.P.C. moved by him demanding his release from judicial custody has been disallowed.

2. The facts pleaded on record reveal that the petitioner faced trial in S.T. Case No. 28/1 of 2023-24 and was ultimately convicted under Sections 489-B and 489-C IPC and directed him to undergo R.I. for seven years as the maximum sentence awarded along with fine of Rs. 5,000/-. Against the order of conviction and sentence, the petitioner preferred Criminal Appeal No. 06 of 2024 and therein, the application under Section 389(1) Cr.P.C. was pressed into service seeking his release on bail with the suspension of sentence but it has not been found favour with and was rejected by the learned Additional Sessions Judge, Titilagarh as per Annexure-5 and the same is under challenge.

3. On a written complaint, CID, CB, STF P.S. Case No. 4 dated 2nd February, 2023 was registered under Sections 420,468,471,489-A,489-B.489-C,489-D and 120-B of IPC and later on, a preliminary charge sheet was filed on 3rd April, 2023, a copy of which is at Annexure-2 series and subsequent thereto, the learned Trial Court framed charge against the petitioner and proceeded with the trial, during

which, nine charge sheeted witnesses were examined from the side of the prosecution and at last, the petitioner was convicted only for the offences under Sections 489-B & 489-C IPC. The petitioner, thereafter, filed the appeal before the learned court below challenging the order of conviction and therein, moved the application under Section 389(1) Cr.P.C. to suspend the sentence and to release him on bail pending its disposal, however, it stood disallowed vide Annexure-5.

4. A copy of the judgment of the learned Assistant Sessions Judge, Titilagarh in S.T. Case No. 28/1 of 2023-24 is at Annexure-4 and the same is perused.

5. Heard Mr. Sahu, learned counsel for the petitioner and Mr. Ray, learned AGA for the State.

6. The grounds upon which the impugned order at Annexure-5 is questioned are as follows:(i) that, the learned court below failed to consider the procedural lapses and lack of corroborative evidence to prove the case against the petitioner, rather, heavily relied upon uncorroborated and inconsistent evidence of the official witnesses ignoring the fact that the independent corroboration in support of search and seizure is essential and necessary not to have been held in accordance with Section 100 Cr.P.C. and hence, failure to comply the statutory safeguards leads to substantial doubt about the reliability and fairness of the evidence collected; (ii) that, there has been lapses in the documentation of the seized counterfeit currency notes and that affects credibility of the evidence produced against the petitioner, inasmuch as, due to such lapse or procedural oversight, it has led to a compromise in the accuracy of the evidence since the seizure does not reveal a detailed itemized denominations, which is a standard requirement in documenting critical evidence concerning economic offences; (iii) that, by keeping the investigation open in terms of Section 173(8) Cr.P.C. and filing a preliminary charge sheet, such a course of action, raises a serious concern about the impartiality and integrity of the investigation, all the more when, there is absence of mens rea on the part of the petitioner as he consistently maintained ignorance regarding the counterfeit currency notes found in his possession for having no knowledge about its source and absence of evidence in that regard has greatly undermined the prosecution case; (iv) that, the evidence of the non-official witnesses, namely, P.Ws. 1, 2 & 3 does not prove the case with regard to the seizure and there has been absence of independent corroboration, hence, when the evidence is not clear, consistent and beyond reasonable doubt and the learned court below has overlooked the same and preferred the evidence of the prosecution instead; (v) that, the petitioner has been in custody since 3rd April, 2023 and such prolonged detention without adequate evidence on record violates his right to personal liberty guaranteed under Article 21 of the Constitution of India and hence, it hugely impacts the right to appeal as acknowledged by the Apex Court in **Hussainara Khatoon and others Vrs. Home Secretary, State of Bihar (1980) 1 SCC 81** emphasizing the importance of fair trial avoiding long detentions; (vi) that, the offences under Sections 489-B and 489-C IPC are not prima facie established since the petitioner was unaware of the nature of

the currency notes that negates the element of mens rea; (vii) that, finally, the petitioner having a fair chance of success in the appeal in view of the procedural lapses and the fact that the seized currency notes with the exhibits sent for forensic examination returned with an endorsement for having not matched with the description detailed in the forwarding report and that the expert, who conducted the test was not examined from the side of the prosecution.

7. Mr. Sahu, learned counsel for the petitioner submits that due to the inconsistent evidence and lack of corroboration to support the charge, the petitioner ought to have been allowed to go on bail with suspension of sentence under Section 389(1) Cr.P.C. and to advance such an argument, he relies on a decision of the Apex Court in **Omprakash Sahni Vrs**. **Jai Shankar Chaudhary & another (2023) 91 OCR (SC) 84**. It is contended that in absence of clear and concrete evidence to substantiate the charge and particularly when, there has been discrepancy noticed by the laboratory upon receiving the exhibits which apparently mismatched the details of the forwarding report, the lapses being conspicuously revealed from record, the petitioner, who has been in custody ever since arrested could have been considered for release suspending sentence under Section 389 (1) Cr.P.C. Since, the forensic examiner has not been a witness of the prosecution during trial, Mr. Sahu, learned counsel cites a decision of the Apex Court in **State of Himachal Pradesh Vrs. Jai Lal & others (1999) Supp. 2 SCR 318** to contend that the evidence of such a witness is material so as to prove the charge in respect of the fake currency notes against the petitioner. With the above pleading and submission and reiterating the lapses on record, Mr. Sahu, learned counsel submits that it is a fit case where the petitioner, since having a fair chance to succeed in the appeal, should have been allowed to go on bail with suitable conditions imposed upon suspension of sentence under Section 389(1) Cr.P.C. but as all such aspects having been lost sight of by the learned court below, the impugned order as at Annexure-5 suffers from legal infirmity.

8. On the contrary, Mr. Ray, learned AGA for the State justifies the impugned decision of the learned Additional Sessions Judge, Titilagarh, while dealing with the appeal and submits that huge numbers of fake currency notes of Rs.31,27,500/- have been recovered from the petitioner and in presence of the witnesses, seizure of the same was carried out and such recovery and seizure is established by evidence before the learned Trial Court. It is further submitted that the evidence of the official witnesses including informant received corroboration independently and hence, to claim that, there is no corroboration at all, is totally incorrect. The contention is that the fake currency notes of different denominations were recovered from the exclusive possession of the petitioner, who failed to offer any plausible explanation and in view of such recovery followed by seizure from him, the learned Trial Court rightly found the charges proved and passed the order of conviction and against the aforesaid background, the learned court below could not have suspended the sentence under Section 389(1) Cr.P.C. even though the judicial custody is ever since

the date of arrest i.e. 2nd February, 2023. It is further submitted that a preliminary chargesheet has been filed on 3rd Aril, 2023, whereafter, the petitioner was put to trial, whereas, another accused, whose name was disclosed or revealed during investigation could not be apprehended and therefore, the investigation was kept open in terms of Section 173(8) Cr.P.C. and under such circumstances and in view of the recovery and seizure of the currency notes found and proved to have been fake after forensic examination report, the learned court below rightly declined release of the petitioner pending disposal of the appeal.

9. Section 389 Cr.P.C. deals with suspension of sentence pending disposal of appeal and release of the convict on bail and it stipulates that the Appellate Court may after considering objection of the prosecution for reasons to be recorded direct that the execution of sentence or order appealed against be suspended and if he is in confinement, him to be released on bail.

10. In **B.R. Kapur Vrs. State of T.N. & another (2001) 7 SCC 231**, it has been held that the Appellate Court cannot suspend the sentence, while exercising the power under Section 389 Cr.P.C. but to defer the execution thereof. Essentially, the jurisdiction under Section 389(1) Cr.P.C. lies with the Court in appeal to consider release of the convict deferring the execution of sentence but it shall have to be by assigning reasons therefor.

11. The Apex Court in **Kishori Lal Vrs. Rupa & others (2004) 7 SCC 638** outlined the factors that require to be taken judicial notice of while dealing with Section 389 Cr.P.C. in cases involving serious offences like murder etc. and therein, it has been held and observed that the Appellate Court is duty bound to objectively assess and record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail to the convict. It is also held therein that the mere fact that during the trial, the convicts were granted bail and there was no allegation of misuse of liberty by them is really not of much significance, since the effect of bail granted during trial becomes irrelevant on its completion and after the accused persons are found guilty, hence, such a plea does not per se warrant suspension of execution of sentence and what really matters is, whether, reasons do really exist to suspend its execution.

12. Similarly, in **Sidhartha Vashisht @ Manu Sharma Vrs. State (NCT of Delhi) (2008) 5 SCC 230** infamously known as Jessica Lal murder case, the Apex Court had the occasion to consider and discuss earlier judicial pronouncements and held that observations on merit one way or the other are likely to prejudice the parties in appeal, hence, not to consider the correctness or otherwise of the evidence on record but at the same time, it cannot be overlooked that the accused having been found guilty and convicted by a competent criminal court, initial presumption of innocence in his favour is no more available.

13. In **Bhagwan Rama Shinde Gosai & others Vrs. State of Gujarat (1999) 4 SCC 421,** it is held by the Apex Court that suspension of sentence can be

considered by the Appellate Court liberally unless there are exceptional circumstances but if for any reason, the sentence of a limited duration cannot be suspended, every endeavor should be made to dispose of the appeal on merit, otherwise, the valuable right of appeal would be an exercise in futility by efflux of time and when the Appellate Court finds that due to practical reasons, the appeal cannot be disposed of expeditiously, it must bestow special concern in the matter of suspending sentence so as to make such right of appeal meaningful and effective.

14. It is concluded in **Ash Mohammad Vrs. Shiv Raj Singh @ Lalla Babu & another (2012) 9 SCC 446** that a question should be posed, whether, the accused deserves to be enlarged on bail or not and only thereafter, issue of imposing conditions would arise and the period of custody is a relevant factor, while considering the same but simultaneously, the totality of circumstances and the criminal antecedent are also to be weighed in the scale of collective cry and desire.

15. In **Omprakash Sahni** (supra), the Apex Court while considering the suspension of execution of sentence under Section 389 Cr.P.C., as it was allowed by the Patna High Court, concluded that the endeavor on the part of the Court should be to ensure as to whether the case presented by the prosecution and accepted by the Trial Court can be said to a case in which ultimately the convict stands for fair chance of acquittal and while undertaking the exercise to ascertain the same, what is to be looked into is something palpable and very apparent on the face of the record, on the basis of which, it can arrive at a prima facie satisfaction that the conviction may not be legally sustainable but with a word of caution that the Appellate Court should not re-appreciate the evidence at that stage and try to pick up few lacunas or loopholes randomly from the case of the prosecution as it is not a correct approach and ultimately held that the execution of sentence suspended was not justified.

16. Many other citations have been referred to at the Bar but the Court is not inclined to unnecessarily add them up and burden the judgment. Applying the standard set forth and discussed herein before, the Court has to examine the plea of the petitioner, whether, he is eligible and entitled to go on bail with the execution of the sentence being temporarily suspended. Turning to the facts of the case, it is made to reveal from the record that the prosecution examined the witnesses on recovery and seizure and the Trial Court proceeded to consider the evidence in its entirety including the one received from the official witnesses and referring to the forensic examination report marked as Ext.21reached at a definite conclusion that a case is made out against the petitioner for offences punishable under Sections 389-B and 389-C IPC. The scientific report i.e. Ext.21reveals that the suspected currency notes are either of low quality counterfeit or invalid and such report fit to be admitted as evidence under Section 292 Cr.P.C. Referring to the evidence of the prosecution and involvement of the petitioner as he was found at the spot intercepted along with a bag containing fake currency notes and such evidence of the I.O. with reference to the exhibits and material objects the learned Trial Court arrived at a decision that the charges are proved. The challenge to the impugned

order i.e. Annexure-5 is based on the grounds pleaded and primarily on account of the procedural lapses and lack of independent corroboration. On a reading of the materials on record received as evidence during trial, it may not be correct to allege that there has been no corroboration. The nature of evidence is always independently examined and combined assessed by a Court to reach at a certain conclusion. The evidence of the I.O. and informant besides others excluding the witnesses turned hostile has been referred by the learned Trial Court to reach at such a conclusion. The recovery and seizure of the fake currency notes is revealed by the IO, who proved the forensic examination report as Ext.21. The sufficiency or otherwise of the evidence produced before the learned Trial Court leading to the order of conviction is a matter to be examined by the learned court below while dealing with the appeal. In fact, lack of evidence independent of the official witnesses is to be duly examined in appeal but it is not that, the entire evidence on record regarding recovery and seizure of fake currency notes and a report as per Ext.21could have been entirely discarded. However, at this juncture, the Court is equally of the view that any observations or comment on the merits of the evidence received during trial must be avoided as it is certainly to prejudice either of the parties in appeal.

17. Mr. Sahu, learned counsel for the petitioner laid much emphasis on the endorsement of the laboratory after receiving the exhibits and dispatching it back on 23rd February, 2023 for the reason that the details of the notes mentioned in the exhibits were not matching on physical checking and hence, requested for its correction and to resend the same for examination. It is contended that there is no evidence on record regarding the resealing of the exhibits after it were received by the laboratory and thereafter, the manner in which, the compliance was made by the IO. It is claimed that there is no evidence on record even to remotely suggest that the exhibits with proper sealing have been dispatched once again for forensic examination, as in that connection, it was for the IO to lead evidence in order to obviate any procedural lapses affecting the sanctity of the collection of the exhibits before resending the same.

18. On a cursory glance of the evidence of the IO examined as P.W.9, it is revealed that on 24th February, 2023, the exhibits have been received back with such a remark of the laboratory duly sealed and packed and on 2nd March, 2023, he placed the requisition before the learned SDJM, Titilagarh for resending the exhibits and it was after verification that all such exhibits were sealed and sent to the laboratory through a special messenger by a forwarding letter marked as an exhibit. On the request of the laboratory, necessary correction was carried out and as it appears, the exhibits were sealed and resent for forensic examination with the orders of the learned SDJM, Titilagarh and by a forwarding letter dated 2nd March, 2023. If it is claimed that in what manner, the exhibits were preserved before being sent to the laboratory and whether, it was duly sealed according to the procedure to prevent any such tampering, considering the evidence of P.W.9, the Court finds that it was

not confronted to him. Rather, it is suggested that P.W. 9 resent the exhibits for forensic examination and admittedly, such an exercise was carried out in view of the request of the laboratory. Had any such lapses been brought to the notice of P.W.9, while under examination with any such evidence retrieved or elicited from him, it would have been better appreciated.

19. The Court does not propose too much of discussion and elaboration on the point agitated since it would ultimately to prejudice the petitioner. The discussions herein above should not be treated as something to do with the merits of the case. The plea of procedural lapses, if any, with regard to resending of the exhibits with or without confrontation to the prosecution and its legal effect should be left open to be examined threadbare by the Court in appeal. Any such detailed examination of evidence at present is alien to the Court's jurisdiction, while considering the plea of suspension of sentence pending appeal, as that kind of an exercise would be like touching upon the merits of the case, when the appeal is awaiting disposal and it could well-nigh to influence the leaned court below considerably. In view of the above discussion, the Court finds that the argument of Mr. Sahu, learned counsel for the petitioner on procedural lapse in sealing the exhibits at any time during or after dispatch to the laboratory is a matter that lies within the realm of appeal Court's jurisdiction and concerning the merits of the case. In the humble view of the Court, it cannot usurp the jurisdiction of the Appellate Court discussing evidence dealing with all such aspects since such a course of action is forbidden as the exercise is to be confined to an overview examination of the materials primarily to disinter anything glaringly visible and apparent on the face of record making out an exception demanding suspension of sentence carrying an impression of the convict having a very good chance of success in the appeal. Furthermore, any such exercise with a detailed analysis would lead to encroaching upon the territory of the Court in appeal.

20. Regarding the plea of the forensic examiner having not been cited as a witness to prove the report i.e. Ext.21, it is again a matter to be examined by the learned court below keeping in view the Section 291 Cr.P.C. But, by claiming that the forensic examiner is not examined though the report is marked as an exhibit from the side of the prosecution and hence, the charge is entirely misplaced is an argument not acceptable, while dealing with an application under Section 389(1) Cr.P.C. as the evidence in its entirety is to be thrashed out and not in isolation and the consequence and effect of such non-examination with reference to Section 291 Cr.P.C. All such procedural lapses alleged by Mr. Sahu, learned counsel should find a basis from the record. In absence of a case showing a fundamental flaw in the investigation and for having not received defence request for the report to be examined through the forensic examiner, it could still be claimed by the prosecution that the same would be admissible as evidence in terms of Section 291 Cr.P.C. apart from the responsibility of the Trial Court to summon him for clarification, if ever needed. The Court is of the further view that it cannot be a ground demanding

release of the petitioner on bail pending decision in the appeal suspending sentence under Section 389 Cr.P.C.

21. Admittedly, a large number of fake currency notes found from the exclusive and conscious possession of the petitioner prima facie proved by the seizure carried out with no any explanation received back from him as revealed from his statement recorded under Section 313 Cr.P.C except a reply that a false case has been foisted and with such evidence on record and forensic report i.e. Ext.21, it may not be proper to allege that the order of conviction is indefensible and hence, in view of the above discussion, the irresistible conclusion of the Court is that the learned court below did not err in denying suspension of execution of sentence under Section 389(1) Cr.P.C. disallowing the petitioner to go on bail by the impugned order i.e. Annexure-5 despite his custody ever since 2023 especially when the conditions of release suspending sentence post-conviction are distinctly different with the plea of presumption of innocence is not available to a convict anymore.

22. At last, before winding up, it is made clear that the Court has not discussed the evidence on merit, rather, made an endeavour to assess the materials on record objectively to examine whether a case is made out for suspension of sentence and hence, the learned court below shall have to consider disposal of appeal on merit and according to law without being influenced by any of its observations made and discussed herein above but within a stipulated period since in the words of the Apex Court in **Bhagwan Rama Shinde Gosai** (supra), the invaluable right of appeal becomes a futile exercise by passage of time.

23. Hence, it is ordered.

24. In the result, the revision petition stands dismissed. As a necessary corollary, the impugned order dated 2nd September, 2024 in Criminal Appeal No. 06 of 2024 as at Annexure-5 is hereby affirmed followed by a direction to the learned Additional Sessions Judge, Titilagarh to ensure disposal of the appeal at the earliest preferably within a month from the date of receipt of a copy of this judgment after providing reasonable opportunity of hearing to the parties involved.

25. Intimation to the Court concerned forthwith.

Headnotes prepared by:
Shri Hara Prasad Padhy, Editor-in-Chief, I/C

Result of the case:
Revision petition dismissed.

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2025 (III) ILR-CUT-581

GOBINDA CHANDRA SAMAL & ORS.
V.
FAKIR CHARAN SAMAL @ FAKIR SAMAL & ANR.

[RSA NO. 142 OF 2009]

29 JULY 2025

[SASHIKANTA MISHRA, J.]

Issue for Consideration

Whether the learned Courts below have committed any error while upholding that the suit land is not identifiable because the plaint schedule does not disclose any boundary.

Headnotes

CODE OF CIVIL PROCEDURE, 1908 – Order VII, Rule 3 of the C.P.C. – Description of property – In the plaint schedule the suit land has been described as District Cuttack, Thana Cuttack Sadar, Thana No. 82, Mouza- Sisua, Khata No. 123/1543, Kisama-Gharabari an area of Ac 0.03 decimals, out of Ac 0.07 decimals with a house standing thereon belonging to the plaintiff and occupied by the defendants – The learned Trial Court held that the description of the suit land was not specific and was also not identifiable from the plaint schedule, hence the suit was dismissed – First Appellate Court held that the suit property as described in the plaint schedule was not properly described and therefore, the suit was liable to be failed – Whether the learned Courts below have committed any error while upholding that the suit land is not identifiable because the plaint schedule does not disclose any boundary.

Held: No – The requirement of the statute is for the plaintiffs to provide such description of the property as would be sufficient to identify it – It is the settled position of law that mis-description of suit property in the plaint is a defect that goes to the root of the matter as it would not be possible for the Court to pass an enforceable decree. (Para 14)

Since the defect of mis-description is a fundamental defect rendering to suit not maintainable by itself, the trial court must be held to have committed an error in entering into the merits of the case after its finding regarding mis-description of the property – The First Appellate Court therefore, rightly refrained from going into the merits of the case and held that the observations of the trial court regarding title and possession of either of the parties would not operate as res-judicata between them in any future

litigation – The above, in the considered view of this Court is the correct approach. (Para 16)

Citations Reference

Dharanidhar Jena and Ors. vs. Dharanidhar Behera and Ors, **139 (2025) CLT802 – referred to.**

List of Acts

Code of Civil Procedure, 1908.

Keywords

Description of property; Disclosure of boundary; Improper description of suit property; Mis-description of property; *faisalanama;*

Case Arising From

Judgment and decree dated 20.01.2009 and 04.02.2009 respectively passed by learned 1st Additional District Judge, Cuttack in R.F.A. No.155 of 2006 while confirming the judgment and decree dated 22.11.2006 and 30.11.2006 passed by learned Civil Judge (Jr. Division), Cuttack in T.S. No.67 of 1997.

Appearances for Parties

For Appellants : M/s. D.P. Mohanty, R.K. Nayak, B. Das, M. Pal, P.K. Swain & T.K. Mohanty.

For Respondents : Mr. B.B. Routray.

Judgment/Order

Judgment

SASHIKANTA MISHRA, J.

This is a plaintiffs' appeal against a confirming judgment. The suit of the plaintiffs praying for recovery of possession of the suit land and eviction of the defendants therefrom was dismissed by the trial Court and confirmed by the First Appellate Court.

2. For the sake of convenience, the parties are referred to as per their respective status in the trial Court.

3. The case of the plaintiffs is that the suit land was exclusively recorded in the name of one Banchu Samal and after his death, it devolved upon them and they are in possession. On the other hand, the defendants are complete strangers to the family of the plaintiffs. As the house of the defendants was damaged due to heavy rain in the year 1995, they requested the plaintiffs to occupy a portion of the dwelling house over the suit land. The plaintiffs permitted the defendants to do so, on their promise of vacating the house after constructing their own house. However, the defendants went back on their promise despite repeated requests by the plaintiffs. They, on the

other hand sent lawyer's notice on 23.09.1996 to the plaintiffs asking them to execute a sale deed in respect of the suit house purportedly as per a contract signed by the parties on receipt of consideration of Rs.2,000/-. The plaintiffs denied in writing about any such contract of sale and on the contrary, they sent a lawyer's notice on 12.12.1996 asking the defendants to vacate the suit property, which the defendants did not comply. Hence the suit.

4. The defendants contested the suit by filing written statement furnishing a different genealogy. They claim to be the successors of one of the sons of the common ancestor, Bidei. They also challenged the description of the suit land as non-specific. On facts, the defendants denied the plaint averments by stating that about 60 years back the sons of the common ancestor, Bidei had come to the suit village in search of work and for beating of drums to maintain their family. While they were staying in a temporary shed, the ex-landlord, Hari Mohanty, out of sympathy inducted Banchu and grandfather of plaintiff-appellants and Sanei, the grandfather of defendants as tenants over Ac.0.04 decs. and Ac.0.03 decs. out of Ac.60 decs. in Sabik Plot No. 127 under Khata No. 65 for their residential purpose with condition of beating drums before their family deity, Shri Gopal Jew Thakur during family festivals. It is further claimed that Sanei and Bhramar constructed their houses separately over said Ac.0.03 decs. land and after death of Sanei, Bhramar and other defendants are in peaceful and continuous possession having acquired occupancy rayati right. Banchu, being the eldest member of the family was requested to look after the suit land during the last settlement operation but the land was recorded in his name in the ROR of the year 1974. However, despite such wrong recording they are owners and in possession of the suit land for which the plaintiffs cannot claim their title over the same. It was also settled between the parties in presence of Gagan Bihari Mohanty that the defendant-respondents would continue to reside over the suit house as put down in writing on 01.04.1974. Further, a meeting was convened in the village and a *faisalanama* was executed on 10.08.1996. Alternatively, the defendants claimed to have perfected their title by adverse possession.

5. Basing on the rival pleadings, the trial court framed the following issues for determination.

1. Have the plaintiffs any cause of action to file the present suit?

2. Is the suit maintainable in the present form?

3. Is the suit barred by limitation?

4. Is the suit bad for non-joinder and mis-joinder of parties?

5. Is the description of the suit land is indistinct and not specific?

6. Are the plaintiffs have got right, title, interest over the suit premises?

7. If the defendants occupied the suit land and house standing thereon with permission of the plaintiffs since the year of 1995 or they are occupying the same as original inducted tenants as claimed in the written statement ?

8. If the defendants have got any tenancy right over the suit land?

9. If the plaintiffs are entitled to evict the defendants from the suit land and house standing thereon?

10. To what relief if any the plaintiffs are entitled to?"

6. Taking up issue Nos. 5, 6, 7 and 8 together for consideration, the trial Court, after a lengthy discussion on the oral and documentary evidence and the contentions raised by the parties, ultimately found that the description of the suit land is not specific and the same, as described in the plaint schedule, is also not identifiable. Having held so, the trial court further held that the source of acquisition of title of Banchu, the ancestor of the plaintiffs, was not proved and as such, their plea of giving permissive possession to the defendants was held to be not proved. However, the possession of the defendants was proved by admission. On the above findings basically, the suit was dismissed.

7. The plaintiffs carried the matter in appeal. The First Appellate Court after taking note of the pleadings and evidence first took up for consideration whether the suit land was properly described or not. In view of the nature of the suit, the First Appellate Court was of the view that the suit land was required to be specifically described for being easily identifiable as per the provisions of Order VII, Rule 3 of CPC. Further, referring to the settled position of law it was held that the suit property as described in the plaint schedule was not properly described and therefore, the suit was liable to be failed. The appeal was thus, dismissed with the further finding that the observations of the trial court as regards the respective title and possession of either of the parties would not operate as res-judicata as between the parties in any future litigation.

8. Being aggrieved, the plaintiffs have preferred this appeal, which was admitted on the following substantial question of law.

"Whether the entire suit plot was constituting an area of Ac.0.07 decimals and the case of the plaintiff was, out of the said Ac. 0.07 decimals, he is in possession of Ac.0.04 decimals, where his residential house stands, and the balance Ad 0.03 decimals are in possession of the defendants, the learned courts below have committed an error in holding that the suit land is not identifiable merely because, the plaint schedule does not disclose any boundary."

9. Heard Mr. D.P. Mohanty, learned counsel for the plaintiff-appellants and Mr. B.B. Routray, learned counsel appearing for the defendant-respondents.

10. Mr. Mohanty would argue that the finding of the trial court that the suit was bad for mis-description of the suit property is an error of record, inasmuch as the

same was properly described in the plaint schedule by referring to the Khata number and Plot number and all other particulars. The First Appellate Court also erroneously confirmed such finding without any valid reason. Mr. Mohanty would further argue that the trial court erroneously held the property in question to be joint family property completely ignoring the ROR marked Ext.1, which in turn was prepared on the basis of the Munsarim Mistake No. 30 dated 04.02.63 (Ext.D). The finding that the plaintiffs had no title over the suit property is therefore, perverse.

11. Mr. Routray on the other hand would argue that it is the settled position of law that improper description of the suit property is a fundamental defect as no enforceable decree can be passed. Having held so, the trial court was wrong in entering into the merits of the case. The First Appellate Court therefore, rightly brushed aside such findings by holding that the same would not act as res-judicata between the parties in future.

12. Reference to the plaint schedule reveals that the suit land has been described as follows:

> *"Dist. Cuttack, Thana – Cuttack Sadar, Thana No. 82, Mouza- Sisua, Khata No. 303, Plot No.123/1543, Gharabari an area of Ac.0.03 decimals, out of Ac.0.07 decimals and house standing thereon being occupied by the defendants of the plaintiffs."*

13. Thus, the dispute is confined to only Ac.0.03 decs. out of Ac.0.07 decs. and house standing thereon. As such, it would be difficult to pinpoint as to which portion of the suit plot the dispute relates to. It must be kept in mind that the suit was filed not only for recovery of possession of the suit land as also the house standing thereon but also for eviction of the defendants therefrom. So, it becomes imperative for the plaintiffs to describe the suit land by providing the exact boundaries to show the specific portion of the suit land which forms part of the entire land measuring Ac. 0.07 dec. Not only that no boundaries were provided but also no sketch map was appended to the plaint. Both the trial court as well as the First Appellate Court have concurrently held that the suit land was not properly described. The First Appellate Court has also referred to the provisions of Order VII, Rule 3 of CPC which is reproduced below.

> *"3. Where the subject-matter of the suit is immovable property.—Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers."*

14. Thus, the requirement of the statute is for the plaintiffs to provide such description of the property as would be sufficient to identify it. It is the settled position of law that mis-description of suit property in the plaint is a defect that goes to the root of the matter as it would not be possible for the Court to pass an

enforceable decree. Reference in this regard may be had to the judgment of this Court in ***Dharanidhar Jena and Ors. vs. Dharanidhar Behera and Ors*** .[1]

15. The first appellate Court has referred to the plaint, the relevant statutory provision as also settled position of law to hold that the suit land was not properly described and therefore, the suit ought to fail. Nothing has been demonstrated before this Court as to how the above findings of the trial court as well as the First Appellate Court are wrong so as to persuade this Court to interfere.

16. Another important aspect is, the trial Court after holding the suit property to be improperly described, unnecessarily forayed into the merits of the case regarding title of the parties. Since the defect of miss-description is a fundamental defect rendering to suit not maintainable by itself, the trial court must be held to have committed an error in entering into the merits of the case after its finding regarding miss-description of the property. The First Appellate Court therefore, rightly refrained from going into the merits of the case and held that the observations of the trial court regarding title and possession of either of the parties would not operate as res-judicata between them in any future litigation. The above, in the considered view of this Court is the correct approach.

17. In view of the foregoing narration, the substantial question of law framed is answered accordingly.

18. In the result, the appeal fails and is therefore, dismissed. There shall be no order as to costs.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
RSA dismissed.

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[1] 139(2025)CLT802

2025 (III) ILR-CUT-587

Sk. SABAKTTULAH & ORS.
V.
Sk. ATTAULLA & ORS.

[RSA NO. 310 OF 2009]

29 JULY 2025

[SASHIKANTA MISHRA, J.]

Issue for Consideration

Whether the principle of estoppel applied against the plaintiff basing upon the allotment sheet of the earlier suit bearing T.S. No. 24/1943-I which was disposed on compromise.

Headnotes

PRINCIPLE OF ESTOPPEL – The earlier suit bearing T.S. No. 24 of 1943-1 was disposed of on compromise between the parties – The plaintiff's claim that on 16.01.1963, Hanifa orally gifted her share in favour of plaintiff and accordingly delivered the possession – In the MS ROR in Lot No. 1, 4 and 6 in 'Kha' Schedule, the properties were wrongly recorded in the names of Didar and Ataulla, even though only Lot No.2 belongs to Didar – The plaintiff filed the suit claiming shares of Hanifa and Kariman apart from their 2/3rd shares – Learned Trial Court basically found that the oral gift of Hanifa in favour of the original plaintiff was acted upon and is valid – Further the shares of Ataulla, Hanifa and Kariman having already decided in the earlier suit (T.S. No. 61/1951) Ataulla is estopped from claiming the entire properties of Didar – Learned Appellant Court after re-appreciating the evidence on record held that the Final Decree passed in T.S. No. 24 of 1943-1 is valid and binding on the parties, as such Hanifa being the sister of Didar has right over half share as per the said decree, the oral gift as alleged by the plaintiff was not proved – It is further held that the plaintiffs have no locus standi to bring the suit for partition – Whether the principle of estoppel applied against the plaintiff basing upon the allotment sheet of the earlier suit bearing T.S. No. 24/1943-I which was disposed on compromise.

Held: Yes – There is no quarrel with the proposition of law in the cited judgments, but on facts, this Court finds that Hanifa during her lifetime never came forward to challenge the compromise decree on the ground of not being a party to it – On the contrary, the plaintiffs themselves claim to have been bestowed with the property by way of gift by Hanifa from her allotted

share – This appears to be a contradictory stand taken by the plaintiffs, which obviously cannot be accepted. (Para 15)

According to the plaintiffs, Hanifa was prejudicially affected by the compromise but then it is for the Hanifa to come forward and say so, which she has not – So, if Haifa herself does not come forward and claim prejudice, the plaintiffs cannot say so purportedly on her behalf. (Para 16)

It was further urged that the finding of the First Appellate Court that the ingredients necessary to constitute a valid gift under the Mohemmedan Law are absent is factually erroneous – Reading of the impugned judgment reveals that the First Appellate Court has scanned the evidence meticulously particularly that of one of the substituted plaintiffs, Sk. Sabaktulla, P.W.-1, who admitted to have no direct knowledge about the oral gift – The donor and the donee being dead, the plaintiffs could not demonstrate through evidence the factum of delivery of possession of the property of Hanifa on the strength of the so called gift – This being essentially a question of fact and there being nothing brought on record to show as to how such finding, based on evidence, is wrong, this Court finds no reason to interfere therewith. (Para 17)

Citations Reference

Sanyasi Jena & Ors. vs. Mina Jena & Ors., **AIR 1983- ORI- 213;** Gupreet Singh vs. Chatur Bhuj Goel, **(1988) 1 SCC 270 – referred to.**

List of Acts

Mulla's Mohammedan Law;

Keywords

Mohammedan law; Gift deed; Declaration of Gift; Acceptance of Gift; Delivery of possession; Estoppel; Resjudicata; Nadabi patra; Partition;

Case Arising From

Judgment and decree dated 15.07.2009 and 04.08.2009 respectively passed by the learned District Judge, Bhadrak in R.F.A. No.57 of 2007 reversing the judgment and decree dated 09.07.2007 and 23.07.2007 respectively passed by learned Civil Judge (Sr. Division), Bhadrak.

Appearances for Parties

For Appellants : Mr. P.K. Rath, Sr. Adv. with M/s. S Rath, A. Behera, S.K. Behera, S. Das, P.K. Satpathy, R.N. Parija, A.K.Rout, S.K. Pattnaik, S.P. Naik & D.P. Pattnaik.

For Respondents: Mr. D.K. Mohapatra, [For 2(k) to 2(una)]
Mr. Ramakanta Mohanty, Sr. Adv,

M/s. Debakanta Mohanty, Sumitra Mohanty,
Sangita Mohanty, A. Mohanty, D. Varadwaj,
T.R. Mohanty, J. Khilar, [For R-1(a) to R-1(j)]

M/s. S.K. Nayak-2, K. Jena, S.S.K. Nayak,
[For R-19(a) to 19(h), R-18(a), 18(b), 18(c), 18(d),
18(g) to 18 (i)]

M/s. K. Behera, P. Swain [For R-13 to 15]

M/s. Subham Sharma, I. Tripathy,
[For r-15(a) to 5(c), R. 20(a) to 20(k)]

Judgment/Order

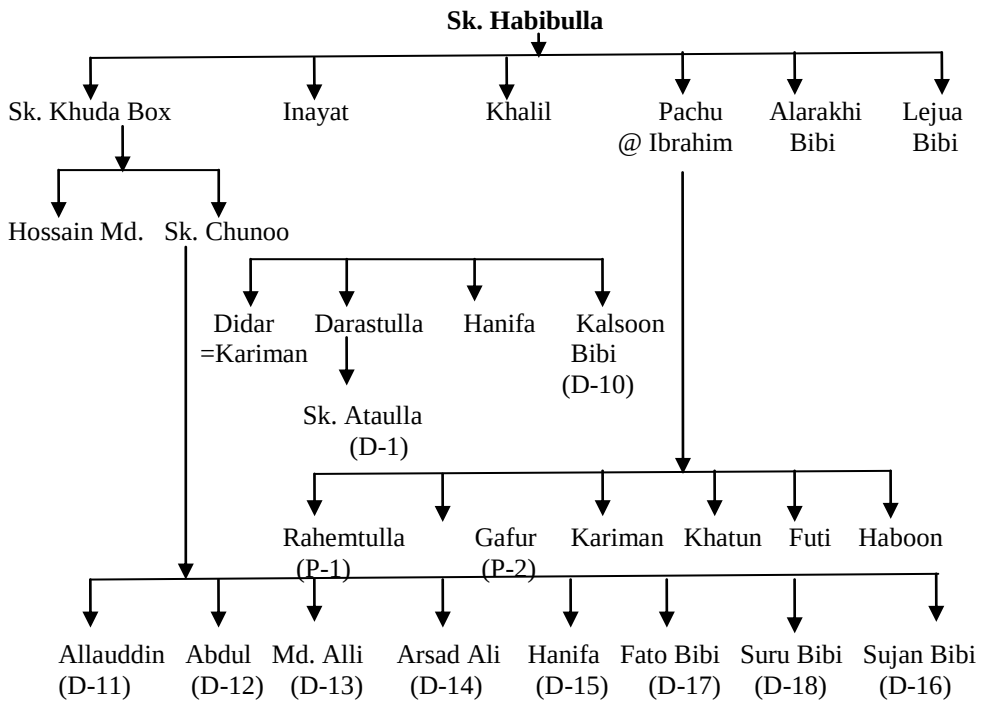
Judgment

SASHIKANTA MISHRA, J.

This is a plaintiffs' appeal against a reversing judgment. The suit filed by the plaintiffs for partition was decreed by the trial Court but was reversed in appeal.

2. For convenience, the parties are referred to as per their respective status before the Trial Court.

3. Before adverting to the case of the parties it would be proper to refer the following genealogy showing the relationship of the parties.



4. Original plaintiffs, defendant No.1 and defendant Nos. 10 to 18 are the successors of Sk. Habibulla, the common ancestor. Sk. Habibulla died leaving

behind four sons and two daughters as indicated in the above table. Khalil died unmarried, while the daughters- Alarakhi and Lejua died issueless. Khuda Bux died leaving behind his two sons, Hossain Mohammed and Sk. Chunoo. Hossain died issueless, while Sk. Chunoo was succeeded by his eight children-four sons (defendant Nos. 11 to 14) and four daughters (defendant Nos. 15 to 18). On the other hand, Inayat died leaving behind four children- two sons and two daughters. His son -Didar died issueless leaving behind his widow-Kariman. His second son- Darastulla was succeeded by his son Sk. Ataulla (defendant No.1). His daughter Hanifa died issueless. His other daughter- Kalsoon Bibi is defendant No.10. Pachu died leaving behind six children- two sons and four daughters. Rahemtulla, as already stated, is his elder son and plaintiff No.1. Gafur is his second son and plaintiff No.2. His daughters are Kariman Bibi, Khatun Bibi, Futi Bibi and Haboon Bibi.

4.2 One Kabul Khan being the maternal uncle of Hanifa (daughter of Inayat) was looking after her affairs and taking advantage of her simplicity, he obtained a sale deed from her in his favour on 03.06.1948. Subsequently, he filed a suit (T.S. No. 61 of 1951) claiming partition of his purchased property. Hanifa was not a party to the suit. In the said suit, Sk. Ataulla and Kariman (wife of Didar) were parties. The suit ended in a compromise, whereby, Kabul Khan got half share as per the sale deed dated 03.06.1948, while Ataulla and Kariman each got $1/4^{th}$ share. After coming to know about the sale deed dated 03.06.1948 obtained by Kabul Khan, Hanifa filed a suit being Q.S. No. 101 of 1958 for its cancellation. Said suit was decreed and thereby, her share of the property came to her possession. While the matter stood thus, on 16.01.1963, Hanifa orally gifted her share in favour of Sk. Rahemtulla and Sk. Gafur, the original plaintiffs and delivered possession.

4.3. Further, in the MS ROR in Lot No. 1, 4 and 6 in 'Kha' Schedule, the properties were wrongly recorded in the names of Didar and Ataulla, even though only Lot No.2 belongs to Didar. The plaintiffs thus, filed the suit claiming shares of Hanifa and Kariman apart from their $2/3^{rd}$ shares. Defendant No.1 contested the suit by filing written statement claiming the plaintiffs had no share in suit property. Maintainability of the suit was questioned on the ground of complete partition effected in O.S. No. 24/43, in which the original plaintiffs, Rahemtulla and Gafur were defendant Nos. 1 and 2. The suit was decreed, whereby Rahemtulla and Gafur got Ac.13.21 dec. 5 kadis towards their share, out of which they sold some property to others leaving a balance of Ac.11.15 dec. but the Civil Court Commissioner made separate allotments by virtue of the Final Decree passed in the said suit and the respective allottees were put in possession accordingly. Hanifa being the exclusive owner of the suit property was defendant No. 9(a) in the said suit being substituted after death of her brother, Didar.

4.4. Another suit being O.S. No. 146 of 1988 was filed by Gafur (plaintiff No.2) for partition against Rahemtulla (plaintiff No.1), which was compromised. According to defendant No1, the plaintiffs cannot claim partition of Hanifa's property because the same was gifted to defendant No.1. On the contrary, Kalsoon

Bibi, sister of Hanifa executed a 'Nadabi patra' in favour of defendant No.1 on 19.02.1979 admitting the oral gift by Hanifa to the extent of Ac.5.48 dec. 7 kadis which was recorded in MS ROR in the year 1984. Out of the suit properties an area of Ac.3.23 dec. was under intermediary interest but was settled in the name of defendant No.1, who is in possession by paying rent and Municipality tax etc. According to defendant No.1, the plaintiffs are estopped from claiming partition in view off the previous complete partition as per T.S. No. 24/43-I.

4.5. Defendant No.3 also contested the suit by filing a written statement supporting the case of defendant No.1 by pleading that defendant No.1 was the owner in possession of the suit property to the extent of Ac.2.25 dec. as per ROR duly published in his name. He executed a registered sale deed on 13.11.1990 in favour of defendant No.3 upon receipt of due consideration. The property has since been mutated in the name of defendant No.3.

4.6. Defendant Nos. 11 to 18 also contested the suit by filing written statement jointly raising the plea of non-joinder of the L.Rs. of Kariman Bibi, Futi Bibi, Haboon Bibi and Sk. Dhanna, who are necessary parties. The suit was also challenged on the ground of res-judicata and estoppel referring to the decree of partition in O.S. No. 24/43. It is their further case that Ibrahim @ Pachu did not inherit the property of Khuda Box and sons of Khuda Box did not expire during his lifetime.

5. Basing on the rival pleadings, the trial Court has framed the following issues for determination.

> *"1. Whether the suit in the present form is maintainable?*
>
> *2.Whether the suit is hit under the principles of estoppels and res judicata?*
>
> *3.Whether the suit is bad for non-joinder of necessary parties?*
>
> *4.Whether there is any unite of title and unit of possession among the parties for the suit lands?*
>
> *5.Whether the gift (Heba) in the year 1963 by Hanifa Bibi in favour of the plaintiffs is valid and genuine?*
>
> *6.What are the shares of the parties?"*

6. After referring to the oral and documentary evidence extensively, the trial Court basically found that the oral gift of Hanifa in favour of the original plaintiffs was acted upon and is valid. The suit lands have been allotted in favour of defendant No.9. Further, the shares of Ataulla, Hanifa and Kariman having already decided in the earlier suit (T.S. No. 61 of 1951), Ataulla is estopped from claiming the entire properties of Didar. The trial Court also held that the suit properties belong to Ataulla and successors of Rehemtulla and Gafur. On such findings, the suit was decreed by allotting 3/4th share to the plaintiffs and 1/4th in favour of defendant No.1 with further direction to adjust the shares of the respective vendors among their vendees.

7. Being aggrieved, defendant no.1 carried the matter in appeal. After re-appreciating the evidence on record, the First Appellate Court held that the Final Decree passed in T.S. No. 24 of 1943-I is valid and binding on the parties. As such, Hanifa being the sister of Didar has right over half share as per the said decree. It was further held that the plaintiffs have no locus standi to bring the suit for partition. As regards the oral gift, it was held that the plaintiffs failed to prove the ingredients of Hiba. Finally, it was held that the suit property, being the exclusive property of Hanifa cannot be partitioned in the suit.

8. Being aggrieved, the LRs of the plaintiffs have filed the present second appeal, which was admitted on the following substantial questions of law.

> *"(i) Whether the learned lower appellate Court has committed an error of law in reversing the judgment and decree passed by the learned trial Court by applying the principle of estoppel against the plaintiff basing upon the allotment sheet of the earlier suit i.e., T.S. No. 24/1943-I?*
>
> *(ii) Whether the learned lower appellate Court has committed an error in reversing the decree of the trial Court by holding that the plaintiffs are estopped from challenging the allotment made in favour of the defendant No.9(a) in the previous suit when the plaintiffs were not parties to the said suit?*

9. Heard Mr. P.K. Rath, learned Senior counsel with Ms. S. Das for the plaintiff-appellants and Mr. R.K. Mohanty, learned Senior Counsel with Ms. S. Mohanty for the defendant-respondents.

10. Mr. Rath, learned Senior Counsel assails the judgment of the first appellate Court by submitting that the Final Decree in T.S. No. 24/43-I runs contrary to the preliminary decree passed in the suit, inasmuch as the share of Didar in the earlier suit was kept out of the purview of partition and the suit was decreed by compromise. So the allotment sheet in the Final Decree proceeding allotting share in favour of defendant No.9(a) is an outcome of tampering of the allotment sheet which the trial Court had rightly observed. Mr. Rath further argues that the earlier suit (T.S. No. 24/43-I) was disposed of on compromise but the compromise petition was never signed by Hanifa after being substituted in place of her brother, Didar. Said compromise is therefore, not binding on Hanifa being void ab initio. Mr. Rath further argues that the observation of the First Appellate Court that the allegation of tampering being an act of fraud having not been pleaded specifically the plaintiffs are not permitted to challenge the Final Decree on such ground, is untenable for the reason that if a document is found to have been tampered with, it is void ab initio and need not be specifically challenged in a formal proceeding. The trial court had tested its finding on partition by comparison of the allotment sheet with original, which the First Appellate Court did not.

11. Per contra, learned Senior Counsel Mr. Mohanty would argue that the contentions raised with regard to Final Decree is redundant in view of the actual dispute between the parties. The judgment in T.S. No. 24/43-I clearly reveals that in so far as Issue No. 24 and 25 is concerned, the Court had categorically held that the

property of Didar should be excluded from partition. The present suit property being the original property of Didar, the plaintiffs cannot claim any title because such property has to devolve upon the rest of the surviving co-sharers (the appellants and defendant No.10). The plaintiffs, being members of Pachu @ Ibrahim branch, cannot claim any right thereon. The property has to therefore devolve within the branch of Inayat on to the surviving heirs of Didar. Mr. Mohanty further argues that though the plaintiffs' own case is that after retrieving the property fraudulently taken away by Kabul Khan, Hanifa gifted the property to them by way of an oral Hiba in 1963. This implies, the plaintiffs admit the antecedent title of Hanifa to the suit property. So, their claim of Hanifa getting the suit property as per T.S. No. 24/43-I in the Final Decree is entirely untenable.

12. As regards oral gift, Mr. Mohanty would argue that as per Article 150 of Mulla's Mohammedan Law, three ingredients are necessary to prove a valid gift, namely:- (a) a declaration of gift by the Donor, (b) an acceptance of the gift, express or implied, by or on behalf of the donee, and (c) delivery of possession. The first appellate Court, after scanning the evidence found that the plaintiffs failed to prove these ingredients. This being a question of fact, cannot be gone into in the present second appeal. On the other hand, the oral gift dated 17.01.1963 is supported by clear evidence on record. The 'Nadabi patra' executed by Hanifa, sister of Kalsoon on 19.02.1979 also admits the aforementioned oral gift, which was recorded in the name of defendant No.1 since 1984 and has not been challenged since then. In the earlier suit, property allotted in favour of Hanifa is the suit property, which is said to be partitioned for which, the plaintiffs are estopped to claim as the Final Decree operates as resjudicata. The plaintiffs have never challenged the decree in T.S. No. 24/43. Further, as found by the First Appelalte Court, they have never pleaded or proved commission of fraud. The contention regarding so called manipulation in the allotment sheet is also misconceived in view of the fact that Hanifa was substituted as defendant No.9 (a) after death of Didar. Mr. Mohanty also argues that the plaintiffs have also admitted to have been allotted with some properties in the aforementioned suit. The plaintiffs having acquiesced to the previous partition by selling some of such allotted properties as per the Final Decree, cannot seek to readjudicate any claim of share beyond the shares allotted to them in T.S. No. 24/194-I.

13. From the rival contentions noted above, it is evident that the plaintiffs claim to have acquired the property of Didar which his sister Hanifa had bestowed through an oral Hiba. In this context, it has been vehemently argued by learned Senior Counsel appearing for the plaintiff-appellants that reliance placed by the First Appellate Court on the Final Decree (Ext.A) while rejecting the claim of the plaintiffs is untenable for the reason that said Final Decree runs contrary to the preliminary decree of the suit. Reading of the judgment passed by the First Appellate Court reveals that the same was also raised before the Court prompting it to refer to the Final Decree wherein Hanifa Bibi was substituted in place of her

brother Didar as defendant No.9(a) and was allotted with property. The First Appellate Court observed that the decree was passed 65 years back and had never been challenged in any Court of law. So the allegation of tampering with the allotment sheet of the Final Decree by practicing fraud cannot be entertained at such a belated stage, more so as the plaintiffs have never pleaded so in their plaint. Thus, invoking the law of estoppel as per Section 115 of the Evidence Act, the First Appellate Court refused to accept the contention raised regarding manipulation/tampering of the allotment sheet in the Final Decree. Further, the First Appellate Court, referring to the Final Decree passed in the subsequent suit i.e. O.S. No 144/88 and copy of the plaint filed in the said suit, found that the plaintiffs were fully conscious of the said suit, which was compromised. No question was raised as regards allotment to Hanifa, which implies that they had accepted the Final Decree in the earlier suit i.e. O.S. No. 24/43. That apart, the First Appellate Court also took note of the fact that defendant No.1 had filed certified copy of the Final Decree in T.S. No. 24/43, marked Ext.A which he had received on 08.05.1979, whereas the certified copy of the same Final Decree was also filed by the plaintiffs as Ext.8. The First Appellate Court also specifically noted that Ext.8 had been obtained 28 years before Ext.8 and contains the name of Hanifa as defendant No.9(a). Therefore, it was held that there is no question of any interpolation of the name of Hanifa as defendant No.9(a) in the Final Decree. Having gone through the reasoning adopted by the First Appellate Court noted above, this Court finds no reason to differ from the same. Moreover, despite claiming that the allotment sheet of the Final Decree was tampered, the plaintiffs have not come forward to indicate much less prove as to who had caused the interpolation, if at all. In any case, as rightly held by the First Appellate Court, Hanifa being the sister of Didar validly succeeded to his half share of the suit property as per the Final Decree.

14. As regards the compromise decree in the subsequent suit i.e., O.S. No. 146/1988, it has been forcefully argued by learned Senior Counsel for the plaintiffs that the so called compromise has no sanction of law for the reason that she not having signed in the petition, the compromise cannot be used against her. Learned Senior Counsel has referred to the following judgments in support of his contention. ***Sanyasi Jena & Ors. vs. Mina Jena & Ors.***[1] and ***Gupreet Singh vs. Chatur Bhuj Goel***[2]

15. There is no quarrel with the proposition of law in the cited judgments, but on facts, this Court finds that Hanifa during her lifetime never came forward to challenge the compromise decree on the ground of not being a party to it. On the contrary, the plaintiffs themselves claim to have been bestowed with the property by way of gift by Hanifa from her allotted share. This appears to be a contradictory stand taken by the plaintiffs, which obviously cannot be accepted.

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1 AIR 1983- ORI- 213

2 (1988) 1 SCC 270

16. In the case of **Sanyasi Jena (supra)** it was held that a compromise of partition suit would be ineffectual unless all the necessary parties to the action having interest in the property and likely to be prejudicially affected by the compromise join in it. Same has also been decided in **Gupreet Singh (supra).** According to the plaintiffs, Hanifa was prejudicially affected by the compromise but then it is for the Hanifa to come forward and say so, which she has not. So, if Haifa herself does not come forward and claim prejudice, the plaintiffs cannot say so purportedly on her behalf.

17. It was further urged that the finding of the First Appellate Court that the ingredients necessary to constitute a valid gift under the Mohemmedan Law are absent is factually erroneous. Reading of the impugned judgment reveals that the First Appellate Court has scanned the evidence meticulously particularly that of one of the substituted plaintiffs, Sk. Sabaktulla, P.W.-1, who admitted to have no direct knowledge about the oral gift. The donor and the donee being dead, the plaintiffs could not demonstrate through evidence the factum of delivery of possession of the property of Hanifa on the strength of the so called gift. This being essentially a question of fact and there being nothing brought on record to show as to how such finding, based on evidence, is wrong, this Court finds no reason to interfere therewith.

18. In the above factual premises, the First Appellate Court reversed the judgment and decree of the trial Court by holding that the suit property belongs to Hanifa exclusively and the so called gift of said property to the plaintiff was not established.

19. Thus, from a conspectus of the analysis of facts, law, contentions raised and the discussion made, this Court finds no reason to interfere with the impugned judgment. The substantial questions of law framed are answered accordingly.

20. In the result, the appeal fails and is therefore, dismissed but in the circumstances without any cost.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter Appeal dismissed.
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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2025 (III) ILR-CUT-596

Dr. AMIYA KUMAR MOHANTY
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO.17769 OF 2024]

10 SEPTEMBER 2025

[A.K. MOHAPATRA, J.]

Issue for Consideration

Whether the petitioner is entitled to the relief of regularisation.

Headnotes

SERVICE LAW – Regularisation of service – Petitioner, an Assistant Surgeon, has rendered 31 years of service, yet his service has not been regularised – He prayed for regularisation of service – Petitioner initially engaged as an Asst. Surgeon on ad-hoc basis vide notification dated 18.12.1992 and continued as such till 31.12.1999 & thereafter, he has been continuing in the service on contractual basis for about 31 years – Similarly placed employees have already been regularised – The petitioner made an application before the authority for regularisation of service but the same was rejected on the ground that, the appointment of petitioner has not been made on the recommendation of the OPSC as required under the relevant rule & his service also cannot be validated as the validation Act is not applicable to the petitioner – Whether the petitioner is entitled to the relief of regularisation.

Held: Yes – Keeping in view the principle laid down by the Constitution Bench of the Hon'ble Supreme Court of India in Uma Devi's case (supra), particularly, in para 53, this Court would now examine the factual background of the present case – Indisputably, the Petitioner was initially engaged in the year 1992 on ad-hoc basis – Thereafter, he was continuing on contractual basis w.e.f. 02.01.2000 – Initially the recruitment of the Petitioner was by virtue of a government notification, although the same was without the concurrence of the OPSC, which is one of the requirements in the recruitment rules – Thus, at best it can be said that the initial recruitment of the Petitioner was "irregular" and was not completely "illegal" – Moreover, by the time the judgment in Uma Devi's case (supra) was delivered on 10.04.2006, the Petitioner had completed 10 years of service on being appointed irregularly – Therefore, the case of the Petitioner meets the requirement of para 53 of the judgment in Umadevi's case (supra) as he had

completed 10 years of service as on the date of the judgment i.e. 10.04.2006 – In furtherance of the direction contained in para 53, the State-Opposite Parties should have carried out the exercise of regularization of service of such ad-hoc/ contractual employees as a one-time measure – However, there is nothing on record to conclusively prove that any such exercise was ever carried out by the State-Opposite Parties as a one-time measure – Additionally, there is no dispute with regard to the fact that the Petitioner was performing his duties against a sanctioned post and that the continuance of the Petitioner for more than 3 decades was without any intervention by any Constitutional Court or Tribunal – Thus, the principle laid down in para 53 in Umadevi's case (supra) squarely applies to the instant case of the Petitioner – As such, as a one-time measure, the case of the Petitioner should have been considered and he should have been regularized against the post of Assistant Surgeon – Although records reveal that an attempt was made in the year 2015 and 2023 by regularizing some of the ad-hoc Dental Surgeons, the case of the Petitioner was never considered – Moreover, there is nothing on record that the vacant post against which the Petitioner was working was ever filled up by the candidates who were recommended by the Odisha Public Service Commission. (Para 34)

In view of the aforesaid analysis of law, this Court has no hesitation in coming to a conclusion that the case of the Petitioner is squarely covered by the direction of the Constitution Bench in Umadevi's case (supra) – Thus, it is further held that the Opposite Parties have failed to carry out the exercise as directed in para 53 of the Umadevi's case (supra) – Therefore, this Court has no hesitation to hold that the case of the Petitioner should have been regularized as a one-time measure pursuant to the direction contained in para 53 of the Umadevi's case (supra). (Para 35)

Citations Reference

Satchidananda Misra v. State of Orissa and Others, **2004 INSC 531;** Jaggo v. Union of India & Ors., **SLP(C) No.5580 of 2024 vide judgment dated 20.12.2024;** Shripal & Anr. v. Nagar Nigam, Ghaziabad, **Civil Appeal No.8157 of 2024 vide judgment dated 31.01.2025;** Secretary, State of Karnataka & Ors. v. Uma Devi & Ors., **AIR 2006 SC 1806;** State of Karnataka & Ors. v. M.L. Keshari & Ors., **AIR 2010 SC 2587**; Sitaram Behera v. State of Odisha & Ors., **W.P.(C) No.8236 of 2024 decided vide judgment dated 16.05.2025 – referred to.**

List of Acts

Constitution of India, 1950

Keywords

Regularization of service; Ad-hoc service; Contractual service; Recommendation of service; Validation; Service benefits; Irregular appointment; Illegal appointment; Vacant post; Sanctioned post.

Case Arising From

Challenging the order dated 06.07.2024 passed by the Opposite party Authority while rejecting the representation of the petitioner.

Appearances for Parties

For Petitioner : Mr. Krishna Chandra Sahu.

For Opp. Parties : Mr. Dayanidhi Lenka, A.G.A.

Judgment/Order

Judgment

A.K. MOHAPATRA, J.

1. The abovenamed Petitioner, who has been working as an Assistant Surgeon and has rendered his service for first 31 years, has approached this Court by filing the present writ application under Article 226 of the Constitution of India with a prayer for issuance of a writ of mandamus to the Opposite Parties to regularize the service of the Petitioner as a Regular Assistant Surgeon by taking into consideration his uninterrupted and long continuance in service for more than 3 decades and to quash the impugned rejection order dated 06.07.2024 under Annexure-17 to the writ application. The Petitioner in addition to the prayer for regularization of his service, has also prayed for an direction to the Opposite Parties to disburse in his favour all consequential service and financial benefits admissible to him.

2. The factual background of the Petitioner's case, bereft of all unnecessary details, is that the Petitioner on completion of his MBBS course and after obtaining a valid degree was initially engaged as an Assistant Surgeon on ad-hoc basis w.e.f. 23.12.1992 pursuant to order dated 18.12.1992 at Annexure-1. While the Petitioner was continuing in service, the Govt. of Odisha, vide notification dated 29.09.1993, regularised the services of several similarly situated ad-hoc Assistant Surgeons on the basis of a validation act w.e.f. 11.05.1993.

3. While the Petitioner was serving as an Assistant Surgeon, the Opposite Parties opened a service book of the Petitioner. They also opened GPF and GIS account of the Petitioner and the petitioner was extended with the benefit of pay fixation and he was being extended with the benefit of annual increment from time to time as was being sanctioned by the Govt. in favour of the Petitioner. While this was the position, the Govt. of Odisha sought for service particulars of Ad-hoc/ Contractual Assistant Surgeons and Dental Surgeons who have already completed five years of continuous service under the State Govt. vide their letter dated

10.04.2013. In reply to the aforesaid letter, the Opposite Party No.2 vide its letter No.11619, dtd.24.04.2013 has sent a list of 20 Ad-hoc/ Contractual Assistant Surgeons and Dental Surgeons to the different CDMOs under whom the abovenoted 20 listed doctors were discharging their duties with a specific request for verification of their service particulars, particularly with regard to 5 years of continuous service by such unlisted doctors for regularization of their service. The said list of doctors includes the name of the Petitioner at Sl. No.3 as per Annexure-6.

4. Pursuant to the letter of the Opposite Party No.2 dated 24.04.2013, the CDMO, Mayurbhanj vide letter No.3319 dated 14.05.2013 has sent the details of service particulars of the Petitioner on 14.05.2013, at Annexure-7 to the writ application. On receipt of such detailed service particulars of the enlisted doctors from different CDMOs, the Govt. of Odisha vide resolution dated 16.01.2015 has regularized the service of 8 contractual Dental Surgeons with the concurrence of Law Dept. and, as such, the abovenoted 8 doctors were brought over to the regular establishment with a regular scale of pay as per Annexure-8. However, the case of the Petitioner, who had completed of 22 years of service by then, was not considered and he was not extended with the benefit of regularization of his service.

5. Since the case of the Petitioner was not considered by the Opposite Parties for regularization of his service, the Petitioner approached the Opposite Parties by submitting a series of representation to the Govt. through proper channel with a prayer for regularization of his service in the same manner as has been done in the case of similarly situated ad-hoc/ contractual Assistant Surgeons as well as Dental Surgeons as per the Annexure-10 series. Although such representations were filed on 28.06.2019, 05.01.2021, 13.07.2021 and 21.04.2023, however they are still pending before the Opposite Party No.1 for consideration. In the meanwhile, the Opposite Party No.3 vide letters dated 23.09.2019, 06.01.2020 and 22.12.2021 furnished the service particulars along with details of place of posting of the Petitioner to the Govt. under Annexure-11 series. The Opposite Party No.2 vide his letter dated 31.01.2022 has directed the Opposite Party No.3 to furnish the copies of the letter/ order in connection with regularization of service of the Petitioner. Pursuant to the aforesaid letter of the Opposite Party No.2 dated 31.01.2022, the Opposite Party No.3 vide letter No.859, dtd.08.02.2022 has furnished the detailed service particulars along with all the letters/ orders in support of the Petitioner's case for consideration by the appropriate authority at the Govt. level as per Annexure-13 to the writ application.

6. Finally, while the Petitioner was continuing on contractual basis and while his case was still under consideration of the Govt., the Govt. of Odisha vide notification No.1476 dated 19.01.2023 published an order thereby regularizing the services of 5 nos. of ad-hoc/ Contractual Dental Surgeons as per Annexure-14 to the writ application. Unfortunately, the case of the Petitioner was also not considered this time. Being aggrieved by such inaction of the Opposite Parties in regularizing the service of the Petitioner, and finding no other alternative, the Petitioner initially

approached this Court by filing W.P.(C) No.36924 of 2023. The said Writ application was disposed of on 17.11.2023 thereby granting liberty to the petitioner to file a fresh representation before the Opposite Party No.1 and the Opposite Party No.1 was directed to consider the case of the Petitioner keeping in view the fact that similarly situated doctors appointed on contractual basis have been regularized in the meantime in view of the Resolution dated 16.01.2015 of the Health and Family Welfare Dept., Govt. of Odisha. After disposal of the earlier writ application, although the Petitioner approached the Opposite Party No.1 by filing a detailed representation on 24.11.2023 at Annexure-16, however, the same has been rejected by the Opposite Party No.1 vide order dated 06.04.2024 as per Annexure-17 to the writ application. Being aggrieved by such rejection of his prayer vide order dated 06.07.2024 at Annexure-17, the Petitioner has once again approached this Court by filing the present writ application.

7. A detailed counter affidavit has been filed on behalf of the Opposite Party No.1 sworn by the Additional Secretary to Govt., Health and Family Welfare Dept. In the counter affidavit it has been stated on behalf of the Opposite Party No.1 that the representation of the Petitioner dated 24.11.2023 was considered by the Opposite Party No.1 pursuant to the order dated 17.11.2023 passed in W.P.(C) No.36924 of 2023. After due consideration and careful examination, the prayer made by the Petitioner in his representation dated 24.11.2023 has been rejected by a speaking order of the H&FW Dept. dated 06.07.2024.

8. In the counter affidavit, the Opposite Party No.1 has not disputed the initial engagement of the Petitioner as an Assistant Surgeon on ad-hoc basis vide department notification dated 18.12.1992 and, accordingly, the Petitioner jointed at PHC (N) Mankadakenda under CHC Khunta, Dist. Mayurbhanj on 23.12.1992. Initially the Petitioner worked on ad-hoc basis up to 31.12.1999. Thereafter, he worked on contractual basis. It has been shown that there was a break in service on 01.01.2000 and from 31.03.2001 to 20.09.2001. In the counter affidavit it has been specifically admitted that services of 195 Assistant Surgeons appointed on ad-hoc basis by the Government during the year 1983 to 1988 without the recommendation of OPSC have been regularized w.e.f. 04.05.1993 by virtue of a Validation Act, 1993. It has been stated that since the Petitioner was not serving during the aforesaid period, he will not be covered under the Validation Act, 1993 and, as such, the Petitioner was not extended the benefit of regularization of his service as an Assistant Surgeon. Moreover, no subsequent Validation Act has ever been notified and that the appointment OMHS cadre can be made through OPSC only.

9. With regard to regularization of 8 contractual Dental Surgeons in the year 2015, it has been stated in the counter affidavit that the same has been made vide a Department Resolution dated 16.01.2015 with the concurrence of GA & PG Department and Law Department and on the basis of the fact that in absence of specific Rules governing the recruitment to the post of Dental Surgeon, the procedure adopted for recruitment of those 8 candidates against the contractual post

can never be said to have fallen short of legality. Similarly, the service of 5 Dental Surgeons, who were engaged on contractual basis by different CDM & PHOs, have been regularized vide notification dated 09.01.2023 with the concurrence of GA&PG Department and Law Department.

10. So far the regularization of service of the Petitioner is concerned, it has been stated that the Finance Department has observed that the Validation Act would be applicable where appointment has not been made in violation of recruitment procedure. Since, in the instant case, the Petitioner has been appointed on contractual basis in violation of the existing rules, his case was not considered by the Opposite Party No.1. Moreover, emphasis has been laid in the counter affidavit on the observation of the Finance Dept. regarding condonation of break period, i.e., although the break period between two regular services can be condoned, however, the same will not apply to contractual service.

11. In the counter affidavit, the Opposite Parties have referred to the judgment of the Hon'ble Supreme Court in the case of ***Satchidananda Misra v. State of Orissa and Others*** reported in ***2004 INSC 531***, wherein the Hon'ble Supreme Court has upheld the judgment of this Court declaring the Section 3 of the Validation Act as *ultra vires* to the Constitution. It was held by the Hon'ble Apex Court that the attempt to regularize the appointments made in violation of the Recruitment Rules, 1979 by taking reserve to a Validation Act is illegal and invalid in law. As such, the regularization of service in view of the Section 3(1) of the Validation Act was held to be invalid and such ad-hoc appointments were not allowed to be legally regularized by the legislative measure. On the aforesaid ground, it has been stated in the counter affidavit that the prayer made by the Petitioner in the Writ application is devoid of merit.

12. A rejoinder affidavit has also been filed at the instance of the Petitioner. In the rejoinder affidavit it has been stated that the Opposite Parties have not disputed the factual backdrop as pleaded in the writ application. Further, the rejoinder affidavit clarifies that by the time the service of 195 Assistant Surgeons, who were appointed on ad-hoc basis, were regularized by virtue of the Validation Act, 1993, the Petitioner was already in service on being appointed on ad-hoc basis and that the Petitioner was similarly placed with the abovenoted 195 Assistant Surgeons. Thus, it was pleaded that the Petitioner be treated at par with those 195 Assistant Surgeons whose service was regularized subsequently. Further, emphasis has been laid on the fact that the case of the Petitioner was being recommended and his service particulars were being sent to the Govt. for regularization. However, the government did not take any step to regularize the Petitioner either in the cadre post or in an ex-cadre post. Thus, it has been stated that the prayer of the Petitioner cannot be denied after the Petitioner has rendered service for more than 3 decades on the ground that the initial appointment of the Petitioner was not with the concurrence of the OPSC. Further, reference has also been made to the para-9 of the Counter Affidavit wherein the Opposite Party No.1 has admitted that with the concurrence of the GA&PG

Dept. and Law Dept., Govt. of Odisha, some Assistant Surgeons were regularized in service subsequent to the regularization pursuant to the Validation Act of the year 1993. It has been stated that the Assistant Dental Surgeons whose services were regularized subsequently are juniors to the Petitioner and had served only for 8 years. In fact, one of such candidates had served only 23 days on contractual service. So far the Petitioner is concerned, it has been mentioned that they he has served for more than 3 decades. Therefore, it was alleged that the conduct of the Opposite Parties is highly discriminatory and, as such, unsustainable in law.

13. In the rejoinder affidavit, the Petitioner has seriously questioned the submission of the Opposite Party No.1 with regard to the break in service. In the rejoinder affidavit an emphatic stand has been taken by the Petitioner that there was no break in service as the Petitioner was discharging his duties continuously for over 3 decades, at times with an artificial break of one day. With regard to the judgment referred by the Opposite Party No.1 in its Counter Affidavit, the Rejoinder Affidavit of the Petitioner reveals that the decision in question is based on a set of facts which can be clearly distinguished from the facts of the present case. While further elaborating, it has been stated that in the reported judgment of the Hon'ble Supreme Court the appointments were made in violation of the Rules, 1979, whereas, in the instant case the Petitioner has been appointed as per the provisions of State Medical & Health Services Cadre though initially on ad-hoc basis, subsequently on contractual basis w.e.f. 02.01.2000. It has also been stated that the service of the Petitioner could very well be regularized by granting relaxation under the existing rules and by treating the Petitioner as an ex-cadre employee. In the rejoinder affidavit it has been emphasized that many employees of the State Government, who had worked continuously for a period of 6 years, have been regularized in service. In the aforesaid context, a reference has also been made to the judgment of the Hon'ble Supreme Court in the case of ***Jaggo v. Union of India & Ors.***, decided in SLP(C) No.5580 of 2024 vide judgment dated 20.12.2024 as well as in ***Shripal & Anr. v. Nagar Nigam, Ghaziabad***, decided in Civil Appeal No.8157 of 2024 vide judgment dated 31.01.2025.

14. Heard Sri K.C. Sahu, learned counsel for the Petitioner as well as Sri D. Lenka, learned Additional Govt. Advocate for the State-Opposite Parties. Perused the Writ application as well as the documents filed along with the Writ application marked as Annexures. Also perused the counter affidavit and the rejoinder affidavit thereto filed by the Petitioner.

15. Sri K.C. Sahu, learned counsel for the Petitioner at the outset argued that so far the factual aspect of the present Writ application is concerned, the same has not been substantially disputed by the Opposite Parties. He further contended that the Petitioner was initially appointed as an Assistant Surgeon on ad-hoc basis on 23.12.1992 as per the order under Annexure-1 and continued as such till he was engaged on contractual basis w.e.f. 01.01.2000. Learned counsel for the Petitioner further contended that while the Petitioner was continuing in service, the Opposite

Parties extended the benefit of scale of pay with periodical annual increments. Moreover, the service book of the Petitioner was opened and he was also extended with the benefit of GPF and GIS by opening such accounts in favour of the Petitioner. It was also contended that the Petitioner was discharging duties at par with the regular Assistant Surgeons i.e. no distinction can be drawn between the service rendered by the Petitioner either on ad-hoc or on contractual basis with that of the service rendered by the Assistant Surgeons whose services have been regularized.

16. Learned counsel for the Petitioner, in course of his argument, further contended that while the Petitioner was continuing in service on contractual basis, the Govt. of Odisha considered the case of the petitioner and, accordingly, the service particulars were sought for on 10.04.2013 along with many similarly situated doctors working under the government. Accordingly, 20 names were short-listed including that of some Dental Surgeons. However, while regularizing the service of Assistant Surgeons Dental on completion of 5 years of service vide Government Resolution dated 16.01.2015, i.e., cases of 8 nos. of Assistant Dental Surgeons (contractual), the service of the Petitioner was never considered for regularization. He further laid emphasis on the basis of the fact while regularizing the service of 8 Assistant Surgeons Dental on the basis of the criteria that they had completed 5 years of service in the year 2015, the Opposite parties did not consider the case of the Petitioner who had completed more than 2 decades of service as Assistant Surgeon. Although the Petitioner brought the aforesaid fact to the notice of the Opposite Party No.1 by filing several representations, however, such grievance of the Petitioner was never considered by the Opposite Party No.1. Emphasis was also laid on the fact that pursuant to subsequent letters of the government, the Opposite Party No.3 furnished the service details of the Petitioner. However, the Opposite Parties regularized service of 5 Assistant Surgeons (Dental) vide notification dated 19.01.2023, once again the case of the Petitioner for regularization of his service was conveniently ignored by the Opposite Parties which amounts to gross discrimination and, as such, is violative of the principle enshrined in Article 14 & 16 of the Constitution of India. Emphasis laws also laid on the fact that some of the Assistant Surgeons (Dental) whose services were regularized, had served for only 23 days before regularization of their service as per Annexure-8 to the Writ application.

17. Mr. Sahu, learned counsel for the Petitioner further contended that pursuant to order dated 17.11.2023 in W.P.(C) No.36924 of 2023 although the Petitioner submitted a detailed representation on 24.11.2023 with a prayer for regularization of his service on the ground that he had served for more than 3 decades uninterruptedly, the Opposite Party No.1 without considering the representation of the petitioner in its proper prospective and without due regard to the order passed by this Court, rejected the representation vide order dated 06.07.2024 at Annexure-17

to the writ application. He further assailed the order of Annexure-17 on the ground that the same is illegal, erroneous and highly discriminatory.

18. In reply to the stand taken by the Opposite Party No.1 in its counter affidavit, learned counsel for the Petitioner emphatically argued that the Opposite Party No.1 has not disputed the factual aspect of the matter. However, while considering the prayer of the Petitioner for regularization of his service on the ground that the Petitioner has successfully rendered service uninterruptedly for more than 3 decades, the Opposite Party No.1 has failed to apply the correct law as has been laid down by this Court as well as the Hon'ble Supreme Court of India. He would also argue that by the time the Validation Act, 1993 came into force, the Petitioner was already in service. As such, the Petitioner is squarely covered by the Validation Act, 1993. Thus, it was argued that the Opposite Parties while regularizing the service of 195 Surgeons pursuant to the Validation Act, 1993 have failed to consider the case of the Petitioner under the said validation act and, as such, the Petitioner has been grossly discriminated against. He further forcibly argued that in the event the Petitioner was found not to be covered under the Validation Act, 1993, the Opposite Parties by taking note of the long and uninterrupted service rendered by the Petitioner would have relaxed the OMHS cadre rule and regularized the service of the Petitioner, or, they could have simply regularized the service of the Petitioner, against an ex-cadre post, on completion of 10 years of service by taking into consideration the length of the Petitioner's service, by applying the ratio laid down by this Court as well as the Hon'ble Supreme Court.

19. Mr. K.C. Sahu, learned counsel for the Petitioner, drawing attention to the orders under Annexures-8 and 14 to the writ application, contended that in the year 2015 as well as in the year 2023, service of some Dental Surgeons were regularized with the concurrence of the G.A&P.G. Dept. and Law Dept., Govt. of Odisha. He further contended that although by then the Petitioner was eligible for regularization neither any such consent was sought for from the G.A. & P.G. Dept. and Law Dept. of the Govt. of Odisha and the case of the Petitioner was never considered for regularization of his service. Such conduct clearly amounts to discrimination against the Petitioner by the State-Opposite Parties. He further argued that the Opposite Parties could not adopt two different set of yardsticks in respect of one category of employees i.e. Assistant Surgeons working under the Govt. of Odisha. Thus, it was argued that such conduct of the Opposite Parties is highly illegal, arbitrary and discriminatory in nature and, as such, the same is unsustainable in law.

20. With regard to the break in service as alleged by the State-Opposite Parties, learned counsel for the Petitioner submitted that such a ground taken by the Opposite Parties in the Counter affidavit is wholly erroneous. Inasmuch as the Petitioner was appointed in the State Medical & Health Services Cadre on ad-hoc basis and, thereafter, the same was being extended from time to time. The aforesaid fact has also been admitted in the Counter affidavit by the Opposite Parties. Thus, it was argued that even if it is assumed for the sake of argument that there was a break

of one or two days here and there, the same can very well be construed to be an artificial break created by the Opposite Parties to deny the legitimate claim of the Petitioner for regularization of his service. With regard to the Validation Act, 1993, learned counsel for the Petitioner contended that there is no quarrel with regard to the proposition of law laid down by this Court which had attained finality after confirmation of the judgment rendered by this Court by the Hon'ble Supreme Court of India. He further argued that the service of the Petitioner was never regularized under the Validation Act, 1993. The case of the Petitioner is that he was appointed initially on ad-hoc basis, thereafter on contractual basis in State Medical & Health Services Cadre. In the said context, it was argued that on completion of 6 years of continuous service, the service of the Petitioner should have been regularized at par with the principle which is being adopted by the State Government in every other department for regularization of the service of ad-hoc/ contractual employees.

21. With regard to the regularization of the service of the Petitioner on the basis of the fact that the Petitioner has rendered his service uninterruptedly for more than 3 decades, learned counsel for the Petitioner referred to the judgment of the Hon'ble Supreme Court of India in ***Secretary, State of Karnataka & Ors. v. Uma Devi & Ors.*** reported in ***AIR 2006 SC 1806***; ***State of Karnataka & Ors. v. M.L. Keshari & Ors.*** reported in ***AIR 2010 SC 2587***. He has also relied upon the latest judgment of the Hon'ble Supreme Court in ***Jaggo v. Union of India & Ors.***, decided in SLP(C) No.5580 of 2024 vide judgment dated 20.12.2024 as well as in ***Shripal & Anr. v. Nagar Nigam, Ghaziabad***, decided in Civil Appeal No.8157 of 2024 vide judgment dated 31.01.2025 as well as the judgment of this bench in ***Sitaram Behera v. State of Odisha & Ors.*** (in W.P.(C) No.8236 of 2024 decided vide judgment dated 16.05.2025).

22. Learned Addl. Govt. Advocate on the other hand contended that pursuant to the earlier order passed by this Court in W.P.(C) No.36924 of 2023, the Petitioner submitted a detailed representation to the Opposite Party No.1 on 24.11.2023 at Annexure-16 to the writ application. Learned Addl. Govt. Advocate further submitted that the Opposite Party No.1 vide order No.16926 dated 06.07.2024 at Annexure-17 rejected the prayer of the Petitioner by passing a speaking and reasoned order. Referring to order dated 06.07.2024 at Annexure-17, learned Addl. Govt. Advocate further submitted that the case of the Petitioner was duly considered on the basis of the factual background of the Petitioner's case. On close scrutiny the Opposite Party No.1 found that the Petitioner was not serving during the period in respect of which the Validation Act, 1993 was enacted. Moreover, no Validation Act has been enacted to regularize the service of Assistant Surgeons working on ad-hoc basis against the post of OMHS Cadre and that such post are being filled up regularly on the recommendation of the Odisha Public Service Commission.

23. Learned Addl. Govt. Advocate, in reply to the Petitioner's allegation that some of the Assistant Surgeons have been regularized in the meantime in the year 2015 as well as in the year 2023, contended that the regularization of 8 contractual

Dental Surgeons has been made vide Resolution dated 16.01.2015 with the concurrence of the GA & PG Dept. and Law Dept. and, that the same is based on the fact that there are no specific rules governing the recruitment to the post of Dental Surgeon. Thus, the Opposite Parties have accepted the fact that in the absence of any recruitment rules the appointment of Dental Surgeon, although on ad-hoc basis, cannot be construed to have fallen short of legality. By adopting the same analogy 5 posts of Dental Surgeons were regularized vide notification dated 09.01.2023 with the concurrence of the GA & PG Dept. and Law Dept. Learned counsel for the State further emphasized that in case of regularization of the Petitioner's service, the Finance Dept. has observed that the Validation Act is applicable to those cases where appointment has not been made in violation of recruitment procedure and that in the instant case, the Doctor has been appointed on contractual basis in violation of the existing rules. In addition to the above opinion, the Finance Dept., Govt. of Odisha has further observed that condonation of break period will arise between two regular services and not between two contractual services. Thus, the regularization of the services of the Petitioner could not be materialized. On the aforesaid ground, learned Addl. Govt. Advocate contended that the direction of this Court in the earlier writ application having been duly complied with by the Opposite Party No.1 and that the Petitioner having not found to be eligible for regularization of his service, the Opposite Party No.1 has not committed any illegality in rejecting his representation vide order dated 06.07.2024 at Annexure-17. In such view of the matter, learned Addl. Govt. Advocate further contended that the present writ application being devoid of merit, is liable to be dismissed.

24. Having heard the learned counsels appearing for the parties, on a careful analysis of their submissions, further taking note of the pleadings of the respective parties as well as the documents filed from both sides, this Court is of the considered view that so far as the factual background of the Writ application is concerned, there is not much of a difference between the version forwarded by both the sides. Thus, the admitted fact is that the Petitioner was initially appointed as Assistant Surgeon on ad-hoc basis vide notification dated 18.12.1992 and, accordingly, he was posted at PHC (N) Mankadakenda under CHC Khunta, Dist. Mayurbhanj. The Petitioner worked there as an Ad-hoc Assistant Surgeon w.e.f. 23.12.1992 to 31.12.1999. Thereafter, the Petitioner was engaged on contractual basis w.e.f. 02.01.2000 till the present date with a break in service on 01.01.2000 and another from 31.03.2001 to 20.09.2001. It is also a fact that the case of the Petitioner is not covered under the Validation Act, 1993. Even assuming that the case of the Petitioner is covered under the 1993 Validation Act, the Petitioner would not be benefited much as the said Validation Act has been held to be *ultra vires* by this Court, which was eventually affirmed by the Hon'ble Apex court. Now, therefore, the questions that arise before this Court for adjudication are, *firstly*, whether the decision taken by the Opposite Party No.1 vide order dated 06.07.2024 at Annexure-1 is valid or not? *Secondly*, whether the service of the Petitioner could be regularized taking into consideration the fact that he had rendered more than 3 decades of service as an Assistant

Surgeon? *Thirdly*, whether the Petitioner is entitled to consequential, financial and service benefits?

25. With regard to the first question that has been formulated by this Court, this Court observes that the same is inter-connected with the question No.2 formulated by this Court i.e. in the event this Court holds that the service of the Petitioner should have regularized as per law and the judgment of this Court as well as the Hon'ble Apex Court, then obviously the impugned order dated 06.07.2024 would fall apart and, as a necessary corollary, the impugned order at Annexure-17 is to be quashed.

26. As has been stated in the preceding paragraphs. there is not much dispute with regard to the initial appointment of the petitioner on ad-hoc basis as an Assistant Surgeon. The document at Annexure-1 to the Writ application, which is a notification of the Govt. of Odisha, H & FW Deptt. dated 18.12.1992, reveals that the Petitioner was appointed as an Assistant Surgeon in the State Medical & Health Services Cadre on ad-hoc basis for a period of 6 months or till the recommendation of the OPSC for appointment of Regular Assistant Surgeon is received. Although the initial appointment order reveals that such appointment was temporary and terminable at any time without prior notice. On the basis of the aforesaid notification of the Government, the Petitioner joined in government service. It is also evident from record that the Petitioner continued in his service, initially on ad-hoc basis, thereafter on contractual basis w.e.f. 02.01.2000 till now as an Assistant Surgeon and, that he has been discharging his duties for more than 3 decades. The record further reveals that twice attempts were made by the State-Opposite Parties to consider the case of the Petitioner for regularization of his service along with similarly situated other doctors. Such facts have been discussed elaborately in the body of the judgment. Therefore, the same need not be repeated here again. On examination, the disputed facts reveal that although the recommendations were sought for from the government seeking service particulars of doctors, including the present Petitioner for regularization of their service of Dental Surgeons, the case of the petitioner was never considered for regularization. Although the Petitioner approached the Opposite parties on several occasions by filing representations, the same was not attended to by the Opposite Parties for which the Petitioner was constrained to approach this Court earlier by filing W.P.(C) No.36924 of 2023 which was disposed of by this Bench only on 17.11.2023 with a specific direction to the Opposite Party No.1 to consider the case of the Petitioner for regularization. Although the Petitioner approached the Opposite Party No.1 with a copy of order dated 17.11.2023, the Opposite Party No.1 rejected the prayer of the Petitioner vide order dated 06.07.2024 at Annexure-17 to the writ application. The impugned order No.16926 dated 06.07.2024 reveals that the claim of the Petitioner was rejected on the following grounds:-

> I) That the Petitioner is not covered under the Validation Act, 1993 as he was not appointed in between 1982 to 1988 with the recommendation of the OPSC.

II) The Petitioner was not serving during the period for which the Validation Act, 1993 was enacted.

III) Regularization of 8 contractual Dental Surgeons in the year, 2015, has been made vide Resolution dated 16.01.2015 with the concurrence of the GA&PG Dept. and Law Dept. and on the basis of the fact that no specific rule governs the recruitment to the post of Dental Surgeon. Similar analogy was adopted while regularizing the service of 5 Dental Surgeons vide notification dated 09.01.2023.

IV) Finally, in view of the observation of the Finance Dept. that the Validation Act is applicable in a case where appointment has been made in violation of the recruitment procedure and, in the instant case, the appointment has been made in violation of the existing rules.

V) Lastly, the break period in service cannot be condoned as the same is permissible only in case of the break that arises between two regular services and not between two contractual services.

27. On a critical analysis of the rejection order dated 06.07.2024 at Annexure-17, this Court observes that the finding with regard to the fact that the Petitioner is not covered under the Validation Act, 1993 is correct and the same remains unassailable. So far as the prayer of the Petitioner for regularization of his service on the basis of the fact that he was initially appointed on 18.12.1992 and has rendered service as an Assistant Surgeon uninterruptedly and without any blemish for more than 3 decades, this Court is of the view that the same has not been appreciated by the Opposite Party No.1 in its proper prospective. While considering such prayer, the Opposite Party No.1 was duty bound take note of the judgments rendered by the Hon'ble Supreme Court as well as this Court with regard to regularization of service of govt. employees who have been engaged and continued on ad-hoc/ contractual basis for several decades.

28. In its entire pleading, the Opposite Parties have nowhere pleaded that the Petitioner was not eligible for appointment as an Assistant Surgeon as he was not having requisite degree/ qualification for such appointment. Moreover, nowhere it has been stated that there was any allegation against the Petitioner while discharging his duties. Also, it is clearly evident from the pleading in para-11 of the Counter affidavit that despite the Opposite Parties being fully aware of the judgment of this Court striking down the Validation Act, 1993, which was upheld by the Hon'ble Supreme Court way back in the year 2004, the Opposite Parties continued to engage the Petitioner in service as an Assistant Surgeon. It is worthwhile to mention here that the petitioner was posted in a pre-dominantly tribal area of the state, namely, Mayurbhanj district of Odisha and he was rendering service as an Assistant Surgeon to the needy people at far and remote places by attending the PHCs/ CHCs. Moreover, after the Validation Act, 1993 was struck down, no steps were taken to either terminate the service of the Petitioner or to engage a doctor in the State Medical and Health Services Cadre through the OPSC. Records further reveal that the Petitioner's name was considered and his service particulars were called for by the government on a couple of occasions. However, the same was not considered by

the State-Opposite Parties while regularizing the service of persons who are juniors to the Petitioner by a considerable extent and were working as Dental Surgeons. In this regard, an instance has been given by the Petitioner that one such Dental Surgeon, who had rendered only 23 days of service, has his service regularized and such fact has not been disputed by the Opposite Parties in their counter affidavit. Finally, after expiry of more than 3 decades, the prayer of the Petitioner for regularization was rejected by virtue of the impugned order dated 06.07.2024 at Annexure-17.

29. The grounds of rejection as indicated in the rejection order dated 06.07.2024 have been crystalized in the preceding paragraphs. Such rejection order has not taken into consideration the long and uninterrupted service rendered by the Petitioner as an Assistant Surgeon spanning over 3 decades. In the aforesaid context, this Court would like to refer to the judgments of the Hon'ble Supreme Court in ***Umadevi***'s case (*supra*). To understand the true impact of the judgment of the Hon'ble Supreme Court in ***Umadevi***'s case (*supra*), this Court would like to observe by taking note of the latest judgment of the Hon'ble Supreme Court in ***Jaggo***'s case (*supra*) as well as ***Shripal***'s case (*supra*) wherein it has been categorically held by the Hon'ble Supreme Court that the State-authorities always use the judgment in ***Umadevi***'s case (*supra*) as a shield to protect their illegal conduct and unfair treatment of the workforce and that no explanation is coming forth from the State side as to whether the one time measure as suggested in ***Umadevi***'s case (*supra*) has been followed or not. Ignoring the mandate in ***Umadevi***'s case (*supra*), the State-authorities are continuing with the practice of contractual or outsource engagement for a long time spanning over decades. Such conduct is being defended by citing in ***Umadevi***'s case.

30. To understand the true sense of the dictum of the Hon'ble Supreme Court in ***Umadevi***'s case (*supra*), this Court would like to refer to the observation of the Hon'ble Supreme Court of India in its latest judgment in ***Jaggo***'s (*supra*);

> "*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 and Ors. Etc. Vs. Union of India & Ors.***[5]***,*** *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…"

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."

31. Similarly, in ***Shripal***'s case (*supra*), the Hon'ble Supreme Court has made the following observations:-

"*14. The Respondent Employer places reliance on* ***Umadevi*** *(supra)*[2] *to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated,* ***Uma Devi*** *itself distinguishes between appointments that are "illegal" and those that are "irregular", the latter being eligible for regularization if they meet certain conditions. More importantly,* ***Uma Devi*** *cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor-based arrangement and a consistent need for permanent horticultural staff the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.*"

32. Another important observation of the Hon'ble Supreme Court in ***Jaggo***'s case (*supra*) which requires a special mention at this stage is as follows:-

"*16. The appellants' consistent performance over their long tenures further solidifies their claim for regularization. At no point during their engagement did the respondents*

raise any issues regarding their competence or performance. On the contrary, their services were extended repeatedly over the years, and their remuneration, though minimal, was incrementally increased which was an implicit acknowledgment of their satisfactory performance. The respondents' belated plea of alleged unsatisfactory service appears to be an afterthought and lacks credibility.

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 ever 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.

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, they contributing to the overall betterment of labour practices in the country."

33. Reverting to the judgment of the Hon'ble Supreme Court in ***Secretary, State of Karnataka Vs. Uma Devi*** reported in ***(2006) 4 SCC 1***, the Constitution Bench of the Hon'ble Supreme Court of India while unanimously speaking through Justice P.K. Balasubramanyan (as he then was) have also taken note of the cases where the appointments were merely "irregular" and not "illegal" and, as such, they had provided for a mechanism in para 53 of the judgment which is quoted hereinbelow:-

"*53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa*[11]*, R.N. Nanjundappa*[12] *and B.N. Nagarajan*[8] *and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should*

be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

34. Keeping in view the principle laid down by the Constitution Bench of the Hon'ble Supreme Court of India in **Uma Devi**'s case (*supra*), particularly, in para 53, this Court would now examine the factual background of the present case. Indisputably, the Petitioner was initially engaged in the year 1992 on ad-hoc basis. Thereafter, he was continuing on contractual basis w.e.f. 02.01.2000. Initially the recruitment of the Petitioner was by virtue of a government notification, although the same was without the concurrence of the OPSC, which is one of the requirements in the recruitment rules. Thus, at best it can be said that the initial recruitment of the Petitioner was "irregular" and was not completely "illegal". Moreover, by the time the judgment in ***Uma Devi***'s case (*supra*) was delivered on 10.04.2006, the Petitioner had completed 10 years of service on being appointed irregularly. Therefore, the case of the Petitioner meets the requirement of para 53 of the judgment in ***Umadevi***'s case (*supra*) as he had completed 10 years of service as on the date of the judgment i.e. 10.04.2006. In furtherance of the direction contained in para 53, the State-Opposite Parties should have carried out the exercise of regularization of service of such ad-hoc/ contractual employees as a one-time measure. However, there is nothing on record to conclusively prove that any such exercise was ever carried out by the State-Opposite Parties as a one-time measure. Additionally, there is no dispute with regard to the fact that the Petitioner was performing his duties against a sanctioned post and that the continuance of the Petitioner for more than 3 decades was without any intervention by any Constitutional Court or Tribunal. Thus, the principle laid down in para 53 in ***Umadevi***'s case (*supra*) squarely applies to the instant case of the Petitioner. As such, as a one-time measure, the case of the Petitioner should have been considered and he should have been regularized against the post of Assistant Surgeon. Although records reveal that an attempt was made in the year 2015 and 2023 by regularizing some of the ad-hoc Dental Surgeons, the case of the Petitioner was never considered. Moreover, there is nothing on record that the vacant post against which the Petitioner was working was ever filled up by the candidates who were recommended by the Odisha Public Service Commission.

35. In view of the aforesaid analysis of law, this Court has no hesitation in coming to a conclusion that the case of the Petitioner is squarely covered by the direction of the Constitution Bench in ***Umadevi***'s case (*supra*). Thus, it is further held that the Opposite Parties have failed to carry out the exercise as directed in para 53 of the ***Umadevi***'s case (*supra*). Therefore, this Court has no hesitation to hold that the case of the Petitioner should have been regularized as a one-time measure pursuant to the direction contained in para 53 of the ***Umadevi***'s case (*supra*).

36. Coming back to the law laid by the Hon'ble Supreme Court in its recent judgments in **Jaggo**'s case (*supra*) as well as in **Shripal**'s case (*supra*), this Court had an occasion to analyse both the aforesaid judgments in its pronouncement in

Sitaram Behera Vs. State of Odisha & Ors. bearing W.P.(C) No.8236 of 2024 decided vide judgment dated 16.05.2025. In **Sitaram Behera**'s case (*supra*), after taking note of the observation of the Hon'ble Supreme Court in **Jaggo**'s case (*supra*) as well as in **Shripal**'s case (*supra*) this Court had given a direction for regularization of service of the Petitioner in the said case.

37. In view of the aforesaid analysis, this Court is of the considered view that the Opposite Party No.1 has committed an illegality by rejecting the prayer of the Petitioner vide order dated 06.07.2024 at Annexure-17 to the writ application. Accordingly, the impugned order dated 06.07.2024 at Annexure-17 is hereby quashed. Moreover, the grounds on which the prayer for regularization has been rejected are found to be unsustainable in law in view the fact that the Petitioner has rendered service uninterruptedly as an Assistant Surgeon in a remote area of the State for more than 3 decades. This answers the first two questions formulated by this Court. With regard to the relief claimed by the present Petitioner, this Court is of the view that since an exercise was conducted to consider the case of ad-hoc/ contractual employees for regularization of their services pursuant to letter dated 24.04.2013 at Annexure-6 and necessary compliance was made with the letter of the Director of Health Services, Odisha at Annexure-6 by the CDMO, Mayurbhanj vide his letter dated 14.05.2013 at Annexure-7 strongly recommending the case of the Petitioner on the basis of the fact that the Petitioner had rendered for more than 19 years of service in rural & difficult areas of a tribal district and at the relevant point of time was continuing as a Contractual MO at Kostha CHC and while such recommendation was rejected, the Opposite Parties have regularized the service of 8 persons vide Resolution dated 16.01.2015 at Annexure-8, this Court is of the view that the case of the Petitioner should have been considered along with those 8 candidates as per Resolution at Annexure-8 dated 16.01.2015. Lastly, in order to uphold the ends of justice, this Court observes that the service of the Petitioner ought to be regularized against an ex-cadre post w.e.f. 16.01.2015. Accordingly, a direction is given to the Opposite Party No.1 to regularize the service of the Petitioner w.e.f. 16.01.2015 in an ex-cadre post of Assistant Surgeon with all necessary consequential, financial and service benefits, within a period of three months from the date of this judgment.

38. With the aforesaid observations/ directions, the writ application stands allowed. However, there shall be no order as to cost.

Headnotes prepared by:
Shri Jnanendra Kumar Swain, Judicial Indexer
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ Petition allowed.

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2025 (III) ILR-CUT-614

Dr. SUPREET SAURAV
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 736 OF 2025]

10 SEPTEMBER 2025

[A.K. MOHAPATRA, J.]

Issue for Consideration

Whether petitioner being an in-service candidate, can be denied the right to pursue higher education merely on the ground of pendency of criminal as well as departmental proceedings.

Headnotes

CONSTITUTION OF INDIA, 1950 – Article 21 – Right to Education – Dignity of an individual – Petitioner while serving as a senior resident doctor at DHH, Jharsugada, a criminal case was initiated on the allegation of demand of bribe – Present Writ petition has been filed with a prayer to issue NOC for pursue of fellowship programme – Authority denied to issue the NOC mainly on the ground of pendency of departmental as well as criminal proceedings – Issue raised that, petitioner being a in-service candidate his right to pursue higher education can be denied merely on the ground of pendency of criminal as well as departmental proceedings.

Held: No – It is thus evident that the right to education, being an integral facet of the right to life and personal liberty under Article 21, must be recognized even in respect of an in-service candidate aspiring for higher studies – Although it is true that such right of the in-service candidate can be made subject to the service conditions of the said candidate and the demands of administration, it cannot, however, be curtailed or denied solely on account of the pendency of departmental or criminal proceedings against the employee – In the instant case at hand, at this juncture, the criminal proceeding against the Petitioner remains at the investigative stage, and there is nothing on record to demonstrate that departmental proceedings have actually been initiated – Therefore, it can very well be ascertained that both the proceedings are pending – As such, neither the eventual outcome of such proceedings nor the timeframe for their conclusion can be determined at this stage – Nevertheless, the mere pendency of such proceedings alone cannot justify denying the Petitioner the opportunity to pursue higher education, which was the object of his request for an NOC.

(Para 23)

Citations Reference

Kailash Kashinathrao Pawar v. State of Maharashtra, **W.P.(C) No.4415 of 2024 judgment dated 26.03.2024, Bombay High Court;** Dr.Smruti Snigdha Sahoo v. State of Odisha and Ors., **W.P.(C) No.10839 of 2025, 26.06.2025;** Association of Medical Superspeciality Aspirants and Residents and Others v. Union of India and Others, **(2019) 8 SCC 607);** Dr. Smruti Snigdha Sahoo v. State of Odisha & Ors., **W.P.(C) No.10839 of 2025;** P.R. Nayak v. Union of India, **(1972) 1 SCC 332;** Ajay Kumar Choudhary v. Union of India, **(2015) 7 SCC 291;** R.P. Kapur v. Union of India, **(1964) 5 SCR 431;** Society for Unaided Private Schools of Rajasthan v. Union of India, **(2012) 6 SCC 1;** Janhit Abhiyan v. Union of India, **(2023) 5 SCC 1;** Unni Krishnan, J.P. v. State of A.P., **(1993) 1 SCC 645);** Miss. Mohini Jain v. State of Karnataka, **(1992) 3 SCC 666 – referred to.**

List of Acts

Constitution of India, 1950.

Keywords

Right to Education; Pendency of departmental as well as criminal proceedings; Suspension; Demand of bribe; No objection certificate; Resolution of the Government; Dignity of an Individual.

Case Arising From

Order No. 34240/H dated 16/12/2024 passed by the Opp. Party No. 1 there by rejecting the representation of the petitioner.

Appearances for Parties

For Petitioner : Mr. Avijit Mishra
For Opp.Parties : Mr. S. K. Parhi, A.S.C.
Mr. Rajani Chandra Mohanty, (for OP No.4)

Judgment/Order

Judgment

A.K. MOHAPATRA, J.

1. The present Writ Petition has been filed with a prayer to quash the order No.34240/H dated 16.12.2024 passed by the Opposite Party No.1, under Annexure-8 to the Writ Petition, along with a further prayer to direct the Opposite Party No.1 to issue a NOC in favour of the Petitioner so as to enable him to pursue his fellowship programme in 'Hepato Pancratico Billiary Surgery' at the Jaslok Hospital and Research Centre Mumbai.

FACTUAL MATRIX OF THE CASE

2. A comprehensive overview of the background facts leading to the filing of the present Writ Petition is as follows; after completing his MBBS course from Kalinga Institute of Medical Sciences, Bhubaneswar in the year 2014, the Petitioner got selected by the OPSC and joined as an Assistant surgeon/Medical Officer under Opposite Party No.3 and was posted at CHC Remuna in the year 2018. Thereafter, the Petitioner was got selected for post-graduation in 'General Surgery', which he completed in the year 2022 from VIMSAR, Burla. When the Petitioner took admission for the post-graduation course he executed a post-PG bond as per the Government of Odisha, Health & Family Welfare Department Resolution No.ME-IIIXM/88/2008- 3418 dated 03.02.2017 (hereinafter referred to as the "2017 Resolution"), under Annexure-1 to the present Writ Petition. Pursuant to such bond, the Petitioner has to work for at least two years in different medical institutions in the state of Odisha. After completion of his PG, the Petitioner, in pursuance of the bond signed, was first posted as a Senior Resident at VIMSAR, Burla and thereafter as a Senior Resident at FMMCH, Balasore and was posted at DHH, Jharsuguda. While working as such, the Petitioner was relieved by the Chief District Medical and Public Health Officer, Jharsuguda vide order No.931 dated 09.02.2024, under Annexure-2.

3. While continuing as such, a F.I.R was lodged against the Petitioner with the allegation that he was taking bribe to conduct an operation at the DHH, Jharsuguda. Following such allegations, the Petitioner was relieved from DHH, Jharsuguda in the afternoon of 09.02.2024 and later suspended from service w.e.f the date of his arrest, i.e. 10.02.2024, vide office order No.5461 dated 01.03.2024, passed by the Opposite Party No.1-Secretary, Department of Health and Family Welfare Department, Odisha, under Annexure-3 to the present Writ Petition. Later on, the Petitioner was released on bail on 23.02.2024. While the matter stood thus, the petitioner got selected by the Maharashtra University of Health Sciences, Nashik for a fellowship course in "Hepato Pancratico Billiary Surgery" and was allotted Jaslok Hospital and Research Centre, Mumbai. Upon being selected, the Petitioner submitted a representation dated 07.04.2024, before the Additional secretary, Health and Family Welfare Department, to issue NOC in favour of the Petitioner enabling him to join the fellowship. Later on, the Petitioner had also filed a W.P.(C) No.27875 before this Court with a prayer for a direction to the Opposite Parties to issue the NOC in favour of the Petitioner. Finally, this Court, vide orders dated 18.11.2024 and 05.12.2024, directed the Opposite Parties to verify the claim of the Petitioner and issue NOC in his favour if his claims are found to be true. Following such direction, the Opposite Party No.1, vide its order dated 16.12.2024 has rejected the representation of the Petitioner for issuing NOC in his favour. Aggrieved, the Petitioner has approached this Court praying for the relief as mentioned hereinabove.

CONTENTIONS OF THE PETITIONER

4. Heard Mr.Avijit Mishra, learned Counsel for the Petitioner. The Learned Counsel for the Petitioner at the outset contended that while the Petitioner was continuing as a Medical Officer in the OMHS Cadre, he was selected to do his Post Graduation in 'General Surgery' as an in-service candidate in the year 2019 from VIMSAR, Burla, which he completed in the year 2022. He further contended that after the Petitioner was selected for a fellowship course in "Hepato Pancratico Billiary Surgery" at Jaslok Hospital and Research Centre, Mumbai, as evidenced from the allotment letter under Annexure-4 to the Writ Petition, the Petitioner had submitted his representation dated 07.04.2024, under Annexure-5, before the Additional Secretary, H&FW Department to issue an NOC in his favour. However, no action was taken upon the said representation. Later on, the Petitioner filed W.P.(C) No.27875 of 2024, wherein a Coordinate Bench of this Court vide orders dated 18.11.2024 and 05.12.2024, produced as Annexure-7 to the Writ Petition, had directed the Opposite Parties to issue NOC in favour of the Petitioner. The Learned Counsel for the Petitioner submitted that despite such order of this Court, the Opposite Party No.1 rejected the representation of the Petitioner, vide order dated 16.12.2024, on the ground that the Petitioner has been placed under suspension while continuing his post-PG bond service.

5. With regard to the allegations of bribery against the Petitioner, the Learned Counsel for the Petitioner referred to a copy of the order No.931 dated 09.02.2024 under Annexure-2, and submitted that while the Petitioner was serving his bond period at DHH, Jharsuguda he was relived on 09.02.2024 to join before the Dean & Principal, VIMSAR, Burla. Unbeknownst, to the Petitioner two persons have tried to frame him by alleging that he had asked for a sum of money from the said persons to conduct their surgery at DHH, Jharsuguda. It is the contention of the learned counsel that following such baseless allegations the Vigilance authorities have arrested the Petitioner on 10.02.2024.

6. Furthermore, the Learned Counsel for the Petitioner contended that a government servant who has been suspended due to a vigilance case should be reinstated within six months from the date of initiation of the criminal case in the event the investigation in the matter is not completed by that time. In fact, the onus is on the Vigilance Department to communicate the reasons for non-completion of the investigation and to also indicate the time period within which the investigation is expected to be completed, and if the investigation is not completed within that period then the Government Servant is to be reinstated in service after reviewing such suspension order. In this context, the learned counsel for the petitioner has stated that the Petitioner was initially arrested on 10.02.2024 and in the meantime more than one year has elapsed, however, neither the investigation has been completed, nor have the reasons for the same been communicated to the government. Moreover, no approval has also been obtained from the State Government to continue the suspension of the Petitioner beyond the six months period.

7. Learned Counsel for the Petitioner went to argue that even though the Petitioner was in regular service under OMHS Cadre, he was directed to sign a bond as per the Government of Odisha, Health & Family Welfare Department Resolution No.ME-II-IXM/88/2008- 3418 dated 03.02.2017, a copy whereof has been provided under Annexure-1 to the Writ Petition. As per the bond condition the Petitioner is compulsorily required to work for two years in health institutions of the State. Referring to Clause 1(e) of the 2017 Resolution**,** the Learned Counsel for the Petitioner contended that when a doctor who has signed the bond and has completed his Post Graduation, in the event the candidate gets an opportunity for higher studies within the two years of bond period, then the bond shall cease to operate and come into effect only after the doctor has returned from his higher studies. Additionally, since the Petitioner has signed the bond as per the 2017 resolution, his two years of bond service shall be governed by the 2017 resolution alone. learned Counsel for the Petitioner further contended that despite the Petitioner belonging to the OMHS Cadre, his services are governed as per the bond which has been signed in terms of the 2017 Resolution which does not contain any restrictions with regard to the Petitioner attending higher studies during pendency of disciplinary proceeding. Furthermore, the said resolution does allow the Petitioner to go for higher studies in between the two year bond service which the Petitioner would complete after returning from his higher studies.

8. Next, the Learned Counsel for the Petitioner contended that following the initiation of the vigilance case against the Petitioner, he was placed under suspension w.e.f 10.02.2024 by the Opposite Party No.1 vide its order dated 01.03.2024, under Annexure-3, pending the initiation of departmental proceeding against the Petitioner. He further mentioned that as per the aforesaid order dated 01.03.2024 the Petitioner is entitled to subsistence allowance as per Rule-90 of the Odisha Service Code. However, the same has not yet been extended in favour of the Petitioner.

9. At this juncture, the learned counsel for the petitioner stated before this Court that the Pendency of any criminal proceedings or disciplinary proceedings cannot serve as a bar for any in-service candidate to go for higher studies. To support his contentions, the Learned Counsel for the Petitioner referred to the Bombay High Court's judgement dated 26.03.2024 in ***Kailash Kashinathrao Pawar v. State of Maharashtra***, bearing ***W.P.(C) No.4415 of 2024***. Thereafter, referring to the rejection order dated 16.12.2024, under Annexure-8, the learned Counsel submitted that the said order enumerates that an NOC will be given to a candidate to pursue only those fellowship courses which are recognized by the NMC. However, the present Petitioner has signed the bond as per the 2017 resolution which does not contain any such criteria. As such, the Learned Counsel for the Petitioner submitted that the case of the Petitioner is squarely covered by the judgement dated 26.06.2025 of this Court in ***Dr.Smruti Snigdha Sahoo v. State of Odisha and Ors.***, bearing ***W.P.(C) No.10839 of 2025***.

10. In such view of the matter, the learned Counsel for the Petitioner contended that the Petitioner has a right to go for higher studies and that the Opposite Parties cannot restrain the Petitioner from exercising such right. It was also contended that the State Government clearly allows in-service doctors to go outside the State for various programs by taking study leave and in such instances the service of such doctors was also protected. However, in the instant case, the Petitioner's case has been handled lackadaisically, especially since there is no such policy as has been mentioned in paragraph 5 of the order dated 16.12.2024. As such, the aforesaid impugned order dated 16.12.2024 is liable to be quashed and that the Opposite Party No.1 be directed to issue NOC in favour of the Petitioner so as to enable him to immediately enroll in the fellowship program to which he has been selected.

CONTENTIONS OF THE OPPOSITE PARTIES

11. Heard Mr.S.K.Parhi, learned Additional Standing Counsel appearing for the Opposite Parties and Mr.R.C.Mohanty, learned Counsel appearing for the Opposite Party No.4. Perused the Counter Affidavit filed by the Opposite Party No.1.

12. Learned ASC, at the outset contended that while the Petitioner was undergoing his service as per his post-PG bond condition at DHH Jharsuguda, he was placed under suspension vide Department Order No.5461 dated 01.03.2024, under Annexure-A/1 to the Counter Affidavit filed by the Opposite Party No.1, owing to the fact that a Rourkela Vigilance P.S Case No.03, dated 09.02.2024, was registered against the Petitioner for making an illegitimate demand of money to the tune of Rs.6,000/- from the complainant to conduct his and a co-villager's 'Hydrocele Surgery'. He further contended that the GA (Vigilance) Department, vide its letter No.48 dated 27.01.2025, under Annexure-B/1 to the Counter, has intimated that the case is pending awaiting sanction for prosecution from GA&PG Department and that the Petitioner ought to cooperate with the investigation of the case.

13. Additionally, referring to the copy of NMC approved courses under Annexure-C/1 to the Counter by the Opposite Party No.1 and the proceeding of the Committee meeting held on 02.09.2022 to grant NOC to Medical Officers, under Annexure-D/1 to the Counter, the learned ASC submitted that as per the current policy of the Government, an NOC will be issued to Medical Officers only for those fellowship courses approved by the NMC and as per the D.M.E.T, Odisha the fellowship course to which the Petitioner claims NOC for being admitted into, i.e. "Hepato Pancratico Billiary Surgery", is not on the list of fellowship courses approved by the NMC. Therefore, the Petitioner cannot be issued with an NOC for admission into the said course. Also, since the Petitioner belongs to the OMHS cadre and he is under suspension, no NOC can be issued in his favour. Moreover, the learned ASC submitted that before applying for the said fellowship course, the Petitioner has not taken the prior permission of the Government.

14. As such, the learned ASC contended that in view of the aforesaid circumstances, the prayer of the Petitioner to issue NOC in his favour to pursue his fellowship programme in Mumbai is devoid of merit and the same is liable to be dismissed.

ANALYSIS OF THE COURT

15. Heard Mr.Avijit Mishra, learned Counsel for the Petitioner and Mr.S.K.Parhi, learned Additional Standing Counsel appearing for the Opposite Parties and Mr.R.C.Mohanty, learned Counsel appearing for the Opposite Party No.4. Perused the Counter Affidavit filed by the Opposite Party No.1.

16. The Petitioner, a doctor, has been selected for the fellowship programme in "Hepato Pancratico Biliary Surgery" at Jaslok Hospital and Research Centre, Mumbai. At the time of his selection, the Petitioner was serving the mandatory two-year post-PG bond service. During this period, he was implicated in a vigilance case, bearing Rourkela Vigilance P.S. Case No.03 dated 09.02.2024, and was placed under suspension w.e.f 10.02.2024 by order dated 01.03.2024 issued by the Opposite Party No.1. Consequently, he applied to the authorities for issuance of an NOC to enable him to pursue his higher studies. When the Petitioner's representation was left in limbo, he approached a Coordinate Bench of this Court by filing W.P.(C) No. 27875 of 2024. The writ petition was disposed of by orders dated 18.11.2024 and 05.12.2024, wherein the Coordinate Bench directed the Opposite Parties to issue an NOC in favour of the Petitioner if the veracity of his claim regarding admission to the fellowship course was found to be true. Pursuant to such direction, Opposite Party No. 1 issued an order dated 16.12.2024 rejecting the Petitioner's request for an NOC to pursue the fellowship course for which he had been selected. The above sequence of events is not in controversy.

17. On perusal of the order of rejection dated 16.12.2024, under Annexure-8, specifically paragraph-5 of the said order, it can be seen that the Petitioner has been denied NOC on three distinct grounds, viz, *firstly*, the fellowship course which he has been selected for is not included in the list of courses approved by the NMC. *Secondly*, the Petitioner belongs to the OMHS Cadre. *Thirdly*, the Petitioner is under suspension. As such, this Court is of the view that in order to fairly adjudicate the matter at hand and to test the veracity of the prayer of the Petitioner made herein, this court is required to test the probity of the order of rejection dated 16.12.2024, under Annexure-8 to the present Writ Petition and to test the validity of grounds taken for rejection by the Opposite Parties against the touchstone of Constitutional principles.

18. In the instant case, when the Petitioner got selected for pursuing his post-graduation in 'General Surgery' at VIMSAR, Burla, he signed a bond, for serving for two years after completion of his PG, as per 'Government of Odisha Health & Family Welfare Department Resolution No.ME-IIIXM/88/2008-3418' dated 03.02.2017, i.e. the '2017 Resolution'. The said fact has not been disputed by the

Opposite Parties. On perusal of the 2017 Resolution, a copy whereof has been provided at Annexure-1, nowhere has it been mentioned that the candidates belonging to the OMHS cadre shall be excluded from the operation of the said resolution. Additionally, nowhere does the resolution mention that an NOC shall be provided to the candidates to only pursue higher studies in the courses that have been approved by the NMC. The crucial provision governing the Petitioner, i.e. a doctor who is serving his post-PG bond period and is selected for higher studies, is Clause 1(e). Clause-1(e) of the 2017 Resolution is quoted hereinbelow for better appreciation.

> "***1. The Bond conditions shall be as follows:***
>
> ***e.*** *In case a candidate gets opportunity for higher study immediately after completion of course, the bond seizes to operate and will come in to force after return from study. They shall submit a declaration in form of affidavit before JMFC as per format enclosed in Appendix-1, to that effect. In such cases the Pass certificate and CLC shall be released. Copy of such affidavit shall be sent to DHS and DMET Odisha.*"

19. On perusal of the aforementioned Clause-1(e) and the 2017 Resolution as a whole, it can be very well ascertained that there is no stipulation in the provisions of the said resolution which envisages a bar upon an OMHS cadre doctor from obtaining NOC to pursue higher studies. The said Guidelines also do not contain any stipulation which shall restrict a doctor who has signed the bond to only receive NOC to pursue higher studies in courses approved by NOC. Although, the said stipulation was later included in subsequent Resolutions of the State Government in 2021 and 2024. However, in the present case it is absolutely undisputed that the Petitioner has signed the bond based on the 2017 Resolution. As such, the Petitioner shall be governed only by that Resolution which he has signed, i.e. the 2017 Resolution (reference maybe had to paragraph 40 of ***Association of Medical Superspeciality Aspirants and Residents and Others v. Union of India and Others,*** reported in ***(2019) 8 SCC 607***). In fact, this very Court in its judgement dated 26.06.2025 in ***Dr. Smruti Snigdha Sahoo v. State of Odisha & Ors.***, bearing ***W.P.(C) No.10839 of 2025*** , dealt with a somewhat similar proposition wherein the Petitioner in the said case was denied NOC on the ground that the course in which she had been selected is not amongst the list of courses approved by the NMC, and, as per the latest State Government resolution, the said Petitioner could not be given NOC to pursue higher education in the said course even though the Petitioner had singed a bond based on a previous resolution of the State wherein no such stipulation was included. This Court, relying on the dicta in ***Association of Medical Superspeciality's case*** *(supra)* and several other pronouncements, held that the Petitioner is to be governed by the stipulation contained in the resolution based on which she had signed her bond for post-PG service, and, accordingly, the Opposite Parties therein were directed to issue NOC to the said Petitioner to pursue higher education. Therefore, in light of the above discussion, the first and second grounds taken in the impugned order of rejection are found to be untenable in law.

20. With regard to the third ground taken in the impugned rejection order under Annexure-8, i.e. the fact that the Petitioner is presently under suspension, the record reveals that the Petitioner was earlier implicated in Rourkela Vigilance P.S. Case No.03 dated 09.02.2024. Pursuant thereto, he was arrested on 10.02.2024, enlarged on bail on 23.02.2024, and then placed under suspension with effect from 10.02.2024 by order dated 01.03.2024 passed by Opposite Party No.1. Upon perusal of the order of suspension dated 01.03.2024, under Annexure-3, specifically the 2nd paragraph thereof, it can be seen that the Petitioner has been suspended w.e.f 10.02.2024 until "further orders pending initiation of Departmental Proceeding against him". In the meantime one and half years have passed and nothing has been brought on record to show when, if at all, a Departmental Proceeding was initiated against the Petitioner. As to the status of the Vigilance case, after almost a year and half of the initiation of the vigilance case, the investigation in the matter has not yet been concluded.

21. Moreover, nothing has been brought on record to indicate as to whether the suspension of the Petitioner has been reviewed periodically. As has been discussed above, the Petitioner has been suspended until further order pending initiation of Departmental Proceedings. This clearly suggests the inference that the suspension of the Petitioner is not in any way indicative of the termination of his service, instead, it is a temporary measure stated to remain in effect until "further orders pending initiation of Departmental Proceeding against him". Apart from that also, It is a settled proposition of law that a suspension is always meant to be an interim measure to aid the disciplinary proceeding and is meant to prevent the officer concerned from taking any advantage of his position or power while the proceeding against him is finalised. On the other hand, if the suspension is turned indefinite then it would turn punitive in nature (reference maybe had to ***P.R. Nayak v. Union of India***, reported in ***(1972) 1 SCC 332***, specifically paragraph 40; ***Ajay Kumar Choudhary v. Union of India***, reported in ***(2015) 7 SCC 291***, specifically paragraphs 11 and 12 thereof) and it would not be tenable in law given that the guilt of the delinquent officer remains to be established in the disciplinary proceeding. In fact, in ***P.R.Nayak's Case*** (supra), the Hon'ble Apex Court, in paragraph 45 thereof, referred to the decision in ***R.P. Kapur v. Union of India***, reported in ***(1964) 5 SCR 431*** and made the following observation;

> *"45. Again, in the case of R.P. Kapur v. Union of India [(1964) 5 SCR 431], this Court considered the suspension of a government servant on the ground that a criminal case was pending against him**. It was contended in that case that suspension pending a criminal proceeding could not be said to be a disciplinary matter. That argument was not accepted. It was said that suspension is of two kinds. It is either a punishment or an interim measure pending a departmental enquiry or pending a criminal proceeding.** Suspension as a punishment is a disciplinary matter. Suspension pending a departmental enquiry or pending a criminal proceeding was also held to be comprised within the words "disciplinary matters" within the meaning of Article 314. It was then said "**Take the case of suspension pending a departmental enquiry. The purpose of such suspension is generally to facilitate a departmental enquiry and to ensure that***

> ***while such enquiry is going on — it may relate to serious lapses on the part of a public service — , he is not in a position to misuse his authority in the same way in which he might have been charged to have done so in the enquiry. In such a case suspension pending a departmental enquiry cannot be but a matter intimately related to disciplinary matters"***.*"* *(Emphasis supplied)*

Be that as it may, it is not the order of suspension of the Petitioner that is under challenge in the present case. It is the order rejecting the grant of NOC to the Petitioner that is under challenge in the instant Writ Petition. As such, this Court has to restrict its adjudication only to the order of rejection of the Petitioner's representation for NOC. Upon further scrutiny of the 2017 Resolution under Annexure-1, i.e. the resolution based on which the Petitioner has signed his post-PG service bond, it can be seen that the resolution does not contain any stipulation barring any in-service candidate from pursuing higher education on the ground of suspension form service.

22. Furthermore, it has long been settled by a catena of decisions of the Hon'ble Supreme Court and various other High Courts of the Country that the right to education of a citizen is a substantive legal right afforded to that person and it emanates from the right to life enshrined under Article 21 of the Constitution of India (reference maybe had to ***Society for Unaided Private Schools of Rajasthan v. Union of India***, reported in ***(2012) 6 SCC 1***; ***Janhit Abhiyan v. Union of India***, reported in ***(2023) 5 SCC 1***; ***Unni Krishnan, J.P. v. State of A.P.***, reported in ***(1993) 1 SCC 645***). Additionally, in the aforesaid context, the Hon'ble Supreme Court in ***Miss. Mohini Jain v. State of Karnataka***, reported in ***(1992) 3 SCC 666***, has held that the right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education and observed that;

> *"9. The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Without making "right to education" under Article 41 of the Constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate.*
>
> ***
>
> *12. "Right to life" is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue.* ***The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education.***
>
> *13. The fundamental rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.*
>
> *14.* ***The "right to education", therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution.***

***

*17. **We hold that every citizen has a "right to education" under the Constitution**. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right.*" (*Emphasis supplied*)

23. It is thus evident that the right to education, being an integral facet of the right to life and personal liberty under Article 21, must be recognized even in respect of an in-service candidate aspiring for higher studies. Although it is true that such right of the in-service candidate can be made subject to the service conditions of the said candidate and the demands of administration, it cannot, however, be curtailed or denied solely on account of the pendency of departmental or criminal proceedings against the employee. In the instant case at hand, at this juncture, the criminal proceeding against the Petitioner remains at the investigative stage, and there is nothing on record to demonstrate that departmental proceedings have actually been initiated. Therefore, it can very well be ascertained that both the proceedings are pending. As such, neither the eventual outcome of such proceedings nor the timeframe for their conclusion can be determined at this stage. Nevertheless, the mere pendency of such proceedings alone cannot justify denying the Petitioner the opportunity to pursue higher education, which was the object of his request for an NOC.

24. In view of the aforesaid analysis, and in the facts and circumstances of the present case, this Court is of the view that the Order of rejection dated 16.12.2024 under Annexure-8 to the present Writ Petition is wholly unsustainable in law. As such, the same is hereby quashed. Accordingly, the Petitioner is directed to approach the Opposite Party No.1 for issuing an NOC in his favour. In such eventuality, the Opposite Party No.1 shall verify the claim of the Petitioner regarding his selection into the fellowship course of "Hepato Pancratico Biliary Surgery" at Jaslok Hospital and Research Centre, Mumbai, and issue an NOC to the Petitioner, within two weeks thereof, allowing him to pursue such higher education, provided there are no other legal impediments to the same. Additionally, issuance of such NOC in favour of the Petitioner shall be subject to the Petitioner furnishing an undertaking in addition to the other requirements to appear before the disciplinary committee conducting the departmental proceeding against the Petitioner as well as before the jurisdictional court where the criminal case is pending, as and when his presence is considered necessary and expedient. It is further clarified that the Petitioner shall undertake such higher studies subject to the eventual decision to be taken in the departmental and criminal proceeding against the Petitioner.

25. Accordingly, the Writ Petition is allowed. However, there shall be no order as to costs.

Headnotes prepared by:
Shri Jnanendra Ku. Swain, Judicial Indexer
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ Petition allowed.

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2025 (III) ILR-CUT-625

NANDINI SAMAL & ORS.
V.
THE PRINCIPAL, SAINT MARY'S SCHOOL & ANR.

[MACA NO. 708 OF 2018]

19 AUGUST 2025

[V. NARASINGH, J.]

Issues for Consideration

1. Whether Tribunal erred in absolving the Insurance Company from the liability.

2. Whether the claimants are entitled to receive enhance compensation towards conventional heads at the rate of 10% in every three years.

Headnotes

MOTOR ACCIDENT – Compensation – Enhancement – Appellants filed the appeal seeking to saddle the liability on Insurance Company & enhancement of compensation amount – The appellant submitted that tribunal wrongly proceeded to hold that driver had no valid license & that the offending vehicle was a heavy vehicle as such absolved the Insurance Company from paying the compensation – That the amounts on conventional heads, namely loss of estate, loss of consortium and funeral expenses should be enhanced at the rate of 10% in every three years – Whether the claimants are entitled to receive the reliefs claimed.

Held: Yes – This Court on the basis of the materials on record comes to the finding that absolving the Insurance Company of the liability being fallacious is also liable to be set aside and as such the Insurance Company is found to be liable to pay the compensation. (Para 7)

As per the decision of the Apex Court in the case of *Pranay Sethi (supra)*, in every three years Rs.70,000/- towards conventional heads should be enhanced at the rate of 10% from the date of filing of the claim application i.e. 20.06.2015 – Hence, further amount of Rs.21,000/- would be added thereon – Hence, the total compensation would be Rs.29,73,940/- plus Rs.21,000/- = Rs.29,94,940/-. (Para 8)

Citations Reference

Sarla Verma vrs. Delhi Transport Corporation, **2009 (3) Supreme 487;** National Insurance Co. Ltd. vrs. Pranay Sethi, **2017 (16) SCC 680 – referred to.**

List of Acts

Motor Vehicles Act, 1988.

Keywords

Motor Accident; Compensation; Enhancement; Conventional heads; Consortium; Loss of Estate; Funeral expenses; Light Motor vehicles.

Case Arising From

Judgment dated 26.02.2018 passed by 3rd MACT, Rourkela in MAC case No. 187/2015.

Appearances for Parties

For Appellants : Mr. K. Panigrahi,

For Respondents: Mr. P.K. Mahali (R-2)

Judgment/Order

Judgment

V. NARASINGH, J.

Heard learned counsel for the Appellants-Claimants and learned counsel for the Respondent No.2-Insurance Company.

2. The Appellants–Claimants assailing the judgment dated 26.02.2018 passed by the learned 3rd M.A.C.T., Rourkela in MAC Case No.187 of 2015 awarding a compensation of Rs.29,76,000/- to the Claimants along with interest at the rate of 6% per annum from the date of application i.e. 26.06.2015 have filed this appeal seeking enhancement of the compensation amount and with a prayer to saddle the liability on Respondent No.2-Insurance Company, inter alia, on the ground that the basis on which Respondent No.1-owner was found to be liable is ex facie illegal in view of the R.C. Book on record vide Ext. A in the light of the definition of Light Motor Vehicles in terms of Section 2(21) of the Motor Vehicles Act, 1988.

3. The Appellants as Claimants filed the aforesaid M.A.C Case claiming compensation of Rs.35,00,000/- on account of the death of the deceased Bata Krushna Samal who was working as a senior technician in SAIL, RSP, Rourkela and earning Rs.35,000/- per month. The deceased while going to his duty by bicycle the offending vehicle bearing registration number OR-14N-8040 being driven in a rash and negligent manner dashed against the deceased as a result of which, he sustained multiple injuries and succumbed to the said injuries.

In such claim application, the owner of the offending vehicle was arrayed as Opposite Party No.1 and was set ex parte. Opposite Party No.2-Insurance Company appeared and filed its written statement denying the assertions made in the claim petition.

4. On the pleadings of the parties, the following issues were framed;

> "i. Whether Batakrushna Samal died in a vehicular accident which took place near Naya Bazar chowk, Rourkela on 27.7.10 at about 5.30 AM due to rash and negligent driving of the driver of the offending vehicle?
>
> (ii) Whether the petitioners are entitled to get any compensation and if so, what would be the just compensation?
>
> (iii) Whether O.P. No. 1 and 2 liable to pay the compensation to the petitioners?"

In order to substantiate their stand, Petitioner No.1 examined herself as P.W.1 and one independent witness was examined as P.W.2 and documents were exhibited and marked as Exts.1 to 13.

Insurance Company has examined one witness as OPW.1 and documents were marked as Exts. A to C.

Considering the evidence on record, learned Tribunal directed for payment of compensation of Rs.29,76,000/- along with 6% interest per annum from the date of filing of the claim petition till the date of payment.

5. It is submitted by the learned counsel for the Appellants-Claimants, Mr. Panigrahi that learned Tribunal has ex facie proceeded on the wrong premises that the vehicle in question is a heavy motor vehicle and the driver had no valid driving licence to drive such vehicle as such absolved the Insurance Company from paying the compensation. It is his further submission that the compensation amount is also liable to be enhanced.

6. Mr. Mahali, learned counsel for the Insurance Company, opposed such submission on both the counts.

7. On a perusal of the photocopy of the R.C. book of the offending vehicle, vide Ext. A it is seen that unladen weight of the offending vehicle is 2585 Kg.

Section 2(21) of the Motor Vehicles Act, 1988[1] deals with "light motor vehicle". For convenience Section 2(21) is extracted hereunder:

> **"2. Definitions.-**
>
> (11) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms; (Emphasized)

On the date of accident i.e. on 27.07.2010 the accused driver was authorized to drive the light motor vehicle as per Ext.C-driving licence.

Hence, the finding of the learned Tribunal that on the date of accident the driver of the offending had no valid driving licence being ex facie erroneous is set aside.

This Court on the basis of the materials on record comes to the finding that absolving the Insurance Company of the liability being fallacious is also liable to be

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[1] Sec.2(21) of the M.V Act, 1988

set aside and as such the Insurance Company is found to be liable to pay the compensation.

So far as quantum of compensation is concerned, it is urged that the award of compensation by the learned Tribunal is contrary to the judgment of the Apex Court in the case of **Sarla Verma vrs. Delhi Transport Corporation**[2] and **National Insurance Co. Ltd. vrs. Pranay Sethi**[3].

Reliance of the judgment in the case of **Pranay Sethi (supra)**[3] is placed to fortify the submission that the amounts on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively is payable and the same should be enhanced at the rate of 10%, in every three years.

Relating to future prospects it is stated on instruction by the learned counsel for the Appellants-Claimants that the deceased was working as a Senior Technician in SAIL, Rourkela Steel Plant and **his L.Rs have not availed any benefits under the Employees Benefit Scheme.**

7-A. On perusal of the basis of quantification, this Court finds substance in the submission made by the learned counsel for the Appellants-Claimants seeking enhancement.

8. On re-quantification thereof in the light of judgments of the Apex Court in the case of **Sarla Verma**[2] **and Pranay Sethi (supra)**[3], it is seen that the learned Tribunal has not awarded Rs.15,000/- for loss of estate. Further, the amount of enhancement at the rate of 10%, in every three years, on conventional heads has also not been done. Hence, monthly gross salary as per Ext.11 comes to Rs.36,810/- and income tax payable is Rs.1,530/-. After deduction of income tax, it comes to Rs.36,810/- minus Rs.1,530/- = 35,280/-. Accordingly, yearly income would be Rs.35,280/- x 12 = Rs.4,23,260/-. After deduction of Rs.2,500/- towards yearly professional tax, it comes to Rs.4,20,860/-.

As the deceased was having permanent nature of job and was aged about 56 years, future prospects at the rate of 15% i.e. Rs.63,129/- would be added. As such, it comes to Rs.4,20,860/- plus Rs.63,129/- = Rs.4,83,989/-. Towards personal living expenses of the deceased, 1/3rd thereof i.e. Rs.1,61,329/- is liable to be deducted. As such, the amount comes to Rs.4,83,989/- minus Rs.1,61,329/- = Rs.3,22,660/- towards contribution for the family by the deceased. After application of 9 multiplier, loss of dependency comes to Rs.3,22,660/- x 9 = Rs.29,03,940/-. Towards conventional heads Rs.70,000/- for loss of estate, loss of consortium and funeral expenses ought to be added to it. As such it comes to Rs.29,03,940/- plus Rs.70,000/- = Rs.29,73,940/-.

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2 2009 (3) Supreme 487

3 2017 (16) SCC 680

As per the decision of the Apex Court in the case of **Pranay Sethi (supra)**[3]**,** in every three years Rs.70,000/- towards conventional heads should be enhanced at the rate of 10% from the date of filing of the claim application i.e. 20.06.2015. Hence, further amount of Rs.21,000/- would be added thereon. Hence, the total compensation would be Rs.29,73,940/- plus Rs.21,000/- = Rs.29,94,940/-.

8-A. As such the awarded amount of Rs.29,76,000/- is to be enhanced to Rs.29,94.940/- and the same will carry interest at the rate of 6% per annum as awarded by the learned Tribunal i.e. from the date of filing of the claim application i.e. 20.06.2015. The distribution of compensation as awarded by the learned Tribunal shall be in terms of the impugned award. The enhanced compensation amount along with accrued interest thereon shall be equally distributed amongst the Respondents-Claimants 1 to 3. The modified compensation amount along with interest at the rate of 6% per annum shall be deposited and disbursed within a period of eight weeks from the date of receipt of a copy of the judgment.

9. It shall be open for the Insurance Company to take steps for recovery of the amount from the owner of the offending vehicle, if the same is recoverable in accordance with law.

10. Court fees shall be payable by the Claimants as per Rules.

11. Accordingly, the MACA stands disposed of. No costs

Headnotes prepared by *Result of the case:*
Smt. Madhumita Panda, Law Reporter MACA disposed of.
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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2025 (III) ILR-CUT-630

HEMANTA NAYAK
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 12399 OF 2024]

09 OCTOBER 2025

[V. NARASINGH, J.]

Issue for Consideration

Whether the decision of Information Commission is sustainable under law.

Headnotes

RIGHT TO INFORMATION ACT, 2005 – Section 16(1), 19(1) – Petitioner made an application u/s. 16(1) of the Act to the Public Information Officer for certain information – Since such information was not provided within stipulated period the petitioner preferred an appeal – The petitioner on 12.12.2018 was informed in the first appeal that information sought by him is not available as per the statement of dealing Assistant, Encroachment – Being aggrieved, petitioner preferred Second Appeal – State Information Commissioner on 26.02.2024 dropped the case, petitioner filed Writ Application – Whether the decision of Information Commission is sustainable under the law.

Held: No – This Court is constrained to observe that in rendering the impugned decision the State Information Commission allowed its finding to be entrapped in officialdom and red tapism, which are illegitimate tools to fall back, to deny response to an application under the RTI Act, 2005 and thereby render the provisions nugatory.

Accordingly, the ground on which the RTI proceeding has been dropped being the outcome of non-application of mind is liable to be set aside – As such the impugned order at Annexure-16 is quashed.

The matter is remitted back to the State Information Commissioner to be heard and decided afresh on merits in the light of the observations made hereinabove, after giving opportunity of hearing to all concerned.

(Paras 24 & 25)

Citations Reference

Shri Vivek Anupam Kulkarni Vrs. The State of Maharashtra and Ors.4, **Writ Petition No.6961 of 2012 disposed of on 27th February, 2015 – referred to.**

List of Acts

Right to Information Act, 2005.

Keywords

Right to information; Appeal; Limitation of Appeal; Access to information; Structural Mechanism; Right of citizen; Power of the Commission.

Case Arising From

Order dated 26.02.2024 passed by the State Information Commissioner.

Appearances for Parties

For Appellants : Mr. S. Mishra
For Respondents : Mr. C.R. Swain, AGA & Mr. B.K Dash,

Judgment/Order

Judgment

V. NARASINGH, J.

1. Heard Mr. Mishra, learned counsel for the Petitioner, Mr. Swain, learned counsel for the State and Mr. Dash, learned counsel for the Opposite Party No.7.

2. Being aggrieved by the Order dated 26.02.2024 passed by the State Information Commissioner in disposing of the Second Appeal No.291 of 2019 of the Petitioner, vide Annexure-16, by which the proceeding was closed, the present writ petition has been filed invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

3. The genesis of the grievance is that the Petitioner along with other villagers of village Kuansh under Bhadrak District made a representation to the Chief Secretary, Government of Odisha dated 26.12.2017 at Annexure-1, seeking recording of Jalasaya Plot No.1765 in Government records and consequential direction to evict the alleged illegal encroachers and to restore the status of such land.

4. On perusal of the same, it can be seen that to fortify their stand the Petitioner along with others relied on several documents including orders passed by the Apex Court as well as the decisions of this Court and details of the land has also been mentioned in the said representation and a copy thereof was endorsed to the Revenue Secretary, Odisha, Bhubaneswar, Revenue Divisional Commissioner (Central), Odisha, Cuttack, Member, Board of Revenue, Odisha, Cuttack and Collector, Bhadrak.

The Deputy Secretary to the Board of Revenue, Odisha, Cuttack vide letter dated 11.01.2018 referring to the grievance petition at Annexure-1 adverted to hereinabove directed the Collector, Bhadrak to conduct an inquiry and submit a comprehensive report for appraisal of the Member, Board of Revenue, Odisha, Cuttack.

Similar communication dated 12.01.2018 was addressed to the Collector, Bhadrak by the Office of the Revenue Divisional Commissioner, Central Division, Odisha, Cuttack.

The Government in the Revenue and Disaster Management Department referring to the representation at Annexure-1 has directed the Collector, Bhadrak, Sub-Collector, Bhadrak and Tahasildar, Bhadrak to inquire into the matter and take action in accordance with law.

The said communication of the Board of Revenue, Odisha, Cuttack, Revenue Divisional Commissioner, Central Division, Odisha, Cuttack and the Revenue and Disaster Management Department are on record at Annexures-2 to 4 of the Writ Petition. Copy of the instructions as imparted by the Government vide Annexure-4 was also endorsed to the Petitioner specifically referring to the petition dated 26.12.2017 at Annexure-1.

5. While the matter stood thus, vide letter dated 31.01.2018 the Deputy Collector (Revenue), Collectorate, Bhadrak vide Annexure-5 sought information regarding steps taken for eviction of unauthorized encroachment and redressal of the grievance in public interest.

The Government in the Revenue and Disaster Management Department reiterated its direction to the Collector, Bhadrak by letter dated 13.03.2018, vide Annexure-6 to look into the grievance petition dated 26.12.2017 relating to unauthorized occupation of Jalasaya Land.

6. When the Petitioner could not get any information relating to any follow up action, he made an application for information under Section 16(1) of the Right to Information Act, 2005 (Act, 2005)[1] to the Public Information Officer, Office of the Tahasildar, Bhadrak.

Particulars of the information was sought in terms of Rule 4(1) thereof in Form-A. The specific details of information sought for in Paragraph-5(c) of the said Form, which is germane for just adjudication is extracted hereunder:

> "xxx xxx xxx
>
> 5. Particulars of information solicited
>
> a) Subject matter of information: Information regarding action with documents.
>
> b) The period to which the information relates 26/12/17 to 25/7/18.
>
> c) Specific details of information required : I and other villagers of Kuansh have made representation on 26/12/17 through Speed Post to take appropriate steps to record the land i.e. M.S Plot No.1765 of MS Kuansh under Government Khata

[1] **Section 16.** Term of office and conditions of service.-(1) The State Chief Information Commissioner shall hold office 1[for such term as may be prescribed by the Central Government] and shall not be eligible for reappointment:

Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

addressing to Chief Secretary, Odisha, Revenue Secretary, Odisha, RDC (C.D), Cuttack, Member Board of Revenue, Cuttack, Collector, Bhadrak. On the above representation, directions have been made to the Collector, Bhadrak and Tahasildar, Bhadrak.

Whether any step has been taken about our prayer?

Whether any proceeding has been initiated to restore the land under Govt. Khata?

Whether the land in question has been taken delivery of possession of the Govt.?

Whether any letters or instructions or directions has been received by Tahasildar Bhadrak from Collector, Bhadrak, Hon'ble Revenue Secretary, R.D.C (C.D), Cuttack, Member, Board of Revenue, Odisha regarding our representation dated 26.12.2017?

xxx xxx xxx"

7. Since such information was not provided within the stipulated period, the Petitioner preferred an appeal under Section 19(1) of the Act, 2005[2] in Form-D under Rule 7(I).

While the matter stood thus, on 12.12.2018 vide Annexure-10 the Petitioner was informed with respect to his first appeal that information sought by him "is not available as per submission of Dealing Assistant, Encroachment"

8. Being aggrieved, the Petitioner preferred Second Appeal under Section 19(3) of the Act, 2005[3] in Form No.E and in response thereto the Law Officer of the Odisha Information Commission, Bhubaneswar was intimated under letter No.4662 dated 06.11.2023 that the questions as raised by the Petitioner have been complied point wise and supplied in his favour vide letter No.8227 dated 12.12.2018.

9. The matter was taken up by the State Information Commissioner on 26.02.2024 and by impugned order, taking note of the letter No.8227 dated 12.12.2018 and the joint affidavit submitted by the First Appellate Authority and the

---

[2] **19. Appeal.-(**1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority: Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

[3] **19. Appeal.**

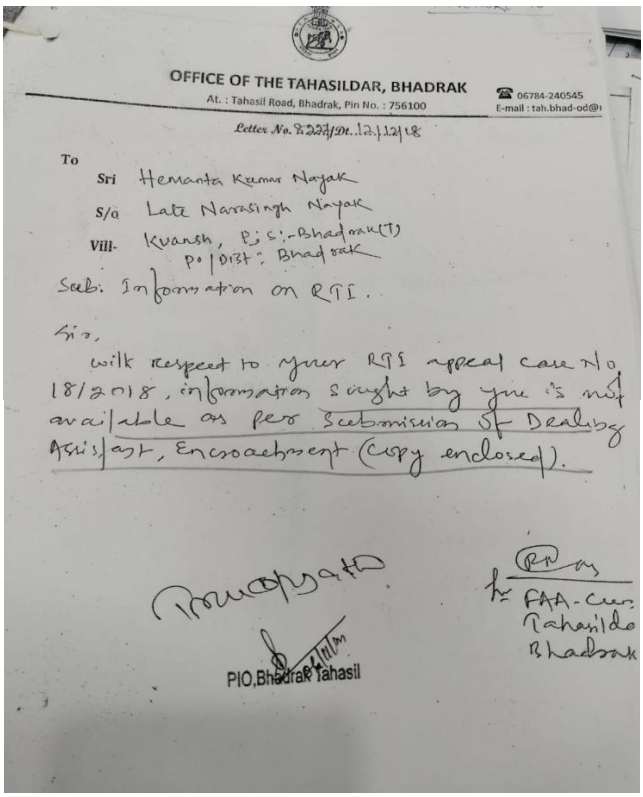
xxx xxx xxx

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

PIO, Bhadrak Tahasil regarding non-availability of the information as sought and receipt of letter No.8227 dated 12.12.2018 by the Petitioner, the case was dropped which, is the subject-matter of challenge in this writ petition.

10. For convenience of reference, the letter No.8227 dated 12.12.2018 is extracted hereunder:



OFFICE OF THE TAHASILDAR, BHADRAK
At. : Tahasil Road, Bhadrak, Pin No. : 756100
☎ 06784-240545
E-mail : tah.bhad-od@

Letter No. 8227/Dt. 12/12/18

To
Sri Hemanta Kumar Nayak
S/o Late Narasingh Nayak
Vill- Kuansh, P.S.:-Bhadrak(T)
P.O/DIST:- Bhadrak

Sub: Information on RTI.

Sir,
With respect to your RTI appeal case No. 18/2018, information sought by you is not available as per submission of Dealing Asst./Asst. Encroachment (Copy enclosed).

PIO, Bhadrak Tahasil

FAA-cum-Tahasildar Bhadrak

11. Counter affidavit is filed by the Tahasildar, Bhadrak, Opposite Party No.5, regarding nature of the land in question and it is also reiterated that the writ petition is liable to be rejected.

In response thereto, a rejoinder has been filed.

12. Learned counsel for the Petitioner, Mr. Mishra to fortify his submission has relied on a Division Bench judgment of the Hon'ble Bombay High Court in the case of **Shri Vivek Anupam Kulkarni Vrs. The State of Maharashtra and Ors**[4]**.**

On perusal of the said judgment, this Court is of the considered view that the same has no application in the factual matrix of the case at hand.

13. Learned Addl. Government Advocate, Mr. Swain and learned counsel for the Opposite Party No.7, Mr. Dash defend the impugned order and submit that the

[4] Writ Petition No.6961 of 2012 disposed of on 27th February, 2015

same does not merit any interference. It is their further submission that the Petitioner has not been able to place on record any material that the information which was available has not been provided.

14. The Right to Information Act was enacted in the year 2005 with an avowed object in tune with Article 19(1)(a) of the Constitution[5] for setting out the structural mechanism for access to information which is crucial for democratic functioning of the Government and also ensure transparency and accountability. A duty is cast on the PIOs to furnish the information as sought for by a citizen and self-contained redressal forums have been provided by way of First and Second Appellate Authorities.

15. Considering the personnel manning the second appellate authority a great duty is cast on them to scrutinize the materials which are produced before them on the touchstone of justice, equity and fair-play since the Act bars the jurisdiction of the Court under Section 23 of the Act, 2005[6]. And, Section 19(7) of Act, 2005[7] provides that decision of the Central Information Commission or State Information Commission shall be binding.

16. Section 19(8) of the Act, 2005[8] deals with the power of the Central Information Commission and the State Information Commission.

Section 8 of the Act, 2005[9] is the exception carved out by the legislature in respect of an application seeking information.

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[5] **19.** (1) All citizens shall have the right— (a) to freedom of speech and expression

[6] **Section 23.** Bar of jurisdiction of courts.- No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

[7] **19. Appeal.**

Xxx xxx xxx

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

[8] (8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section(1)of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application

17. The impugned order passed by the State Information Commissioner vide Annexure-16 has to be tested on the anvil of the powers as conferred under Section 19(8) of the Act, 2005 adverted to hereinabove.

18. On bare perusal of the impugned order, it can be seen that the State Information Commissioner referred to the letter No.8227 dated 12.12.2018 as compliance of the information sought. The information sought for has already been extracted hereinabove so also the replies. The enclosure to the letter dated

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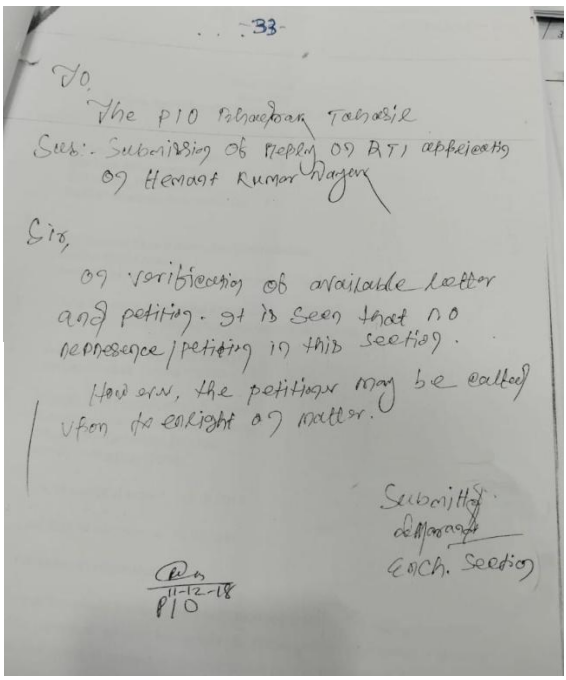
[9] **8. Exemption from disclosure of information.-** (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
(f) information received in confidence from foreign Government;
(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
(h) information which would impede the process of investigation or apprehension or prosecution of offenders;
(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;
(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.
(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.
(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:
Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

12.12.2018 forms part of the reply since in the letter dated 12.12.2018 it is stated "as per submission of Dealing Assistant, Encroachment (copy enclosed)".

Such enclosure addressed to the PIO, Bhadrak Tahasil is reproduced below for convenience of ready reference:



-33-

To,
The PIO Bhandaran Tahasil

Sub:- Submitting of Reply of RTI application of Hemant Kumar Nayak

Sir,

On verification of available letter and petition. It is seen that no representation/petition in this section.

However, the petitioner may be called upon for copy of matter.

Submitted
Manager
Encn. Section

11-12-18
PIO

19. The stand taken by the PIO, Bhadrak Tahasil referring to the letter of the Dealing Assistant is that no representation/petition was available in the encroachment section.

20. Annexures-1 to 6 to the writ petition adverted to hereinabove and letter dated 21.04.2018 addressed to the PIO of the Collectorate (in vernacular), vide Annexure-7, indicate that on receipt of required information the same shall be furnished.

21. The stand taken by the State and readily accepted by the Information Commission that point wise reply was supplied is de hors the records. In the face of communications at Annexures-1 to 6 and Annexure-7, the ground urged by the authorities that such representation is not available only exemplifies apathy of the highest order.

22. It is indeed baffling that on one hand the State functionaries are taking a stand that such representation of the Petitioner in respect of which action taken report is being sought for RTI, through Act, 2005 is not received but in the same breath it is stated that point wise reply has been provided.

23. Ex facie such stand of the State authorities is incongruous. Such patent contradictory stand escaped the scrutiny of the State Information Commission. In passing the impugned order, the State Information Commission mechanically accepted

the stand of the State authorities, failing to take notice of the patent contradictions in their stand and also failed to appreciate that if such stand of the State authorities is accepted at their face value as in the case at hand without due scrutiny, right of a citizen to get information as codified by Act, 2005 would be a dead letter and it will set at naught the very purpose for which the Act has been enacted "to contain corruption and to hold Government and their instrumentalities accountable to the governed".

24. In the factual backdrop of the case at hand, this Court is constrained to observe that in rendering the impugned decision the State Information Commission allowed its finding to be entrapped in officialdom and red tapism, which are illegitimate tools to fall back, to deny response to an application under the RTI Act, 2005 and thereby render the provisions nugatory.

25. Accordingly, the ground on which the RTI proceeding has been dropped being the outcome of non-application of mind is liable to be set aside. As such the impugned order at Annexure-16 is quashed.

The matter is remitted back to the State Information Commissioner to be heard and decided afresh on merits in the light of the observations made hereinabove, after giving opportunity of hearing to all concerned.

26. To cut short the delay and taking into account that the information sought for relates to an RTI application of 2018 it is directed that the Petitioner as well as the Opposite Parties shall appear before the State Information Commissioner, Opposite Party No.7 on 27.10.2025 to receive further instruction.

On such appearance the application shall be disposed of as expeditiously as possible, preferably within a period of 45 days.

27. The travail of the Petitioner reminds one of the plight of the protagonist "Josef" in Kafka's celebrated works "The Trial" where he faces nightmarish bureaucracy that seems designed to confuse.

Considering the manner in which the Petitioner was embroiled in unavoidable litigation in seeking information relating to his representation dated 26.12.2017 addressed to, no less than the Chief Secretary of the State, which is yet to see the light of the day, it is directed that the Opposite Party No.5 (Tahasildar, Bhadrak) shall be liable to pay cost of Rs.50, 000/- (rupees fifty thousand only) to the Petitioner on or before 09th December, 2025. Proof evidencing such payment shall be submitted to the Registry.

It shall be open for the Government, Opposite Party No.1 to recover the same from the concerned official(s) in accordance with law.

28. The Writ Petition is accordingly disposed of.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ Petition disposed of.

—— o ——

2025 (III) ILR-CUT-639

SANJEEB KUMAR KAR
V.
ANADI CHARAN GIRI & ANR.

[W.P.(C) NO. 28275 OF 2022]

21 JULY 2025

[BIRAJA PRASANNA SATAPATHY, J.]

Issue for Consideration

Whether writ application is maintainable in view of the provision prescribed U/s. 38(4) of the Act which provides that any person aggrieved by an order of the Civil Judge, within 30 days from the date of the order may prefer an appeal.

Headnotes

ORISSA GRAMA PANCHAYATS ACT, 1964 – Section 38 (3), (4) r/w Article 226 of Constitution of India – Learned Civil Judge (Jr. Division) Balasore in Election Misc. Case condone the delay in filing the election petition and also held the election petition is maintainable – Petitioner contended that challenging his election as Sarpanch, the Opp. Party No. 1 field the election petition on 04.05.2022 after the stipulated period – Present petitioner challenges the order passed by learned Civil Judge (Jr. Division) in Election Petition before the Hon'ble High Court by filing writ application – Whether writ application is maintainable in view of the provision prescribed U/s. 38(4) of the Act which provides that any person aggrieved by an order of the Civil Judge, within 30 days from the date of the order may prefer an appeal.

Held: No – Taking into account the provisions contained under sub-section-3 r/w sub-section 4 of Section 38 of the Act and the decisions in the case of *K. Prabhakaran, Om Prakash Bhatia and Vivek Narayan,* it is the view of this Court that the word "all orders" does not mean that the final order passed in an election petition **–** The word *"all"* in order to give a sensible meaning has to be construed as "any". (Para 6.4)

In view of the provision contained under sub-section 3 read with sub-section 4 of Section 38 of the Act, it is the view of this Court that an appeal lies against the impugned order. (Para 6.5)

In view of the aforesaid analysis, this Court is of the view that the impugned order is an appealable one and it is open for the Petitioner to move the appellate Court. (Para 6.7)

Citations Reference

Anirudha Jena Vs. Gopal Panda and Another, **2004 (Suppl) OLR 259;** Niranjan Sahu V. Narasu Satpathy, **AIR 1970, Orissa, 46;** Sasmita Pradhan Vs. The District Collector-cum-District Election Officer, Puri and Others, **2007 (Supp. II) OLR 875;** Digambar Pradhan v. Arjun Pradhan, **1972(1) CWR 74;** Fuerst Day Lawson Ltd. V. Jindal Exports Ltd., **(2001) 6 SCC 356;** Hyder Consulting (UK) Ltd., Vs. State of Orissa, **(2015) 2 SCC 189;** Shah Faesal V. Union of India, **(2020) 4 SCC 1;** Allahabad University Etc. Vs. Gitanjali Tiwari (Pandey) & Others Etc. Etc., **Civil Appeal Nos.12411-12414 of 2024 with Civil Appeal No.12415 of 2025;** Gujarat Urja Vikash Nigam Limited Vs. Amit Gupta, **(2021) 7 SCC 209;** K. Prabhakaran v. P. Jayarajan, **(2005) 1 SCC 754 : 2005 SCC (Cri) 451;** Om Prakash Bhatia v. Commr. of Customs, **(2003) 6 SCC 161;** Vivek Narayan Sharma Vs. Union of India, **2023 LIVELAW (SC) 1 – referred to.**

List of Acts

Orissa Grama Panchayats Act, 1964; Constitution of India, 1950.

Keywords

Election disputes; Grama Panchayats election ; Appeal; Election Petition; Limitation to file election petition; Sarapanch; Any person aggrieved; Maintainability of Writ Petition.

Case Arising From

Challenging order dt.29.09.2022 passed by the learned Civil Judge (Jr. Divn.), Balasore in Election Misc. Case No.20 of 2022.

Appearances for Parties

For Appellants : Mr. B. Baug, Sr. Adv. alongwith Mr. M. Baug.

For Respondents : Mr. C.K. Pradhan, AGA
Mr. D. Samal (O.P. No.1)

Judgment/Order

Judgment

BIRAJA PRASANNA SATAPATHY, J.

1. The present Writ Petition has been filed inter alia challenging order dt.29.09.2022 so passed by the learned Civil Judge (Jr. Divn.), Balasore in Election Misc. Case No.20 of 2022 under Annexure-8. Vide the said order, learned Court below while condoning the delay in filing the election Petition, held the election petition as maintainable. Learned Sr. Counsel appearing for the Petitioner contended that challenging the election of the Writ Petitioner as Sarpanch of Tentulida Gram

Panchayat, Opp. Party No.1 filed Election Misc. Petition in Election Misc. Case No.20 of 2022.

2. It is the contention of the learned Sr. Counsel appearing for the Petitioner that the result of the election though was published on 28.01.2022 and Petitioner was declared as the Sarapanch, but Opp. Party No.1 on the face of the provisions contained under Section 30 & 31 of the Orissa Gram Panchayat Act, 1964 (in short, "the Act"), filed the election petition on 04.05.2022.

2.1. It is contended that as provided under Section 31 of the Act, an election petition is required to be filed within a period of 15 days from the date of publication of the result. However, since the election petition was filed beyond the period of limitation, an application was filed along with the election petition by Opp. Party No.1 under Section 5 of the Limitation Act for condonation of delay vide Annexure-2.

2.2. It is contended that though the election petition was filed along with the application under Annexure-2, but in support of the illness of the Petitioner from 22.02.2022, no medical certificate was initially enclosed to the said petition. Only after filing of the election Petition along with Annexure-2, a medical certificate was filed by the election Petitioner/Opp. Party No.1, showing that he was treated as an outdoor patient in Fakir Mohan Medical College & Hospital, Balasore vide O.P.D No.0204791 dated 22.02.2022. It is contended that such a certificate was produced having been issued by Fakir Mohan Medical College & Hospital, Balasore vide OPD No.0204791. But in the R.T.I information so provided under Annexure-7, the authorities of Fakir Mohan Medical College and Hospital, Balasore clearly indicated that Opp. Party No.1 was never treated as an outdoor patient vide OPD No. 0204791 dt.22.02.2022.

2.3. It is accordingly contended that since the certificate produced by Opp. Party No.1 showing his illness for the period in question in Fakir Mohan College and Hospital, Balasore was disputed by the self-same Hospital vide Annexure-7 and the same was duly brought to the notice of the learned Court below, but without proper appreciation of the same, learned Court below condoned the delay vide the impugned order dt.29.09.2022 under Annexure-8. It is accordingly contended that since the ground taken by Opp. Party No.1 for condonation of delay was proved wrong with issuance of Annexure-7, the delay in filing the election petition should not have been condoned. Accordingly, it is contended that the impugned order is not sustainable in the eye of law and requires interference of this Court.

3. Mr. D. Samal, learned counsel appearing for Opp. Party No.1 on the other hand raised a preliminary objection with regard to maintainability of the Writ Petition, relying on the provisions contained under Section 38 of the Act. Placing reliance on the provisions contained under Sub-Section 3 & 4 of Section 38 of the Act, it is contended that the impugned order being an appealable one, the Petitioner

has to approach the District Judge having jurisdiction over the issue. Section 38 of the Act reads as follows:

> ***38.*** *Decision of '[Civil Judge (Junior Division)] (1) If the [Civil Judge (Junior Division)] after making such enquiry, as he deems necessary, finds in respect of any person, whose election is called in question by a petition that his election was valid, he shall dismiss the petition as against such person and may award costs at his discretion.*
>
> *(2) If the '[Civil Judge (Junior Division)] finds that the election of any person was invalid, he shall either-*
>
> *(a) declare a casual vacancy to have been created, or*
>
> *(b) declare another candidate to have been duly elected,*
>
> *whichever course appears, in the circumstances of the case to be more appropriate and in either case, may award costs at his discretion.*
>
> *(3) All orders of the '[Civil Judge (Junior Division)] shall, subject to the provisions of Sub-section (4), be final and conclusive:*
>
> *Provided that '[Civil Judge (Junior Division)] may, on application presented within one month from the date of any of the orders made under this section by any person aggrieved, review such order on any ground and may, pending the decision in review direct stay of operation of such order:*
>
> *provided further that no application for review under the preceding proviso shall lie, if an appeal is preferred in accordance with the provisions of Sub section (4).*
>
> *(4) Any person aggrieved by an order of the '[Civil Judge (Junior Division)] may within thirty days from the date of the order, prefer an appeal in such manner as may be prescribed before the District Judge having jurisdiction who shall after giving the parties an opportunity of being heard, confirm, reverse, alter or modify the order of the '[Civil Judge (Junior Division)] and pending disposal of such appeal may direct stay of operation of the said order.*

3.1. It is contended that in view of the provisions contained under sub-section 3 & 4 of Section 38 of the Act, the Petitioner has got an alternative remedy of appeal before the learned District Judge and the present Writ Petition is not maintainable. In support of his submission, reliance was placed to a decision of this Court rendered in the case of ***Anirudha Jena Vs. Gopal Panda and Another, 2004 (Suppl) OLR 259***. This Court in para 11 to 13 of the said decision held as follows:

> ***11.*** *The Supreme Court in the case of* ***Surya Dev Rai v. Ram Chander Rai and others****, AIR 2003 SC 3044, has held:*
>
> *"Certiorari jurisdiction though available is not to be exercised as a matter of course. The High Court would be justified. in refusing the writ of certiorari if no failure of justice has been occasioned. In exercising the certiorari jurisdiction the procedure ordinarily followed by the Court is to command the inferior Court or Tribunal to certify its record or proceedings to the High Court to determine whether on the face of the record the inferior Court has committed any of the proceeding errors occasioning failure of justice.*
>
> ***12.*** *The provisions of the Orissa Grama Panchayat Act and Rules framed thereunder lead to an irresistible conclusion that a special machinery is constituted under the said*

Act to adjudicate the inter se disputes cropping up from an election. Law is well-settled that a dispute of such nature has to be efficaciously adjudicated by the Tribunals constituted under the Act. The jurisdiction and modalities of such Tribunals should not be interfered with in a casual manner, that too at interlocutory stages. An election dispute has to be decided as expeditiously as possible. Section 38 (4) of the Orissa Grama Panchayat Act, therefore, mandates that any person aggrieved by an order passed by an Election Tribunal has a right to prefer an Appeal before the District Judge having jurisdiction. who shall, after giving opportunity to the parties, confirm, reverse, alter or modify the order of the Tribunal. The questions raised by Mr. Patnaik, according to us, can be adequately canvassed in an Appeal. Though this Court can exercise its jurisdiction under/Articles 226 and 227 of the Constitution of India, even in relation to a case where there is an equally efficacious alternative remedy, yet this Court must always exercise such discretion sparingly. As we are satisfied that the points raised by Mr. Patnaik can be canvassed adequately in Appeal, we do not propose to exercise our jurisdiction in this case. It is needless to say that if the petitioner is required to file an Appeal, it would be open to him to raise all his points and contend that the order for inspection and re-counting of ballot papers passed by the Civil Judge (Junior Division) was not justified in law. The same view was expressed by this Court in the case of Digambar Pradhan v. Arjun Pradhan, 1972 (1) CWR 74 relying upon the decision of the Supreme Court in the case of Dr. Jagjit Singh v. Giani Kartar Singh and others, AIR 1966 SC 773. Apart from the aforesaid decision, in an unreported decision of this Court in W.P. (C) No. 5937 of 2003 disposed of on 8.8.2003, this Court also turned down a similar prayer observing that if the petitioner in the said case was finally aggrieved by the order that was to be passed by the Additional Civil Judge (Junior Division) in the Election Case, it would be open to him to file an Appeal as provided under the Orissa Grama Panchayat Act, and it would be open to him to raise all contentions as are available to him under law in such Appeal.

***13.** After going through the aforesaid decisions, we are not inclined to take a different view from what has been held by two different Division Benches of this Court in the decisions supra. Therefore, without entering into the controversy with regard to propriety or otherwise of the direction issued by the Civil Judge (Junior Division), Bhadra, we dismiss the Writ Petition holding that we do not consider this to be a fit case in which we should exercise our jurisdiction under Articles 226 and 227 of the Constitution of India despite existence of any equally efficacious alternative remedy. We direct the Election Tribunal to take steps for expeditious disposal of the Election Case.*

4. With regard to maintainability of the Writ Petition on the ground of alternative remedy, learned Sr. Counsel appearing for the Petitioner contended that the impugned order being an interlocutory order, no appeal lies in terms of the provisions contained under Section 38 (3) & (4) of the Act. In support of his submission, reliance was placed to a decision of this Court rendered in the case of ***Niranjan Sahu V. Narasu Satpathy, AIR 1970, Orissa, 46***. It is contended that this Court relying on the provisions contained under Section 38 of the Act, clearly observed that an appeal lies only against the final order passed under sub-section 1 & 2 of Section 38 of the Act and no appeal lies against an interlocutory order. The view expressed by this Court in para 3 of the judgment reads as follows:

***3.** On a perusal of the various sub-sections, it is clear that an appeal lies only against final orders passed under sub-sections (1) and (2), and no appeal lies against an*

interlocutory order. Those very sub-sections make provisions for awarding of costs at the discretion of the Munsif. The first proviso to sub-section (3) makes the position further clear that the appeal is to lie against any order made under section 38. This section makes no provision for passing of interlocutory orders. It merely conceives of final orders either of dismissal or of allowing the election petition. We are therefore satisfied that there is no substance in the preliminary objection. No appeal lies to the District Judge, and the only remedy is by an application under Article 226 of the Constitution.

4.1. It is also contended that relaying on the decision in the case of Niranjan Sahu, this Court in a reported decision rendered in the case of ***Sasmita Pradhan Vs. The District Collector-cum-District Election Officer, Puri and Others, 2007 (Supp. II) OLR 875*** also held that appeal will lie only against a final order made under the sub-section and there is no provision to prefer an appeal against an interlocutory order. View expressed by this Court in para 4 to 7 of the said judgment reads as follows:

4. This Court heard learned counsel for the parties patiently, perused the pleadings and the documents annexed thereto meticulously. referred to the legal provisions carefully and considered the matter diligently. A cumulative reading of Section 38 of the Act vis-a-vis its Sub-sections leads to an irresistible conclusion that in consonance with Sub section (4) of the Section 38 an appeal lies only against the final orders passed under Sub-sections (1) and (2) of the said Section, and that within the four corners of the said Section there is no provision to prefer an appeal against an interlocutory order. The First Proviso to Sub-section (3) fortifies my aforesaid view and makes it further clear that an appeal will lie only against a final order made under Section 38. In other words, there is no provision in Section 38 for entertaining an appeal against an interlocutory order passed by an Election Tribunal. It only stipulates that an appeal lies before the District Judge having jurisdiction only against a final order either dismissing or allowing an election petition. The same view was also expressed by this Court in the case of Niranjan Sahu (supra).

5. It appears that some conclusion arises with regard to the observation made by a Division Bench of this Court in the case of Anirudha Jena (supra). Facts of the said case reveal that no appeal was preferred before the concerned District Judge against an interlocutory order. On the other hand, the party aggrieved had approached this Court invoking jurisdiction under Articles 226 and 227 of the Constitution of India. In para-12 of the judgment in that case this Court observed as follows:-

"The provisions of the Orissa Grama Panchayat Act and Rules framed thereunder lead to an irresistible conclusion that a special machinery is constituted under the said Act to adjudicate the inter se disputes cropping up from an election. Law is well settled that a dispute of such nature has to be efficaciously adjudicated by the Tribunals constituted under the Act. <u>The jurisdiction and modalities of such Tribunals should not be interfered with in a casual manner, that too at interlocutory stages.</u> An election dispute has to be decided as expeditiously as possible. Section 38(4) of the Orissa Grama Panchayat Act therefore mandates that any person aggrieved by an order passed by an Election Tribunal has a right to prefer an appeal before the District Judge having jurisdiction, who shall, after giving opportunity to the parties, confirm, reverse, alter or modify the order of the Tribunal."

6. In the aforesaid case this Court did not express any view mor did make any observation to the effect that an appeal lay to the District Judge against an interlocutory order passed by an Election Tribunal. Thus, in the considered opinion of this Court, there is absolutely no ambiguity and/or controversy with regard to the conclusion arrived at by this Court in Niranjan Sahu and Anirudha Jena cases (supra).

7. It should always be kept in mind that the intention of the Legislature in creating special Tribunal for hearing of election disputes is aimed at speedy and efficacious disposal. Thus the reason for not providing an appeal against an interlocutory order is obvious. If any of the parties is aggrieved by an interlocutory order, it would always be open to that party to challenge the same in the appeal against the final order and the same would be dealt with by the appellate Court. Thus there will be no prejudice.

4.2. Placing reliance on the decision in the case of ***Niranjan Sahu*** so followed in the case of ***Sasmita Pradhan,*** learned Sr. Counsel appearing for the Petitioner contended that since the impugned order is an interlocutory order, no appeal lies in terms of the provisions contained under Section 38(4) of the Act and the appropriate remedy is to file a Writ Petition under Article 226 & 227 of the Constitution of India. It is also contended that the Writ Petition was duly entertained by this Court with passing of an interim order on 01.11.2022. It is accordingly contended that the Writ Petition is very much maintainable and the same be decided on merit instead of relegating the Petitioner to prefer an appeal in terms of the provisions contained under Section 38(4) of the Act.

5. To the submission made by the learned Sr. Counsel appearing for the Petitioner, learned counsel appearing on behalf of Opp. Party No.1 made further submission and contended that Section 38(4) of the Act clearly provides that any person aggrieved by an order of the Civil Judge, may within 30 days from the date of the order prefer an appeal in such matter as may be prescribed before the District Judge having jurisdiction. Placing reliance on the provisions contained under Section 38(4) of the Act that "any person aggrieved by an order", it is contended that the impugned order being the nature of an order passed by the Civil Judge, an appeal lies to the learned District Judge and the correct view has been taken by this Court in the reported decision in the case of ***Anirudha Jena*** as cited (supra).

5.1. It is also contended that on the face of the clear provisions contained under Section 38(4) of the Act read with Section 38(3) of the Act, the view expressed by this Court in the case of Niranjan Sahu so followed in the case of Sasmita Pradhan are per incuriam and it has got no binding effect. Not only decision in the case of Niranjan Sahu was rendered without following the decision in the case of ***Digambar Pradhan, 1972(1) CWR 74,*** where the correct view had been taken. In support of his submission that decision in the case of ***Niranjan Sahu and Sasmita Pradhan*** are per incuriam, reliance was placed to a decision of the Hon'ble Apex Court rendered in the case of ***Fuerst Day Lawson Ltd. V. Jindal Exports Ltd., (2001) 6 SCC 356.*** Hon'ble Apex Court in para 19 to 23 of the said decision held as follows:

19. *In Mamleshwar Prasad v. Kanhaiya Lal [(1975) 2 SCC 232] reflecting on the principle of judgment per incuriam, in paras 7 and 8, this Court has stated thus : (SCC p. 235)*

"7. Certainty of the law, consistency of rulings and comity of courts — all flowering from the same principle — converge to the conclusion that a decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission. No such situation presents itself here and we do not embark on the principle of judgment per incuriam.

8. Finally it remains to be noticed that a prior decision of this Court on identical facts and law binds the Court on the same points in a later case. Here we have a decision admittedly rendered on facts and law, indistinguishably identical, and that ruling must bind."

20. *This Court in A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602 : 1988 SCC (Cri) 372] in para 42 has quoted the observations of Lord Goddard in Moore v. Hewitt [(1947) 2 All ER 270 (KBD)] and Penny v. Nicholas [(1950) 2 All ER 89 (KBD)] to the following effect : (SCC p. 652)*

"'Per incuriam' are those decisions given in ignorance or forgetful-ness of some inconsistent (sic) statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."

21. *This Court in State of U.P. v. Synthetics & Chemicals Ltd. [(1991) 4 SCC 139] in para 40 has observed thus : (SCC p. 162)*

"40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd. [(1944) 2 All ER 293 : 1944 KB 718])"

22. *The two judgments (1) Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court, Chandigarh [(1990) 3 SCC 682 : 1991 SCC (L&S) 71] and (2) State of U.P. v. Synthetics and Chemicals Ltd. [(1991) 4 SCC 139] were cited in support of the argument. Attention was drawn to paras 40, 41 and 43 in the first judgment and paras 39 and 40 in the second judgment. In these two judgments no view contrary to the views expressed in the aforesaid judgments touching the principle of judgment per incuriam is taken.*

23. *A prior decision of this Court on identical facts and law binds the Court on the same points of law in a latter case. This is not an exceptional case by inadvertence or oversight of any judgment or statutory provisions running counter to the reason and result reached. Unless it is a glaring case of obtrusive omission, it is not desirable to depend on the principle of judgment "per incuriam". It is also not shown that some part of the decision was based on a reasoning which was demonstrably wrong, hence the principle of per incuriam cannot be applied. It cannot also be said that while deciding Thyssen [(1999) 9 SCC 334] the promulgation of the first Ordinance, which was effective from 25-1-1996, or subsequent Ordinances were not kept in mind more so when the judgment of the Gujarat High Court in Western Shipbreaking Corpn. [(1988) 1 Raj 367, 404] did clearly state in para 8 of the said judgment thus:*

"8. We now come to the Arbitration and Conciliation Ordinance, 1996 which was promulgated on 16-1-1996 and brought into force with effect from 25-1-1996. The second Ordinance, 1996 was also promulgated on 26-3-1991 as a supplement to the main Ordinance giving retrospective effect from 25 1-1996. The Ordinance received assent of the President on 16-8-1996 giving the retrospective effect from 25-1-1996. Thus the Ordinance has now become an Act. All the provisions of the Ordinance as well as the Act are same. Therefore, the use of the words 'the Ordinance' shall also mean the Act and vice versa."

It appears in the portion extracted above that there is a mistake as to the date of promulgation of the second Ordinance as 26-3-1991. But the correct date is 26-3-1996.

5.2. Reliance was also placed to a decision of the Hon'ble Apex Court rendered in the case of ***Hyder Consulting (UK) Ltd., Vs. State of Orissa, (2015) 2 SCC 189.*** Apex Court in para 46 & 47 of the said decision held as follows.

46. *Before I consider the correctness of the aforementioned decisions, it would be necessary to elaborate upon the concept of "per incuriam". The Latin expression "per incuriam" literally means "through inadvertence". A decision can be said to be given per incuriam when the court of record has acted in ignorance of any previous decision of its own, or a subordinate court has acted in ignorance of a decision of the court of record. As regards the judgments of this Court rendered per incuriam, it cannot be said that this Court has "declared the law" on a given subject-matter, if the relevant law was not duly considered by this Court in its decision. In this regard, I refer to State of U.P. v. Synthetics and Chemicals Ltd. [(1991) 4 SCC 139] , wherein R.M. Sahai, J. in his concurring opinion stated as follows : (SCC p. 162, para 40)*

"40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'."

47. *Therefore, I am of the considered view that a prior decision of this Court on identical facts and law binds the Court on the same points of law in a later case. In exceptional circumstances, where owing to obvious inadvertence or oversight, a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, the principle of per incuriam may apply. The said principle was also noticed in Fuerst Day Lawson Ltd. v. Jindal Exports Ltd. [(2001) 6 SCC 356 : AIR 2001 SC 2293]*

5.3. A further reliance was also made to a decision of the Apex Court rendered in the case of ***Shah Faesal V. Union of India, (2020) 4 SCC 1.*** Hon'ble Apex Court in para 27 to 32 of the said decision held as follows:.

27. *Having discussed the aspect of the doctrine of precedent, we need to consider another ground on which the reference is sought i.e. the relevance of non consideration of the earlier decision of a coordinate Bench. In the case at hand, one of the main submissions adopted by those who are seeking reference is that, the case of Sampat Prakash [Sampat Prakash v. State of J&K, AIR 1970 SC 1118] did not consider the earlier ruling in Prem Nath Kaul [Prem Nath Kaul v. State of J&K, AIR 1959 SC 749] .*

28. *The rule of per incuriam has been developed as an exception to the doctrine of judicial precedent. Literally, it means a judgment passed in ignorance of a relevant*

statute or any other binding authority [see Young v. Bristol Aeroplane Co. Ltd. [Young v. Bristol Aeroplane Co. Ltd., 1944 KB 718 (CA)]]. The aforesaid rule is well elucidated in Halsbury's Laws of England in the following manner [3rd Edn., Vol. 22, Para 1687, pp. 799 800.] :

"1687. ... the court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of a coordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords." (emphasis supplied)

29. *In this context of the precedential value of a judgment rendered per incuriam, the opinion of Venkatachaliah, J., in the seven-Judge Bench decision of A.R. Antulay v. R.S. Nayak [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] assumes great relevance : (SCC p. 716, para 183)*

"183. But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A coordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, inter partes, in the previous decision is overturned. In this context the word "decision" means only the reason for the previous order and not the operative order in the previous decision, binding inter partes. ... Can such a decision be characterised as one reached per incuriam? Indeed, Ranganath Misra, J. says this on the point : (para 105)

'Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without effecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench.'" (emphasis supplied)

30. *The counsel arguing against the reference have asserted that the rule of per incuriam is limited in its application and is contextual in nature. They further contend that there needs to be specific contrary observations which were laid down without considering the relevant decisions on the point, in which case alone the principle of per incuriam applies.*

31. *Therefore, the pertinent question before us is regarding the application of the rule of per incuriam. This Court while deciding Pranay Sethi case [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , referred to an earlier decision rendered by a two-Judge Bench in Sundeep Kumar Bafna v. State of Maharashtra [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] , wherein this Court emphasised upon the relevance and the applicability of the aforesaid rule : (Sundeep Kumar Bafna case [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] , SCC p. 642, para 19)*

"19. It cannot be over emphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the

court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta." (emphasis supplied)

***32.** The view that the subsequent decision shall be declared per incuriam only if there exists a conflict in the ratio decidendi of the pertinent judgments was also taken by a five-Judge Bench decision of this Court in Punjab Land Development & Reclamation Corpn. Ltd. v. Labour Court [Punjab Land Development & Reclamation Corpn. Ltd. v. Labour Court, (1990) 3 SCC 682 : 1991 SCC (L&S) 71] : (SCC pp. 706-07, para 43)*

"43. As regards the judgments of the Supreme Court allegedly rendered in ignorance of a relevant constitutional provision or other statutory provisions on the subjects covered by them, it is true that the Supreme Court may not be said to "declare the law" on those subjects if the relevant provisions were not really present to its mind. But in this case Sections 25-G and 25-H were not directly attracted and even if they could be said to have been attracted in laying down the major premise, they were to be interpreted consistently with the subject or context. The problem of judgment per incuriam when actually arises, should present no difficulty as this Court can lay down the law afresh, if two or more of its earlier judgments cannot stand together."

5.4. Relying on the decisions in the case of ***Fuerst Day Lawson Ltd., Hyder Consulting (UK) Ltd. & Shah Faesal*** *as cited* (*supra*), it is contended that on the face of the clear provisions contained under Section 38(3) r/w 38(4)of the Act, the decision in the case of ***Niranjan Sahu*** so followed in the case of ***Sasmita Pradhan*** being per incurium, it has got no binding effect and the correct view has been taken by this Court in the case of ***Aniruddha Jena*** *as cited supra*. It is accordingly contended that the impugned order is an appealable one and the Writ Petition is not maintainable.

5.5. It is further contended that the word "All Order" reflected in sub-section 3 of Section 38 of the Act has to be interpreted in the manner it has been so incorporated in the Statute. It is contended that the word "All Order" so incorporated under sub-section 3 of the Act has to be interpreted in the way the legislature has so intended.

5.6. With regard to interpretation of the aforesaid provision in the manner it has been so incorporated, reliance was placed to a decision of the Hon'ble Apex Court in the case of ***Allahabad University Etc. Vs. Gitanjali Tiwari(Pandey) & Others Etc.*** Etc., Civil Appeal Nos.12411-12414 of 2024 with Civil Appeal No.12415 of 2025. Hon'ble Apex Court in para-13 of the said judgment held as follows:

13. Another crisp and enlightening passage is found in Reserve Bank of India (supra), where His Lordship observed as follows:

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a

whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. ... "

5.7. It is also contended that it is trite law that the words of a statute have to be construed in a manner which would give them a sensible meaning which accords the overall scheme of the statute, the context in which the words are used and the purpose of the underlying provision.

5.8. In support of the same, reliance was placed to a decision of the Hon'ble Apex Court rendered in the case of ***Gujarat Urja Vikash Nigam Limited Vs. Amit Gupta (2021) 7 SCC 209***. Hon'ble Apex Court in para 55 of the said decision held as follows:

55. *For, it is trite law that the words of a statute have to be construed in a manner which would give them a sensible meaning which accords with the overall scheme of the statute, the context in which the words are used and the purpose of the underlying provision.*

5.9. It is also contended that the word "All" reflected in sub-section 3 of Section 38 has not been interpreted, but Hon'ble Apex Court in various decisions while interpretating the word "any", has come to a conclusion that the word "any" dictionarily means "one or some or all". In support of the same, reliance was placed to the following decisions:

1. ***K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754 : 2005 SCC (Cri) 451***

2. ***Om Prakash Bhatia v. Commr. of Customs, (2003) 6 SCC 161***

3. ***Vivek Narayan Sharma Vs. Union of India, 2023 LIVELAW (SC) 1***

5.10. Hon'ble Apex Court in the case of ***K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754*** in para 50 of the said decision held as follows:

50. *In Black's Law Dictionary (6th Edn.) the word "any" is defined (at p. 94) as under:*

"Any.—Some; one out of many; an indefinite number. One indiscriminately of whatever kind or quantity.

One or some (indefinitely).

'Any' does not necessarily mean only one person, but may have reference to more than one or to many.

Word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and the subject-matter of the statute.

It is often synonymous with 'either', 'every', or 'all'. Its generality may be restricted by the context; thus, the giving of a right to do some act 'at any time' is commonly construed as meaning within a reasonable time; and the words 'any other' following the enumeration of particular classes are to be read as 'other such like', and include only others of like kind or character."

51. *The word "any" may have one of the several meanings, according to the context and the circumstances. It may mean "all"; "each"; "every"; "some"; or "one or many out of several". The word "any" may be used to indicate the quantity such as "some", "out of many", "an infinite number". It may also be used to indicate quality or nature of the noun which it qualifies as an adjective such as "all" or "every". (See The Law Lexicon, P. Ramanatha Aiyar, 2nd Edn. at p. 116.) Principles of Statutory Interpretation by Justice G.P. Singh (9th Edn., 2004) states (at p. 302)—*

"When a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that 'the meanings of words and expressions used in an Act must take their colour from the context in which they appear'. Therefore, 'when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers'."

5.11. Hon'ble Apex Court in the case of ***Om Prakash Bhatia v. Commissioner of Customs, (2003) 6 SCC 161,*** in para 10 held as follows:

10. *"What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to 'any prohibition imposed by any law for the time being in force in this country' is liable to be confiscated. 'Any prohibition' referred to in that section applies to every type of 'prohibition'. That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression 'any prohibition' in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions 'prohibiting', 'restricting' or 'otherwise controlling', we cannot cut down the amplitude of the word 'any prohibition' in Section 111(d) of the Act. 'Any prohibition' means every prohibition. In other words all types of prohibitions. Restriction is one type of prohibition. From Item (I) of Schedule I Part IV to Import Control Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues."*

5.12. Hon'ble Apex Court in the case of ***Vivek Narayan Sharma Vs. Union of India, 2023 LIVELAW (SC) 1*** in para 158 has held as follows:

158. We find that the word "any" would mean "all" under sub-section (2) of Section 26 of the RBI Act.

6. Having heard learned counsel appearing for the parties and considering the submission made, this Court taking into account the preliminary objection raised by the learned counsel appearing for Opp. Party No.1 took up the issue with regard to the maintainability of the Writ Petition as a preliminary issue.

6.1. It is not disputed that an election petition challenging the election of a Sarapanch or a member of a Grama Panchayat can be filed in terms of the provisions contained under Section 30 of the Act. As provided under Section 31 of the Act, an election Petition has to be filed within a period of 15 days from the date of publication of the result.

6.2. In the instant case, since the election petition has been filed beyond the period of limitation. Opp. Party No.1/election petitioner along with an election Petition in Election Misc. Case No.20 of 2022 filed an application for condonation of delay under Section 5 of the Limitation Act vide Annexure-2. Learned trial Court vide the impugned order dt. 29.09.2022 allowed the said application by condoning the delay.

6.3. In view of such order passed by the trial Court on 29.09.2022 under Annexure-8, it is to be seen as to whether an appeal lies against the said order before the learned District Judge in terms of the provisions contained under sub-section 4 r/w sub-section 3 of Section 38 of the Act.

6.4. This Court after going through the aforesaid provisions finds that an appeal lies against an order of the Civil Judge (Jr. Divn). Even though Section 38 of the Act deals with the power of the Civil Judge to take a final decision in an election petition, but as provided under sub-section 3 r/w sub-section 4 of the Act, all orders of the Civil Judge shall be subject to the provisions of sub section 4 be final and conclusive. Sub-section 4 of the Section provide that any person aggrieved by an order of the Civil Judge, may prefer an appeal. Taking into account the provisions contained under sub-section-3 r/w sub-section 4 of Section 38 of the Act and the decisions in the case of ***K. Prabhakaran, Om Prakash Bhatia and Vivek Narayan,*** it is the view of this Court that the word "all orders" does not mean that the final order passed in an election petition. The word ***"all"*** in order to give a sensible meaning has to be construed as "any".

6.5. Therefore, in view of the provision contained under sub-section 3 read with sub-section 4 of Section 38 of the Act, it is the view of this Court that an appeal lies against the impugned order and the correct view has been taken by this Court in the case of ***Anirudha Jena*** so cited (supra).

6.6. In view of the clear provisions contained under sub-section 3 & 4 of Section 38 of the Act and the decisions in the case of ***Jindal Export Ltd., Hyder Consultancy (UK) Ltd.*** and ***Shah Faesel*** as cited (supra), the view expressed by this Court in the case of ***Niranjan Sahu,*** so followed in the case of ***Sasmita Pradhan*** as per the considered view of this Court are per in curium and has got no binding effect. Not only that decision in the case of ***Niranjan Sahu*** was also rendered, without following the earlier decision of this Court rendered in the case of ***Digambar Pradhan Vs. Arjun Pradhan, 1972(1) CWR 74.*** This Court in para 4 of the said decision held as follows:

> ***4.*** *Under Section 38(4) of the Act any person aggrieved by an order of the Munsif may within thirty days from the date of the order prefer an appeal before the District Judge having jurisdiction who shall, after giving the parties an opportunity of being heard, confirm, reverse, alter or modify the order of the Munsif. The point urged by Mr. Patnaik can be fully canvassed in appeal. Law is now well settled that this Court can exercise jurisdiction under Articles 226 and 227 of the Constitution even in relation to a case where there is an equally efficacious alternative remedy. But the Court must always exercise discretion whether the jurisdiction should be exercised or not. When we are satisfied that the aforesaid point can be canvassed adequately to appeal we do not propose to exercise; our jurisdiction in this case. In other words, in appeal it is open to Mr. Patnaik to contend that the inspection and recounting that has been permitted by the Munsif is not justified by law.*

The decision in the case of ***Aniruddha Jena*** as per the considered view of this Court has laid down the correct position of law.

6.7. In view of the aforesaid analysis, this Court is of the view that the impugned order is an appealable one and it is open for the Petitioner to move the appellate Court. However, since the Writ Petition is pending before this Court with passing of an interim order on 01.11.2022, it is observed that if any such appeal will be filed within a period of two (2) weeks from the date of receipt of this order, the appellate Court shall entertain the appeal and decide the issue on merit by condoning the delay.

6.8. It is however observed that this Court has not gone into the merits and contentions raised by either of the parties. It is open for the appellate Court to decide the issue on merit. Certified copy of the impugned order be returned back to the learned Sr. Counsel appearing for the Petitioner by taking photo copy of the same.

6.9. Accordingly, the Writ Petition stands disposed of.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ Petition disposed of.

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2025 (III) ILR-CUT-654

BINAPANI MAHALIK
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 38462 OF 2020]

23 JULY 2025

[BIRAJA PRASANNA SATAPATHY, J.]

Issue for Consideration

Whether the punishment of unauthorized absence from 01.08.2003 to 05.05.2019 should be treated as non-duty when no fault lies with the petitioner.

Headnotes

SERVICE JURISPRUDENCE – Unauthorized absence – The petitioner while continuing as an Assistant Teacher transferred from Kantuapani Primary school to Butupali UGME School by order dated 10.05.2001, relived on 15.05.2001, and joined on 16.05.2001 – The transfer order was later cancelled, but the D.I. of schools by order dated 27.06.2001 permitted teachers already joined under the earlier order to continue – Despite this, the petitioner was illegally relived on 31.07.2003 by the Head Master – She made representation to the authorities but no action was taken to reinstate or reposted her for years – Pursuant to the order dated 02.05.2018 in O.A. No. 2136 of 2016 by the Odisha Administrative Tribunal, she rejoined on 06.05.2019 in Butupali UGME School – The Disciplinary Authority treated the period 01.08.2003 to 05.05.2019 as unauthorized absence and non-duty, and the order was confirmed in appeal – Whether the punishment of unauthorized absence from 01.08.2003 to 05.05.2019 should be treated as non-duty when no fault lies with the petitioner.

Held: No – It is the view of this Court that, since after being illegally relieved from the school by the Headmaster on 31.07.2003, Petitioner was never given a posting nor allowed to continue in Butupali UGME School, no fault lies with the Petitioner for her not joining and continuing for the period from 01.08.2003 to 5.5.2019. (Para 5.6)

Accordingly, this Court is inclined to quash the order of punishment passed against the Petitioner vide order dt.31.10.2019 under Annexure-16, further confirmed vide order dt.20.11.2020 under Annexure-19, While quashing both the orders, this Court held that Petitioner is deemed to be continuing in service for the period 01.08.2003 to 05.05.2009 and is entitled to get all service and financial benefits as due and admissible to her. (Para 5.8)

However, since for the period 01.08.2003 to 05.05.2019, Petitioner has not discharged any duty, this Court held the Petitioner entitled to get the arrear salary to the extent of 50%. (Para 5.9)

List of Acts

Constitution of India, 1950

Keywords

Transfer; Relieve; Joining; Unauthorized Absence; Punishment; Non-duty. Service benefits; No fault of petitioner

Case Arising From

Order of punishment dated 31.10.2019 and confirmation by appellate authority vide order dated 20.11.2020.

Appearances for Parties

For Petitioner : Mr. A.K. Panda
For Opp. Parties : Mr. A. Tripathy, AGA

Judgment/Order

Judgment

B.P. SATAPATHY, J.

1. This matter is taken up through Hybrid Mode.

2. The present Writ Petition has been filed inter alia with the following prayer:

> *It is, therefore, most humbly prayed that Hon'ble Court may graciously be pleased to admit writ application, issue rule Nisi calling upon opposite parties to show cause as to why the prayers made hereunder be not allowed, Upon showing insufficient cause/no cause make the said Rule absolute, issue writ/writs in nature of*
>
> *(i) Mandamus directing the State Opp. Parties to release the salary of the Petitioner from 01.09.2003 to 05.05.2019 in the light of observation and direction of learned OAT in the order dtd.2.5.2018 in O.A. 2136/2016 as at Annexure-9 by declaring the penalty order dt.31.10.2019 as at Annexure-16 and rejection order of appeal authority dtd.20.11.2020 at Annexure-19 to be illegal, void and in violation to the direction of the competent court of law as much as in violation to the direction of higher authorities.*
>
> *(ii) Direct the Opp. Parties to grant all the consequential service and financial benefits in favour of the Petitioner as due and admissible to her with arrear benefits.*
>
> *(iii) And/or may pass such other writ/writs, order/orders, direction/directions as this Hon'ble Court may think fit and proper for the ends of justice.*
>
> *And for this act of kindness the Petitioner as in duty bound shall ever pray.*

3. It is contended that Petitioner while working as an Asst. Teacher in Kantuapani Primary School, he was transferred and posted to Butupali UGME School vide order dt.10.05.2001 under Annexure-1. Pursuant to the said order,

Petitioner was relieved vide order dt.15.05.2001 under Annexure-2 and Petitioner joined in Butupali UGME School on 16.05.2001 as reflected in Annexure-3.

3.1. It is contended that subsequently order dt.10.05.2001 though was cancelled vide order dt.01.06.2001, but by that time Petitioner had already joined in Butupali UGME School on 16.05.2001. Thereafter vide order dt.27.06.2001 under Annexure-5, D.I of School, Boudh passed a fresh order observing therein that pursuant to order dt.01.06.2001 those teachers who have not yet been relieved, be allowed to continue in their respective school as per office order dt.10.05.2001.

3.2. It is contended that by the time order dt.27.06.2001 was issued Petitioner since was continuing in Butupali UGME School pursuant to order dt.10.05.2001, on the face of such order issued by the then D.I of School under Annexure-5, Petitioner should have been allowed to continue in Butipali UGME School. However, on the face of such order passed on 27.06.2001 under Annexure-5, Petitioner was wrongly relieved from Butupali UGME School by the Headmaster on 31.07.2003 basing on the order dt.01.06.2001 so issued under Annexure-4.

3.3. It is contended that on being so relieved illegally by the Headmaster of Butupali UGME School on 31.07.2003, Petitioner though bring the same to the notice of the then D.I of School, Boudh by making a representation on 01.08.2003 under Annexure-7, but no action was taken in considering the grievance of the Petitioner, and allowing her to continue in Butupali UGME School.

3.4. It is contended that challenging the inaction on the part of the Opp. Parties in not allowing her to continue in Butupali UGME School, Petitioner approached Odisha Administrative Tribunal in OA 24(S) of 2004. The said Original Application was disposed of vide order dt.21.12.2009 inter alia with the following direction:

> *"Considering the submissions of the learned counsel for the applicant, a copy of the paper book be sent to Respondent No.3 at the cost of the applicant for treating the same as a representation and issuing appropriate orders on the same in accordance with existing rules keeping in view the submissions of the applicant that the applicant had already joined Butupali UGME School, as per annexure-3, after relief from her earlier place of posting on 15.05.2001 (Annexure-2) and hence cancellation order issued by letter by 2415 dt.1.6.2001 will be 'non-est' in view of the fact that applicant had already joined the aforesaid place of posting. If the authorities had to alter her posting, a regular transfer order changing her place of posting should have been issued instead of merely cancelling orders not pertinent to her. Similarly orders at annexure-6 make no reference to earlier orders as submitted by the applicant, regarding her change of place/transfer to Butupali. Such orders be issued within a period of two months from the date of receipt of these order, under initiation to the applicant.*
>
> *It is made clear here that merits of the matter have not been gone into by this Tribunal and the Respondent No.3 is at liberty to issue appropriate orders on merits in accordance with existing rules independently.*

3.5. Learned counsel appearing for the Petitioner contended that in terms of the order passed by the Tribunal on 21.12.2009 in OA No.24(S) of 2004, Petitioner was

never given a posting nor allowed to continue at Butupali UGME School. Instead, a proceeding was initiated against her by the D.I of School, Boudh vide memorandum on 31.12.2010 under Annexure-8 inter alia with the following charges:

> ***Article of Charge***
>
> *Smt. Binapani Mahalik, Asst. teacher, Kantuani Primary School under deputation to Butupali UGME School has committed the following irregularities and constituting gross misconduct.*
>
> *Willful unauthorized absence in duty.*
>
> *Disobedience to higher authority.*

3.6. It is contended that because of such initiation of the proceeding, Petitioner again approached the Tribunal by filling OA No.38(S)of 2011 inter alia with the prayer to quash the relieve order dt.31.07.2003. The said Original Application was disposed of vide order dt.02.05.2018 under Annexure-9 inter alia with the following direction so contained in Para-8 & 9.

> ***8.*** *So far as initiation of the disciplinary proceeding is concerned, as it appears that the proceeding has been kept in abeyance as per the order of the Tribunal, we direct the respondent authorities to conclude the proceeding in accordance with rule as expeditiously as possible but within a period of two months from the date of receipt of a copy of this order.*
>
> ***9.*** *Accordingly the O.A is disposed of with a direction to the respondent authorities to allow the applicant to continue in Butupali UGME School or issue order posting her in any school, within a period of two months from the date of receipt of a copy of this order and salary as due and admissible be released in her favour treating the entire period as duty.*

3.7. Learned counsel appearing for the Petitioner contended that pursuant to the order passed by the Tribunal under Annexure-9, Petitioner was again posted at Butupali UGME School vide order dt.04.05.2019 under Annexure-13 and accordingly Petitioner joined in the said school on 06.05.2019 as reflected in Annexure-14.

3.8. It is contended that basing on the order passed by the Tribunal under Annexure-9, the Disciplinary Authority proceeded with the proceeding and passed the order of punishment vide order dt.31.10.2019 under Annexure-6 by imposing the following punishments:

> ***1.*** *The unauthorized period of absence from 01.08.2003 to 05.05.2019 (relieved from school on 31.07.2003) is hereby treated as Non duty (unauthorized absence).*
>
> ***2.*** *The said period will not be counted towards any financial service benefit and others consequential benefits.*

3.9. It is contended that challenging such order of punishment, Petitioner moved the Appellate Authority by filing an appeal under Annexure-17. However, the said appeal was also dismissed by the appellate authority-Opp. Party No.2 vide order dt.20.11.2020 under Annexure-19.

3.10. Learned counsel appearing for the Petitioner contended that the proceeding in question was initiated inter alia with the charge that, Petitioner remained on unauthorized absence from duty w.e.f. 01.08.2003 to 05.05.2019, even though she was the relieved from the School on 31.07.2003.

3.11. It is contended that on the face of the order passed by the then D.I of School on 27.06.2001 under Annexure-5, Petitioner could not have been relieved from Butupali UGME School by the Headmaster of the School on 31.07.2003 under Annexure-6, as by the said date, order dt.01.06.2001 was already superceded with passing of an order on dt.27.06.2001 under Annexure-5. It is further contended that such illegal action of the Headmaster in relieving the Petitioner basing on a non-existent order dt.01.06.2001 though was brought to the notice of the then D.I of School on 01.08.2003 under Annexure-7, but no action was taken in considering the grievance of the Petitioner.

3.12. Even though Petitioner challenging such inaction on the part of the Opp. Parties moved the Tribunal in OA. No.24(S) of 2004, but in the said Original Application, no counter affidavit was filed by the State. The Tribunal accordingly vide order dt.21.12.2009 directed the Opp. Party to consider the Petitioner's grievance and to give her posting in any other school or to allow the Petitioner to continue at Butupali UGME School.

3.13. On the face of such order passed in OA No.24(C) of 2004 on 21.12.2009, Petitioner was never given a fresh posting nor allowed to continue at Butupali UGME School from where she was illegally relieved on 31.07.2003. Thereafter when a proceeding was initiated vide Memorandum dt.31.12.2010 under Annexure-8, Petitioner seeking quashing of the relieve order approached the Tribunal by filing OA No.38(S) of 2011, which was subsequently transferred and re numbered as OA No.2136 of 2016. The said Original Application was disposed of vide order dt.02.05.2018 under Annexure-9 inter alia directing the authorities to allow the Petitioner to continue in Butupali UGME School or to issue a fresh order of posting. However, the Tribunal allowed the authority to continue with the proceeding. In terms of the said order passed by the Tribunal, Petitioner was given a posting at Butupali UGME School vide order dt.04.05.2019, where she joined on 06.05.2019.

3.14. It is contended that since because of the wrong relieve order issued by the Headmaster of the School on 31.07.2003, Petitioner remained out of employment on the face of her approach made to the D.I of School on 01.08.2003 under Annexure-7 as well as the filing of OA No.24 (CS) of 2004 before the Tribunal, on the ground of unauthorised absence from duty, the proceeding could not have been initiated against her.

3.15. It is contended that for the latches on the part of the Opp. Parties, Petitioner was not only illegally relieved from her duty on 31.07.2003, but also her claim was never considered by allowing her to continue in the said school or to give her an alternate posting. It is accordingly contended that no fault lies with the Petitioner for

her not joining in the School for the period from 01.08.2003 to 05.05.2019. It is accordingly contended that not only the initiation of the proceeding is bad in the eye of law, but also the order of punishment passed on 31.10.2019 under Annexure 16 so confirmed by the appellate authority-Opp. Party No.2 vide order dt.20.11.2020 under Annexure-19. It is accordingly contended that while interfering with the said order passed under Annexure-16 so confirmed under Annexure-19, the period of service from 01.08.2003 to 05.05.2019 be regularized with extension of all service and financial benefits as due and admissible.

4. Learned Addl. Govt. on the other hand made his submission basing on the stand taken in the counter affidavit so filed by Opp. Party No.4.

4.1. It is contended that after being relieved from Butupali UGME School on 31.07.2003, Petitioner never joined in the school and she approached the Tribunal by filing OA No.24 (C) of 2004. The said OA was disposed of on 21.12.2009 at the stage of admission and while disposing the said Original Application, the Tribunal directed Opp. Party No.3 therein to pass appropriate order on merit in accordance with the existing rules and the stand taken in the original Application.

4.2. Since Petitioner after being relieved on 31.07.2003, never joined in any school, the proceeding in question was initiated against her vide Memorandum dt.31.12.2020. Even though the proceeding as well as the relive order was challenged by the Petitioner before the Tribunal in OA No.38(S) of 2011, subsequently re-numbered as OA No.2136 of 2016, but the Tribunal never interfered with the initiation of the proceeding while disposing the Original Application vide order dt.02.05.2018 under Annexure-9. The Tribunal also never interfered with the relieve order and instead directed the authority to pass an order allowing the petitioner to join at Butupali UGME School or in any other school.

4.3. It is contended that in term of the order dt.2.5.2018 so passed by the Tribunal, Petitioner was posted at Butupali UGME School vide order dt.04.05.2019 under Annexure-13 where she joined on 06.05.2019. It is also contended that basing on the liberty granted by the Tribunal, the Disciplinary Authority proceeded with the proceeding and passed the order of punishment vide order dt.18.10.2019 under Annexure-16. Such order passed by the Disciplinary Authority was also confirmed by the appellate authority vide order dt.20.11.2020 under Annexure-19.

4.4. It is contended that since after being relieved on 31.07.2003, Petitioner never discharged her duty till she re-joined on 06.05.2019, the proceeding was not only initiated against the Petitioner for such unauthorized absence but also the Disciplinary authority passed the order of punishment rightly which has also been upheld by the Appellate Authority. It is contended that since Petitioner for the aforesaid period never joined, she is not entitled to get any benefit for the said period and the impugned order of punishment has been rightly passed.

5. Having heard learned counsel for the parties and considering the submission made, this Court finds that Petitioner while continuing as an Assistant Teacher in

Kantuapani Primary School, she was put under transfer to Butupali UGME School vide order dt. 10.05.2001 under Annexure-1. In terms of the said order, Petitioner was relieved on 15.05.2001 under Annexure-2 and submitted her joining in Butupali UGME School on 16.05.2001 as found from Annexure-3. Vide order dt.01.06.2001 under Annexure-4, though D.I of School, Boudh cancelled order dt.10.05.2001 but the said order was superceded with passing of another order on 27.06.2001 under Annexure-5 inter alia with the following observation:

> ***2.*** *"In supersession to the order No.2415 dt.1.6.2001 the teachers if not relieved are allowed to continue at their respective schools a per order No.1998 dt.10.05.2001 till finalization of rationalization of teachers.*

5.1. As found from the said order, the then D.I of school observed that those teachers who are continuing in their place of transfer in terms of order dt.10.05.2001, should be allowed to continue in the said school. It is the view of this Court that on the face of such order issued by the D.I. of School on 27.06.2001 under Annexure-5, Petitioner could not have been relieved by the Headmaster of the School on 31.07.2003 under Annexure-6 and such relieve order is not sustainable in the eye of law.

5.2. It is also found that challenging such illegal action of the Headmaster in relieving the Petitioner on 31.07.2003, Petitioner though moved the then D.I of School on 01.08.2003 under Annexure-7 and subsequently the Tribunal by filing OA No.24(C) of 2004, but Petitioner was never given a new posting nor she was allowed to continue in Butupali UGME School.

5.3. The Tribunal vide order dt.21.12.2009 while disposing OA 24(S) of 2004, though directed Opp. Parties therein to take a decision with regard to giving a posting to the Petitioner, but no decision was taken in terms of the said order. Instead a proceeding was initiated against the Petitioner vide Memorandum dt.31.12.2010 under Annexure-8 with the charges that Petitioner w.e.f 01.08.2003 has remained on unauthorized absence from her duty.

5.4. After such initiation of the proceeding, Petitioner when again approached the Tribunal challenging the proceeding as well as the relieve order on 31.07.2003 by filing OA 38(S) of 2011, subsequently renumbered as OA No.2136 of 2016, Petitioner was also never given a fresh posting nor allowed to continue at Butupali UGME School. Only after disposal of OA No.2136 of 2016 vide order dt.02.05.2018, Petitioner was given a posting vide order dt.04.05.2019 in Butupali UGME School under Annexure-13, where she joined on 06.05.2019 under Annexure-14.

5.5. After such joining of the Petitioner, the proceeding was disposed of with the imposition of the punishment vide order dt.31.10.2019 under Annexure-16. Vide the said order, unauthorized absence of the Petitioner for the period 01.08.2003 to 05.05.2019 was treated as non-duty period and it was also held that Petitioner is not entitled to get any financial or service benefit and other consequential benefit also.

The said order passed under Annexure-16 has been upheld by the Appellate Authority–O.P. No.2 vide order dt.20.11.2020 under Annexure-19.

5.6. In view of the aforesaid analysis, it is the view of this Court that, since after being illegally relieved from the school by the Headmaster on 31.07.2003, Petitioner was never given a posting nor allowed to continue in Butupali UGME School, no fault lies with the Petitioner for her not joining and continuing for the period from 01.08.2003 to 5.5.2019.

5.7. Not only that on the face of the pendency of OA No.24(S) of 2004 and OA 38(S) of 2011, subsequently re-numbered as OA No.2136 of 2016, Petitioner was never given a posting till such a posting order was issued vide order dt.04.05.2019 under Annexure-13.

5.8. In view of the aforesaid analysis, it is the view of this Court that no fault lies with the Petitioner for her not discharging duty for the period from 01.08.2003 to 05.05.2019. Accordingly, this Court is inclined to quash the order of punishment passed against the Petitioner vide order dt.31.10.2019 under Annexure-16, further confirmed vide order dt.20.11.2020 under Annexure-19, While quashing both the orders, this Court held that Petitioner is deemed to be continuing in service for the period 01.08.2003 to 05.05.2009 and is entitled to get all service and financial benefits as due and admissible to her.

5.9. However, since for the period 01.08.2003 to 05.05.2019, Petitioner has not discharged any duty, this Court held the Petitioner entitled to get the arrear salary to the extent of 50%. This Court directs Opp. Party No.2 to pass an order in terms of the direction given here-in-above within a period of two (2) months from the date of receipt of this order. All arrear entitlements be also released in favour of the Petitioner during the aforesaid time period.

5.10. The Writ Petition accordingly stands disposed of with the aforesaid observation and direction.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter Writ Petition disposed of.
(Verified by: Shri H.P.Padhy, Editor-in-Chief(I/C)

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2025 (III) ILR-CUT-662

Smt. RENUKA DEI
V.
STATE OF ODISHA,
COMMISSIONER-CUM-SECRETARY,
WATER RESOURCES DEPARTMENT,
BHUBANESWAR & ORS.

[W.P.(C) NO. 7447 OF 2021]

01 AUGUST 2025

[MURAHARI SRI RAMAN, J.]

Issue for Consideration

Whether the pension of petitioner should be re-fixed after granting 3rd financial up-gradation under RACP with effect from 01.01.2013, as per the notification dated 19.09.2015.

Headnotes

(A) ODISHA REVISED SCALE OF PAY RULES, 2008 – Revised Assured Career Progression – The petitioner joined in service as Lower Division Clerk on 14.06.1978 – Petitioner completed 30 years of service on 14.06.2008 – After completion of around 32-33 years of service, petitioner joined in the promotional Post of Senior Clerk on 23.12.2011 – Whether pension of petitioner should be re-fixed after granting 3rd financial up-gradation under RACP with effect from 01.01.2013, as per the notification dated 19.09.2015.

Held: Yes – It has become abundantly clear that the petitioner in terms of RACPS under the Odisha Revised Scales of Pay Rules, 2008 is entitled to 1st, 2nd and 3rd financial up-gradation as on 13.06.2008 having completed 10, 20 and 30 years of service from date of entry into the service. (Para 10.1)

In the present case, it is patent on record that the promotion to the rank of "Senior Clerk" was not accorded before the year 2008, when the petitioner completed 30 years of service as on 13/14.06.2008 – The petitioner, therefore, deserves to be extended similar benefit as is given to **Shiba Charan Bal (supra)** by the competent authority as he is entitled to "financial up-gradations" as per the RACPS under the ORSP Rules, 2008.
(Para 13.11)

(B) INTERPRETATION OF STATUTES – Difference between up-gradation and promotion – Discussed with reference to case laws.
(Para 8-9.1)

Citations Reference

Union of India Vrs. Pushpa Rani, **(2008) 9 SCC 24;** Bharat Sanchar Nigam Limited Vrs. R. Santhakumari Velusamy, **(2011) 9 SCC 510;** Rama Nand Vrs. Chief Secretary, Government of NCT of Delhi, **(2020) 6 SCR 19 = 2020 (II) OLR (SC) 487;** Union of India Vrs. M.V. Mohanan Nair, **(2020) 7 SCR 851;** State of Odisha Vrs. Bikash Ranjan Dash, **2021 SCC OnLine Ori 1839;** State of Odisha Vrs. Bihari Lal, **2016 SCC OnLine Ori 333;** (State of Odisha Vrs. Bihari Lal Barik, **23rd August, 2017 passed in SLP(C) Diary No.20358 of 2017;** Susanta Kumar Dash Vrs. State of Odisha, **W.P.(C) No.18142 of 2020;** State of Odisha Vrs. Shiba Charan Bal**, W.P.(C) No.28074 of 2019;** Shiba Charan Bal Vrs. State of Odisha, **O.A. No.2328 (C) of 2017 disposed of by Order dated 26.07.2018 – referred to.**

List of Acts

Odisha Revised Scale of Pay Rules, 2008.

Keywords

Revised Assured Career Progression; Up-gradation; Promotion; Financial benefits; Pay Band; Fixation of Pay

Case Arising From

Non-grant of Financial up-gradation under RACP Scheme.

Appearances for Parties

For Petitioner : Mr. Gyana Ranjan Sethi, Ms. Babita Kumari Pattanaik
Mr. Manoja Kumar Khuntia
For Opp. Parties : Mr. Shantanu Das, Additional Standing Counsel

Judgment/Order

Judgment

MURAHARI SRI RAMAN, J.

Non-grant of financial upgradation under the Revised Assured Career Progression Scheme (for brevity referred to as "RACPS") in the Grade Pay of Rs.4,600/- brought the petitioner before this Court beseeching exercise of extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India with the following pray(s):

> *"It is therefore humbly prayed that this Hon'ble Court may graciously be pleased to admit the case, call for the records and after hearing both the parties pass the following reliefs;*
>
> *i) To direct the opposite parties to refix the pension of petitioner after granting 3rd financial upgradation in pay band-2, scale of pay of Rs.9300/- to 34800/- with grade pay of Rs.4600/- under RACP w.e.f. 01.01.2013 as per Notification*

19.09.2015 and ratio decided in O.A.No.2328(C) of 2017 confirmed by this Hon'ble Court in W.P.(C) No28074 of 2019;

ii) To direct the opposite parties to release the arrear salary consequent upon granting 3rd financial upgradation in pay band-2, scale of pay of Rs.9300/- to 34800/- with grade pay of Rs 4600/- under RACP w.e.f. 01.01.2013.

iii) And pass such other order/orders as may be deemed fit and proper for the interest of justice.

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

PLEADINGS:

2. Having entered into Government service on 14.06.1978 (*vide* Service Book copy of which is at Annexure-1), as Lower Division Clerk, the petitioner posted in the Office of Superintending Engineer, Upper Kolab Dam Circle, Koraput got transferred to function as such at the Eastern Circle, Cuttack and was granted Time-Bound Advancement taking entry grade from his initial date of joining on 14.06.1978.

2.1. The petitioner on completion of 30 years of Government service as on 13-14.06.2008, she is entitled for the benefit of 3rd RACPS attune with the Finance Department Resolution dated 06.02.2013 with effect from 01.01.2013 with grade pay at Rs.4,600/-.

2.2. As the pay has not been fixed appropriately, so also pensionary benefits, this writ petition has been filed.

Hearing:

3. The instant writ petition got disposed of on 04.03.2021 at the stage of admission with the direction to the opposite parties to "look into the grievance of the petitioner *vide* Annexure-6 and take decision, as appropriate, taking into consideration the development through Annexure-5 and also the plea taken in the writ petition". Aggrieved thereby, the opposite parties proceeded in intra-Court appeal (W.A. No.1026 of 2022) with the complaint that without affording opportunity of placing para-wise reply to the writ petition, prejudice did ensue. This Court in Division Bench *vide* Order dated 20.03.2023 disposed of said writ appeal remitting the matter with the following observation and direction:

"1. On the short ground that the impugned order was passed on the very first date without affording an opportunity to the Appellants-State to file a para wise reply to the writ petition, the impugned order dated 4th March, 2021 passed in W.P.(C) No.7447 of 2021 is hereby set aside and the said writ petition is remitted to the Roster Bench of the learned Single Judge, where it will be listed for directions on 10th May, 2023.

2. ***Replies will be filed by the State to the writ petition positively on or before 1st May, 2023*** *and rejoinder thereto, if any, be filed by the writ petitioner before 10th May, 2023.* ***It is made clear that no further time will be granted to either party for***

> ***that purpose***. *The learned Single Judge is requested to proceed with the matter on merits and endeavour to dispose it of as expeditiously as possible.*
>
> *3. Accordingly, the writ appeal is disposed of."*

3.1. Accordingly, being restored to file, this matter was listed on 22.07.2025.

3.2. Sri Shantanu Das, learned Additional Standing Counsel would submit that the opposite parties have not taken any step to file counter affidavit notwithstanding specific direction of the Division Bench. Since the dateline as specified in the order passed in writ appeal has already been elapsed, he would prefer to advance arguments on the basis of material available on record.

3.3. Ms. Babita Kumari Pattanaik, learned Advocate appearing for the petitioner assisting Sri Manoja Kumar Khuntia, learned Advocate conceded to such request of Sri Shantanu Das, learned Additional Standing Counsel appearing for the opposite parties. She submitted that as the petitioner, retired Government employee, is seeking fixation of pay for pension as also arrears, the matter can be disposed of by taking into consideration case of similarly situated employee who has already been granted identical benefit as prayed for in the instant writ petition.

4. Heard Sri Manoja Kumar Khuntia, learned Advocate along with Ms. Babita Kumari Pattanaik, learned Advocate for the petitioner on 22.07.2025 and the following order was passed:

> *"This matter is taken up through Hybrid Mode.*
>
> *2. Sri Manoj Kumar Khuntia, learned counsel on behalf of Sri Gyana Ranjan Sethi, learned counsel appearing for the petitioner advanced arguments by submitting that the petitioner being transferred from Upper Kolab Dam Circle to Eastern Circle, Cuttack on 29.09.1986, her past services were not taken into consideration for the purpose of computation of thirty years in order to extend the benefit of 3rd Financial Upgradation of the Revised Assured Career Progression Scheme (RACPS) under the Odisha Revised Scales of Pay Rules, 2008 read with Finance Department Resolution dated 06.02.2013. He further submitted that the Finance Department Resolution dated 13.02.2025 has clarified the position by deleting the words ―in a single cadre‖ as mentioned in Finance Department Resolution dated 06.02.2013. He submitted that similar issue has already been decided by a Division Bench of this Court in W.P.(C) No.28074 of 2019 (State of Odisha and others Vrs. Shiba Charan Bal), disposed of on 06.03.2020, wherein order dated 26.07.2018 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.2328(C) of 2017 has been affirmed.*
>
> *3. Sri Shantanu Das, learned Additional Standing Counsel appearing for the opposite parties-State seeks a day's accommodation to advance his reply arguments.*
>
> *4. List this matter tomorrow (23.07.2025) to be taken up at 2.00 P.M."*

4.1. Accordingly the matter being listed on 23.07.2025, the arguments were advanced by counsel for both sides and hearing was concluded.

4.2. The matter was kept reserved for preparation and pronouncement of judgment.

SUBMISSIONS AND ARGUMENTS OF RESPECTIVE PARTIES:

5. Ms. Babita Kumari Pattanaik, Advocate appearing for the petitioner assisting Sri Manoja Kumar Khuntia, learned Advocate submitted that having joined as Junior Clerk on 14.06.1978 at Upper Kolab Dam Circle, the petitioner on getting transferred on 29.09.1986 worked in Eastern Circle, Cuttack and allowed to retire with effect from 31.07.2019 on attaining age of superannuation.

5.1. It is contended that the petitioner in the capacity of Junior Clerk was granted time-bound advancement taking into account the date of appointment as 14.06.1978. As per RACPS on completion of 10, 20 and 30 years of service in a post, she is entitled to 1st, 2nd and 3rd upgradations. The petitioner has completed her 30 years of service on 14.06.2008 and she was entitled to 3rd RACPS in terms of the Finance Department Resolution dated 06.02.2013, with effect from 01.01.2013. When for all practical purposes the date of entry into Government service has been treated as 14.06.1978 (as reflected in the Service Book), non-grant of 3rd RACPS by fixing her grade pay at Rs.4,600/- in the wake of revision of grade pay in CSL Cadre (Ministerial) of Medium IP in the Department (Office) of Water Resources (EIC-Medium IP) *inter alia* from Rs.4,200/- (feeder post of Head Clerk) to Rs.4,600/- (Head Assistant, 1st Promotional Post) *vide* Finance Department by Notification No25323— PCC-Meet-1/2012 (pt.)/F., dated 19.09.2015, is contested vehemently by the petitioner in this writ petition.

5.2. Stemming on subsequent development, *i.e.,* Finance Department Resolution No.5073— FIN-CS1-APPL-0001-2024/F., dated 13.02.2025, which fact has been brought on record by way of an interlocutory application, being I.A. No.11608 of 2025, it is arduously argued that when the petitioner was granted the benefit of 3rd financial upgradation in terms of Revised Assured Career Progression Scheme under the Odisha Revised Scales of Pay Rules, 2008, effective from 01.01.2013, having been accrued on completion of 30 years of service commencing from 13/14.06.1978 and she was in receipt of Modified Assured Career Progression (MACP) on 29.09.2016 with grade pay of Rs.4,600/-, merely because she got promotion after 30 years of service and allowed to retire on superannuation, the opposite parties could not have adhered to revision of grade pay adhering to Finance Department by Notification No25323— PCC-Meet-1/2012 (pt.)/F., dated 19.09.2015.

6. Sri Shantanu Das, learned Additional Standing Counsel, though conceded that despite opportunity granted by the Division Bench in their writ appeal *vide* Order dated 20.03.2023 passed in W.A. No.1026 of 2022 filed against the order dated 04.03.2021 of the learned Single Judge in the present matter, the opposite parties did not choose to file any counter affidavit, submitted that the impugned action of the opposite parties in refixing the revised pay as is available in consonance with the Finance Department by Notification No.25323— PCC-Meet-

1/2012 (pt.)/F., dated 19.09.2015 could not be questioned, as the competent authority has acted within the scope of the statutory notification.

6.1. He would submit that as is manifest from the entry in Service Book (Annexure-3) that the petitioner joined in the promotional post of Senior Clerk on 23.12.2011 on the strength of Office Order No.12 of 2012-13, and exercised option for fixation of promotional pay with effect from 01.06.2012, by re-fixing her grade pay attached to Senior Clerk no flaw could be attributed when the authorities have taken correctional measure.

6.2. Such action being in conformity with the Finance Department Notification No.25323— PCC-Meet-1/2012 (pt.)/F., dated 19.09.2015, he urged not to disturb the fixation of grade pay and made fervent request to dismiss the writ petition.

Discussions and analysis:

7. For ready reference the RACPS, 2013, as it existed prior to Resolution dated 13.02.2025, is given hereunder:

"Government of Odisha
Finance Department

RESOLUTION

No.3560/F/PCC(A)-49/2012 *Date: 06.02.2013*

Sub:- Revised Assured Career Progression Scheme (RACPS) for the State Government Employees.

The State Government considered the recommendations of the Fitment Committee and granted Assured Career Progression (ACP) to the State Government employees on completion of 15th, 25th and 30th years of service akin to the Time Bound Advancement (TBA) provisions of the Orissa Revised Scales of Pay Rules, 1998. Accordingly, all State Government employees avail ACP in 3 stages i.e. 1st ACP on completion of 15 years of service, 2nd ACP after 25 years of service and 3rd ACP after 30 years of service in their original post/grade by addition of one increment @ 3% on the Basic Pay + Grade Pay with next annual increment after a period of one year from the date of sanction of the ACP.

2. The Government of India in the meanwhile, had introduced Modified Assured Career Progression Scheme (MACPS) for the Central Government Civilian employees in supersession of the provisions of ACP scheme. Consequent upon implementation of the MACPS by the Government of India, various Service Associations of the State Government employees have come up with memoranda to consider implementation of the MACPS in respect of employees of the State Government.

3. Taking into account the uncertain promotional avenues and career stagnation of the State Government employees, Government after careful consideration have decided to implement a career advancement scheme to be known as Revised Assured Career Progression Scheme (RACPS).

4. The RACPS is to be effective from 01.01.2013.

5. The details of the RACP Scheme and conditions for grant of the financial up-gradation under the Scheme are given in Annexure-1.

By order of the Governor
Sd/-
Additional Secretary to Government

REVISED ASSURED CAREER PROGRESSION SCHEME (RACPS):

1. There shall be three financial up-gradations under the RACPS, counted from the direct entry grade on completion of 10, 20 and 30 years of service in a single cadre in absence of promotion. An employee if completed 10 years of service in the entry grade will be considered for 1st up-gradation under RACPS. An employee completing 20 years of service and has got only one upgradation either by promotion or by RACPS will be considered for the 2nd upgradation. Similarly an employee completing 30 years of service and has got two upgradation either by RACPS or promotion or both will be considered for 3rd upgradation under RACPS.

2. The financial upgradation under the RACPS would be admissible upto the highest Grade Pay of Rs.7600/- in the Pay Band PB-3 under ORSP Rules, 2008.

3. There shall be a Screening Committee to decide the eligibility of the persons for upgradation under RACPS. The Screening Committee shall follow a time schedule and meet twice in a financial year, preferably in the first week of January and first week of July every year for advance processing of the cases maturing in that half year. Accordingly, cases maturing during the first-half i.e. April to September of a particular financial year shall be taken up for consideration by the Committee in the first week of January. Similarly, the Screening Committee meeting in the first week of July shall process the cases that would be maturing during the second-half i.e. October to March of the same financial year.

4. RACPS shall be permissible in case of those employees only after regulation of their pay under O.R.S.P. Rules, 2008. On introduction of RACPS, the ACP Scheme as under O.R.S.P. Rules, 2008 shall cease to operate.

5. The manner of fixation of pay on promotion shall be applicable while fixing the pay under RACPS. An employee can opt to get the pay fixed under RACPS after accrual of his next increment in existing Pay Band with Grade Pay within one month from the date of issue of RACPS order in his/her favour in the pro forma appended as Fourth Schedule of O.R.S.P. Rules, 2008; else the pay of the employee shall be fixed from the date of effect of RACP. The next increment due shall be 12 months from the date of such fixation.

6. On grant of financial upgradation under the Scheme, there shall be no change in the designation, classification or status. However, financial and certain other benefits which are linked to the pay drawn by an employee such as HBA, allotment of Government accommodation may be permitted.

7. Financial upgradation under the RACPS shall be purely personal to the employee and shall have no relevance to his position of seniority in the grade. As such, there shall be no stepping up of pay/antedation of increment between Senior and Junior after regulation of pay under RACPS.

8. The Pay Band PB-3 of Rs.15,600-39,100/- with Grade Pay of Rs.5400/- being the Group-A Entry Grade Pay Band shall not be allowed under RACPS to an employee in Pay Band PB-2. For example, if an employee in the Pay Band PB-2 i.e. Rs.9,300-34,800/- with Grade Pay of Rs.4600/- gets financial upgradation under RACPS, he shall be entitled to get his/her pay fixed in the Pay Band PB-2 i.e. Rs.9,300-34,800/- with

Grade Pay of Rs.5400/- instead of Pay Band PB-3 i.e. Rs.15,600-39,100/- with Grade Pay of Rs.5400/-.

9. There shall be no further financial upgradation under RACPS, if an employee has already availed three financial upgradations by way of RACPS/Promotion.

10. Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the Scheme, which means the pay shall be raised by 3% of the total of pay in the Pay Band and the Grade Pay drawn before such upgradation. The employees of the cadre having promotional hierarchy will get the Grade Pay of the promotional post. The employees in isolated/ ex-cadre posts not having any promotional hierarchy will get the next higher Grade Pay as per the first schedule of ORSP Rules, 2008 with the interpolations, if any introduced subsequently. In case the new Grade Pay corresponds to a different Pay Band, the employee will get the Pay Band corresponding to the revised Grade Pay. There shall, however, be no further fixation of pay at the time of regular promotion.

11. The RACPS shall also be applicable to work charged employees, only if their service conditions are comparable with the staff of regular establishment.

12. The RACPS is directly applicable only to State Government employees. It will not get automatically extended to employees of State PSUs/Autonomous/ Statutory Bodies under the administrative control of a Department. Keeping in view the financial implications involved, a conscious decision in this regard shall have to be taken by the respective Government Body/ Board of Directors as well as the Administrative Department concerned and wherever it is proposed to adopt the RACPS, prior concurrence of Financial Department shall be obtained.

13. If a financial upgradation under the RACPS is not allowed after 10 years in a Grade Pay and is deferred for the reason an employee being unfit or due to departmental proceedings, his case will be reviewed in subsequent years. In the matter of disciplinary / penal proceedings, grant of benefit under the RACPS shall be subject to rules / guidelines governing normal promotion. Such cases shall, therefore, be regulated under the provisions of the OCS (CCA) Rules, 1962 and instructions issued thereunder.

14. The RACPS contemplates mere placement on personal basis in the Grade Pay and pay scale of the higher post and shall not amount to actual functional promotion of the employees concerned. Therefore, no reservation orders / roster shall apply to the RACPS. However, as usual the rules of reservation in promotion shall be ensured at the time of regular promotion. For this reason, it may not be mandatory to associate members of SC/ST in the Screening Committee meant to consider cases for grant of financial upgradation under the Scheme.

15. Pay drawn in the Pay Band and the Grade Pay allowed under the RACPS shall be the basis for determining the terminal benefits in respect of the retiring employee.

16. If a regular promotion in due course is refused by the employee before becoming entitled to a financial upgradation, then there shall be no financial upgradation under RACPS as the employee has not been stagnated due to lack of promotional opportunities. If, however, financial upgradation has been allowed due to stagnation and the employee refuses the subsequent promotion, it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the next financial upgradation shall also be deferred to the extent of period of debarment due to such refusal.

17. Employees on deputation need not revert to the parent Department for availing the benefit of financial upgradation under the RACPS. They may exercise a fresh option to draw the pay in the Pay Band and the Grade Pay of the post held by them or the pay plus Grade Pay admissible to them under the RACPS, whichever is beneficial like the regular employee in the parent cadre had they not been deputed.

18. Assured Career Progression (ACP) availed under ORSP Rules, 2008 shall not be taken into account while considering the RACPS in favour of an employee. But, no pay fixation shall be allowed by extending the benefit of 3% of basic pay and Grade Pay to the existing Pay but only the Grade Pay as applicable shall be allowed while giving RACPS.

Sd/-
Additional Secretary"

8. At the outset it is felt expedient to have overview of the terms "promotion" and "upgradation".

8.1. The legal position regarding the distinction between upgradation and promotion is well-settled. In *Union of India Vrs. Pushpa Rani, (2008) 9 SCC 24*, the Supreme Court had examined and explained the difference thus:

"In legal parlance, upgradation of a post involves transfer of a post from lower to higher grade and placement of the incumbent of that post in the higher grade. Ordinarily, such placement does not involve selection but in some of the service rules and/or policy framed by the employer for upgradation of posts, provision has been made for denial of higher grade to an employee whose service record may contain adverse entries or who may have suffered punishment. The word 'promotion' means advancement or preferment in honour, dignity, rank, grade. Promotion thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law, the word 'promotion' has been understood in wider sense and it has been held that promotion can be either to a higher pay scale or to a higher post."

8.2. The decision in *Union of India Vrs. Pushpa Rani, (2008) 9 SCC 24* was discussed in *Bharat Sanchar Nigam Limited Vrs. R. Santhakumari Velusamy, (2011) 9 SCC 510* and ruling has been enunciated as under:

"In Pushpa Rani, (2008) 9 SCC 242, this Court while considering a scheme contained in the Letter dated 09.10.2003 held that it provided for a restructuring exercise resulting in creation of additional posts in most of the cadres and there was a conscious decision to fill up such posts by promotion from all eligible and suitable employees and, therefore, it was a case of promotion and, consequently, the reservation rules were applicable."

9. It has been set forth in *Bharat Sanchar Nigam Limited Vrs. R. Santhakumari Velusamy, (2011) 9 SCC 510* as follows*:*

"29. On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge:

(i) Promotion is an advancement in rank or grade or both and is a step towards advancement to a higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both— that is, advancement to a higher position

and advancement to a higher pay scale— are described by the common term "promotion", does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.

(ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.

(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simpliciter can be said to be a promotion in its wider sense, that is, advancement to a higher pay scale.

(iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simpliciter. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simpliciter. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation.

(v) Where the process is an upgradation simpliciter, there is no need to apply the rules of reservation. But where the upgradation involves a selection process and is therefore a promotion, the rules of reservation will apply.

(vi) Where there is a restructuring of some cadres resulting in creation of additional posts and filling of those vacancies by those who satisfy the conditions of eligibility which includes a minimum period of service, will attract the rules of reservation. On the other hand, where the restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provide relief against stagnation, the said process does not invite reservation."

9.1. See also, *Rama Nand Vrs. Chief Secretary, Government of NCT of Delhi, (2020) 6 SCR 19 = 2020 (II) OLR (SC) 487,* where it has been observed as follows:

"17. The reasons for coming to this conclusion is based on the principles set out in the Bharat Sanchar Nigam Limited Vrs. R. Santhakumari Velusamy, (2011) 9 SCC 510. No doubt, sometimes there is a fine distinction which arises in such cases, but, a holistic view has to be taken considering the factual matrix of each case. The consequence of reorganisation of the cadre resulted in not only a mere re-description of the post but also a much higher pay scale being granted to the appellants based on an element of selection criteria. We say so as, at the threshold itself, there is a requirement of a

minimum 5 years of service. Thus, all Telephone Operators would not automatically be eligible for the new post. Undoubtedly, the financial emoluments, as stated above, are much higher. The third important aspect is that the appellants had to go through the rigorous of a specialised training. All these cannot be stated to be only an exercise of merely re-description or reorganisation of the cadre. On applying the test in BSNL case (supra), as per sub-para (i) of paragraph 29, promotion may include an advancement to a higher pay scale without moving to a different post. In the present case, there is a re-description of the post based on higher pay scale and a specialised training. It is not a case covered by sub-para (iii), as canvassed by learned counsel for the appellants, where the higher pay scale is available to everyone who satisfies the eligibility condition without undergoing any process of selection. The training and the benchmark of 5 years of service itself involve an element of selection process. Similarly, it is not as if the requirement is only a minimum of 5 years of service by itself, so as to cover it under sub-para (iv).

18. We have already observed that the complete factual contours of the difference between the two posts would have to be examined in the given factual situation and the triple criteria of minimum 5 years of service, a specialised training and much higher financial emoluments leaves us in no manner of doubt. What was done has to be considered as a promotion disentitling the appellants to the benefits of the ACP Scheme. As the very objective of the ACP Scheme, as set out, is "to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues."

9.2. In *Union of India Vrs. M.V. Mohanan Nair, (2020) 7 SCR 851*, describing object behind ACP (Assured Career Progression) *versus* MACP (Modified Assured Career Progression) with reference to policy and wisdom of Pay Commission, it has been stated as follows:

"28. The object behind the MACP Scheme is to provide relief against the stagnation. If the arguments of the respondents are to be accepted, they would be entitled to be paid in accordance with the grade pay offered to a promotee; but yet not assume the responsibilities of a promotee. As submitted on behalf of Union of India, if the employees are entitled to enjoy Grade Pay in the next promotional hierarchy, without the commensurate responsibilities as a matter of routine, it would have an adverse impact on the efficiency of administration.

29. The change in policy brought about by supersession of ACP Scheme with the MACP Scheme is after consideration of all the disparities and the representations of the employees. The Sixth Central Pay Commission is an expert body which has comprehensively examined all the issues and the representations as also the issue of stagnation and at the same time to promote efficiency in the functioning of the departments. MACP Scheme has been introduced on the recommendation of the Sixth Central Pay Commission which has been accepted by the Government of India. After accepting the recommendation of the Sixth Central Pay Commission, the ACP Scheme was withdrawn and the same was superseded by the MACP Scheme with effect from 01.09.2008. This is not some random exercise which is unilaterally done by the Government, rather, it is based on the opinion of the expert body— Sixth Central Pay Commission which has examined all the issues, various representations and disparities. Before making the recommendation for the Pay Scale/Revised Pay Scale, the Pay Commission takes into consideration the existing pay structure, the representations of the government servants and various other factors after which the recommendations are

made. When the expert body like Pay Commission has comprehensively examined all the issues and representations and also took note of inter-departmental disparities owing to varying promotional hierarchies, the court should not interfere with the recommendations of the expert body. When the Government has accepted the recommendation of the Pay Commission and has also implemented those, any interference by the court would have a serious impact on the public exchequer.

30. Observing that it is the function of the Government which normally acts on the recommendations of the Pay Commission which is the proper authority to decide upon the issues, in Union of India Vrs. P.V. Hariharan, (1997) 3 SCC 568, it was held as under:

*'5.*** It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of 'equal pay for equal work' is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. We have come across orders passed by Single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to pay scales, i.e., matters asking for a higher pay scale or an enhanced pay scale, as the case may be, on one or the other ground, are heard by a Bench comprising at least one Judicial Member. ***'*

31. Observing that the decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review, in State of U.P. Vrs. U.P. Sales Tax Officers Grade II Association, (2003) 6 SCC 250, the Supreme Court held as under:

*'11. There can be no denial of the legal position that decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review obviously because pay fixation is an exercise requiring going into various aspects of the posts held in various services and nature of the duties of the employees. ***.'*

32. In Secretary, Government (NCT of Delhi) Vrs. Grade-1 Officers Association, (2014) 13 SCC 296, the Supreme Court refused to interfere with the ACP Scheme as it would violate Government policy and since exercise of judicial review would not be proper, upheld the ACP Scheme and the conditions therein.

33.In State of Tamil Nadu Vrs. S. Arumugham, (1998) 2 SCC 198, the Supreme Court has observed that the Government has the right to frame a policy to ensure efficiency and proper administration and to provide to suitable avenues for promotion to officers working in different department. The Supreme Court has further observed that the Tribunal cannot substitute its own views for the views of the Government or direct new policy based on the views of Tribunal.

34.Observing that fixation of pay and determination of responsibilities is a complex matter which is for the executive to take a decision, the courts should approach such matters with restraint, in State of Haryana Vrs. Haryana Civil Secretariat Personal Staff Association, (2002) 6 SCC 72, the Supreme Court held as under:

*'10. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. *** That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same. ***.'*

35. The prescription of Pay Scales and incentives are matters where decision is taken by the Government based upon the recommendation of the expert bodies like Pay Commission and several relevant factors including financial implication and court cannot substitute its views. As held in Haryana Civil Secretariat Personal Staff Association (2002) 6 SCC 72, the court should approach such matters with restraint and interfere only when the court is satisfied that the decision of the Government is arbitrary. Even in a case where the court takes the view that order/Scheme passed by the Government is not an equitable one, ordinarily only a direction could be given to the State Government or the authority for consideration of the matter and take a decision. In the present batch of cases where the respondents are claiming financial upgradation in the grade pay of promotional hierarchy, no grounds are made out to show that the MACP Scheme granting financial upgradation in the next grade pay is arbitrary and unjust; warranting interference. The implementation of the MACP Scheme is claimed to have led to certain anomalies; but as pointed out earlier, MACP Scheme itself is not under challenge."

9.3. Government of Odisha in Finance Department *vide* Resolution No.3560-PCC(A)-49/2012/F, dated 06.02.2013, in consideration of Fitment Committee recommendations, granted ACP to the State Government employees on completion of 15th, 25th and 30th years of service akin to the Time Bound Advancement (TBA) provisions of the Odisha Revised Scales of Pay Rules, 1998, and taking into account the uncertain promotional avenues and career stagnation of the State Government employees, decided to implement a career advancement scheme to be known as "Revised Assured Career Progression Scheme" (RACPS), with effect from 01.01.2013.

9.4. It can be culled out from the Revised Assured Career Progression Scheme under the Odisha Revised Scales of Pay Rules, 2008, that after the Central Government introduced a Modified Assured Career Progression Scheme (MACPS), the Government of Odisha in the Finance Department *vide* Resolution dated 6th

February 2013 allowed the RACPS for the State Government employees with effect from 01.01.2013. In terms of the said RACPS, three financial upgradations are made available counted from the direct entry grade on completion of 10, 20 and 30 years of service in a single cadre in the absence of promotion. In terms thereof an employee:

> *(a)* on completion of 10 years of service in the entry grade, will be considered for the first upgradation under the RACPS;
>
> *(b)* on completion of 20 years of service and having got only one upgradation either by promotion or by RACPS, will be considered for the second upgradation;
>
> *(c)* likewise on completion of 30 years of service and having got two upgradations either by RACPS or promotion or both will be considered for third upgradation under the RACPS.

9.5. Per Paragraphs 2 and 4 of Annexure-I to the RACPS, it has further been stipulated that the financial upgradation under the RACPS would be admissible up to the highest Grade Pay of Rs.7,600/- in the Pay Band—PB-3 under the ORSP Rules, 2008 and shall be permissible with effect from 1st January 2013 in case of those employees only after regulation of their pay under the ORSP Rules, 2008. It is stated that on introduction of the RACPS, the ACP Scheme under the ORSP, 2008, ceased to be operational.

9.6. Further, under Paragraph 4 thereof, it was stipulated that there will be a Screening Committee to decide the eligibility of persons for upgradation under RACPS. Under paragraph 13, it was provided that if a financial upgradation of the RACPS was not allowed due to certain departmental proceedings, the case of the concerned employee would be reviewed in the subsequent years. In the event of disciplinary/penal proceedings, the grant of benefit under the RACPS would be subject to the rules/guidelines governing normal promotion and would be governed under the provisions of the Odisha Civil Services (Classification, Control and Appeal) Rules, 1962.

10. With the above backdrop, from the pleadings on record, submissions made and arguments advanced by counsel for respective parties, essential facts necessary for adjudicating as to whether the relief(s) claimed for "to refix the pension of the petitioner after granting 3rd financial upgradation in pay band-2 scale of pay of Rs.9,300/- to 34,800/- with grade pay of Rs.4,600/- under RACPS with effect from 01.01.2013 as per Notification dated 19.09.2015" can be granted are that:

> *i.* The petitioner joined in service as Lower Division Clerk on 14.06.1978;
>
> *ii.* Completed 30 years of service on 13.06.2008;
>
> *iii.* Joined the promotional post of Senior Clerk on 23.12.2011 after completion of around 32-33 years of service.

10.1. From the above factual position read with Paragraph 1 of Annexure-I appended to the RACPS, it is explicit that three financial upgradations shall be

counted from the direct entry grade on completion of 10, 20 and 30 years of service in a single cadre in absence of promotion. The words "in a single cadre" being deleted *vide* Finance Department Resolution dated 13.02.2025 (which came into force with retrospective effect from 01.01.2013), it has become abundantly clear that the petitioner in terms of RACPS under the Odisha Revised Scales of Pay Rules, 2008 is entitled to 1st, 2nd and 3rd financial upgradation as on 13.06.2008 having completed 10, 20 and 30 years of service from date of entry into the service.

10.2. Notwithstanding the promotion being accorded to the petitioner in the post of Senior Clerk in the year 2012, that would not change the entitlement of the RACPS in terms of the Odisha Revised Scales of Pay Rules, 2008, as 10, 20 and 30 years of service as 30 years in service got completed by 2008 itself.

10.3. This Court is persuaded to take into consideration the treatment of ACP prior to 01.01.2013 for the purpose of consideration of RACPS. It has been explained in the decision of this Court in the case of *State of Odisha Vrs. Bikash Ranjan Dash, 2021 SCC OnLine Ori 1839* that:

> *"A careful perusal of the RACPS introduced by the resolution of the FD dated 6th February 2013 reveals that even while introducing the said RACPS, the Government considered the recommendations of the fitment committee and the prevalent system of granting TBA under the ORSP Rules, 1998 as well as the ACP under the ORSP Rules, 2008. The RACPS Resolution acknowledges in its preamble that the Central Government had introduced the MACPS. Therefore, something similar had to be introduced in the State Government. Therefore, the RACPS was being introduced as a Career Advancement Scheme. The purpose of granting of financial upgradations was the absence of a promotional avenue to an employee who has remained over a long period of time in the same cadre. There are as many as 18 paragraphs in the RACPS. The grant of earlier benefits was clearly not seen as bar to receipt of the benefit under the RACPS. For instance, in Paragraph 18, it is clarified as under:*
>
> *'Assured Career Progression (ACP) availed under ORSP Rules, 2008 shall not be taken into account while considering the RACPS in favour of an employee.' ***"*

10.4. Regard may also be had to *State of Odisha Vrs. Bihari Lal, 2016 SCC OnLine Ori 333*, wherein it has been observed as follows:

> *"16. From the aforesaid analysis of the RACP of Paragraph 10 it is clear that the pay will be fixed under the ORSP Rules, 2008, but the modalities for awarding RACP would be given under this Scheme. On clear harmonious interpretation of Paragraph 10 it is found that the employees of cadre having promotional hierarchy will get Grade Pay of the promotional post and in case the new Grade Pay corresponds to a different Pay Band, the employee will get Pay Band corresponding to upgraded Grade Pay. Here the learned Addl. Government Advocate drew our attention to a clarification issued by the State Government in the Finance Department on 20.1.2014 at Paragraph 12. According to said Paragraph 12 the Grade Pay of promotional post which belongs to other cadre shall not be allowed under RACP Scheme even if the former post being only the feeder post of that promotional post and the RACP is confined to the cadre only. He further stated that it has been further clarified in Paragraph 12 that such promotion shall be to an ex-cadre post and the period of service for RACP on that promotional post shall be reckoned afresh from the date of joining in that post. Such clarification is absolutely*

contrary to Paragraph 10 of the RACP Scheme because Paragraph 12 has denied benefit of RACPS to the employee entitled to promotional avenue under recruitment Rules, whereas Paragraph 10 of RACPS allow same. ***If clarification is contrary to scheme, scheme has to be followed. Clarification has no any legislative value, whereas a scheme being in absence of rule has got binding effect and to be followed by all in the Administration. Clarification by State Government has no legal force unless it is converted to an Act, Rules, Regulation or Scheme or culminates from such Act, Rules, Regulation and Scheme.*** *Be that as it may, the Scheme is clear that the RACP is available to an employee having promotional hierarchy. We are of the view that opposite party No.1 as V.L.W. (Village Level Worker) being not promoted to the post of G.P.E.O. (Grama Panchayat Extension Officers) and P.A. (Progress Assistants) is entitled to RACP Scheme and as such ORSP Rules, 2008 will be applicable to them."*

10.5. The decision taken in the said *Bihari Lal's case (supra)*, was not disturbed by the Hon'ble Supreme Court of India *vide* Order dated 23rd August, 2017 passed in SLP(C) Diary No.20358 of 2017 *(State of Odisha Vrs. Bihari Lal Barik)*, which is as follows:

"Delay condoned.

We do not see any ground to interfere with the impugned order.

The special leave petition is accordingly dismissed.

Pending applications, if any, shall also stand disposed of."

10.6. So, it would now be established that an Office Memorandum cannot "clarify" the RACPS Resolution dated 6th February 2013 which is of a legislative character. *Vide, State of Odisha Vrs. Bikash Ranjan Dash, 2021 SCC OnLine Ori 1839.*

10.7. To implement directions in *Bihari Lal Barik (supra)*, the Finance Department brought forth the following Resolution dated 13.02.2025:

"Government of Odisha
Finance Department
***

No.FIN-CS1-APPL-0001-2024/5073/F. *Date 13.02.2025*

Sub.: Revised Assured Career Progression Scheme (RACPS) for the State Government Employees effective under ORSP Rules, 2008— Modifications.

1. Odisha Revised Scale of Pay Rules, 2008 was implemented by the State Government w.e.f. 01.01.2006 vide Finance Department Notification No.55244/F., dated 24.12.2008. Rule 14 of said ORSP Rules, 2008 provided for Assured Career Progression (ACP) Scheme for State Government employees on completion of 15, 25 and 30 years of service, in absence of promotion.

2. Thereafter, the ACP was substituted by Revised Assured Career Progression (RACP) Scheme w.e.f. 01.01.2013 vide Finance Department Resolution No.3560/F dated 06.02.2013; ensuring three financial upgradations to an employee counting from the direct entry grade on completion of 10, 20 and 30 years of service in a single cadre in absence of promotion.

3. However, Revised Assured Career Progression Scheme (RACPS) is now embroiled in litigations. Hon'ble Court of Orissa, in Biharilal Barik case (i.e. W.P(C) No.2831/2016), has directed implementation of the RACP scheme in a particular manner.

4. Therefore, in exercise of power conferred under Rule 19 of the ORSP Rules, 2008, the Government is now pleased to bring following modifications in Para-1 and Para-10 of the RACP Scheme guideline issued vide this Department Resolution No.3560/F, dated O6.02.2013.

(a) The words "in a single cadre" mentioned in first sentence of Para-1 of Annexure-I of Finance Department Resolution No.3560/F., dated 06.02.2013 are hereby deleted

(b) Para-10 of Annexure-I of the said Resolution is substituted by the following paragraph:

'10. Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the Scheme, which means the pay shall be raised by 3% of total of pay in the Pay Band and the Grade Pay drawn before such upgradation.

(i) The employees, who do not have any promotional hierarchy in their existing cadre nor have any scope for selection into a post of another cadre carrying higher pay, will get next higher Grade Pay available in the First Schedule of the ORSP Rules, 2008.

(ii) The employees having only one or two promotional hierarchies in their existing cadre and not having any scope for selection into a post of another cadre carrying higher pay, will get Grade Pay attached to the promotional post(s) of their existing cadre and, thereafter, next higher Grade Pay available in the First Schedule of the ORSP Rules, 2008.

(iii) The employees having three or more promotional hierarchies in their existing cadre; with/without having scope for selection into a post of another cadre carrying higher pay, will get Grade Pay attached to the promotional posts in their existing hierarchy, up to three promotions.

(iv) The employees who do not have any promotional hierarchy in their existing cadre; but have scope for selection into a post of another cadre carrying higher pay, will get Grade Pay of the post of that another cadre subject to satisfying the eligibility criteria for selection to the said post of the said another cadre. However, if an employee does not satisfy the eligibility criteria for selection to the said post of the said another cadre, he will be entitled for next higher Grade Pay available in the First Schedule of the ORSP Rules, 2008.

In case the new Grade Pay corresponds to a different Pay Band, the employee will get the Pay Band corresponding to the revised Grade Pay. There shall, however, be no further fixation of pay at the time of regular promotion.'

5. Some illustrations are provided below on the RACP entitlement of applicable Grade Pay under ORSP Rules, 2008 as stated above in the modified Para-10 of Annexure-I of the said Resolution.

Sl. No.	Nature of employees	Applicable RACP	Illustration
1.	(A) Employees who do not have any promotional hierarchy in their existing cadre nor	Next higher Grade Pay available in the First	Demonstrator of a college ➔ Demonstrators are getting Grade pay of

	have any scope for selection into a post of another cadre carrying higher pay.	Schedule of the ORSP Rules, 2008.	Rs.4200 in PB-2 (Rs. 9300- 34800) ➔ They have neither any promotional post in their own cadre nor any Scope for selection to another cadre carrying higher pay. ➔ Therefore, they will get following GPs under RACP Scheme on completion of 10/ 20/ 30 years of service subject to fulfilling other conditions prescribed in F.D Resolution No.3560/F dated 06.02.2013. 1st RACP-GP of Rs.4600 2nd RACP-GP of Rs.4800 3rd RACP-GP of Rs.5400 (in PB-2)
	(B) Employees having only one or two promotional hierarchies in their existing cadre and not having any scope for selection into a post of another cadre carrying higher pay.	Grade Pay attached to the promotional post(s). Thereafter, next higher Grade Pay available in the First Schedule of the ORSP Rules, 2008.	
	(C) Employees having three or more promotional hierarchies in their existing cadre; with or without having scope for selection into a post of another cadre carrying higher pay.	Grade pay attached to the promotional posts in their existing hierarchy, up to three promotions.	➔ Junior Clerk under Revenue & DM Department Junior Clerks are getting Grade Pay of Rs.1900 in P.B-1 (Rs.5200- 20200) ➔ They have promotional avenue to the post of Senior Clerk (Rs.2400), Head Clerk (Rs.4200) and Office Superintendent (Rs.4600) in their own cadre. ➔ They also have

			Scope for selection to the rank of ORS (Rs.4600). ➔ In such case, a Junior Clerk is not entitled for G.P of ORS *i.e*. Rs.4600 in 1st RACP. ➔ He will get following GPs under RACP Scheme on completion of 10/20/30 years of service subject to fulfilling all other conditions prescribed in F.D Resolution No.3560/F dated 06.02.2013. 1st RACP - GP of Sr. Clerk Rs.2400 2nd RACP- GP of Head Clerk Rs.4200 3rd RACP- GP of Office Supdt. Rs.4600
2.	Employees who do not have any promotional hierarchy in their existing cadre; but have scope for selection into a post of another cadre carrying higher pay.	Grade Pay of the post of that another cadre subject to satisfying the eligibility criteria for selection to the said post of the said another cadre.	VLW (Eligible for selection to the post of GPEO) ➔ VLWs are getting Grade Pay of Rs.2000 in P.B-1 (Rs.5200- 20200) ➔ They have no promotional avenue in their own cadre. ➔ But they are eligible for consideration for selection to the post of GPEO carrying GP of Rs.4200 in P.B-2 (Rs.9300- 34800) ➔ Therefore, they will get following Grade Pay under RACP Scheme on completion of 10/20/30 years of service subject to fulfilling all conditions prescribed in F.D Resolution No.3560/F dated

			06.02.2013 and also satisfying the eligibility criteria for selection to the post of GPEO 1st RACP -GP of GPEO Rs.4200 2nd RACP - GP of SDPO Rs.4600 3rd RACP -GP of DPO Rs.4800 / Rs.5400 (in PB-2) w.e.f 19.06.2014
		However, if an employee does not satisfy the eligibility criteria for selection to the said post of the said another cadre, he will be entitled for next higher Grade Pay available in the First Schedule of the ORSP Rules, 2008	VLW (Not eligible for selection to the post of GPEO) VLWs not satisfy the eligibility criteria for selection to the post of GPEO, will get next higher Grade Pay available in the First Schedule of the ORSP Rules, 2008 under RACP Scheme on completion of 10/20/ 30 years of service. 1st RACP- GP. of Rs.2200 2nd RACP - GP of Rs.2400 3rd RACP - GP of Rs.2800

6. This modification shall take effect retrospectively from the date of implementation of the RACP Scheme, i.e. from 01.01.2013.

7. Pre-conditions to avail RACP benefits as stipulated in Finance Department Resolution No.3560/F, dated 06.02.2013 shall remain unaltered.

8. Wherever required in accordance with this modification, RACP benefit already sanctioned in favour of any serving or retired/superannuated employee shall be revised by revising their pay/pension and arrear pay/pension shall be disbursed to the employee concerned, as admissible, irrespective of whether the employee has/had taken shelter of Court or not. Disposal/withdrawal of the Court case, if any, shall not be a pre-condition to revise RACP benefit and/or to disburse arrear pay/pension.

By order of the Governor
Sd/- 13.02.2025
Principal Secretary to Government"

10.8. However, this Court wishes to take cognizance of Government of Odisha in Finance Department Resolution No. 26274— FIN-PCC-MEET-0001/2012/F., dated 08.08.2013, which reads as under:

"Government of Odisha
Finance Department
****

RESOLUTION

No. 26274— FIN-PCC-MEET-0001/2012/F.,
dated 08.08.2013

Sub.: Revision of grade pay in certain posts with Grade Pay of Rs. 4200 and Rs.4600.

Under ORSP Rules, 2008, the revision of pay has been effected on scale to scale basis with merger of scales of pay under the ORSP Rules, 1998 in Pay Bands. The pay bands constitute different Grade Pay. In Grade Pay Rs.4200 pertaining to Pay Band PB-2, seven pay scales existing under the ORSP Rules, 1998 were merged. As a consequence of such merger, some of the promotional scales existing under the previous pay rule are now placed in Pay Band PB-2 with same Grade Pay of Rs.4200.

2.The introduction of Revised Assured Career Progression (RACP) Scheme in Finance Department Resolution No.3560, dated 06.02.2013 with effect from 01.01.2013 envisage three financial upgradations at an interval of 10/20/30 years of the service career with stipulation in the said FD Resolution. As per the said Finance Department Resolution, services having defined line of promotion shall avail the Pay Band/Grade Pay of next promotional hierarchy. Due to same Grade Pay existing in many of the cadres having defined line of promotion the Grade Pay does not change as per the Scheme dated 06.02.2013 thereby creating resentment among such cadres. The Service Association of various cadres have been representing for removal of such anomaly.

3. After careful consideration of the recommendation of Anomaly Committee and in exercise of powers conferred under Rule 19 of ORSP Rules, 2008, Government have been pleased to incorporate the following changes in the Grade Pay of posts of different Departments mentioned at Table-I to mitigate such anomaly:

i) Enhance the promotional Grade Pay of the cadres from Rs.4200 to Rs.4600 where the feeder post Grade Pay is Rs.4200.

ii) With the feeder post grade pay of Rs.4200, where more than one promotional hierarchy is at Rs.4200 grade pay, the promotional posts shall be merged to one cadre with the grade pay Rs.4600. For example, the Section Officer, Level-II and Level-I in Heads of Department cadre shall be merged to one cadre of Section Officer with grade pay Rs.4600.

iii) The grade pay of the next promotional post now carrying the grade pay of Rs.4600 shall be enhanced to Rs.4800. There are services in which the posts carrying grade pay of Rs.4600 gets filled up partly by direct recruitment and partly by promotion from a post now carrying grade pay Rs.4200. If the grade pay of such feeder posts is enhanced to Rs.4600 the grade pay of such promotional posts shall be enhanced to Rs.4800.

Sl. No.	*Name of Department*	*Feeder post (Rs.9300 – 34800 + GP Rs.4200)*	*1st Promotional Post (Rs.9300-34800 + GP Rs. 4600)*	*2nd Promotional Post Rs.9300-34800 + GP Rs.4800)*
1	*2*	*3*	*4*	*5*

1	*Home*	*ASO (Sectt/ Governor's Sectt OLA/OHC*	*SO (Sectt/ Governor's Sectt OLA/OHC*	*Desk Officer*
		Senior Stenographer	*Personal Assistant*	*Private Secretary*
		Supdt. Level-II (Issue)	*Supdt. Level-I (Issue)*	—
		Asst. Jailor	*Jailor*	*Jail Superintendent*
2	*P.R.*	*PA/GPEO*	*ABDO/SDPO*	*DPO (Promotional)*
3	*W&CD*	*ICDS Supervisor*	*CDPO*	*DSDO (Promotional)*
		SEO/SA	*ADSWO*	*DSWO (Promotional)*
4	*S&ME*	*Assistant Teacher*	*Head Master (Cl-III)*	*Head Master (Cl-II)/DI (Promotional)*
5	*Transport*	*Sub-Inspector (Tr)*	*Inspector (Tr)*	—
6	*R&DM*	*R.I.*	*Revenue Supervisor*	*Jr. Consolidation Officer (Promotional)*
7	*ST&SC Devp.*	*WEO*	*ADWO*	*DWO (Promotional)*
8	*Finance*	*Audit (CCA) Audit (LFA)*	*Asst. Audit Officer/ Audit Superintendent*	*Audit Officer*
9	*Cooperation*	*Inspector of Coop. Soc.*	*SARCS*	*ARCS (Promotional)*
10	*HOD*	*Senior Assistant*	*SO, L-I & L-II both redesignated as Section Officer*	*Establishment Officer*

4. This resolution shall take effect from dt. 01.01.2013. The financial benefits shall be with prospective effect.

Order: Ordered that the Resolution be published in Extra-ordinary issue of the Odisha Gazette.

By order of the Governor
Sd/-
(U.N. Behera)
Addl. Chief Secretary to Government"

10.9. Thus, the Government of Odisha also admitted that different departments had different anomaly peculiar to the posts available in the respective department. Thus, for no fault of the employee, the legitimate dues could not be withheld by the Government.

11. In the case at hand, the petitioner having completed 30 years of service as on 13/14.06.2008 calculating from the date of entry into service in terms of ORSP Rules, 2008, she was eligible and entitled to get the 3rd RACPS with effect from 01.01.2013.

11.1. Perusal of copy of Service Book transpires that the petitioner joined in the promotional post of Senior Clerk on 23.12.2011. It, therefore, depicts that the petitioner has got promotion from Junior Clerk/Lower Division Clerk after 30 years of service and by then the grade pay was to be allowed as per the ORSP Rules, 2008 read with provisions of the RACPS promulgated thereunder. So, there could not have been any reduction of grade pay, to which the petitioner had already been entitled to.

11.2. The above view can find support from the following observation made in *State of Odisha Vrs. Bikash Ranjan Dash, 2021 SCC OnLine Ori 1839*:

> *"36. In the present case, the converse is true. What happened on 13th October 2009 was not really a promotion as is contended by the State. It was across the board and it was a re-fitment of the post of ACF as Group-A (Jr. Branch) with the promotion avenue to the post of DFO remaining intact. ACF was still the entry level grade. In order to remove the anomaly between the Forest Ranger being a Group B post, the post of ACF was re-designated as Group-A (Jr. Branch). This was en masse across the board. Therefore, there is merit in the contention of the Opposite Parties that this type of upgradation due to re-structuring is purely related to grant of financial benefit without involving any element of promotion. All the promotion avenues remained intact, i.e. the promotional avenue from Forest Ranger to ACF and ACF to DFO. This was, therefore, in terms of the law explained in Bharat Sanchar Nigam Limited Vrs. R. Santhakumari Velusamy, (2011) 9 SCC 510, a mere upgradation without any promotional benefit.*
>
> *34.* ***Upon carefully examining the Resolution dated 6th February, 2013, it is seen the above upgradation effected in 2009 as a result of restructuring of the cadre cannot be construed to be an upgradation which would deny the benefit of the RACPS which in any event was not in force at the relevant point in time.*** *For the same reason, the TBA granted earlier in 2005 cannot be considered to be as an upgradation which would deny the Opposite Parties the benefit of the RACPS.* ***In other words, merely because the employee had availed a TBA or ACP prior to 2013, he cannot be denied to the benefit of the RACPS. Unless a person has already got a promotion within time period of 10, 20 and 30 years in the manner indicated, he cannot be denied the RACPS benefit****."*

12. In the case of *Susanta Kumar Dash Vrs. State of Odisha, W.P.(C) No.18142 of 2020,* this Court *vide* Judgment rendered on 22.09.2023, made the following observation, while deciding the question whether an employee having got promotion to the higher rank with higher Grade Pay, can again be eligible to get RACPS:

> *"24. As it appears, under the Revised Assured Career Progression Scheme (RACPS), there shall be three financial up-gradations under the RACPS, counted from the direct entry grade on completion of 10, 20 and 30 years of service in a single cadre in absence of promotion.* ***An employee, if completed 10 years of service in the entry grade will be considered for 1st up-gradation under RACPS. An employee completing 20 years of service and has got only one upgradation either by promotion or by RACPS will be considered for the 2nd upgradation. Similarly, an employee completing 30 years of***

service and has got two upgradation either by RACPS or promotion or both will be considered for 3rd upgradation under RACPS. The financial upgradation under the RACPS would be admissible upto the highest Grade Pay of Rs.7600/- in the Pay Band PB-3 under ORSP Rules, 2008.

Therefore, it is made clear from the above provision that 'pay' means the amount drawn monthly by the Government servant on various heads, as mentioned in Rule 33 of the Odisha Service Code.

25. Rule 73 deals with time scale of pay adhering to the pay fixation formula. As mentioned therein, and under the Odisha Revised Scale of Pay Rules, 1998, though Assured Career Progression was granted and basing upon that the Revised Scale of Pay Rules, 2008 also extended such benefit w.e.f. 01.01.2008, ***subsequently RACPS was introduced by the State Government to give financial upgradation to its employees on completion of 10 years, 20 years and 30 years of service due to stagnation in the promotional benefits****.*

26. In Col. B.J. Akkara (Regd.) Vrs. Govt. of India, (2006) 11 SCC 709, the apex Court held that a "pay scale" has basically three elements. The first is the minimum pay or initial pay in the pay scale. The second is the periodical increment. The third is the maximum pay in the pay scale. An employee starts with the initial pay in the pay scale and gets periodical increases (increments) and reaches the maximum or ceiling in the pay scale. Each stage in the pay scale starting from the initial pay and ending with the ceiling in the pay scale, when applied to an employee is referred to as "basic pay" of the employee. Whenever the Government revises the pay scales, a fitment exercise takes place as per the principle of fitment (formula) provided in the rules governing the revision of pay so that the "basic pay" in the old scale is converted into a "basic pay" in the revised pay scale.

27. In Gurpal Tuli Vrs. State of Punjab, 1984 (Supp.) SCC 716 = AIR 1984 SC 1901, the apex Court held that to be entitled to draw a particular pay scale the employee must fulfil the eligibility conditions whether by way of qualification or otherwise.

28. In St. Stephen's College Vrs. University of Delhi, (1992) 1 SCC 558 = AIR 1992 SC 1630, the apex Court held that public services comprise different grades of employees. It is basically a hierarchical system. The pay scales are framed in a descending order viz., the highest scale is prescribed for the highest grade and thereafter followed by lower scales attached to the descending grades of service. This is consistent with Article 14 of the Constitution which mandates that unequals cannot be treated as equals.

29. In State Bank of India Vrs. K.P. Subbaifah, (2003) 11 SCC 646 = AIR 2003 SC 3016, the apex Court has observed that since public service comprise different grades, different pay scales are provided for different grades and as such the pay of an employee is fixed with reference to a pay scale.

30. In State of U.P. Vrs. J.P. Chaurasia, (1989) 1 SCC 121 = AIR 1989 SC 19, the apex Court held that the fixation of pay scales is essentially an executive function. The answer to the question whether an officer or a group of officers is entitled to a particular scale depends upon several factors. It requires evaluation of duties and responsibilities of posts and should be determined by expert bodies like the Pay Commission. The Pay Commission would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should normally accept it.

31. In Delhi Veterinary Association Vrs. Union of India, (1984) 3 SCC 1 = AIR 1984 SC 1221, the apex Court held that although it is primarily the function of the Pay

Commission to determine matters relating to pay structure and to apply such norms as are proper and relevant, certain "basic principles" are to be followed in fixing pay scales of various posts and cadres in the Government service. The apex Court considered the matter both from the point of view of the employees and the employer. As far as the employees are concerned, the apex Court observed as follows:

'The degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the task, hazard attendant on work and fatigue involved are, according to the Third Pay Commission, some of the relevant factors which should be taken into consideration in fixing pay scales. The method of recruitment, the level at which the initial recruitment is made in the hierarchy of service or cadre, minimum educational and technical qualifications prescribed for the post, the nature of dealings with the public, avenues of promotion available and horizontal and vertical relativity with other jobs in the same service or outside are also relevant factors.'

As far as the employers are concerned the apex Court ruled as follows:

'At the same time while fixing the pay scales, the paying capacity of the Government, the total financial burden which has to be borne by the general public, the disparity between the incomes of the Government employees and the incomes of those who are not in Government service and the net amount available for Government at the current taxation level, which appears to be very high when compared with other countries in the world, for developmental purposes after paying the salaries and allowances to the Government servants have also to be borne in mind. These are, however, not exhaustive of the various matters which should be considered while fixing the pay scales. There may be many others including geographical considerations.'

Then the apex Court referred to certain broad and general considerations which a Pay Commission ought to have in mind:
'In an egalitarian society based on planned economy it is imperative that there should be an evolution and implementation of a scientific national policy of incomes, wages and prices which would be applicable not merely to Government services but also to the other sectors of the national economy. As far as possible the needs of a family unit have to be borne in mind in fixing the wage scales. The 'needs' are not static. They include adequate nutrition, medical facilities, clothing, housing, education, cultural activities etc. Any provision made while fixing the pay scales for the development of a society of healthy and well educated children irrespective of the economic position of the parents is only an investment and not just an item of expenditure. In these days of galloping inflation, care should also be taken to see that what is fixed today as an adequate pay scale does not become inadequate within a short period by providing an automatic mechanism for the modification of the pay scale.'

32. In Secretary, Finance Department Vrs. West Bengal Registration Service Association, 1993 Supp. (1) SCC 153 = AIR 1992 SC 1203, the apex Court held that ordinarily a pay structure is evolved keeping in mind several factors e.g. (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational and technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capability to pay, etc. Several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc.

> *Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well."*

12.1. After discussing broad contours of RACPS, this Court in the said case of *Susanta Kumar Dash (supra)* came to hold as follows:

> *"38. Needless to say, since the petitioner has already availed the benefit of RACP and in fact the same has been extended to him w.e.f. 01.01.2013, even if the petitioner was promoted to the post of Duftary, no such further benefit can be granted to him because he has already reached the scale of pay admissible to the post of Duftary by way of RACP and, as such,* ***no double benefit can be available to the petitioner so far as the scale of pay is concerned****. **As the petitioner has already exercised his option to avail RACP benefit and the same has already been extended to him w.e.f. 01.01.2013, merely because subsequently he got promotion to the post of Duftary on 12.03.2014, in which he joined on 02.04.2014, he once again cannot be entitled to get promotional scale of pay in the post of Duftary, as he has already received such benefit w.e.f. 01.01.2013.*** *Thereby, the representation filed by the petitioner on 13.09.2017 has been rightly considered and rejected by the learned District Judge, Sonepur vide order impugned dated 27.01.2020."*

12.2. Taking cue from the above observations, the conspectus of case laws discussed above manifests that no double benefit can be availed under the Scheme. In the instant case, it is noteworthy to reiterate that it is not disputed that having got promoted to the post of Senior Clerk on 23.12.2011 from the post of Lower Division Clerk/Junior Clerk, the petitioner joined in the promotional post, but by then she had already been adjudged entitled to draw the pay scale attune with 3rd RAPCS under the Odisha Revised Scales of Pay Rules, 2008, with effect from 01.01.2013, having the date of entry into Government service, *i.e.,* 14.06.1978, as has been recorded in the Service Book, which fact remained undisputed by the opposite parties.

13. On the score of craving for direction to the opposite parties for extending the benefit of RACPS on completion of 30 years of service with respect to appropriate Grade Pay, it has been strenuously urged by the learned Advocate for the petitioner that as the contents of Paragraph 16 of Annexure-I of the RACPS under the ORSP, 2008, makes it unambiguous that if a regular promotion in due course is refused by the employee "before becoming entitled to a financial upgradation", then there shall be no financial upgradation under the RACPS, as the employee has not been stagnated due to lack of promotional opportunities. Said paragraph further clarifies that if, however, financial upgradation has been allowed due to stagnation and the employee refuses the subsequent promotion, it shall not be a ground to withdraw the financial upgradation and he shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the next financial upgradation shall also be deferred to the extent of period of debarment due to such refusal.

13.1. In this respect, if applied to the instant facts and circumstances, such eventuality does not arise in the instant case. It is revealed from record that the petitioner got the promotion to the post of Senior Clerk after 33 years of service. As

is transpired from admitted position, the entry of the petitioner into the Government service was on 14.06.1978 and he completed 10 years of service on 13.06.1988, 20 years of service on 13.06.1998 and 30 years of service on 13.06.2008. It is fact on record that he got promotion to the rank of Senior Clerk from Lower Division Clerk/ Junior Clerk on 23.12.2011, *i.e.,* after 30 years of service.

13.2. The petitioner has not been offered with promotion on the date of eligibility for the next upgradation, *i.e.,* 13.06.2008, but he was considered for promotion to the post of Senior Clerk in the year 2011, *i.e.,* after around 32-33 years of service, which is much after she was entitled to the financial upgradation in the year 2008.

13.3. The record does not depict and having not filed any response by objecting to any of the contents and the averments of the writ petition and facts found stated in the writ petition even though the Division Bench in the writ appeal while remitting the matter granted opportunity to the opposite parties to do so within period stipulated, it is deemed that the opposite parties do not have any objection to the claim(s) made by the petitioner in the writ petition.

13.4. It is appreciated from Paragraph 16 of Annexure-I of the RACPS under the ORSP Rules, 2008 that the condition stipulated therein is that no financial upgradation under RACPS is available to the Government employee "if a regular promotion in due course is refused by the employee before becoming entitled to a financial upgradation". The record does not demonstrate existence of such a fact.

13.5. Nevertheless, on 22.07.2025 when the instant matter was taken up for hearing, and after hearing the counsel for the petitioner, at the request of the learned Additional Standing Counsel an opportunity was granted to him to examine the similitude of factual details as reflected in *State of Odisha Vrs. Shiba Charan Bal, W.P.(C) No.28074 of 2019, vide Order dated 06.03.2020,* and legal perspective as discussed therein. In the said case, the observations and entitlement of the employee-applicant as decided by the learned Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.2328 (C) of 2017 [*Shiba Charan Bal Vrs. State of Odisha disposed of by Order dated 26.07.2018*] has been affirmed.

13.6. On the adjourned date, *i.e.,* 23.07.2025, the learned Additional Standing Counsel has conceded that the prayer(s) of the petitioner in the instant writ petition could not be denied on the anvil of such position as set at rest in *Shiba Charan Bal (supra).*

13.7. Since in identical situation bearing similar question of law discussed and decided in such decision of the learned Odisha Administrative Tribunal has been acceded to by a Division Bench of this Court in the writ petition filed at the behest of the State Government, there cannot be any deviation from application of the same to the present facts and circumstances.

13.8. For better comprehension, the Order dated 26.07.2018 passed in O.A. No.2328 (C) of 2017 is reproduced hereunder:

> *"Heard Mr. M.K. Khuntia, learned counsel for the applicant and Mr. H. K. Panigrahi, learned standing counsel.*
>
> *No counter has been filed but as the present case involves the question of law, hearing is taken up.*
>
> *Learned counsel for the applicant submitted that the issue involves in this case is squarely covered by the in judgment dated 23.06.2017 in O.A.No.1322 (C) and 1323 (C)/2016. The grievance of the applicant is that he was granted 3rd RACP vide Annexure-3 dated 08.10.2013 with grade pay of Rs. 4,200/- with effect from 01.01.2013. The applicant claiming the grade pay of Rs.4,600/-, approached the authority but the authority in turn vide impugned order at Annexure-5 dated 04.10.2016 held that the applicant's service will be counted from 01.05.1987 under another cadre (i.e. E.C. cadre) and therefore, on the date of retirement on 31.08.2103, he had not completed 30 years of service and therefore, he will not be entitled to 3rd RACP. Accordingly, he has approached this Tribunal.*
>
> *The averment of the applicant is that initially he was appointed as Junior Clerk on 15.05.1976 and posted at Rengali Multipurpose Project, Rengali and while he was continuing as such, was transferred to Eastern Circle Cuttack on 01.05.1987 and therefore, his service is to be counted from the initial date of appointment i.e. 15.05.1976. He had been granted TBA scale taking into consideration his initial date of joining, i.e. 15.05.1976.*
>
> *Law is well settled that the RACP is to be considered taking into consideration the initial date of appointment which has confirmed in the order dated 23.06.2017 in O.A.No.1322 (C) and 1323 (C)/2017. By that time, i.e. on 01.01.2013, the applicant has completed 30 years of service.*
>
> *Hence, the O.A. is allowed. The applicant is entitled to 3rd RACP benefits with effect from 01.01.2013 and accordingly, the 3rd RACP, as due and admissible, be given to him within a period of two months from the date of receipt of a copy of this order and as he has retired, the arrears be paid to him within a further period of two months from the date of receipt of a copy of this order."*

13.9. Being dissatisfied, the Government of Odisha challenged the said order before this Court by way of writ petition, giving rise to W.P.(C) No.28074 of 2019, which came to be dismissed by a Division Bench with the following observations *vide* Order dated 06.03.2020:

> *"Heard Mr. A. Pattnaik, learned Addl. Government Advocate for the petitioners and Ms B. Pattnaik, learned counsel for opposite party.*
>
> *The State of Odisha and its functionaries have filed this writ petition challenging the order dated 26.07.2018 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.2328 (C) of 2017, by which the learned tribunal allowed the original application filed by the applicant-opposite party and held that the applicant is entitled to 3rd RACP benefits with effect from 01.01.2013 on completion of 30 years of service as junior clerk.*
>
> *Mr. A. Pattnaik, learned Addl. Government Advocate for the petitioners contended that as per the Revised Assured Career Progression Scheme (RACPS) three financial up-gradations counted from the direct entry grade on completion of 10, 20 and 30 years of service in a single cadre in absence of promotion. The opposite*

party-applicant having joined as Lower Division Clerk in major irrigation project and having got two separate cadres, he is not entitled to such benefits as granted by the Tribunal. Thereby, the order so passed by the Tribunal cannot sustain in the eye of law.

Ms. B. Pattnaik, learned counsel for opposite party contended that the opposite party-applicant joined as Lower Division Clerk on 15.05.1978 under the major irrigation project and continued up to 31.08.2011 when he got promotion to the post of senior clerk. But in the meantime the opposite party is continuing in one cadre as Lower Division Clerk for more than 30 years. Therefore, he is entitled to get 3rd RACP and though the claim of the applicant was rejected by the authority, the learned Tribunal allowed the same vide order dated 26.07.2018. It is contended that whether the applicant continued in a single cadre or not, that question has not been raised by State Counsel before the learned Tribunal nor filed any counter affidavit and, as such, for the first time such contention raised before this Court cannot sustain.

Considering the contention raised by learned counsel for the parties and after going through the records, it appears that as per the decision taken by the authority to grant RACP, there shall be three financial up-gradations under the said scheme, counted from the direct entry grade on completion of 10 20 and 30 years in a single cadre in absence of promotion. Admittedly, the petitioner joined as Lower Division Clerk on 15.05.1978 and he has already completed 30 years of service in the said post by 15.05.2008 and due to stagnation of promotional avenues, the benefit of RACP has to be extended to the petitioner on completion of 10, 20 and 30 years of service. Subsequently, he got promotion to the post of Senior Clerk on 31.08.2011. Thereby, if the petitioner already completed 30 years of service in one post, i.e., Lower Division Clerk, may be he has discharged his duty in major irrigation project or minor irrigation project, it cannot be said that he has got two different cadres. As such, nothing has been indicated whether the post of Lower Division Clerk in major irrigation project and minor irrigation project are different posts and different cadres. In absence of any materials before this Court, to that effect, this Court is of the considered view since the applicant-opposite party has already completed 30 years of service, he is entitled to get the benefit of RACP, which has been granted by the Tribunal. Furthermore, in absence of contention before the Tribunal with regard to the post held by the applicant-opposite party that the same is not a single cadre, the same cannot be raised before this Court at this stage.

In such view of the matter, this Court is not inclined to entertain this writ petition. Accordingly, the same is dismissed."

13.10. The piquant situation which arose on account of "single cadre" or otherwise, though commented upon by this Court in the above observation, such ambiguity has been removed by way of implementation of the Finance Department Resolution dated 13.02.2025, with retrospective effect from 01.01.2013.

13.11. In the present case, it is patent on record that the promotion to the rank of "Senior Clerk" was not accorded before the year 2008, when the petitioner completed 30 years of service as on 13/14.06.2008. The petitioner, therefore, deserves to be extended similar benefit as is given to *Shiba Charan Bal (supra)* by

the competent authority as he is entitled to "financial upgradations" as per the RACPS under the ORSP Rules, 2008.

CONCLUSION & DECISION:

14. Given the position of law propounded by the Hon'ble Supreme Court of India and clarified in the decisions rendered by this Court referred to *supra*, more particularly the benefit as claimed in the prayer(s) of the instant writ petition being akin to the case of *Shiba Charan Bal (supra),* in the light of the discussions made above and in view of reasons assigned, taking into consideration the documents forming part of the pleadings, this Court finds that the case of the petitioner has not been considered in right perspective by the authorities/opposite parties. Therefore, this Court has no other option than to accede to the prayers of the petitioner. Accordingly this Court does so.

15. It is, thus, necessary to issue following directions:

i. The petitioner being found entitled to benefit in terms of the Revised Assured Career Progression Scheme promulgated under the Odisha Revised Scales of Pay Rules, 2008, the opposite parties are directed to consider the representation at Annexure-6 and grant the benefit as prayed for by the petitioner in present writ petition taking into account that identical benefits have been extended to similarly situated employee, *viz., Shiba Charan Bal (supra).*

ii. The aforesaid exercise is directed to be completed within a period of two months from today.

16. In fine, the Writ Petition stands disposed of along with all pending interlocutory applications, if any, in terms of observations and directions as above, but in the circumstances without any order as to costs.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ Petition disposed of.

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2025 (III) ILR-CUT-692

LIPIKA NAYAK
V.
AJITAV NAYAK

[W.P.(C) NO. 17056 OF 2023]

01 SEPTEMBER 2025

[SANJAY KUMAR MISHRA, J.]

Issue for Consideration

Whether a matrimonial proceeding can be dismissed on the ground of non-compliance of interlocutory order of maintenance.

Headnotes

HINDU MARRIAGE ACT, 1955 – Section 24 – Pendente lite maintenance – The present petitioner is the wife/respondent in C.P. No.04/2020-46/2018 – The petitioner-wife moved an application on dated 06/03/2018 with a prayer to file written statement after receiving the litigation expenses and maintenance – The learned Court below allowed the said prayer – The petitioner-wife on 21.03.2023 filed an application for dismissal of C.P on the ground of non-compliance of order of maintenance passed on dated 28.10.2022 – The learned Court below rejected the petition and posted the matter to 04.05.2023 for filing of written statement by the petitioner-wife – The petitioner challenges the said rejection order in the present writ petition – Whether a matrimonial proceeding can be dismissed on the ground of non-compliance of interlocutory order of maintenance?

Held: No – From the discussions made above, so also the settled position of law, it is amply clear that there is no such provision under the C.P.C, 1908 or Hindu Marriage Act, 1955 or Family Courts Act, 1984 for dismissal of a matrimonial proceeding for non-compliance of interim order of maintenance passed under Section 24 of the 1955 Act – Hence, this Court is of the view that a matrimonial proceeding cannot be dismissed for non-compliance of interlocutory order of maintenance passed by the concerned Court – The appropriate remedy would be to initiate an execution proceeding under Section 28-A of the Hindu Marriage Act, 1955, read with Section 18 of the Family Courts Act, 1984 and Order 21 Rule 94 of CPC before the concerned Court, so also to file petition to strike off the pleadings of the party, in case of non-payment of maintenance in accordance with the interim order passed.

(Para 18)

Citations Reference

Gouri Das Vs. Pradyumna Kumar Das), **1986 (II) OLR 44;** Mohinder Verma v. Sapna, **2014 SCC OnLine P&H 25147;** Rajnesh v. Neha, **(2021) 2 SCC 324 – referred to.**

List of Acts

Hindu Marriage Act, 1955; Family Court Act, 1984; Code of Civil Procedure, 1908;

Keywords

Interim maintenance; Dismissal of Civil proceeding on the ground of non-compliance of order of maintenance; Execution Proceeding; Striking off Pleading; Non-payment of maintenance; Overlapping jurisdictions; Enforcement mechanism

Case Arising From

Challenging the order dated 21.04.2023 passed in C.P. 04/20-46/18 pending in the Court of learned Judge, Family Court, Nayagarh.

Appearances for Parties

For Petitioner : Mr. A. Tripathy

For Opp. Party : Mr. S.P. Dash

Judgment/Order

Judgment

SANJAY KUMAR MISHRA, J.

1. The present Writ Petition has been preferred by the Petitioner-wife, who is the Respondent in C.P. No.04/46 of 2020/2018, which is now pending in the Court of learned Judge, Family Court, Nayagarh. A prayer has been made by the Petitioner-wife to set aside the order dated 21.04.2023 passed by the learned Court below in the aforesaid C.P. and allow the Petitioner to file her Written Statement only after getting the maintenance and litigation expenses in terms of the order dated 28.10.2022 passed in I.A. No.01/2020-22/2018, arising out of C.P. No.04/46 of 2020/2018.

2. Being noticed, though the Opposite Party-husband has appeared in this case, no Counter Affidavit has been filed till date opposing to such prayer made in the Writ Petition. However, on consent of the learned Counsel for the parties, the matter is taken up for hearing and disposal at the stage of admission based on the materials available on record.

3. Heard Mr. Tripathy, learned Counsel for the Petitioner-wife so also Mr. Dash, learned Counsel for the Opposite Party-husband.

4. Mr. Tripathy, learned Counsel for the Petitioner, drawing attention of this Court to order dated 27.12.2022 passed in C.P. No.04/2020-46/18 as at Annexure-4, submitted that the Petitioner-wife moved an application on 06.03.2018 in the said case with a prayer to allow her to file Written Statement after receiving the litigation expenses and maintenance. Though, vide order dated 27.12.2022, the learned Court below allowed the said prayer, but, vide subsequent order dated 21.04.2023, rejected the petition dated 21.03.2023 filed by the Petitioner-Respondent, which was moved before the Court below for dismissal of C.P. No.04/20-46/18 on the ground of non-

compliance of order of maintenance passed by it dated. 28.10.2022 and the matter stood posted to 04.05.2023 for filing of Written Statement by the Petitioner-Respondent.

4.1 Mr. Tripathy further submitted that, the learned Court below ought to have allowed the Petition dated 21.03.2023 for dismissal of proceeding in C.P. No.04/20-46/18 for non-compliance of its own order, instead of directing the Petitioner-Respondent to file her Written Statement, which is contrary to its own order dated. 27.12.2022.

4.2 Mr. Tripathy submitted that, in view of the judgment of this Court in (***Gouri Das Vs. Pradyumna Kumar Das***), reported in 1986 (II) OLR 44, the Petitioner-Respondent should not have been compelled to file her Written Statement without ensuring compliance of order dated 28.10.2022 passed in I.A. No.01/2020-22/2018 so also contrary to the Order dated 27.12.2022, vide which the prayer of the Petitioner-Respondent was allowed.

5. Per contra, Mr. Dash, learned Counsel for the Opposite Party-husband submitted that, though vide petition dated 06.03.2018, a prayer was made by the Petitioner-Respondent before the Court below to allow her to file Written Statement after receiving litigation expenses and maintenance, but vide order dated 27.12.2022, the learned Court below allowed her prayer only to the effect of filing her written statement, as is evident from the said order dated 27.12.2022, as at Annexure-4 of the Writ Petition.

5.1 Mr. Dash further submitted that, misinterpreting the said order dated 27.12.2022, the Petitioner-Respondent is avoiding to file Written Statement in C.P. No.04/20-46/18. The learned Court below was justified to pass the impugned order dated 21.04.2023 rejecting the petition of the Petitioner-Respondent dated 21.03.2023.

5.2 He further submitted that there is no such provision under law for dismissal of matrimonial proceeding for non-compliance of interim maintenance order passed by the concerned Court. Hence, there being no infirmity in the impugned order, the writ petition deserves to be dismissed.

6. In view of the submissions made by learned Counsel for the parties, it would be apt to reproduce below the order dated 27.12.2022 passed in C.P. No.04/20-46/18 for proper adjudication of the present *lis*.

> *"**C.P. 04/2020 of 46/18***
>
> *27.12.2022*
>
> *This suit is posted today for orders on a petition dtd. 6.3.2018 filed by the learned advocate for the respondent **with a prayer to allow the respondent to file written statement after receiving the litigation expenses and maintenance**.*
>
> *Heard the learned advocate for the petitioner and the learned advocate for the respondent.*

> *On perusing the suit record I find that this suit was instituted before the Judge, Family Court, Balasore on the order of the Hon'ble Court passed in TRP (Civil) in 51 of 2018 dtd. 14.11.2019 the proceeding was transferred to this court and* ***after transfer of the proceeding the interim application no.01/2020-22/2018 disposed of on contest on 28.10.2022****. The respondent after the transfer of this proceeding has appeared in the suit and now praying for filing the written statement in the suit. The order sheet shows that the respondent was granted time to file her written statement. The respondent in her application for interim maintenance u/s 24 of the H.M. Act has clearly stated her stand on the entire suit of the plaintiff/petitioner. Considering the above circumstances and the fact that the suit was not taken up for hearing due to covid, I think there is no fault of this present respondent and this is a divorce suit and both the parties well educated and well placed,* ***in the circumstances the prayer is allowed and the respondent to file her written statement in the circumstances no order as to cost. Put up on 10.01.2023 for filing written statement.****" **(Emphasis Supplied)***

7. Admittedly, prior to the aforesaid order, vide order dated 28.10.2022, the learned Court below passed an order directing the present Opposite Party-husband, who is the Petitioner in C.P. No.04/2020-46/2018, to pay interim maintenance so also litigation expenses to the Petitioner (Respondent in C.P. No.04/2020-46/2018). The Operative portion of the said order, being relevant, is extracted below:

> *"**ORDER***
>
> *Husband Ajitava Nayak is directed to pay Rs.5,000/- (Rupees seven thousand) per month as interim maintenance to the wife Lipika Nayak, Rs.2000/- (rupees three thousand) per month to the daughter towards her education by 10th of each succeeding month till disposal of original suit. Rs.10,000/-(Rupees ten thousand) towards litigation expenses be paid by the OP to the petitioner within one month of passing of the order. The arrear maintenance from 06.03.2018 till date be paid within 54 months from the date of this order in fifty four equal installment. Petitioner-wife is at liberty to recover the arrear as well as current interim maintenance through process of the Court in case husband Ajitava failed his obligation imposed by this order."*

8. Because of non-compliance of the said order, the Petitioner-wife moved an application before the learned Court below on 21.03.2023 for dismissal of C.P. No.04/2020-46/2018 on the ground of non-compliance of the said order. But, the learned Court below rejected the said petition directing the Petitioner to file her Written Statement on 04.05.2023, which is allegedly contrary to its own Order dated 27.12.2022, vide which the Petitioner was permitted to file her Written Statement after receiving the litigation expenses and maintenance.

9. On being asked during hearing, as to whether the Opposite Party-husband challenged the said Order dated 28.10.2022 passed in I.A. No.01/2020-22/2018 (arising out of C.P. No.04/2020-46/2018) as at Annexure-3, Mr. Dash, learned Counsel for the Opposite Party-husband fairly submitted that his client preferred W.P.(C) No.32693 of 2022 challenging the said order before this Court. However, on 05.05.2023, the Writ Petition stood disposed of at the stage of admission without interfering with the order impugned in the said Writ Petition, with an observation that the Petitioner is at liberty to move an application for early disposal of C.P. No.4/2020-46/2018. Learned Counsel for the Opposite Party-husband also filed the

certified copy of the said order dated 05.05.2023 passed in W.P.(C) No.32693 of 2022 in the Court, which is reproduced below for ready reference.

*"**ORDER***
05.05.2023

1. This matter is taken up through hybrid mode.

2. The Petitioner in this writ petition prays for setting aside the order dated 28th October, 2022 (Annexure-3) passed by learned Judge, Family Court, Nayagarh in I.A. No.1 of 2020-22 of 2018 (arising out of C.P. No. 4 of 2020-46 of 2018), whereby allowing an application under Section 24 of Hindu Marriage Act, 1955, he has been directed to pay pendente lite maintenance of Rs.5,000/- per month to the Opposite Party and Rs.2,000/- per month to his minor daughter for her education along with litigation expenses of Rs.10,000/-.

*3. **In course of hearing, Mr. Dash, learned counsel for the Petitioner submits that interest of justice will be best served, if a direction is made to learned Judge, Family Court Nayagarh for early disposal of C.P. No. 4 of 2020-46 of 2018**.*

*4. In view of such submission, this Court **without interfering with the impugned order under Annexure-3**, disposes of the writ petition with an observation that the petitioner is at liberty to move an application for early disposal of C.P. No. 4 of 2020-46 of 2018, if the matter is otherwise ready for hearing. In that event, learned Judge, Family Court, Nayagarh shall do well to consider the said application and proceed with the matter accordingly.*

Urgent certified copy of this order be granted on proper application."

(Emphasis Supplied)

10. From the discussions made above, the following Issues emerge to be dealt in the present lis:

i) Whether, vide Order dated 27.12.2022, the learned Court below allowed the Petitioner-Respondent to file her Written Statement in C.P. No.04/2020-46/2018, only after compliance of its order dated 28.10.2022 regarding payment of litigation expenses and maintenance?

ii) Is there any provision under the law to permit so?

iii) Whether the learned Court below was justified to pass the impugned order dated 21.04.2023, vide which the Petitioner's application for dismissing C.P. No.04/2020-46/2018 on the ground of non-compliance of Order dated 28.10.2022 stood rejected and she was directed to file Written Statement ?

iv) Whether a matrimonial proceeding can be dismissed for non-compliance of interlocutory order of maintenance passed by the concerned Court ?

So far as issues No-(i) to (iii)**,** being interlinked, are taken up together for the sake of brevity.

11. Admittedly, prior to order dated 27.12.2022, the learned Court below, vide order dated 28.10.2022, directed the Opposite Party-husband to pay interim maintenance to the Petitioner-wife so also her minor daughter towards her education, as has been extracted above. The said Order, being challenged in W.P.(C) No.32693 of 2022, has attained finality.

12. As is revealed from the Order dated 27.12.2022 passed in C.P. No.04/20-46/18, admittedly, the Petitioner-Respondent filed an application to allow her to file the Written Statement after receiving litigation expenses and maintenance in terms of order dated 28.10.2022 passed in I.A. No.01/2020-22/2018. The learned Court below, though mentioned about such prayer made in the petition in the first para of the said order dated 27.12.2022, in the ordering portion, it was simply mentioned that "Put up on 10.01.2023 for filing of written statement." The said order does not reflect that the prayer made by the Petitioner in her petition dated 06.03.2018 was allowed in toto. However, because of such ambiguity in the Order dated 27.12.2022, as extracted above, the Petitioner-Respondent was under a bona fide impression that she had been allowed to file her Written Statement by the learned Court below only after payment of litigation expenses and maintenance in terms of the Order dated 28.10.2022, for which she did not file her Written Statement. Rather, she chose to file an application on 21.03.2023 for dismissal of C.P. No.04/20-46/18 on the ground of non-compliance of order dated 28.10.2022. Though the learned Court below rejected the said Petition, but still allowed the Petitioner-Respondent to file the Written Statement.

13. There is no such provision under the law permitting the wife to file Written Statement in a matrimonial proceeding only after receiving maintenance and litigation expenses. Rather, in ***Gouri Das*** (supra), relied upon by the learned Counsel for the Petitioner, this Court, relying on the Judgments of various High Courts, held as follows:

> *"**7.** The learned counsel for the opposite party has relied on AIR 1981 Jammu & Kashmir 5 Purna Chand v. Mst. Kamala Devi and contended that the proceeding for the purpose of Section 24 of the Act commences with the settlement of issues. The aforesaid decision has, however, been overruled by the Full Bench of the same Court in AIR 1982 Jammu & Kashmir 98 Amrit Lal Nohru v. Usha Nehru Kotwal, J. speaking for the Full Bench observed that there was no warrant for the proposition that proceeding in a suit commences only from the stage contemplated by Order 13. The stage of first hearing is one of the various stages in the proceeding which starts as soon as the plaint is filed in Court. The term 'during' in Section 24(1) implies the period intervening the commencement and termination of the main proceeding. The matter can be viewed from another angle. The object of Section 24 is twofold-Firstly, to prevent vagrancy resulting from strained relations between the husband and the wife, **and secondly, to ensure that the indigent litigating spouse is not handicapped in defending or prosecuting the case due to want of money. See Amrit Lal's case. In AIR 1962 Cal. 88 Smt. Anita Karmokar v. Birendra Chandra Karmakar, it was held that if the amount directed to be paid towards pendente lite maintenance and litigation expense is not paid, further proceedings should be stayed so that the case of the indigent spouse is not hampered. In AIR 1968 Cal. 68 Smt. Latika Ghosh v. Nirmal Kumar Ghosh, it was held that the wife could not be compelled to file her written statement before her prayer for maintenance and expenses was considered. She could insist that her application Under Section 24 should first be decided before she was called upon to file her written statement. Similar view was taken in AIR 1981 All. 178 Smt. Anjula v. Milan Kumar**. The Courts, therefore, have insisted that whenever an application Under Section 24 of the Act is made, the same must be disposed of before*

any further steps are taken in the main proceeding. ***Therefore, whenever an order is passed directing payment of pendente lite maintenance and litigation expense, the Courts should in exercise of their inherent power stay further proceedings of the main proceeding till the order passed by it granting pendente lite maintenance and litigation expense is complied with by the other side****.*

I am, therefore, of the view that the expressions 'during the proceeding' in Section 24 should not be construed as to mean the stage of settlement of issues."

(Emphasis Supplied)

14. Admittedly, an Order has already been passed since 28.10.2022 for payment of maintenance as well as litigation expenses, vide which I.A. No.01/2020-22/2018 filed by the Petitioner-Respondent stood allowed and disposed of. After disposal of I.A. No.01/2020-22/2018, instead of taking necessary steps for execution of the said order in accordance with law and filing Written Statement, the Petitioner-wife filed petition on 21.03.2023 for dismissal of C.P. No.04/20-46/18. Thereafter, such petition being rejected, she has preferred the present Writ Petition with a prayer to set aside the said order dated 21.04.2023 and allow her to file the Written Statement only after getting the maintenance and litigation expenses. Further proceeding in C.P. No.04/20-46/18, being stayed at the instance of the Petitioner, the civil proceeding is pending before the learned Court below for about last 7 years, awaiting filing of Written Statement. From the discussions made above, this Court is of the view that, in absence of any legal provision so also clear and unambiguous order to the said effect, thereby permitting the Petitioner-Respondent to file her Written Statement after execution of Order dated 28.10.2022 passed in I.A. No.01/2020-22/2018, the Petitioner -Respondent was not justified to delay the filing of WS on such plea. The learned Court below was justified to pass the impugned order dated 21.04.2023. Issue Nos. i) to iii) are answered accordingly against the Petitioner.

15. So far as issue No.(iv)***,*** the Punjab and Haryana High Court **in *Mohinder Verma* v. *Sapna,*** reported in 2014 SCC OnLine P&H 25147, held as follows:

"8. Section 24 of the Act empowers the matrimonial court to award maintenance pendente lite and also litigation expenses to a needy and indigent spouse so that the proceedings can be conducted without any hardship on his or her part. The proceedings under this section are summary in nature and confer a substantial right on the applicant during the pendency of the proceedings. Where this amount is not paid to the applicant, then the very object and purpose of this provision stands defeated. No doubt, remedy of execution of decree or order passed by the matrimonial court is available under Section 28-A of the Act, but the same would not be a bar to striking off the defence of the spouse who violates the interim order of maintenance and litigation expenses passed by the said court. *In other words, the striking off the defence of the spouse not honouring the court's interim order is the instant relief to the needy one instead of waiting endlessly till its execution under Section 28-A of the Act. Where the spouse who is to pay maintenance fails to discharge the liability, the other spouse cannot be forced to adopt time consuming execution proceedings for realising the amount.* ***Court cannot be a mute spectator watching flagrant disobedience of the interim orders passed by it showing its helplessness in its instant implementation. It***

> ***would, thus, be appropriate even in the absence of any specific provision to that effect in the Act, to strike off the defence of the erring spouse in exercise of its inherent power under Section 151 of the Code of Civil Procedure read with Section 21 of the Act rather than to leave the aggrieved party to seek its enforcement through execution as execution is a long and arduous procedure.*** *Needless to say, the remedy under Section 28-A of the Act regarding execution of decree or interim order does not stand obliterated or extinguished by striking off the defence of the defaulting spouse. Thus, where the spouse who is directed to pay the maintenance and litigation expenses, the legal consequences for its non-payment are that the defence of the said spouse is liable to be struck off."* ***(Emphasis Supplied)***

16. The above-stated principles were subsequently affirmed by the Supreme Court in ***Rajnesh v. Neha*** reported in (2021) 2 SCC 324, which comprehensively addressed various facets of maintenance law, including interim maintenance, overlapping jurisdictions, disclosure obligations, criteria for determining quantum, and enforcement mechanisms. The Supreme Court categorically upheld the views taken by the Punjab & Haryana High Court in ***Mohinder Verma*** (supra) as laying down the correct position of law.

17. Regarding the enforcement of orders granting maintenance, in ***Rajnesh v. Neha*** (supra), the Supreme Court held as follows:

> *"**114.** Enforcement of the order of maintenance is the most challenging issue, which is encountered by the applicants. If maintenance is not paid in a timely manner, it defeats the very object of the social welfare legislation. Execution petitions usually remain pending for months, if not years, which completely nullifies the object of the law. The Bombay High Court in Sushila Viresh Chhadva v. Viresh Nagshi Chhadva [Sushila Viresh Chhadva v.Viresh Nagshi Chhadva, 1995 SCC OnLine Bom 315 : AIR 1996 Bom 94] held that : (SCC OnLine Bom para 7)*
>
> *"7. ...The direction of interim alimony and expenses of litigation under Section 24 is one of urgency and it must be decided as soon as it is raised and ... the law takes care that nobody is disabled from prosecuting or defending the matrimonial case by starvation or lack of funds."*
>
> ***"115.** An application for execution of an order of maintenance can be filed under the following provisions:*
>
> ***"(a) Section 28-A of the Hindu Marriage Act, 1955 read with Section 18 of the Family Courts Act, 1984 and Order 21 Rule 94 CPC for executing an order passed under Section 24 of the Hindu Marriage Act (before the Family Court);***
>
> *(b) Section 20(6) of the DV Act (before the Judicial Magistrate); and*
>
> *(c) Section 128 CrPC before the Magistrate's Court."*
>
> ***116.** Section 18 of the Family Courts Act, 1984 provides that orders passed by the Family Court shall be executable in accordance with the CPC/CrPC.*
>
> ***117.** Section 125(3) CrPC provides that if the party against whom the order of maintenance is passed fails to comply with the order of maintenance, the same shall be recovered in the manner as provided for fines, and the Magistrate may award sentence of imprisonment for a term which may extend to one month, or until payment, whichever is earlier.*

118. Some Family Courts have passed orders for striking off the defence of the respondent in case of non-payment of maintenance, so as to facilitate speedy disposal of the maintenance petition. In Kaushalya v. MukeshJain [Kaushalya v. Mukesh Jain, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915] , the Supreme Court allowed a Family Court to strike off the defence of the respondent, in case of non-payment of maintenance in accordance with the interim order passed.

132. *For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of the Hindu Marriage Act, 1955; Section 20(6) of the DV Act; and Section 128 of CrPC, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21."*

(Emphasis Supplied)

18. From the discussions made above, so also the settled position of law, it is amply clear that there is no such provision under the C.P.C, 1908 or Hindu Marriage Act, 1955 or Family Courts Act, 1984 for dismissal of a matrimonial proceeding for non-compliance of interim order of maintenance passed under Section 24 of the Act, 1955. Hence, this Court is of the view that a matrimonial proceeding cannot be dismissed for non-compliance of interlocutory order of maintenance passed by the concerned Court. The appropriate remedy would be to initiate an execution proceeding under Section 28-A of the Hindu Marriage Act, 1955, read with Section 18 of the Family Courts Act, 1984 and Order 21 Rule 94 of CPC before the concerned Court, so also to file petition to strike off the pleadings of the party, in case of non-payment of maintenance in accordance with the interim order passed. Issue No.(iv) is answered accordingly.

19. However, in view of the peculiar facts and circumstances, as detailed above, so also settled position of law, the Writ Petition stands disposed of giving liberty to the Petitioner-wife, who is the Respondent in C.P. No.04/2020, to initiate an execution proceeding for compliance of Order dated 28.10.2022 passed in I.A. No.01/2020-22/2018, so also to move an application to strike off the pleadings in C.P. No.04/2020, if so advised. It is made clear that, if such applications are moved, the learned Judge, Family Court, Nayagarh shall deal with and dispose of the said applications first before proceeding further on merit in C.P. No.04/2020-46/2018). As the C.P. is of the year 2018, which was renumbered as C.P. 04/2020, being transferred from the Court of learned Judge, Family Court, Balasore to the Court of learned Judge, Family Court, Nayagarh, it is made clear that the Petitioner-wife is to file her Written Statement in C.P. 04/2020, if she intends to do so, at the earliest preferably, within a period of four weeks hence. No order as to costs.

20. Interim order dated 26.06.2023 passed in I.A. No.7728 of 2023 stands vacated.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ Petition disposed of.

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2025 (III) ILR-CUT-701

AJAY KUMAR BHRAMAR BAR RAY
V.
UNION OF INDIA & ORS.

[W.P.(C) NO. 105 OF 2022]

12 SEPTEMBER 2025

[SANJAY KUMAR MISHRA, J.]

Issue for Consideration

Whether Writ petition is maintainable without approaching the Employees Insurance Court U/s. 75 of the ESI Act.

Headnotes

EMPLOYEES STATE INSURANCE ACT, 1948 – Section 81, 85(B) r/w E.S.I. General Regulation, 1950 – Regulation 31(C) r/w OEIC Rule, 1951 – Opp. Party No. 2 issued letter U/R 31(C) r/w Section 85-B of the E.S.I. Act seeking recovery of damage to the tune of Rs. 3,83,999/- and calling upon to show cause as to why maximum damages should not be imposed – Petitioner prayed to waive the damages imposed on it for delay payment of E.S.I. contribution due to non-availability of E.S.I. medical facilities, but the prayer was rejected by the Authority – Whether Writ petition is maintainable without approaching the Employees Insurance Court U/s. 75 of the Act.

Held: Yes – Admittedly, one of the controversies in the present lis is, in view of the provisions enshrined under Regulation 31(C) of the Regulation, 1950 to impose damages, whether the provisions under Section 85-B of the ESI Act, 1948, concerning imposition of damages, are mandatory or directory, which is a pure question of law – The said issue has already been decided by the Supreme Court in HMT Limited (supra), as detailed above – That apart, Section 81 of the E.S.I. Act permits an Employees' Insurance Court to submit any question of law for the decision of the High Court.

Furthermore, the second prayer made in the writ petition is regarding facilitation of medical facilities in a nearby area for the convenience of the beneficiaries/ insured persons. Hence, this Court is of the view that the Employees' Insurance Court may not be competent to issue directions to the ESI Authorities to do so in a proceeding U/s. 75 of the E.S.I. Act like a Writ Court. In view of the above reasons, this Court is inclined to hold that the writ petition is maintainable. (Para 24)

Citations Reference

Employees' State Insurance Corporation versus HMT Limited and Another**, (2008) 3 SCC 35;** A.K. Industries Vrs. Employees Insurance Corporation, Faridabad & others**, 2011(131) FLR-894 of the Punjab & Haryana High Court;** M/s Samrat Industries Vrs. Regional Director, Employees State Insurance Corporation**, 1994(II) OLR-328 – referred to.**

List of Acts

Employees State Insurance Act, 1948; E.S.I. General Regulation, 1950; Orissa Employees Insurance Court Rules, 1951.

Keywords

Employee insurance; Payment; Liability of Employer; Delay in contribution; Imposition of damages; Recovery; Waive; Show cause; Insurance Court; Maintainability of Writ; May recover; Shall; Mandatory or directory.

Case Arising From

Order dated 20.12.2021 passed by Deputy Director, ESI Corporation, Bhubaneswar.

Appearances for Parties

For Petitioner : Mr. S.K. Parida

For Opp.Parties : Mr. M.K. Pradhan, Sr. Panel Counsel (O.P. No.1)
Mr. B. Dash (For the Corporation)

Judgment/Order

Judgment

S.K. MISHRA, J.

This Writ Petition has been preferred by the Petitioner to quash order dated 20.12.2021 (Annexure 12) vide which the Deputy Director, E.S.I. Corporation, Bhubaneswar (Opposite Party No.4) rejected the prayer of the Petitioner to waive the damages imposed on it for delayed payment of E.S.I. Contribution. Also a prayer has been made to direct the Opposite Parties to provide effective medical facilities to the employees of the Petitioner's Establishment in nearby areas of Gumadera, for which they are contributing under the Employees' State Insurance Act 1948, shortly, "the E.S.I Act".

2. The factual backdrop of the case is that the Petitioner is the Proprietor of M/s Ajay Construction, situated At- Gumadera, Po/Ps – Belpahar in the District of Jharsuguda. The E.S.I Act has been duly enforced in various districts across Odisha, including Jharsuguda District, vide Gazette Notification dated 30.05.2016. The Petitioner registered his Establishment under the E.S.I. Act in March, 2017. However, due to non-availability of any medical facilities in the nearby areas, the Petitioner couldn't deduct employees' contributions due to resistance of the workers.

Accordingly, he made a representation on 18.10.2018 requesting the Opposite Party No.2 to provide medical infrastructure in or around Belpahar, so that contributions could be regularised.

2.1. In response to such communication, the Opposite Party No.2 issued a letter on 30.11.2018, stating therein that the E.S.I Act had come into force in the Belpahar area w.e.f 01.06.2016 and steps were being taken to extend the benefits in the newly implemented areas. However, the reply remained silent on the grievance regarding absence of medical facilities in the nearby areas, and no effective action was taken in the said regard.

2.2. The Petitioner then responded on 28.01.2019, reiterating that the nearest medical facility provided by the Corporation is around 22 KMs away, making it infeasible for the workers to access the medical facilities. Despite such difficulty, the Petitioner voluntarily began contributing under the E.S.I Act from December, 2018. A request was made vide the said communication to the authorities not to take any penal action for the previous non-contributed period from March, 2017 to November, 2018, citing the reason of employees' protest and practical difficulties.

2.3. The Petitioner, on multiple occasions, requested the Opposite Parties-E.S.I.C. to ensure the availability of medical facilities for the employees of his Establishment in nearby area, considering the fact that regular contributions are being made under the E.S.I Scheme. However, despite such contributions, no E.S.I Hospital, Dispensary or empanelled private medical facilities were made available to its employees, thereby depriving them from the statutory benefits. Subsequently, on 01.09.2021, the Opposite Party – E.S.I.C issued a demand notice requiring payment of Rs.4,55,844/- towards employer and employees' contributions for the period from March, 2017 to January, 2020, citing provisions under Sections 39 & 40 of the ESI Act, 1948, r/w Regulations 29,31 & 33 of the ESI (General) Regulations, 1950, shortly, the Regulation, 1950. In compliance with the above letter, the Petitioner deposited the full amount of Rs. 4,55,844/- under protest on 20.09.2021. However, the Opposite Party No.2, through letter dated 19.10.2021, demanded payment of interest towards delayed payment of contribution of Rs.1,86,279/- U/s 39(5) of the E.S.I Act, r/w Regulation-31-A of the Regulation, 1950 and threatened to recover the same as arrears of land revenue under Sections 45-C to 45-I of the E.S.I Act, which was deposited by the Petitioner on 16.11.2021. On the same date, i.e. on 19.10.2021, another letter was issued under Regulation 31-C of the Regulations, 1950, r/w Section-85-B(1) the ESI Act, by the Opposite Party No. 2 seeking recovery of damages to the tune of Rs.3,83,999/- and calling upon to show cause as to why maximum damages should not be imposed.

2.4. The Petitioner on 26.10.2021 submitted a detailed grievance petition praying for waiver of interest and damages, citing genuine hardship, prior representations, non-assessment of medical services by its employees.

2.5. Pursuant to notice dated 10.11.2021, though the Petitioner appeared before the Opposite Party No.2 on 07.12.2021, but the request for waiver was rejected. The Petitioner was directed to pay damages amounting to Rs.3,83,999/- within 30 days, failing which it was warned that recovery proceeding would be initiated under Sections 45-C to 45-I of the E.S.I Act.

2.6. The case of the Petitioner is that, its employees were reluctant to participate under the Scheme, due to absence of any E.S.I medical infrastructure around Gumadera or Belpahar. Hence, he was unable to deduct E.S.I. contributions earlier and started compliance only from December, 2018.

3. The writ petition has been preferred basically to decide the legal issue regarding justification of the E.S.I. Corporation to impose maximum damages under Regulation 31-C of the Regulations, 1950, which is not mandatory. Further, the grounds urged in the writ petition to challenge the demand notice are, Section 85-B of the E.S.I Act uses the words "May Recover", indicating discretion and not compulsion. Moreover, computation and imposition of damages must be based on Section 85-B of the ESI Act and cannot derive authority solely from Regulation 31-C of the Regulations, 1950, which is a subordinate legislation. Further, substantial compliance of the provisions has already been made by paying Rs.4,55,844/- towards contribution so also Rs.1,86,279/- towards interest. The delay was due to non-availability of E.S.I medical services and employees' resistance, so also genuine hardships beyond the Petitioner's control.

4. A Counter Affidavit has been filed by the Opposite Parties-Corporation taking a stand therein that, as per the Orissa Employees' Insurance Court Rules, 1951, disputes between the Employer and ESIC must be adjudicated before the Employees' Insurance Court under Section 75 of the E.S.I Act. Only the aggrieved party can knock the doors of this Court on appeal. Further, before invoking the jurisdiction of this Court, the Employer must have deposited 50% of the amount claimed by E.S.I.C. Moreover, E.S.I Medical Services are not confined to primary care. Insured employees can access tie-up hospitals anywhere in India, including for super-specialized treatment. The Petitioner failed to pay statutory contributions for an extended period, i.e., from 583 to 1613 days, causing denial of benefits to eligible employees. The delay on part of the Employer is deliberate and intentional; establishing the mens rea, justifying imposition of damages U/s 85-B of the ESI Act. Ultimately, the Petitioner was issued with notices, granted adequate opportunity of personal hearing before passing the impugned order, hence, there is no procedural infirmity.

5. In response to the Counter filed by the Opposite Parties, the Petitioner has filed a Rejoinder Affidavit stating therein that, the writ petition involves a legal issue, as to whether damages can be levied even after full payment of contribution and interest, in absence of statutory mandate or mens rea. Therefore, the writ petition is maintainable despite availability of alternative remedy. Further, Section 85-B of the ESI Act is an enabling provision and there is no statutory compulsion to

impose damages in every case. The factual allegations made by the Opposite Party in Para 7 to 13 of the Counter Affidavit have been denied demanding proof of such averments. Moreover, it has been stated that the claim of nationwide tie-up ESI hospital access is merely theoretical and impractical for primary or daily treatment of poor workmen residing in Belpahar in the district of Jharsuguda.

6. Apart from reiterating the grounds urged in the writ petition, learned Counsel for the Petitioner, drawing attention of this Court to the various correspondences made by the Petitioner to the ESI Authorities, dated 18.10.2018 (Annexure-2), 28.01.2019 (Annexure-4), 20.09.2021, (Annexure-6), 26.10.2021 (Annexure-9) and 07.12.2021 (Annexure-11) submitted that from day one, the Petitioner brought the fact to the notice of the ESI Authority that he is not able to deduct the contributions from the Employees-Members because of non-availability of medical facilities in the nearby vicinity. It was also brought to the notice of the ESI Authorities that the concerned labourers are not willing to contribute because of lack of medical facility within 10 KMs from its Establishment. A request was made not to levy penalty for the period of 21.03.2017 to November, 2018. That apart, payment of such penalty for an amount of Rs.4,55,844/- was made under protest. Despite such bonafide conduct of the Petitioner, the impugned order dated 20th December, 2021, as at Annexure-12, was passed by the Deputy Director (I/C) ESI Corporation without taking note of the said grounds urged in the reply dated 26th October, 2021, followed by additional reply/response dated 7th December, 2021.

6.1. Learned Counsel for the Petitioner further submitted that, apart from the grounds urged in the response/reply dated 26.10.2021 to the show cause notice for levy of damages, the Petitioner appeared through his Counsel on 07.12.2021 and submitted an additional reply to the show cause notice relying on the Judgment of the Supreme Court reported in (2008) 3 SCC 35 ***(Employees' State Insurance Corporation versus HMT Limited and Another)*** to satisfy the authority concerned that Section 85-B of the ESI Act provides for an enabling provision and does not make it mandatory to levy damages in every case and the words "may recover" used in Section 85-B of the ESI Act, regarding levy of damages cannot be and should not be read as "shall".

6.2. Learned Counsel for the Petitioner further submitted that, in view of the settled position of law, when a discretionary jurisdiction has been conferred on a statutory authority to levy penal damages by reason of an enabling provision, the same cannot be construed as imperative. Even otherwise, an endeavour should be made to construe such penal provisions as discretionary, unless under the statute it is held to be mandatory in character.

6.3. Learned Counsel for the Petitioner, drawing attention of this Court to the impugned order dated 20th December, 2021, as at Annexure-12 further submitted that the grounds urged in the reply submitted in response to the show cause notice, including the legal point, were not dealt by the Deputy Director, while passing order

under Section 85 -B of the ESI Act. Such order, being perverse, deserves to be set aside.

6.4. So far as maintainability of the writ petition, learned Counsel for the Petitioner submitted that the sole point involved in the present lis is a legal point, as the averments made in the writ petition regarding reason for the delayed payment of ESI Corporation has not been disputed by the Corporation. The only point to be decided is whether the ESI Corporation was justified to levy damages in view of the wordings "may recover" used under section 85-B of the ESI Act, 1948. The said point being a substantial question of law, even if there is alleged an alternative remedy under Section 75 (1) of the ESI Act, the writ petition is maintainable.

6.5. He further submitted that, apart from the prayer to quash the order dated 20.12.2021, a further prayer has been made by the Petitioner to direct the Opposite Parties to provide medical facilities to its employees in a nearby place for which, they are contributing and such a prayer cannot be made before the EI Court, as a Writ Court can only give such a direction to the ESI Corporation.

6.6. Learned Counsel for the Petitioner further submitted that, pursuant to communication dated 30.11.2018, the Petitioner's Establishment deposited the contribution pertaining to its employees from the month of December, 2018 with a request not to take any action regarding nonpayment of contribution and other related matters on the ground of non-availability of medical facilities in and around village Gumadera and protest of the concerned workmen regarding deduction for the previous period. However, without any further communication in response to such compliance report dated 28.01.2019, after about two years of such communication, a demand was made towards unaccounted wage/salary contribution for the period from 21.03.2017 to 30.11.2018 to the tune of Rs.4,54,349/- and alleged differential contribution of Rs.1,495/- for the months of December, 2018, December, 2019 and January, 2020 and the said amount was also paid immediately thereafter on 20th September, 2021 under protest. Again, reiterating therein, vide letter dated 20th September, 2021, it was brought to the notice of the Authority concerned regarding non-availability of medical facility in the nearby vicinity and availability of the same only 22 KMs away from Belpahar, with a request not to levy any penalty. However, without dealing with those grounds urged in the reply dated 26th October, 2021, followed by reply dated 7th December, 2021, the Authority concerned mechanically passed the impugned order dated 20th December, 2021 under Section 85-B of the ESI Act solely on the grounds that the Petitioner did not deposit the contribution for the aforesaid period within the stipulated time, for which, return of contribution could not be submitted/generated for the contribution periods resulting therein the inability of employees to avail the benefit under the ESI Scheme during the corresponding benefit period. The said order is also perverse for not taking into consideration the grounds urged in the show cause notice so also the Judgment of the Supreme Court reported in ***HMT Limited*** (supra), wherein it was categorically

held that the provisions enshrined under Section 85 -B of the ESI Act, when for the levy of damages uses the words "May recover", should not be read as "shall".

6.7. He further submitted that the impugned order was passed mechanically solely on the basis of the provisions enshrined under regulation 31-C of the Regulations, 1950 and is a product of non-application of mind. Though, there was sufficient cause for non-deposit of ESI contribution, delayed payment of ESI contribution for the period of March, 2017 to till November, 2018, the Deputy Director, ESIC failed to take note of the said admitted fact on record so also the settled position of law as held in ***HMT Limited*** (supra).

7. To substantiate his submissions, learned Counsel for the Petitioner relied on the judgment of the Supreme Court in ***HMT Limited*** *(supra),* in ***A.K. Industries Vrs. Employees Insurance Corporation, Faridabad & others*** reported in 2011(131) FLR-894 of the Punjab & Haryana High Court so also of this Court in ***M/s Samrat Industries Vrs. Regional Director, Employees State Insurance Corporation*** reported in 1994(II) OLR-328.

8. Apart from reiterating the facilities provided by the Corporation under the ESI Act, learned Counsel for the Corporation submitted that in view of the alternative remedy under Section 75 of the ESI Act, the writ petition is not maintainable. It was further submitted that the impugned order was passed by the Authority concerned after giving due opportunity of hearing to the Petitioner. There being no infirmity in the impugned order dated 20th December, 2021, as at Annexure-12, the writ petition deserves to be dismissed.

9. As is revealed from the pleadings on record, admittedly, the Petitioner's Establishment is engaged in the process of packing of Refractories bricks at TRL Korasaki Refractory Limited at Gumadera, Belpahar since 1994. It was brought under the coverage of the ESI Act with effect from March, 2017. Immediately thereafter, vide letter dated 18th October, 2018, the Proprietor of the Petitioner-Establishment brought to the notice of the Additional Commissioner and Regional Director, ESIC, Bhubaneswar regarding non-availability of medical facility to its employees, who became members under the ESI Scheme so also its inability to deduct contribution from the members/employees because of non-availability of medical facilities in the nearby vicinity. Instead of mitigating the grievance of the Petitioner regarding providing medical facilities in nearby area, a letter was given to the Petitioner by the Assistant Director (Revenue-II) indicating that he is liable to comply with the provisions under the ESI Act to enable its employees to avail the benefits under the provisions of the ESI Scheme with effect from 21.03.2017. Accordingly, a request was made to comply the provisions under the ESI Act with effect from 21.03.2017. On getting such communication, again the Petitioner wrote a letter dated 28.01.2019 to the Additional Commissioner and Regional Director, ESIC, Bhubaneswar, indicating therein that the medical facilities are available 22 KMs away from Gumadera and the workmen are reluctant to pay under the scheme so also regarding compliance of the recovery under the scheme with effect from

December, 2018, with a request not to take any action regarding nonpayment of contribution and other related matters on the ground of non-availability of medical facility around village Gumadera and protest of the workman for deduction of ESI contribution from them for the previous period.

10. Admittedly, after receiving the letter dated 28.01.2019 till 01.09.2021, no communication was made to the Petitioner's Establishment for non-payment of ESI contribution for the period from 21.03.2017 till November, 2018. However, on 01.09.2021 a communication was made to the Petitioner to deposit an amount of Rs.4,54,349/- towards contribution on unaccounted wage/salary for the period from 21.03.2017 till November, 2018, indicating therein that if the Petitioner fails to make the payment within 15 days thereof under intimation to the Office of the Deputy Director, ESI Corporation, the same will be recovered under Section 45-C to 45-I of the ESI Act.

11. On getting such communication, reiterating the grounds/reasons, as communicated earlier, the Petitioner deposited an amount of Rs.4,55,844/- towards contribution for the aforesaid period under protest and made a communication to the said effect on the very same day to the Deputy Director, ESI Corporation, Regional Office, Bhubaneswar. As it seems from the record, immediately thereafter, a demand was made vide demand notices, both dated 19th October, 2021, claiming therein an amount of Rs.1,86,279/- towards interest of delayed payments for the period from 21.03.2017 till 20.09.2021, so also Rs.3,83,999/- towards damages for the said period. Though the Petitioner's Establishment paid the interest of Rs.1,86,279/- as per demand Notice No.5149 dated 19th October, 2021, but contested the demand made vide notice no.5149 dated 19.10.2021 towards damages by filing a detailed reply on 26.10.2021, followed by further reply dated 7th December, 2021 in response to the notice dated 10.11.2021, coupled with the judgment of the Supreme Court in ***HMT Limited*** (supra).

12. As it reveals seems from the record, the impugned order under Section 85-B of the ESI Act was passed on 20th December, 2021 after hearing the learned Counsel for the Petitioner, who appeared before the authority concerned on 7th December, 2021 and filed reply/response with a prayer to waive the damages.

13. As it further reveals from the reply/response of the Petitioner to the show cause notice, the Petitioner's Establishment though was registered in the month of March, 2017 under the ESI Act, the employees raised objection for deduction of employees contribution from their wages with an allegation that they are not getting ESI facilities in the nearby vicinity and they have to travel a long distance for medical treatment. Since the employees concerned (contract labourers) raised objections, no deduction could be made timely towards employees' contribution, thereby causing delay in deposit of ESI contribution and such delay caused in making payment of contribution is neither intentional nor deliberate, but due to bona fide facts as detailed above.

14. As is revealed from the impugned order dated 20th December, 2021, the Deputy Director, ESI Corporation ordered for a damages to the tune of Rs.3,83,999/- with the following observations.

> *"That, as the employer did not file contribution for the above contribution period within stipulated, the same cannot be filed later on, for which, Return of Contribution could not be submitted/generated for the contribution periods resulting therein the ineligibility of the employees for benefit under the ES! Scheme during the corresponding benefit period.*
>
> *That the grounds of non-compliance, i.e., non-deduction of employee's contribution from the wages, does not absolve the employer with liability to pay the contribution under the Act.*
>
> ***That, it shows that the delay caused in making payment of contribution is intentional and deliberate, which establishes mens rea (wilful intention) of the employer to contravene the statutory provisions of the Act.***
>
> *That the extent of delay ranges from 583 to 1613 days for payment of contribution for the period from 03/2017 to 01/2020, has not been challenged by the employer. Whereas, the submission of the employer,that the amount of damages is bit substantial to which they cannot pay, as their financial health is not sound, is not tenable as the financial health cannot absolve the employer to pay contributions within stipulated period.*
>
> *Further, the ES! Scheme is a self-financing Scheme and mainly depends upon the contribution paid by the employers and employees covered under the Scheme. An employee who is covered under the Scheme is entitled to certain benefits from the day one of his insurable employment irrespective of whether contribution in respect of him, has been deposited in ESI Fund or otherwise. If, however, there are constant out-flows from the ESI Fund by way of disbursement of benefits without sufficiently matching in-flows into the said fund by way of timely payment of contribution, the very financial viability of the ES! Scheme will be at stake.*
>
> *Under the facts and circumstances of the case as above, levy of penal damages is not only a matter of necessity but also a form of deterrent to eliminate recurrence of such delays."* ***(Emphasis supplied)***

15. From such observation made by the Deputy Director, ESIC, it is amply clear that such damages was imposed on the Petitioner ignoring the ground of workers' resistance and distance of ESI dispensary to be more than 22 KMs for non-compliance / non-deduction of employees contribution from their wages, with an observation that such ground does not absolve the employer with a liability to pay the contribution under the ESI Act. The delay caused in making payment of contribution is allegedly intentional and deliberate, which establishes mens rea of the employer to contravene the statutory provisions under the Act and the levy of penal damages is not only in the matter of necessity but also a form of deterrent to eliminate recurrence of such delays.

16. Admittedly, the ESI Scheme is a self-financing Scheme. The sole intent under the said Scheme is to provide benefits to its members-workers. There is no dispute at the bar that from day one of coverage of the Petitioner's Establishment under the ESI Act, it was brought to the notice of the ESI Authority in writing

regarding discontentment of the workers, who are the members under the ESI Scheme regarding non-availability of medical facilities in the nearby vicinity, where the Establishment of the Petitioner exists. It was also brought to the notice of the Authority regarding protest of workers, who are contract labourers, for deduction of ESI contribution from their salary, including deduction for the past period.

17. Admittedly, vide each and every communication made by the Petitioner to the ESI Authority; it was brought to the notice of the Authority concerned that its workers-members are not getting proper facility under the ESI Act because of non-availability of ESI dispensaries in the nearby area of village Gumadera. As is revealed from the record, in none of the replies submitted by the ESI Authority, such grievance of the Petitioner was dealt with. Rather demands after demands were made regarding ESI contribution, interests, followed by damages for the said period.

18. Admittedly, on being so demanded, the Petitioner not only deposited the ESI contribution but also the interest payable on the said ESI contribution for the aforesaid period under protest. So far as levy of damages for the said period, is under challenge in the present writ petition. While dealing with the show cause reply submitted by the Petitioner's Establishment, as it appears from the impugned order passed by the Deputy Director In-charge ESI Corporation dated 20th December, 2021, without applying mind and taking into consideration the real difficulty faced by the Petitioner's Establishment to convince its employees/ contract labourers for deduction of employees' contribution from their salary/wages and deposit the same with the ESI Corporation, the impugned order has been passed mechanically referring to the provisions under Regulation 31(C) of the ESI (General) Regulation, 1950, which is extracted below for ready reference:

> *"**31-C. Damages or contributions or any other amount due, but not paid in time**- If an employer who fails to pay contribution within the periods specified under regulation 31, or any other amount payable under the Act, the Corporation **may recover damages,** not exceeding the rates mentioned below, by way of penalty:*
>
> | | *Period of delay* | *Maximum rate of damages in per cent per annum of the amount due* |
> |---|---|---|
> | *(i)* | *Less than 2 months* | *5%* |
> | *(ii)* | *2 months and above but less than 4 months* | *10%* |
> | *(iii)* | *4 months and above but less than 6 months* | *15%* |
> | *(iv)* | *6 months and above* | *25%* |
>
> *[Provided that the Corporation in relation to a company in respect of which a Resolution Plan has been sanctioned by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016, may:-*
>
> *(a)Waive up to 50 percent of the damages levied or leviable depending upon merits of the case.*
>
> *(b) In exceptional hard cases, waive either totally or partially the damages levied or leviable]"* ***(Emphasis Supplied)***

19. That apart, the grievance of the Petitioner's Establishment regarding distance of the ESI Dispensary from the Petitioner's Establishment, which causes hardship to the employees/contract labourers to avail the benefits under the ESI Scheme, was never redressed by any of the communications made by the Corporation, as detailed above, till passing of the impugned order under Section 85-B of the ESI Act. That apart, it is amply clear from the impugned order dated 20th December, 2021 that though the learned Counsel for the Petitioner, in order to substantiate the prayer made in the show cause reply not to levy of damages on it, relied on the Judgment of the Supreme Court in ***HMT Limited*** (supra), the impugned order is silent about such legal point urged before the Authority concerned.

20. As is further revealed from the impugned order, despite such settled position of law and the undisputed stand of the Petitioner regarding delayed payment, the Authority concerned, vide the impugned order, observed that the "delay caused in making payment of contribution is intentional and deliberate and the same establishes mens rea (willful intention) of the Employer to contravene the statutory provisions", which is perverse.

21. Though under Regulation 31(C) of the Regulation, 1950, the rates of damages to be levied have been detailed, which varies depending on the period of delay, in ***HMT Limited***(supra), the Supreme Court held as follows:

> ***16. It is a well-known principle of law that a subordinate legislation must conform to the provisions of the legislative Act. Section 85-B of the Act provides for an enabling provision. It does not envisage mandatory levy of damages. It does not also contemplate computation of quantum of damages in the manner prescribed under the Regulations.***
>
> ***17.*** *The statutory liability of the employer is not in dispute. An employee being required to be compulsorily insured, the employer is bound to make his part of the contribution. An employee is also bound to make his contribution under the Act.* ***But the same does not mean that levy of damages in all situations would be imperative.***
>
> ***18. Section 85-B of the Act uses the words "may recover". Levy of damages thereunder is by way of penalty****. The legislature limited the jurisdiction of the authority to levy penalty i.e. not exceeding the amount of arrears.* ***Regulation 31-C of the Regulations, therefore, in our opinion, must be construed keeping in view the language used in the legislative Act and not dehors the same.***
>
> ***21.*** *A penal provision should be construed strictly.* ***Only because a provision has been made for levy of penalty, the same by itself would not lead to the conclusion that penalty must be levied in all situations****. Such an intention on the part of the legislature is not decipherable from Section 85-B of the Act.* ***When a discretionary jurisdiction has been conferred on a statutory authority to levy penal damages by reason of an enabling provision, the same cannot be construed as imperative. Even otherwise, an endeavour should be made to construe such penal provisions as discretionary, unless the statute is held to be mandatory in character.***
>
> ***24.*** *We agree with the said view as also for the additional reason that* ***the subordinate legislation cannot override the principal legislative provisions.***

> ***25.*** *The statute itself does not say that a penalty has to be levied only in the manner prescribed. It is also not a case where the authority is left with no discretion. The legislation does not provide that adjudication for the purpose of levy of penalty proceeding would be a mere formality or imposition of penalty as also computation of the quantum thereof became a foregone conclusion. Ordinarily, even such a provision would not be held to providing for mandatory imposition of penalty, if the proceeding is an adjudicatory one or compliance with the principles of natural justice is necessary thereunder.*
>
> ***26. Existence of the mens rea or actus reus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and/or the quantum thereof.*** ***(Emphasis Supplied)***

22. That apart, in ***HMT Limited*** (supra) it was further held that an employee, being required to be compulsorily insured, the employer is bound to make his part of contribution and the employee is also bound to make his contribution under the Act, but the same does not mean that levy of damages in all the situation would be imperative. However, the Authority concerned failed to take note of such observation made by the Supreme Court while passing the impugned order. Rather, contrary to the said observation made in ***HMT Limited*** (supra), it was held that levy of penal damages is not only a matter of necessity but also a form of deterrent to eliminate recurrence of such delays, attributing such delays to be allegedly intentional and deliberate act on part of the Petitioner's Establishment to make the payment of contribution belatedly for the said period.

23. So far as the issue regarding maintainability of the writ petition, this Court deems it appropriate to refer Section 81 of the Employees' State Insurance Act, 1948, which is reproduced below:

> ***"Section 81- Reference to High Court-*** *An Employees' Insurance Court* ***may submit any question of law for the decision of the High Court*** *and if it does so, shall decide the question pending before it in accordance with such decision."*
>
> ***(Emphasis Supplied)***

24. Admittedly, one of the controversies in the present lis is, in view of the provisions enshrined under Regulation 31(C) of the Regulation, 1950 to impose damages, whether the provisions under Section 85-B of the ESI Act, 1948, concerning imposition of damages, are mandatory or directory, which is a pure question of law .The said issue has already been decided by the Supreme Court in ***HMT Limited*** (supra), as detailed above. That apart, Section 81 of the E.S.I. Act permits an Employees' Insurance Court to submit any question of law for the decision of the High Court.

Furthermore, the second prayer made in the writ petition is regarding facilitation of medical facilities in a nearby area for the convenience of the beneficiaries/ insured persons. Hence, this Court is of the view that the Employees' Insurance Court may not be competent to issue directions to the ESI Authorities to

do so in a proceeding U/s. 75 of the E.S.I. Act like a Writ Court. In view of the above reasons, this Court is inclined to hold that the writ petition is maintainable.

25. In view of the reasons detailed above so also the settled position of law, this Court is of the view that the order dated 20th December, 2021, passed under Section 85-B of the ESI Act at Annexure-12, is perverse and deservers interference. Accordingly, the said order is hereby set aside.

26. So far as the second prayer regarding direction to the Opposite Parties to provide medical facilities to the employees of the Petitioner's Establishment in a nearby place, as per the information available in the Official Website of ESI Corporation, various Circulars have been issued by the Corporation from time to time for setting up of ESI Hospitals and Dispensaries, including the revision of norms for up-gradation of existing Hospitals and Dispensaries so also the determination of permissible radial distance between proposed and existing ESI Hospitals and Dispensaries. Admittedly, the Petitioner repeatedly ventilated such grievance in writing, stating therein that despite being covered under the ESI Act and complying with all statutory obligations, no such dispensary or alternative medical facility has been made available to the insured persons within the nearby area of its establishment, which resulted in undue hardship to the employees of the Petitioner's Establishment.

27. Hence, this Court directs the Opposite Parties- ESI Corporation to consider the grievance of the Petitioner Establishment for setting up Hospital/Dispensary and provide other ESI facilities in the nearby locality, wherein the Petitioner Establishment is situated, and take necessary steps in accordance with the guidelines issued by it from time to time for setting up of ESI Hospitals and Dispensaries, if the same has not already been done in the meantime. Such action, if so required as per the guidelines, shall be initiated and completed expeditiously preferably, within a period of six months hence.

28. With the said observation, the writ petition stands allowed and disposed of. No order as to cost.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
Writ Petition allowed & disposed of.

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2025 (III) ILR-CUT-714

SANKARPRASAD PRADHAN
V.
STATE OF ODISHA

[BLAPL NO. 2715 OF 2025]

WITH

PAPU TAREI V. STATE OF ODISHA
(IN BLAPL NO. 1215 OF 2025)

SIBARAM TAREI @ RAJA V. STATE OF ODISHA
(IN BLAPL NO.1227 OF 2025)

RAJU TAREI V. STATE OF ODISHA
(IN BLAPL NO.1253 OF 2025)

ASISH SAHU @ PANDA V. STATE OF ODISHA
(IN BLAPL NO.1516 OF 2025)

KARTIKA PARIDA V. STATE OF ODISHA
(IN BLAPL NO.1818 OF 2025)

AND

SUKANTA TAREI @ KALIA @ BABU V. STATE OF ODISHA
(IN BLAPL NO.1931 OF 2025)

11 AUGUST 2025

[G. SATAPATHY, J.]

Issue for Consideration

Whether the petitioners are entitled to bail on the ground of parity though the informant and some other eye witnesses are yet to be examined?

Headnotes

BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 483 – Bail – The petitioners are charged U/ss.147/ 148/341/323/307/324/326/ 302/ 120-B/149 of IPC r/w section 25(1)(a)/27(1) of the Arms Act – Plea of parity – It is submitted by the petitioner that some of the material witnesses have already examined and 15 co-accused persons have already been granted bail – Whether the petitioners are entitled to bail on the ground of parity though the informant and some other eye witnesses are yet to be examined?

Held: – Taking into consideration the nature and gravity of the offences alleged against the petitioners vis-à-vis the allegations sought to be brought against them and the materials collected in support thereof and keeping in view the number & nature of injuries sustained by the deceased & the injured persons and the role as alleged against each of the petitioners and on going

through the material accusations against the petitioners together with the evidence of material witnesses and taking into account the circumstances under which the occurrence took place and its impact on society at large and regard being had to the no specific allegations made against the petitioners Sankarprasad Pradhan, Asish Sahu @ Panda and Sukanta Tarei @ Kalia @ Babu for attacking or assaulting the deceased and injured persons by means of any lethal weapons, this Court while being not inclined to grant bail to the petitioners-Papu Tarei, Raja Tarei, Kartika Parida and Raju Tarei considers it proper to admit the petitioners-Sankarprasad Pradhan, Asish Sahu @ Panda and Sukanta Tarei @ Kalia @ Babu to bail by extending the principle of parity. (Para 7)

Citation Reference

X Vrs. State of Rajastan, **(2024) SCC Online SC 3539 – referred to.**

List of Acts

Bharatiya Nagarik Suraksha Sanhita, 2023; Indian Penal Code, 1860.

Keywords

Bail; Co-accused; Parity; Gravity of offences; Examination eye witness.

Case Arising From

P.S. Case 414/2024 corresponding to S.T. Case No. 60/2024 pending in the Court of learned Addl. Sessions Judge, Khalikote.

Appearances for Parties

For Petitioners : Mr. D. Nayak, Sr. Adv. & Mr. P. Nayak,
(in BLAPL No.2715 & 1253 of 2025)
Mr. D.P. Nanda, Sr. Adv.& Mr. S. Dwibedi,
(in BLAPL No. 1215 of 2025)
Mr. D.P. Dhal, Sr. Adv. & Mr.B.S. Dasparida
(in BLAPL No.1227 of 2025)
Mr. J. Sahoo, (in BLAPL No.1516 of 2025)
Mr. L. Samantaray, (in BLAPL No.1818 of 2025)
Mr. A.A. Mishra, (in BLAPL No.1931 of 2025)

For Opp. Parties: Mr. M.K. Mohanty, Addl. PP
Mr. B.K. Ragada, (Informant) (in BLAPL Nos. 2715, 1215,1227, 1516, 1818 & 1931 of 2025)
Mr. H.S. Mishra, (Informant)(in BLAPL No. 1253 of 2025)

Judgment/Order

Judgment

G. SATAPATHY, J.

1. Since these seven bail applications arise out of one and same case record, the same are taken up together and disposed of by this common order with the consent of the learned counsel for the parties.

2. These are bail applications U/S.483 of the BNSS by the petitioners for grant of bail in connection with Khallikote P.S. Case No.414 of 2024 corresponding to S.T. Case No.60 of 2024 pending in the file of learned Addl. Sessions Judge, Khallikote, for commission of offences punishable U/Ss. 147/148/341/323/307/ 324/326/302/120-B/149 of IPC r/w sec. 25(1)(a)/ 27(1) of the Arms Act.

3. The allegations against the petitioners emerge out of FIR lodged by the informant who is the father of the deceased-cum-himself a injured, are that the brother-in-law of the deceased and two to three others had been to affix posters of a political party on a particular place of the village which was protested by one co-accused namely Sudarshan Pahana @ Mandha leading to a quarrel between the deceased and his supporters on one side and the petitioners and others on the other side and in such quarrel, the deceased as well as injured Jitendra Pahana, Abhimanyu Pahana, Bapuji Pahana @ Chintu, Birat Pahana and the informant were assaulted by means of sword and iron rods and accordingly, they were provided with treatment at different places, but the deceased succumbed to the injuries. Accordingly, the FIR in Khallikote PS Case No. 414 of 2024 was registered against 9 known accused persons and 15 to 20 others, but charge sheet was placed against 23 accused persons, out of whom 15 co-accused have already been granted bail.

4. Heard, Mr. Dharanidhar Nayak, learned Senior Counsel, who is being assisted by Mr. Pratik Nayak, learned counsel for the petitioners in BLAPL Nos. 2715 & 1253 of 2025; Mr. Durga Prasad Nanda, learned Senior Counsel, who is being assisted by Mr. Suryakanta Dwibedi, learned counsel for the petitioner in BLAPL No. 1215 of 2025; Mr. Debi Prasad Dhal, learned Senior Counsel, who is being assisted by Mr. Bhabani Shankar Dasparida, learned counsel for the petitioner in BLAPL No.1227 of 2025; Mr. Jyotirmaya Sahoo, learned counsel for the petitioner in BLAPL No. 1516 of 2025; Mr. Lalatendu Samantaray, learned counsel for the petitioner in BLAPL No. 1818 of 2025; Mr. A.A. Mishra, learned counsel for the petitioner in BLAPL No. 1931 of 2025; Mr. M.K. Mohanty, learned Addl. Public Prosecutor; Mr. Bijaya Kumar Ragada, learned counsel for the informant in BLAPL Nos. 2715, 1215, 1227, 1516, 1881 & 1931 of 2025 and Mr. Himanshu Sekhar Mishra, learned counsel for the informant in BLAPL No. 1253 of 2025.

5. Learned Sr. Counsels appearing for the respective petitioners submit in tandem that the petitioners are in custody for a substantial period and material witnesses like PW3,4,8 and 9 having already examined in the trial have only testified in omnibus manner about the culpability of the petitioners in this case and even if, the evidence of these material witnesses are considered, the petitioners being found only to have assaulted the injured persons in a quarrel upon a sudden fight and the injuries to the injured being not on vital part and also the deceased being assaulted to hand which is not a vital part, the further detentions of the petitioners in custody is unwarranted, especially when 15 co-accused persons have already been granted bail in this case and accordingly, the learned Sr. Counsels have prayed for grant of bail to the petitioners for whom they are appearing.

5.1. Learned counsels for the rest of the petitioners in BLAPL No. 1516 of 2025, BLAPL No. 1818 of 2025 and BLAPL No. 1931 of 2025 submit that the petitioners' presence only being noted at the spot without any overt act attributed to them can be easily said to have been similarly situated with co-accused persons granted bail earlier in this case and accordingly, the learned counsels pray to grant bail to the petitioners in these bail applications.

5.2. Mr. H.S. Mishra, learned counsel for the informant in BLAPL No. 1253 of 2025 submits that since trial having already commenced with examination of 9 witnesses in the meantime and material witness like the informant being yet to be examined, it would not be permissible to appreciate the evidence of the witnesses and grant bail to the petitioners at this stage. It is further argued by him that the injured witnesses having taken the name of the petitioner-Raju Tarei for assaulting Rama Pahana, the informant by means of a sword, his bail application may kindly be turned down, however, in response to the submission of the learned counsel for the petitioner-Raju Tarei for assaulting the informant by means of a "Thenga" as per the evidence of PW8, Mr. Mishra submits that it is not the time to appreciate the evidence to find out the exact role or the manner by which the petitioner assaulted the injured inasmuch as there are other eye witnesses to the occurrence including the informant who are yet to be examined. Mr. Mishra accordingly, prays to reject the bail application of the petitioner-Raju Tarei.

5.3. Mr. B.K. Ragada, learned counsel for the informant in the rest of the bail applications, however, submits that the injured eye witness-cum-informant is yet to be examined and the evidence of witness so far examined clearly spells out the role played by each of the petitioners in assaulting the deceased and the injured persons and so far the co-accused persons except accused-Kalu @ Kalia Pradhan released on bail does not stand on similar footing with the present petitioners, but co-accused Kalia Pradhan has secured bail by suppressing material facts, for which the informant has preferred a SLP before the Apex Court. Mr. Ragada further submits that the petitioners Papu Tarei, Raja Tarei, Kartika Parida having participated in the crime actively and were stated by the injured witnesses to have assaulted them and the deceased, they may not kindly be admitted to bail. Mr. Ragada also relies the judgment of the Apex Court in ***X Vrs. State of Rajastan; (2024) SCC Online SC 3539*** to refuse bail to the petitioners.

5.4. Mr. M.K. Mohanty, learned Addl. Public Prosecutor, however, strongly opposes the bail applications of the petitioners on the ground that six eye witnesses are yet to be examined and in case of grant of bail, the petitioners would influence those witnesses. He further submits that the material witnesses so far examined have clearly testified in the Court about petitioners-Papu Tarei, Raja Tarei, Kartika Parida and Raju Tarei assaulting the deceased and the injured persons by means of lethal weapons including sword. On these submissions, Mr. Mohanty prays to reject the bail applications of the petitioners.

6. After having considered the rival submissions upon perusal of record, it is not in dispute that 9 witnesses have already been examined in this case, but the informant and some other eye witnesses are yet to be examined, but law is well settled that detail analysis of evidence and meticulous examination of documents on merits should be avoided at the time of consideration of bail applications. It is, however, not in dispute that 15 co-accused persons have already been granted bail by a Coordinate Bench of this Court, but they stand on a different footing with that of some of the present petitioners inasmuch as there is allegation against the petitioners-Papu Tarei, Raja Tarei and Raju Tarei for assaulting the deceased and injured persons by lethal weapons allegedly supplied by petitioner-Kartika Parida, however, there is allegation against some of the co-accused persons for assaulting the injured and deceased by giving fist and kick blows. In such scenario, especially when the informant and some eye witnesses are yet to be examined, it would not be proper to grant bail to those petitioners who have allegedly assaulted either the deceased or the injured persons with lethal weapons or the petitioner who had allegedly supplied the lethal weapons to the co-accused persons at the time of occurrence. Besides, it cannot be forgotten that petitioner-Raju Tarei has 13 criminal antecedents including another case of 302/34 of IPC and Kartika Parida has got 3 criminal antecedents.

7. In view of the above facts and taking into consideration the nature and gravity of the offences alleged against the petitioners vis-à-vis the allegations sought to be brought against them and the materials collected in support thereof and keeping in view the number & nature of injuries sustained by the deceased & the injured persons and the role as alleged against each of the petitioners and on going through the material accusations against the petitioners together with the evidence of material witnesses and taking into account the circumstances under which the occurrence took place and its impact on society at large and regard being had to the no specific allegations made against the petitioners Sankarprasad Pradhan, Asish Sahu @ Panda and Sukanta Tarei @ Kalia @ Babu for attacking or assaulting the deceased and injured persons by means of any lethal weapons, this Court while being not inclined to grant bail to the petitioners-Papu Tarei, Raja Tarei, Kartika Parida and Raju Tarei considers it proper to admit the petitioners-Sankarprasad Pradhan, Asish Sahu @ Panda and Sukanta Tarei @ Kalia @ Babu to bail by extending the principle of parity.

8. Hence, while rejecting the bail applications of the petitioner Papu Tarei in BLAPL No.1215 of 2025, Sibaram Tarei @ Raja in BLAPL No.1227 of 2025, Raju Tarei in BLAPL No.1253 of 2025 and Kartika Parida in BLAPL No.1818 of 2025, the three bail applications of the petitioners namely Sankarprasad Pradhan, Asish Sahu @ Panda and Sukanta Tarei @ Kalia @ Babu in BLAPL Nos. 2715, 1516 and 1931 of 2025 are allowed and the three petitioners namely-Sankarprasad Pradhan, Asish Sahu @ Panda and Sukanta Tarei @ Kalia @ Babu are allowed to go on bail on furnishing bail bonds of Rs.50,000/- (Rupees Fifty Thousand) each with one

solvent surety for the like amount to the satisfaction of the learned Court in seisin of the case on such terms and conditions as deem fit and proper by it.

9. Accordingly, the BLAPL Nos. 2715, 1215, 1227, 1253, 1516, 1818 & 1931 of 2025 stand disposed of. Issue urgent certified copy of the order as per Rules.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
BLAPL Nos. 2715, 1215, 1227, 1253, 1516, 1818 & 1931 of 2025 disposed of.

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2025 (III) ILR-CUT-719

G. DEBENDRA RAO
V.
G. PUSPA PRABHA RAO & ANR.

[RPFAM NO.18 OF 2021]

16 SEPTEMBER 2025

[G. SATAPATHY, J.]

Issue for Consideration

Whether petitioner is liable to pay maintenance to his unmarried major daughter & educated wife?

Headnotes

CODE OF CRIMINAL PROCEDURE, 1973 – Section 125(1)(C) r/w Section 20(3) of Hindu Adoptions & Maintenance Act, 1956 – The petitioner challenges the order of learned Family Court awarding maintenance of ₹5,000/- each to wife and daughter – The order of the Learned Family court is challenged mainly on the ground that the daughter has attained majority and that the wife being an educated lady, has voluntarily deserted the society of husband – Whether petitioner is liable to pay maintenance to his unmarried major daughter and educated wife?

Held: Yes – The plea for maintenance by major unmarried daughter is unsustainable as advanced does not stand to the legal scrutiny and the impugned order does not call for any interference by this Court on such plea of the revision-petitioner, provided it is established that such daughter is unable to maintain herself out of his own earning or other properties. (Para 9)

It appears that the learned trial Court on analysis of evidence albeit has considered present OP No.1 as an advocate at Bargarh Bar, but it has considered that all the advocates have no sufficient income. (Para 10)

Citations Reference

Nanak Chand Vrs. Chandra Kishore Aggarwal and Others, **(1969) 3 SCC 802;** Abhilasha Vrs. Prakash & Others, **AIR 2020 SC 4355;** Jugtawat vrs. Manju Lata and Others, **(2002) 5 SCC 422;** Madan Kumar Satpathy Vrs. Priyadarshini Pati, **RPFAM No.417 of 2023 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Hindu Adoption and Maintenance Act, 1956; Mulla Hindu Law, Bharatiya Nagarik Suraksha Sanhita, 2023.

Keywords

Maintenance; Maintenance to major daughter; Minor Child; Maintenance to married daughter; Educated wife; Voluntary desertion; Sufficient means; Standard of living.

Case Arising From

Order dated 23.12.2019 passed in CMC No. 52-734 of 2012-16 of the Learned Judge Family Court, Baragarh.

Appearances for Parties

For Petitioner : Mr. B.P.B. Bahali
For Opp. Parties: Mr. A. Pradhan

Judgment/Order

Judgment

G. SATAPATHY, J.

1. In the instant revision, the petitioner husband seeks to challenge the impugned order dated 23.12.2019 passed in CMC No. 52-734 of 2012-16 by which the learned Judge Family Court, Bargarh has allowed the petition filed U/s. 125 of CrPC of OP-wife and daughter for maintenance @ Rs.5,000/- each per month; total Rs.10,000/- w.e.f. 06.03.2012.

2. The short facts involved in this case are that the petitioner and OP No.1 who are the husband and wife and their marriage was solemnized on 19.01.2001 according to their caste and customs and after their marriage, they are blessed with a girl child who is OP No.2 in this case. However, owing to dissension and rancor between them with regard to allegation of demand of further dowry articles, the OP No.1 reported the matter to Mahila Sammittee, Bargarh and thereafter, the revision-petitioner allegedly deserted the OPs in the year 2004. Thus, the revision petitioner filed MAT Case No. 06 of 2004 against the present OP No.1 before the learned Civil

Judge (Sr.Divn.), Sambalpur for dissolution of their marriage and such proceeding was decreed ex-parte on 08.03.2007, but thereafter, the present OP No.1 filed a petition under Order IX, Rule 13 of the Code of Civil Procedure, 1908 (in short, "the CPC") to set aside the above ex-parte decree in CMA No. 28 of 2007 which was dismissed for default on 02.02.2012 and thereafter, the present OPNo.1 filed another petition U/s. 151 of CPC to set aside the order dated 02.02.2012 as passed in CMA No. 28 of 2007 which proceeding was registered as CMA No. 13 of 2012. While the matter stood thus, the present OPs filed a petition U/s. 125 of CrPC against the revision-petitioner for grant of maintenance and in such petition, the present OPs have averred that the revision-petitioner is an Advocate and earns Rs.20,000/- per month, out of his profession and he also earns Rs.1,00,000/- per month from his Hero Honda showroom and Rs.50,000/- per month from house rent.

In resisting such claim, the present revision-petitioner filed his show cause denying his liability, but admitting the relationship with present OPs. In such objection, the revision-petitioner has also averred that the present OP No.1 is a qualified lady with MA LLB Degree and she is earning more than him and she being a LIC Agent & Teacher in private school with landed property and building at heart of Bargarh town, does not need any money to maintain herself or their daughter. It is also claimed by revision-petitioner that since present OP No.1 voluntarily deserted him without any cause is not entitled to be maintained and he is not having any landed property and his old and ailing mother being dependent on him with his two younger brothers is not able to pay the maintenance @ Rs.5,000/- each to the OP Nos. 1 & 2. It is also contended in the objection by the revision-petitioner that he has a small residential house over land of about Ac.0.07dec. at Ainthapali Sambalpur which belong to his father and he thereby having no other house has not given any house on rent. With the aforesaid averments, the revision-petitioner has prayed to dismiss the maintenance proceeding.

3. After having considered the rival pleas upon hearing the parties, the learned Judge Family Court, Bargarh by formulating some points proceeded to dispose the maintenance proceeding U/S. 125 of CrPC by allowing the same with consequential direction to the present revision-petitioner to pay Rs.5,000/- each to his wife and daughter total Rs.10,000/- per month w.e.f. 06.03.2012. Being aggrieved, the husband-cum-revision petitioner is before this Court in this present revision.

4. Heard, Mr. Biplab P.B. Bahali, learned counsel for the Petitioner and Mr. Adhikari Pradhan, learned counsel for OPs in the matter and perused the record. In addition to oral argument, both the parties have filed their written notes of submissions.

4.1. Mr.Biplab P.B. Bahali, learned counsel for the petitioner, however, primarily raised three grounds in his argument to dispute the claim of the wife & daughter for maintenance; firstly, the wife-cum-present OPNo.1 being a well-qualified and earning lady is not entitled to maintenance; secondly, OP No.2 being a major daughter is also not entitled to maintenance and thirdly, the OP No.1-wife

having deserted the husband voluntarily without any excuse is not entitled to any maintenance.

4.2. On the other hand, Mr. Adhikari Pradhan, learned counsel for the present OPs has countered such argument by submitting *inter alia* that the OP No.1-wife being an Advocate is not having so much of income to maintain herself and her daughter by catering the need of the daughter as a Law student and the OP No.1-wife having never deserted voluntarily the revision-petitioner and the revision-petitioner having already married to another lady, is thereby guilty of neglecting the present-OPs as his wife and daughter. It is further argued that the revision-petitioner is a man of means and his younger brother is a Software Engineer and the mother cannot be said to be dependent only on the present petitioner, who is also having own spare part shop in prime location of Sambalpur town and earning some handsome amount/income out of the shop and thereby, he is squarely liable to maintain his first wife and daughter. Mr. Adhikari accordingly, has prayed to dismiss the revision.

5. After having considered the rival submissions upon perusal of record together with the written notes of submissions as produced, there is hardly any dispute about the relationships between the parties and it is borne out from the record that the OP No.1 was the wife of petitioner, whereas OP No.2 is their daughter. The revision-petitioner, however, has taken a technical plea of desertion against the OP No.1 to absolve him from the liability to pay maintenance, but since being not disputed about petitioner having married for the second time, it can be well presumed that the OP No.1 has an valid excuse in law to live separately from the revision-petitioner, which is in fact mandated in the explanation appended to Sub-Sec(3) of Sec. 125 of the CrPC, wherein it is laid down that if a husband has contacted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him. Besides, it is also not in dispute that the revision-petitioner has filed a proceeding before the Court seeking divorce from OP No.1 and, therefore, such desertion plea could not enure to the benefit of the revision-petitioner.

6. In coming back to the next challenge of the revision-petitioner with regard to father not liable in law to maintain unmarried major daughter, it appears that Section 125(1)(b)(c) of the CrPC, however, casts a responsibility on the father to maintain his minor child unable to maintain itself as well as major child, but not being a married daughter where such child is by reason of any physical or mental abnormality or injury unable to maintain itself. In this case, initially the wife and minor daughter had claimed maintenance, however, in the meantime, the daughter has already attained majority. True it is that Section 125 of CrPC does not have any express provision to grant maintenance to major unmarried daughter/child except when such child is by reason of any physical or mental abnormality or injury unable to maintain itself. Admittedly, OP No.2 is not a special child or a married daughter within the meaning of Sec. 125(1)(c) of the CrPC, but by virtue of Sec.20(3) for the

Hindu Adoptions and Maintenance Act, 1956 (in short, "HAMA"), an unmarried daughter is entitled to maintenance, provided she is unable to maintain herself out of her own earnings or other property. For clarity the provision of Sec. 20 of the HAMA is extracted as under:-

> *"20. Maintenance of children and aged parents.— (1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.*
>
> *(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.*
>
> *(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property".*
>
> *Explanation- In this Section "parents" includes a childless step mother.*

7. On a careful scrutiny of 125(1)(c) of the CrPC, it only contemplates the claim of maintenance by a special child including a daughter who even though attained majority is entitled to maintenance only when by reason of any physical or mental abnormality or injury, is unable to maintain herself, but there is no such limitation in Sec. 20(3) of the HAMA. Whether Sec. 125 of CrPC and Sec. 20 of the HAMA can stand together has been answered by the Apex Court in ***Nanak Chand Vrs. Chandra Kishore Aggarwal and others; (1969) 3 SCC 802***, wherein while explaining the provision of Sec. 488 of Code of Criminal Procedure, 1898(125 of CrPC) and Sec. 20 of the HAMA, the Apex Court in Paragraph-4 has observed as under:-

> *"4.xx xx The learned Counsel says that Section 488 of Code of Criminal Procedure, 1898, insofar as it provides for the grant of maintenance to a Hindu, is inconsistent with Chapter III of the Maintenance Act, and in particular, Section 20, which provides for maintenance to children. We are unable to see any inconsistency between the Maintenance Act and Section 488 of Code of Criminal Procedure, 1898. Both can stand together. The Maintenance Act is an act to amend and codify the law relating to adoptions and maintenance among Hindus. The law was substantially similar before and nobody ever suggested that Hindu Law, as in force immediately before the commencement of this Act, insofar as it dealt with the maintenance of children, was in any way inconsistent with Section 488 of Code of Criminal Procedure, 1898. The scope of the two laws is different. Section 488 of Code of Criminal Procedure, 1898 provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties xx xx xx".*

8. It is no doubt true that Sec. 125 of CrPC operates in the field of maintenance irrespective of religion, but Sec. 20 of HAMA operates in the context of Hindu Personal Law, however, in the present case, the religion of the parties are not in dispute and they are Hindus. In Classical Uncodified Hindu Law, a Hindu male was

always held morally and legally liable to maintain his aged parents, a virtuous wife and infant child. Hindu Law always recognized the liability of father to maintain an unmarried daughter. In this context, this Court considers it useful to refer to paragraph 539 and 543 of Mulla Hindu Law– 20th Edition, which are as follows:-

> *"539.* ***Personal liability: liability of father, husband and son****: A Hindu is under a legal obligation to maintain his wife, his minor sons,* ***his unmarried daughters****, and his aged parents, whether he possesses any property or not. The obligation to maintain these relations is personal in character and arises from the very existence of the relation between the parties.*
>
> *543.* ***Daughter****, (1):* ***A father is bound to maintain his unmarried daughters****. On the death of the father, they are entitled to be maintained out of his estate".*

After the codification of Hindu Laws, HAMA came into operation and deals with the question of maintenance of the wife, widowed daughter-in-law, children and aged parents as been dealt in Sec 18 to 20 of the HAMA. It is, therefore, very clear that Sec. 20(3) of the HAMA is nothing, but the recognition of principle of un-codified Hindu Law regarding maintenance of children and aged parents. Sec. 20(3) of the HAMA makes it obligatory on a Hindu to maintain his or her aged or infirm parents, or a daughter who is unmarried and unable to maintain herself out of her own earnings or other properties and, therefore, Sec. 20(3) of HAMA casts a statutory obligation on a Hindu to maintain his daughter who is unmarried and unable to maintain herself out of her own earnings or other properties. Be that as it may, the statutory embargo as placed either in Sec. 125 of CrPC or U/s. 20(3) of the HAMA lies on the very same ingredients for the person claiming maintenance to establish that he or she is unable to maintain himself or herself. It is, therefore, in essence both the sections are applicable subject to satisfaction of the Court that person claiming maintenance is unable to maintain itself out of their own earning or other property. Further, the laws are nothing, but collective consciousness of community. One of the apparent conflicts in Sec. 125 of CrPC and Sec. 20 of HAMA is that the daughter on the literal interpretation of provision of Sec. 125 of CrPC would cease to claim maintenance on attaining majority, but she can claim maintenance under HAMA on the satisfaction that she is unable to maintain herself. The purpose and object of Sec. 125 of CrPC is benevolent and it is a social welfare legislation so as to provide some relief to the person unable to maintain itself from destitution & vagrancy and, therefore, even if the daughter is ceased to have her claim of maintenance on attaining majority in terms of Sec. 125 of CrPC., but she is entitled to maintenance even after on attaining majority under personal law. However, this Court feels that the daughter may not be forced to seek a remedy before the Court again for the selfsame relief under Personal Law merely because her proceeding is one U/s. 125 of CrPC when the Family Court has jurisdiction to decide a case either U/s. 125 of CrPC or U/S. 20 of the HAMA. In this case, the impugned order has been passed by the learned Judge Family Court who is competent to pass order U/S. 20(3) of the HAMA. Further, had the impugned order being passed by a learned Magistrate in exercise of power U/S. 125 of CrPC., there

would have some rationale to ask the daughter to seek the same remedy again under Personal Law. Learned counsel for the petitioner has, however, relied upon the decision in ***Abhilasha Vrs. Prakash & others; AIR 2020 SC 4355***, to contend that the present OP No.2 is not entitled to maintenance on attaining majority, but in the aforesaid relied on decision, the Apex Court has in fact granted liberty to the major unmarried daughter to approach the Court again U/S. 20(3) of the HAMA inasmuch as, the impugned order thereon was passed by learned Judicial Magistrate and a proceedings U/S. 20 of the HAMA being filed by the applicants therein was dismissed as withdrawn, but it is crystal clear that the impugned order has been passed in this case by learned Judge Family Court, Bargarh who has concurrent jurisdiction to decide the application of the applicants either under CrPC or under Personal Law. In this situation, this Court does not see any valid reason to force OP No.2 after six years to approach again to the same Court for selfsame relief which has been allowed to her in the year 2019 and remained unsettled till today.

9. One precedent which would clarify the position of law in this regard is the decision in ***Jagdish Jugtawat vrs. Manju Lata and others; (2002) 5 SCC 422*** wherein a three Judge Bench of the Apex Court in Paragraphs-3 & 4 has held as under:-

> *"3. In view of the finding recorded and the observations made by the learned Single Judge of the High Court, the only question that arises for consideration is whether the order calls for interference xx xx xx ....."*
>
> *4. Applying the principle to the facts and circumstances of the case in hand, it is manifest that the right of a minor girl for maintenance from parents after attaining majority till her marriage is recognized in Section 20(3) of the Hindu Adoptions and Maintenance Act. Therefore, no exception can be taken to the judgment/order passed by the learned Single Judge for maintaining the order passed by the Family Court which is based on a combined reading of Section 125, Code of Criminal Procedure and Section 20(3) of the Hindu Adoptions and Maintenance Act. For the reasons aforestated, we are of the view that on facts and in the circumstances of the case no interference with the impugned judgment order of the High Court is called for."*

On analysis of the facts involved in this case together with the precedents as referred to above, the position of law as emerges that even though Section 125 of the CrPC restricts the payment of maintenance to the children till they attain the majority, but when it comes to the daughter, it is consistent view that the major unmarried daughter would be entitled to maintenance till she remains unmarried by virtue of Section 20(3) of HAMA and the rationale behind the aforesaid view is to avoid the multiplicity of proceedings and to avoid situation like this for pushing unmarried major daughter to file an independent petition seeking for maintenance U/S.20(3) of HAMA again, more particularly when the Family Court has jurisdiction to decide the application of such daughter either U/S125 of CrPC or U/S. 20(3) of HAMA and therefore it cannot be forgotten that the unmarried daughter though has attained majority is entitled to claim maintenance in law from

her father. The aforesaid position of law has in fact been recognized in Section 144 of Bharatiya Nagarika Surakhshya Sanhita 2023 (in short BNSS), which is *pari materia*, to Section 125 of CrPC, but slightly in different way inasmuch as it does not save the word "minor" and simply says "child" not being a married daughter in its provision. Besides, Section 125 (1)(c) speaks about the special child who by reason of any physical or mental abnormality or injury unable to maintain itself, but such injury may also include mental injury and it would not be incorrect to say that mental injury is nothing, but malice in law which can be gathered on the basis of violation of a legal right to claim maintenance vested under law and if the right to claim maintenance of the daughter is infringed, probably it may be called as a injury which can very well fit into the definition to material injury. On a cumulative consideration of the discussions made hereinabove, it is apparently clear that even though the daughter has attained majority, but she can maintain an application for maintenance under personal law and the impugned order in the present case having been passed by learned judge, Family Court, who has the jurisdiction to decide maintenance for the major unmarried daughter by invoking the provision of Sec.20(3) of the HAMA, it would not be proper to ask the daughter to file a proceeding for her maintenance after such length of time as in this case. It is no more *res integra* that it is the substance, but not the form under which a party applies to the Court and appropriate relief, to which such party is entitled to, should not be withheld merely because the petition has been filed under wrong nomenclature. Accordingly, the plea for maintenance by major unmarried daughter is unsustainable as advanced does not stand to the legal scrutiny and the impugned order does not call for any interference by this Court on such plea of the revision-petitioner, provided it is established that such daughter is unable to maintain herself out of his own earning or other properties.

10. On coming to the next question of maintenance to the present OPs, it appears that the learned trial Court on analysis of evidence albeit has considered present OP No.1 as an advocate at Bargarh Bar, but it has considered that all the advocates have no sufficient income. True it is that the income of each and every advocates cannot be generalized or it cannot be said that all the advocates are earning handsomely, but even for a moment, taking the OP No.1 for having some income out of her profession, no document or evidence is forthcoming or produced by the revision petitioner to establish that OP No.1 is having a particular income and taking into account the averments of OP No.1 in her additional affidavit that her monthly expenses is around Rs.7,000/- to Rs.8,000/-, it is quite probable in the present day market index. In addressing the plea of OP No.1 that she has got no independent income, no evidence has been tendered to establish the income of OP No.1, however, she is an Advocate is not disputed, but the wife and children are required to be maintained in law commensurate to the standard of livings of husband/father. Further, no document or evidence has been produced by the revision-petitioner to show that OPNo.1 had appeared in how many cases and contested the same for her clients. It may so happen that a person may be enrolled as

an Advocate, but he or she may not have engagement for days, months and years together and in absence of any evidence with regard to engagement of the OPNo.1 as a counsel for different parties, it can be considered that she is not having sufficient means to maintain herself and her daughter in present day market cost, however, even if the plea of revision-petitioner as advanced in oral argument & written note of submission that the monthly income of OP No.1 is Rs.6,000/- to Rs.7,000/- from advocacy is taken into consideration, such income of OPNo.1 cannot be held to be sufficient, more particularly when the daughter, who is reading law might be requiring such amount/earning of the mother towards her study. It is also argued that the father of the petitioner is having numerous landed properties, but there is no liability of the father in law to maintain his married daughter. Further, neither any document has been tendered in the evidence nor produced before this Court to establish that the OP No.2-cum-major daughter is earning and not depending on the income of her mother. It is, however, claimed that the OP. No.2 is pursuing her study in law which has not been controverted and disputed by the petitioner. The revision petitioner, however, takes a plea right now that he is not having sufficient income and he having dependents children out of his wedlock with second wife and dependent mother may not be able to share any amount towards the maintenance of the OPs, but the learned trial Court on analysis of exhibit 4 to 6 which are income tax returns acknowledgement of the revision petitioner for the year 2016-17, 2017-18, 2018-19 respectively has found the revision petitioner to have gross total income of Rs.6,06,888/- in the year 2018-19 with payment of income tax of Rs.10,655/-. The learned trial Court has also found on analysis of exhibit 7 to 10 that the revision petitioner has deposited the money in SBI, LIC of India and S.R.E.I Equipment Finance Ltd. which are never disputed by the revision petitioner. It is neither denied nor disputed that Ext.1 is the ROR of a piece of land in the prime location at Ainthapali in Sambalpur Town which stands recorded in the name of revision-petitioner and Ext.2 is another piece of land which stands recorded in the name of his father. Further, the revision-petitioner has admitted his income @ Rs.12,000/- per month out of his avocation as an Advocate and right now the revision-petitioner in the written notes of argument claims to have an income Rs.15,000/- per month. On analysis of the admitted facts on record together with the discussions as referred to above with regard to revision-petitioner filing Income Tax returns in the year 2016-17, 2017-18, 2018-19, it can, therefore, be said that the revision petitioner has sufficient income and he is liable to provide maintenance to the present OPs being his first wife and daughter who have no sufficient means to maintain themselves.

11. It is also argued for the petitioner by relying upon the decision of this Court in ***Madan Kumar Satpathy Vrs. Priyadarshini Pati RPFAM No.417 of 2023*** disposed of on 07.02.2025 that since the petitioner is a well qualified woman and she having prospect to earn, no maintenance is admissible to her and her dependent daughter, but this decision was rendered on a particular facts and the wife therein was earlier working, but remained idle and for that reason, the maintenance amount

to the wife in the relied on case was reduced to Rs.5,000/-, however, such situation is not prevailing in this case. Besides, it cannot have any universal application in all the cases that wife having high qualification is intentionally avoiding to work only to harass the husband with a intention to saddle the liability to pay maintenance to her, unless there is material evidence to that effect, inasmuch as in absence of any evidence of income and/or prospect to earn, it would be unfair to say that the wives are breeding a class of idle women to burden their husband. On the other hand, taking into account the materials placed on record and the discussions made hereinabove together with analysis of evidence on record, since it appears that the OPs are not having sufficient means to maintain themselves out of their own earnings and properties, and they being the wife and major daughter of revision petitioner are entitled to maintenance, but the entitlement of the major daughter is till she remains unmarried and on consideration of present day market cost and standard of living of OPs which must commensurate to the standard of living of revision petitioner, it cannot be said that the grant of maintenance to OPs @ Rs.5,000/- per month each is neither exorbitant or on higher side, even after taking into consideration of the income of an Advocate of the stature of OP No.1 who is considered to be not a serious practitioner and, therefore, the impugned order calls for no interference by this Court.

12. In the result, the revision stands dismissed on contest, but in the circumstance, there is no order as to costs. Consequently, the impugned judgment dated 23.12.2019 passed by the learned Judge, Family Court, Bargarh in CMC No. 52-734 of 2012-16 is hereby confirmed.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter RPFAM dismissed.
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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2025 (III) ILR-CUT-729

CHANDRAMANI MAHAR
V.
STATE OF ORISSA (VIG)

[CRLA NO. 266 OF 2012]

26 AUGUST 2025

[CHITTARANJAN DASH, J.]

Issues for Consideration

1. Whether keeping money inside the Appellant's file by the complainant can be treated as acceptance of gratification or bribe.

2. Whether the statutory presumption under section 20 of the P.C Act can be invoked in absence of proof of demand.

Headnotes

(A) PREVENTION OF CORRUPTION ACT, 1988 – Section 7 and 13(2) r/w section 13(1) (d) – The complainant has categorically stated that he himself had kept the money inside the file without the knowledge of the appellant – The phenolphthalein test on the Appellants hand wash was negative, which itself shows that the Appellant never accepted the money – Whether keeping money inside the Appellant's file by the complainant can be treated as acceptance of bribe or gratification.

Held: No – The trial Court reasoned that since the file belonged to the Appellant and the money was found in it, acceptance was proved – However, as urged by learned counsel for the Appellant, the absence of phenolphthalein on the Appellant's hands weakens this inference, because if he had actually handled the tainted notes, traces ought to have been found – Furthermore, the Complainant himself testified that the Appellant was absent when he placed the money, thereby rendering the theory of voluntary acceptance by the accused doubtful. (Para 12)

(B) PREVENTION OF CORRUPTION ACT, 1988 – Section 20 – The complaint has turned hostile, on demand has admitted that he kept the money in the file/ record – The prosecution has strongly relied on the fact that tainted currency notes were recovered from the OLR case record kept on the Appellant's table, and the file was turned pink which establishes that the Appellant had accepted the bribe money which was kept in his file – Whether the statutory presumption under section 20 of the Act can be invoked in absence of proof of demand.

Held: No – The foundational requirement for raising the presumption of voluntary acceptance by the accused remains unproved – Consequently, the statutory presumption under Section 20 cannot automatically be drawn on

the basis of recovery alone – The burden, therefore, cannot be said to have shifted to the Appellant, and the prosecution must stand or fall on the strength of its own evidence. (Para 15)

Citations Reference

State of Kerala Vs. C.P. Rao, **(2011) 6 SCC 450;** K. Shanthamma Vs. State of Telangana, **(2022) 4 SCC 574;** Neeraj Dutta Vs. State (NCT of Delhi), **(2023 SCC OnLine SC 280);** Neeraj Dutta Vs. State (NCT of Delhi), State of Goa Vs. Babu Thomas, **(2005) 8 SCC 130;** Sushil Kumar Pati Vs. State of Odisha, **(2018) 1 ILR (Cuttack) 1118;** Raghubir Singh Vs. State of Haryana, **(1974) 4 SCC 560;** Shankar Prasad Vs. State of A.P., **(2004) 3 SCC 753;** Vinod Kumar Garg Vs. State (GNCT of Delhi), **(2020) 77 OCR (SC) 310;** P. Satyanarayana Murthy v. District Inspector of Police, **(2015) 10 SCC 152;** B. Jayaraj v. State of A.P., **(2014) 13 SCC 55 – referred to.**

List of Acts

Prevention of Corruption Act, 1988.

Keywords

Demand of bribe; Acceptance; Stock witness; Statutory Presumption; Tainted notes; Trap; Phenolphthalein test.

Case Arising From

The judgment of conviction dated 11th of April, 2012 passed by Special Judge (Vigilance), Bhawanipatna in G.R. (Vig.) Case No. 23 of 2007/T.R. No. 27 of 2011.

Appearances for Parties

For Petitioner : Mr. H.K. Mund
For Opp. Parties : Mr. M.S. Rizvi, Standing Counsel (Vig.)

Judgment/Order

Judgment

CHITTARANJAN DASH, J.

1. The present Appeal is directed against the judgment and order dated 11.04.2012 passed by the learned Special Judge (Vigilance), Bhawanipatna, District-Kalahandi in G.R. (Vig.) Case No.23 of 2007 corresponding to T.R. Case No.27 of 2011, whereby the Appellant was convicted under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹1,500/–, in default to undergo further rigorous imprisonment for three months for the offence under Section 7 of the Act; and further to undergo rigorous imprisonment for a period of one year and six months and to pay a fine of ₹2,500/–, in default to undergo further rigorous imprisonment for four months for the offence under Section 13(2) read with Section 13(1)(d) of the Act, with a direction that the substantive sentences shall run concurrently.

2. The factual matrix of the case is that the Appellant, who was working as a Revenue Inspector in the Tahasil Office, Bhawanipatna, was dealing with OLR Case No.12 of 2005, pending in the name of the Complainant. It was alleged that on 05.07.2007, the Appellant demanded a sum of ₹400/- from the Complainant as illegal gratification for processing and issuing necessary orders in connection with the said OLR case. The Complainant, being unwilling to pay the bribe, approached the Vigilance Police and lodged a written report, whereupon a trap was organized. As per the trap arrangement, the Complainant tendered the tainted currency notes of ₹400/- to the Appellant in his office, which the Appellant allegedly accepted and kept inside the case record. Immediately thereafter, the Vigilance team entered, conducted hand-wash and file-wash tests, which turned pink, and seized the tainted notes from the possession of the accused.

3. In course of the investigation, the Vigilance Police seized the relevant documents, prepared the pre-trap and post-trap memoranda, recorded the statements of witnesses, obtained sanction for prosecution from the competent authority, and forwarded the chemical examination report which confirmed the presence of phenolphthalein in the hand-wash and file-wash solutions. Upon completion of investigation, charge-sheet was submitted against the Appellant under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, leading to his trial before the learned Special Judge (Vigilance), Bhawanipatna.

4. The prosecution examined eight witnesses in support of its case. P.W.1, the in-charge Tahasildar, proved that the OLR case record was pending with the accused at the relevant time. P.W.2 was the scribe of the written complaint lodged before the Vigilance Police. P.W.3, the Additional District Magistrate, deposed to having granted sanction for prosecution of the accused. P.W.4, the independent witness to the trap, corroborated the pre-trap and post trap proceedings and stated that the accused had demanded and accepted ₹400/- from the Complainant, which was recovered from the OLR case record maintained by him. P.W.5, the Trap Laying Officer, supported the version of P.W.4 and proved the seizure, recovery, and preparation of memoranda. P.W.6, another independent official witness, also corroborated the recovery of tainted notes and the hand-wash turning pink. P.W.7, the Complainant, however, resiled from his earlier statement and did not support the prosecution on the aspect of demand, though he admitted to having kept the money in the file. P.W.8, the Investigating Officer, spoke about the completion of investigation, seizure of documents, receipt of sanction order, and submission of charge-sheet.

5. Mr. H. K. Mund, learned counsel for the Appellant, submitted that the prosecution has failed to establish the foundational facts of demand and acceptance of illegal gratification, which are sine qua non for conviction under Sections 7 and 13(1)(d) of the Prevention of Corruption Act. He urged that the Complainant (P.W.7) clearly deposed before the court that the Appellant never demanded any bribe and that he himself had kept the tainted money in the file in the absence of the

Appellant. Thus, the very substratum of the prosecution case is destroyed. Mr. Mund further argued that reliance placed by the prosecution on P.W.4, the so-called shadow witness, is misplaced. P.W.4 admitted in cross-examination that he had acted as a Vigilance witness in three to four cases earlier, thereby showing that he is a "stock witness" and not an independent person. His testimony is also contradicted by P.W.7 and is unsupported by any independent corroboration. The alleged overhearing from the verandah is highly doubtful. In such circumstances, mere recovery of money from the file is insufficient to bring home guilt, as held in ***State of Kerala Vs. C.P. Rao***[1] and ***K. Shanthamma Vs. State of Telangana***[2]**.**

Learned counsel further submitted that the phenolphthalein test on the Appellant's hand wash was negative, which itself shows that the Appellant never accepted the money. The presumption under Section 20 of the P.C. Act cannot be invoked in the absence of proof of demand, as reiterated in the Constitution Bench decision of ***Neeraj Dutta Vs. State (NCT of Delhi)***[3]**.** On the issue of sanction, it was urged that P.W.3, who was only in routine charge as ADM, had no authority to remove the Appellant from service and therefore was incompetent to grant sanction. The sanction being invalid, the cognizance itself stands vitiated. This amounts to a failure of justice as contemplated under Section 19(3) of the Act, rendering the trial illegal. Placing reliance on ***Neeraj Dutta Vs. State (NCT of Delhi), State of Goa Vs. Babu Thomas***[4]**,** and ***Sushil Kumar Pati Vs. State of Odisha***[5]**,** learned counsel submitted that the conviction cannot be sustained merely on recovery, especially when demand is unproved, hand wash is negative, and sanction is defective. He prayed that the impugned judgment be set aside and the Appellant acquitted.

6. Mr. Rizvi, learned counsel for State (Vigilance), submitted that the prosecution has successfully proved the demand, acceptance, and recovery of illegal gratification from the Appellant beyond all reasonable doubt. He contended that the evidence of P.W.4, P.W.5, and P.W.6, consistently established that the accused had demanded and accepted ₹400/- from the Complainant, which was recovered from the file kept on his table. The phenolphthalein test on the hand wash and file-wash yielded positive results, and the FSL report (Ext.18) further corroborated the prosecution case. It was urged that even though the Complainant (P.W.7) turned partially hostile, he admitted to having kept the money inside the file of the accused, which, coupled with the testimony of the independent witnesses, sufficiently proves acceptance. Reliance was placed on the presumption under Section 20 of the P.C. Act, as once acceptance of tainted money is proved, the burden shifts to the accused to explain the same, which he has miserably failed to do.

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1 (2011) 6 SCC 450
2 (2022) 4 SCC 574
3 (2023 SCC OnLine SC 280)
4 (2005) 8 SCC 130
5 (2018) 1 ILR (Cuttack) 1118

Mr. Rizvi further argued that the defence plea of false implication at the instance of an Advocate is an afterthought, not suggested to any witness during cross-examination, and finds no place in the detection report. He submitted that minor discrepancies in trap procedure do not dislodge the core prosecution story. On the issue of sanction, it was submitted that in view of Section 19(3)(a) of the P.C. Act, the Appellant is estopped from challenging its validity in appellate proceedings unless failure of justice is shown, which is absent in the present case. Placing reliance on the decisions in ***Raghubir Singh Vs. State of Haryana[6], Shankar Prasad Vs. State of A.P[7], Vinod Kumar Garg Vs. State (GNCT of Delhi)[8], and the recent in Neeraj Dutta Vs. State (NCT of Delhi)*** *(Supra),* Mr. Rizvi argued that even in the absence of direct support from the Complainant, conviction can be sustained if other reliable evidence proves demand and acceptance. He contended that the trial court has meticulously appreciated the evidence and returned well-reasoned findings, and no perversity or illegality warrants interference by this Court.

7. On perusal of the case record and hearing learned counsels for both the parties, this Court finds it pertinent to bring its own analysis.

8. It is by now trite law that proof of demand of illegal gratification is the gravamen of the offences under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988. The Constitution Bench in ***Neeraj Dutta v. State (Govt. of NCT of Delhi)*** **(2023) 4 SCC 731**, has reiterated the following –

> "68. What emerges from the aforesaid discussion is summarised as under:
>
> (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and(ii) of the Act.
>
> (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.
>
> (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.
>
> (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:
>
> (i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.
>
> (ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the

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6 (1974) 4 SCC 560

7 (2004) 3 SCC 753

8 (2020) 77 OCR (SC) 310

public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13 (1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act.

Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13 (1)(d) and (i) and (ii) of the Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event the Complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1)(d)(i) and (ii) of the Act.

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature.

Earlier precedents such as ***P. Satyanarayana Murthy v. District Inspector of Police***[9] ***and B. Jayaraj v. State of A.P.***[10] have also consistently held to the same effect and relied on in Neeraj Dutta (Supra). Thus, the primary question before this Court is whether the prosecution has been able to prove, beyond reasonable doubt, that the Appellant had made a demand of ₹400/- from the Complainant.

9. Turning to the evidence, the Complainant (P.W.7) did not support the prosecution on the crucial aspect of demand. In his testimony before the trial court,

9 (2015) 10 SCC 152
10 (2014) 13 SCC 55

he categorically stated that the Appellant never demanded any bribe and that he had placed the tainted money inside the case record on his own, at the instance of his Advocate. The prosecution declared him hostile, and he was confronted with his previous statement under Section 164 Cr.P.C., wherein he had spoken about demand. However, it is well settled that a prior statement under Section 164 is not substantive evidence unless duly proved by examining the Magistrate who recorded it. In the present case, the Magistrate was not examined, and therefore the alleged statement under Section 164 cannot be relied upon substantively. What remains is only the testimony in court, where P.W.7 resiled from his earlier version.

The prosecution has sought to prove demand through P.W.4, the shadow witness. P.W.4 stated that he overheard the Appellant ask the Complainant about the demanded amount and that the Complainant replied affirmatively. However, his testimony suffers from inherent infirmities. He admitted in cross-examination that he had earlier acted as a witness in three to four Vigilance cases, thereby branding himself as a "stock witness," and diminishing the credibility of his independence. Moreover, P.W.4 himself stated that he was standing in the verandah adjacent to the Revenue Section at the relevant time, which makes it doubtful whether he could have either heard the conversation or seen the Complainant placing the notes inside the file. This renders his version vulnerable. The other so-called independent witness (P.W.6) does not speak directly to the demand, but only corroborates the recovery and post-trap proceedings.

It is also significant to mention that the Complainant, while turning hostile on demand, has at least admitted that he kept the money in the file himself. If his version is accepted, it completely negates the prosecution story of any demand having been made by the Appellant. On the other hand, the version of P.W.4, standing alone without corroboration, is unsafe to be relied upon, more so when the Complainant himself has exonerated the Appellant. The Hon'ble Supreme Court in ***State of Kerala Vs. C.P. Rao*** **(Supra)** held that when the Complainant does not support the case of demand, and there is no other reliable evidence, conviction cannot be sustained. Similarly, in ***K. Shanthamma Vs. State of Telangana*** **(Supra),** it was reiterated that proof of demand cannot rest on suspicion or doubtful testimony.

10. In the present case, therefore, the prosecution has failed to establish the foundational fact of demand. The Complainant has not supported the case; his prior statement is legally inadmissible; the testimony of P.W.4 is unreliable and stands contradicted by the Complainant; and there is no other independent corroboration of demand. In such circumstances, this Court is constrained to hold that the charge of demand of illegal gratification has not been proved beyond reasonable doubt.

11. On the question of acceptance and recovery, the prosecution has strongly relied on the fact that the tainted currency notes were recovered from inside the OLR case record kept on the Appellant's table, and that the file wash turned pink, which, according to learned counsel for Vigilance, clearly establishes that the Appellant had accepted the bribe money and kept it in his file. Mr. Rizvi, learned counsel for State (Vigilance), argued that once recovery of tainted notes is established, and the chemical test corroborates the presence of phenolphthalein, the presumption under Section 20 of the

P.C. Act comes into play, shifting the burden on the accused to explain the recovery. He emphasised that the Appellant has not offered any plausible explanation for the presence of money in his file and that the defence plea of planting at the instance of the Complainant's Advocate is an afterthought, not put to the witnesses during cross-examination. On the other hand, Mr. Mund, learned counsel for the Appellant contended that the Complainant has categorically stated that he himself kept the money inside the file without the knowledge of the Appellant, and the very fact that the phenolphthalein test on the Appellant's hand wash yielded a negative result establishes that the Appellant never touched the money and therefore did not accept it. He urged that when the Complainant's version rules out acceptance, and the recovery is capable of being explained as a planting of money, the presumption under Section 20 does not arise.

12. It is noted that the testimony of P.W.4 and P.W.6 is of limited assistance in this regard. P.W.4 stated that he saw the Complainant place the money inside the file, but his statement does not specifically establish that the Appellant himself accepted the money. His evidence in fact tends to corroborate the Complainant's version that the money was placed by P.W.7 himself. P.W.6, the other official witness, corroborates the post-trap recovery, tally of numbers, and chemical test but likewise does not speak to the Appellant physically accepting the money. The trap officer (P.W.5) proved the recovery of notes from the file and the positive test on the file wash, but he too admits that the hand wash of the accused was negative.

Thus, the prosecution's case on acceptance hinges on whether keeping of the money inside the Appellant's file by the Complainant can be treated as acceptance by the Appellant. The trial court reasoned that since the file belonged to the Appellant and the money was found in it, acceptance was proved. However, as urged by learned counsel for the Appellant, the absence of phenolphthalein on the Appellant's hands weakens this inference, because if he had actually handled the tainted notes, traces ought to have been found. Furthermore, the Complainant himself testified that the Appellant was absent when he placed the money, thereby rendering the theory of voluntary acceptance by the accused doubtful.

13. The next issue is whether the statutory presumption under Section 20 of the Prevention of Corruption Act can be invoked in the facts of this case. Section 20 provides that where it is proved that an accused has accepted or obtained any gratification other than legal remuneration, the Court shall presume that such gratification was accepted as a motive or reward, unless the contrary is proved. The sine qua non for drawing this presumption, however, is proof of the foundational fact of voluntary acceptance by the accused. As clarified in ***B. Jayaraj Vs. State of A.P. (Supra), P. Satyanarayana Murthy Vs. D.I. of Police (Supra),*** and reiterated in Neeraj Dutta (Supra), mere recovery of tainted currency notes does not suffice; the prosecution must first prove beyond doubt that the accused voluntarily accepted the money.

14. Learned counsel for the State (Vigilance) urged that since the tainted notes were admittedly recovered from the file belonging to the accused and the file wash tested positive, the factum of acceptance must be taken as established. He submitted

that once recovery is proved, the presumption arises automatically, and the burden shifts to the accused to explain how the tainted money reached his possession. Learned counsel for the Appellant, however, countered that the very premise for drawing the presumption is missing in this case. He submitted that the Complainant (P.W.7) has denied any demand or voluntary acceptance by the Appellant, and has instead deposed that he placed the money inside the file without the accused's knowledge. He highlighted that the phenolphthalein test on the Appellant's hands was negative, which conclusively shows that the Appellant never touched the tainted notes.

15. On a careful scrutiny of the evidence, this Court finds that while recovery from the Appellant's file is undisputed, the evidence of acceptance is contested and doubtful. The Complainant has denied that the Appellant ever accepted the money; P.W.4 and P.W.6 do not speak to actual handling by the Appellant; and the hand wash being negative fortifies the defence stand. In such a factual backdrop, the foundational requirement for raising the presumption of voluntary acceptance by the accused remains unproved. Consequently, the statutory presumption under Section 20 cannot automatically be drawn on the basis of recovery alone. The burden, therefore, cannot be said to have shifted to the Appellant, and the prosecution must stand or fall on the strength of its own evidence.

16. On the testimony of the Complainant and reliability of trap witnesses, a pivotal feature of the present case is that the Complainant (P.W.7), who was the star witness for the prosecution, turned hostile during trial. In his examination-in-chief, he stated that the accused never demanded money from him and that he himself had placed the tainted notes inside the file at the instance of his Advocate, even asserting that the accused was not present in the office at that time. This version, if accepted, strikes at the very root of the prosecution case. The learned counsel for the Appellant has urged that in corruption cases, when the Complainant does not support the allegation of demand and acceptance, the foundation of the prosecution collapses. Learned counsel for Vigilance, however, argued that P.W.7's testimony cannot be read in isolation. He pointed out that the Complainant had earlier given a consistent version in his written report and his statement under Section 164 Cr.P.C. before the Magistrate, wherein he had categorically stated about the demand and acceptance.

17. In this context, the prosecution has leaned heavily on P.W.4 and P.W.6. P.W.4, the shadow witness, stated that he overheard the accused asking the Complainant about the demanded amount and saw the Complainant keep the notes inside the file. P.W.6 corroborated the post-trap proceedings, including tally of the notes and positive chemical tests. However, learned counsel for the Appellant contended that P.W.4 admitted in cross-examination that he had acted as a Vigilance witness in three to four earlier cases, thereby rendering him a "stock witness" whose independence is doubtful. Further, P.W.4's position in the verandah makes it questionable whether he could have overheard the alleged conversation inside the office. P.W.6, on the other hand, did not speak to any demand or acceptance but

only to the recovery, which by itself, in the absence of proof of demand, cannot establish the offence.

18. It is true that a hostile witness can still be relied upon to the extent his testimony finds corroboration from other evidence. Yet, in the present case, P.W.7's admission is limited to his own act of placing the money in the file, which supports recovery but simultaneously negates acceptance by the accused. P.W.4's evidence on demand is weakened by his status as a repeated Vigilance witness, and P.W.6's evidence is confined to recovery and chemical wash. However, the absence of direct testimony from the Complainant on demand, coupled with the infirmities in P.W.4 and the limited scope of P.W.6, makes the prosecution version doubtful.

19. Furthermore, the sanction for prosecution in the present case was accorded by P.W.3, who was then functioning as the Additional District Magistrate, Kalahandi. P.W.3 deposed that he had verified the materials placed before him and was satisfied that a prima facie case was made out against the accused, whereafter he accorded sanction under Section 19 of the P.C. Act. The defence, however, has seriously challenged the validity of this sanction. Learned counsel for the Appellant contended that the Appellant was serving as a Revenue Inspector and the appointing and removing authority was the Collector, not the ADM. Since P.W.3 was only in routine charge and did not possess the power of removal, he was incompetent to grant sanction, and as such the cognizance itself is vitiated. Learned counsel for Vigilance, on the other hand, submitted that sanction is an administrative act and not a quasi-judicial function. He argued that P.W.3, as ADM, was duly authorized to exercise the powers of the Collector in his absence, and therefore the sanction cannot be termed invalid. Moreover, Section 19(3)(a) of the P.C. Act makes it clear that any irregularity in sanction will not ipso facto vitiate the proceedings unless it has resulted in a failure of justice.

20. On a careful appreciation of the record, it emerges that P.W.3 did not produce any specific order of delegation showing that he was empowered to remove the Appellant from service. While the law permits reliance on Section 19(3) to cure irregularities, the absence of clear proof of competence, as highlighted by defence, does cast doubt on the validity of sanction. Nevertheless, this Court also cannot ignore that the trial proceeded to conclusion and no specific prejudice has been established by the accused in his defence. Thus, the issue of sanction, though debatable, may not by itself be sufficient to vitiate the trial unless coupled with other infirmities in the prosecution case.

21. Learned counsel for the Appellant has also pointed to several infirmities in the trap proceedings. Mr. Rizvi, learned counsel for Vigilance, countered that minor discrepancies in trap procedure cannot be elevated to the level of fatal contradictions.

22. On consideration, while it is correct that not every procedural lapse is fatal, certain lapses in the present case appear to be substantive. The non-examination of

the Magistrate weakens reliance on the Complainant's Section 164 statement; the negative hand wash undermines the inference of physical handling by the accused and contradictions among the trap witnesses make the exact sequence of events uncertain. These infirmities must be weighed along with the central question of demand and acceptance while assessing the overall strength of the prosecution case.

23. Upon a careful consideration of the rival submissions and the evidence on record, this Court finds that the prosecution has failed to establish the essential ingredient of demand of illegal gratification by the Appellant. The Complainant (P.W.7), who was the best person to speak on the alleged demand, has categorically denied it in his testimony, and his prior statement under Section 164 Cr.P.C. remains unproved for want of examination of the Magistrate, which could not have been taken as substantive evidence otherwise. The evidence of P.W.4, the shadow witness, is weakened by his admitted status as a repeated Vigilance witness and by doubts about his capacity to overhear the conversation from the verandah. P.W.6 speaks only to recovery and chemical test, not to demand. The recovery of tainted notes from the file of the Appellant, coupled with a positive file wash, does establish that the tainted money was present in his office file, however, the negative hand wash and the Complainant's testimony that he himself placed the money in the file create serious doubt about voluntary acceptance by the Appellant. In such circumstances, the presumption under Section 20 of the P.C. Act does not arise. The sanction for prosecution is itself open to question, as P.W.3 did not demonstrate clear competence as the removing authority, though by virtue of Section 19(3), this irregularity may not by itself vitiate the trial in the absence of prejudice. Nonetheless, when seen cumulatively with the failure to prove demand, the infirmities in acceptance, and procedural lapses in trap proceedings, the prosecution case falls short of the stringent standard of proof required in criminal jurisprudence. The finding of guilt recorded by the learned trial court thus cannot be sustained.

24. In view of the foregoing analysis and findings, the Appeal succeeds. The judgment and order dated 11.04.2012 passed by the learned Special Judge (Vigilance), Bhawanipatna, District-Kalahandi in G.R. (Vig.) Case No.23 of 2007 corresponding to T.R. Case No.27 of 2011 convicting the Appellant under Sections 7 and 13(2) read with Section 13(1)(d) of the P.C. Act, 1988 and sentencing him thereunder, is hereby set aside. The Appellant is acquitted of all the charges.

The Appellant, who is on bail, be discharged from the liabilities of his bail bonds. A copy of this judgment be sent to the Court concerned for information and necessary action.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter Appeal succeeds..
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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2025 (III) ILR-CUT-740

MANGULI BHAL & ORS.
V.
STATE OF ORISSA

[CRA NO. 370 OF 1992]

19 AUGUST 2025

[SIBO SANKAR MISHRA, J.]

Issue for Consideration

Whether non explanation of injuries on the accused persons by the prosecution vitiate its case?

Headnotes

CRIMINAL TRIAL – Offence U/s. 395 of Penal Code – Case & Counter Case – Injuries on the accused person – No explanation has been offered by the prosecution – The prosecution witness are related & interested to each other and also inimical to the accused – Whether non explanation of injuries on the accused persons by the prosecution vitiate its case?

Held: Yes – In the present case, the evidence of the prosecution witnesses suffers from these very defects – Witnesses examined by the prosecution are either related to the informant or otherwise inimically disposed towards the accused – Their consistent silence regarding the injuries sustained by the accused, particularly when the injury is serious and is medically proven, indicates suppression of material aspects and raises grave suspicion as to whether the prosecution has presented a true and fair account of the incident.

Furthermore, the defence has provided a plausible explanation that the occurrence was not unilateral and that the accused had also sustained injuries during the scuffle, which could indicate an altercation where the right of private defence cannot be ruled out – The affidavit filed by the informant also omits any reference to injuries to the accused, further confirming suppression of the genesis and origin of the occurrence.

Given the above, it is no longer safe to rely upon the prosecution's version to sustain conviction – The evidence of the prosecution witnesses stands compromised on account of suppression, omission, and interested testimony – The legal position being clear from a catena of decisions referred above, the benefit of doubt must necessarily go to the accused – In view of the foregoing discussion and in light of the settled position of law, this Court is of the considered view that the prosecution has failed to prove its case beyond reasonable doubt. (Paras 16 to 18)

Citations Reference

Lakshmi Singh v. State of Bihar, **(1976) 4 SCC 394;** Krishna Padhi and Others v. State of Orissa, **(1992) 5 OCR 529;** Veli Thevar v. State of Madras, **AIR 1957 SC 614;** Krushna v. State of Orissa, **(1992) 5 OCR 529 – referred to.**

List of Acts

Indian Penal Code, 1860.

Keywords

Case & Counter Case; Injuries on the accused; Explanation of injuries; Related & interested witness; Inimical witness; Suppression of the material facts; Genesis & origin of the occurrence; Benefit of doubt.

Case Arising From

Judgment dated 28.10.1992 passed by Additional Sessions Judge, Kendrapara in Sessions Trial Case No. 214/8 of 1990 arising out of G.R. Case No. 593 of 1989,.

Appearances for Parties

For Appellants : Mr. D.P. Dhal, Sr Adv.
For Respondent : Ms. Subhalaxmi Devi, ASC

Judgment/Order

Judgment

S.S. MISHRA, J.

This criminal appeal is directed against the judgment dated 28.10.1992 passed by the learned Additional Sessions Judge, Kendrapara in Sessions Trial Case No. 214/8 of 1990 arising out of G.R. Case No. 593 of 1989, whereby the appellants along with others were convicted under Section 395 of the Indian Penal Code (IPC), and sentenced to undergo rigorous Imprisonment for a period of 2 years and to pay a fine of Rs. 1000/- each and in default, to undergo further rigorous imprisonment for three months. The remaining sixty accused persons were acquitted of all charges.

2. Pursuant to the order dated 01.07.2025, the IIC, Pattamundai Model Police Station has submitted a written report dated 15.07.2025, *inter alia*, informing this Court that appellant no.2-Jagir Bhal, appellant no.4-Pada @ Padmanav Nayak, appellant no.7-Batakrushna Pradhan and appellant no. 10-Pati @ Patitapaban Bhal have already expired, and the rest of the appellants are residing in their village. Along with the report, the death certificates have been submitted, which were taken on record.

3. Heard Mr. D.P. Dhal, learned Senior Counsel for the appellants and Ms. Subhalaxmi Devi, learned Additional Standing Counsel for the State.

4. The prosecution case in brief is that on 09.07.1989 at about 3:30 PM, one Raj Kishore Pradhan (P.W.5) was allegedly chased by accused No. 09 Jadumani Rout (later

acquitted) along with his wife and daughter while he was on his way to mill paddy. It was alleged that they were armed with thenga and tenta and intended to assault him. The said Raj Kishore ran towards the village and took shelter, following which the accused persons, alleged to be seventy in number, armed with weapons like tenta, farsa, and sticks, chased him and reportedly pelted stones, broke open the doors of houses, entered therein, assaulted some villagers and removed household articles and agriculture produce.

5. The oral information regarding the occurrence was given by P.Ws. 16 to 17, the then officer-in-charge of Pattamundai Police Station, at about 7 PM on the same day, which was reduced into writing and registered as the plain paper FIR. Investigation ensued and Charge-Sheet was filed against seventy persons under Sections 454 and 395 IPC, resulting in their commitment to face trial before the Court of Sessions.

6. In support of the charges, the prosecution examined seventeen witnesses. P.Ws. 1 to 12, 15 and 16 were projected as eye-witnesses to the occurrence. P.W. 13 was the doctor who had allegedly examined the injured persons. P.W. 14 was a seizure witness, and P.W. 17 was the Investigating Officer. The defence examined four witnesses and relied on several documents, including injury reports, which showed that several accused persons had sustained injuries during the occurrences.

7. The defence case was one of total denial and pleaded that a petty quarrel between two rival village factions occurred on the village road, in the course of which both sides sustained injuries. It was further contended that no incident of house trespass or dacoity occurred and that the case was the result of group enmity, a counterblast to other proceedings between the parties.

8. The learned trial Court, on appreciation of the evidence, came to a finding that there indeed existed deep-seated enmity and party faction between the complainant side and the accused persons, which was evident from the FIR and other materials on record. It was noted that most of the prosecution witnesses were related and interested, and there were proceedings under Section 107 Cr.P.C. between the parties. The Court found that the prosecution had failed to explain the injuries sustained by the accused persons, and that many of the injuries on vital parts of the body gave rise to a presumption that the genesis of the occurrence had been suppressed.

9. The trial Court noted significant inconsistencies in the evidence of prosecution witnesses. While P.W.5 alleged assault and injuries, no injury was found on him by the doctor. P.W.4 claimed injury from a stone thrown by another person who is not before the Court. P.W.6 sustained a simple injury, while others had either no injury or their injuries were not supported by medical evidence. The trial Court despite these infirmities chose to disbelieve the case under Section 454 IPC but found the appellants guilty under Section 395 IPC relying primarily on the evidence of P.W.11, who claimed to have seen the accused looting articles from her house. The relevant portion of the aforesaid judgment is extracted herein below:-

> *"Thus in the net result the prosecution has not been able to substantiate its case against any of the accused persons conclusively for the offence u/s 454 I.P.C. and the prosecution has also equally failed to bring home the offence conclusively u/s, 395*

I.P.C, against accused No.1,4,5,6,7,8,9,10,11,12,13,14,13,16,17,18,19,20,22,24,25,26, 29, 31, 32, 53, 34, 33, 36, 37,38,39,40,41,42,43,44,45,46,47,43,49,50,51,52,53,54,55,56, 57,58,59,61,62,63,64,65,67,69 and 70. They are given benefit of doubt. They are found not guilty and are set at liberty by virtue of section 235 Cr.P.C.

Accused persons serial No, 2 Manguli Bhol, 3 Jagir Bhal, 21 Parsuram Jena, 23 Padmanava Nayak 27 Benudhar Pradhan, 28 Asok Kumar Pradhan, 30 Batakrushna Pradhan, 60 Paramananda Das, 66 Rabindra Kumar Samal and 68 ,Patitapaban Bhal are found guilty for the offence u/s 395 I.P.C. and are convicted thereunder. Place the accused persons for hearing on the question of sentence.

Heard the accused convicts and their advocate on the question of sentence. They have sought for a lenient consideration of imparting sentence. Regard being had to the facts and circumstances of the case and socio economic rural life condition of the accused convicts, each of the convicts are sentenced to undergo rigorous imprisonment for two years term and each of them are further sentenced to pay a fine of Rs, 1,000/- (One thousand). In default of payment of fine amount, the defaulting accused convicts are to undergo further R.I. for three months term."

10. Mr. Dhal, learned Senior Counsel for the appellants, has strenuously argued that the learned trial court has failed to appreciate the serious lapse of the prosecution in not explaining the injuries to the accused persons. Reliance has been placed on the judgment of the Hon'ble Supreme Court in ***Lakshmi Singh v. State of Bihar,*** reported in ***(1976) 4 SCC 394,*** wherein it was held that non-explanation of injuries sustained by the accused at the time of the occurrence or during the altercation is a very important circumstance from which the court can infer that the prosecution has suppressed the genesis and origin of the occurrence.

11. Further reliance was placed on the Division Bench decision of this Court in ***Krishna Padhi and Others v. State of Orissa,*** reported in ***(1992) 5 OCR 529,*** wherein it was held that non-explanation of injuries assumes greater importance when the witnesses are inimical and the defence version is more probable. It is submitted that in the present case, the evidence of P.W.11, on which conviction was based, was itself shaky and suffered from exaggeration and lack of corroboration, thus not fitting into the category of wholly reliable evidence as contemplated in ***Veli Thevar v. State of Madras,*** reported in ***AIR 1957 SC 614.***

12. More significantly, the informant himself, namely Basant Kumar Pradhan, has filed an affidavit before this Court stating that the dispute between the parties has long been resolved amicably and they now live harmoniously. It is also mentioned that four of the convicted appellants have already passed away during the pendency of the appeal and the rest are old and ailing, living peacefully with their families.

13. On careful consideration of the materials on record and the submissions advanced, this Court finds that the prosecution's case suffers from a vital infirmity namely, the failure to explain the injuries sustained by the accused persons during the same occurrence. The record reveals that the accused Kalia sustained injuries in course of the incident, which the prosecution has not even attempted to explain. The prosecution witnesses have either denied knowledge of such injuries or offered vague

and evasive statements, which cast a serious doubt on the veracity of the prosecution's case.

14. The Hon'ble Supreme Court in ***Lakshmi Singh v. State of Bihar,*** reported in ***(1976) 4 SCC 394*** has categorically held that non explanation of injuries found on the accused by the prosecution assumes significant importance, especially in cases where the defence version competes in probability with that of the prosecution and the evidence comes from interested or inimical witnesses. The failure of the prosecution to offer any explanation for the injuries found on the accused, when the same could have been reasonably explained, indicates that the prosecution has not come with clean hands, and the evidence presented cannot be wholly relied upon. The Hon'ble Court held thus-

> *"The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the We must hasten to add that as held by this Court in State prosecution case. of Gujarat v. Bai Fatima (supra) there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises."*

15. The proposition is not that every non-explained injury vitiates the prosecution, but where such omission is coupled with interested testimony and suppression of material facts, it becomes fatal. As observed in ***Krushna v. State of Orissa,*** reported in ***(1992) 5 OCR 529,*** which relies upon and reaffirms the aforementioned decision, the Court cautioned against relying on witnesses who deny seeing injuries on the accused, despite their visible nature, as such conduct undermines their credibility and neutrality. The Court held thus-

> *"Added to it, we find that the accused Kalia had sustained an injury. It cannot be laid down as a general proposition that wherever there is an injury on an accused which is explained; the prosecution case is bound to fail. Where there is failure of the prosecution to offer any explanation regarding the injuries found on the accused, it may show that the evidence related to the incident is not true or at any rate not wholly true. This view was expressed by the Supreme Court in Mohar Rai and Bharat Rai v. The State of Bihar: AIR 1963 SC 1281. Non-explanation of the injuries on the accused by the prosecution affects the prosecution. (See Lakshmi Singh and others v. State of Bihar: AIR 1976 SC 2263). Such non-explanation assumes greater importance where the evidence consists of interested or inimical witness or where the defence gives a version which competes in probability with that of the prosecution. Where, however, the*

evidence is clear, cogent and credit-worthy and where the Court can distinguish the truth from false-hood, the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence, and consequently the whole case. Much depends on the facts and circumstances of each case. (See Vijayee Singh and others v. State of U.P.: 1990 (11) Crimes 584). Where it is shown that the prosecution has suppressed the genesis and the origin of the occurrence and has not presented a true version, the prosecution case becomes vulnerable. Non-explanation of the injuries may not affect the prosecution case as a whole, but the defence can contend on the basis of non explanation of injuries found on the accused that the accused could have had a right of privets defence or at any rate a reasonable doubt arises in this regard."

16. In the present case, the evidence of the prosecution witnesses suffers from these very defects. Witnesses examined by the prosecution are either related to the informant or otherwise inimically disposed towards the accused. Their consistent silence regarding the injuries sustained by the accused, particularly when the injury is serious and is medically proven, indicates suppression of material aspects and raises grave suspicion as to whether the prosecution has presented a true and fair account of the incident.

17. Furthermore, the defence has provided a plausible explanation that the occurrence was not unilateral and that the accused had also sustained injuries during the scuffle, which could indicate an altercation where the right of private defence cannot be ruled out. The affidavit filed by the informant also omits any reference to injuries to the accused, further confirming suppression of the genesis and origin of the occurrence.

18. Given the above, it is no longer safe to rely upon the prosecution's version to sustain conviction. The evidence of the prosecution witnesses stands compromised on account of suppression, omission, and interested testimony. The legal position being clear from a catena of decisions referred above, the benefit of doubt must necessarily go to the accused. In view of the foregoing discussion and in light of the settled position of law, this Court is of the considered view that the prosecution has failed to prove its case beyond reasonable doubt.

19. In view of the above, I am of the considered view that the prosecution has failed to prove the charge under Section 395 IPC against the appellants beyond all reasonable doubt. The benefit of doubt must necessarily go to the appellants.

20. Accordingly, the appeal is allowed. The conviction and sentence passed by the learned trial court are hereby set aside. The appellants are acquitted of all the charges and the bail bonds furnished by them stand discharged.

Headnotes prepared by: *Result of the case:*
Shri Jnanendra Ku. Swain, Judicial Indexer Appeal allowed.
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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2025 (III) ILR-CUT-746

SATYABATI MISHRA & ORS.
V.
STATE OF ORISSA

[CRA NO. 147 OF 1998]

25 SEPTEMBER 2025

[SIBO SANKAR MISHRA, J.]

Issue for Consideration

Whether, in the absence of satisfactory evidence establishing cruelty against the deceased in connection with a demand of dowry, the offence U/s. 304B of the IPC can be charged upon the accused/appellant**.**

Headnotes

INDIAN PENAL CODE, 1860 – Sections 304B and 498-A – The learned trial Court has convicted the accused/appellants for the offences U/s. 304-B / 498-A / 34 of the IPC and acquitted U/s. 4 of D.P. Act – Whether in the absence of satisfactory evidence establishing cruelty against the deceased in connection with demand of dowry, the offence U/s. 304B of the IPC can be charged upon the accused/appellant.

Held: No – It is trident law that main cruelty or harassment *dehors* demand of dowry cannot satisfy the ingredient required to establish the offence under Section 304B of the IPC – Hence, on the basis of the available evidence on record and the findings recorded by the learned trial Court, this Court is satisfied that the prosecution has miserably failed to bring home the charge under Section 304 IPC, as the basic ingredient requires to bring the case under the mischief of Section 304B IPC is missing – Hence, the accused persons are entitled to the benefit of doubt and accordingly acquitted of the said charge of Section 304B. (Para 19)

Citations Reference

Durga Prasad and others vs. State of Madhya Pradesh, **(2010) 9 SCC 73;** Biswajit Haldar @ Babu Haldar and another vs. State of West Bengal, **(2008) 1 SCC 202;** Bholram vs. State of Punjab, **(2013) 16 SCC 421 – referred to.**

List of Acts

Indian Penal Code, 1860; Evidence Act, 1872.

Keywords

Dowry death; Demand of dowry; Cruelty; Soon before death; Harassment by husband & her relative

Case Arising From

Judgment and Order dated 24.07.1998 passed by the Learned Addl. Session Judge, Rayagada in Session Case No.09 of 1997.

Appearances for Parties

For Appellants : Mrs. Shuvra Mohapatra
For Respondent : Mr. Sarathi Jyoti Mohanty, ASC

Judgment/Order

Judgment

S.S. MISHRA, J.

The present Criminal Appeal filed by the appellants under Section 374(2) of the Cr. P.C., is directed against the judgment and order dated 24.07.1998 passed by the learned Additional Sessions Judge, Rayagada in Sessions Case No.9 of 1997, whereby the learned trial Court has convicted the accused-appellants for the offences punishable under Sections 304-B/498-A/34 of the IPC and sentenced them to undergo R.I. for eight years each for the offence under Section 304-B/34 of the IPC. No separate sentence is called for in respect of the offence under Section 498-A of the IPC.

2. Heard Mrs. Shuvra Mohapatra, learned counsel appearing for the appellants and Mr. Sarathi Jyoti Mohanty, learned Additional Standing Counsel appearing for the State.

3. The prosecution case in terse and brief is that the deceased was the daughter of Haribandhu Mishra of Gunupur married to accused Laxmikanta Misra on 23.05.1993. The marriage was held in the residence of Haribandhu Misra at Gunupur and prior to that, there was a negotiation for the marriage between two parties. During the marriage, as per the terms of pre-engagement, utensils, gold ornaments, cash and other articles were given by the parents of the deceased to Laxmikanta Misra. She came to the house of her husband situated at Rayagada and lived there in the company of other accused persons in the same house. Krushna Prasad Mishra was the brother of the deceased and he suddenly got the information of death of his sister (the deceased) on 24.09.1995 at about 5 P.M. He along with his family members arrived at Rayagada by hearing such sad news and came to know that his sister died by receiving burn injuries on account of certain accident. They opined that her death was not accidental, but it was a pre-planned murder. Her dead body was not completely burnt. The head and palms were not affected by fire. The tongue was pressed by both the jaws and some liquid came out from the mouth of the deceased. Her bangles were not broken. She never cried for help on account of any accident. So, he thought that she was murdered by committing suffocation. Then kerosene was poured on her body and fire was set to burn her. Previously, she was subjected to cruelty and harassment on account of demand of more dowry. She was

also complaining before her parents and other family members against demand of more dowry by her in-laws even after marriage. Her parents also fulfilled certain demands of the accused persons by paying cash and other articles in kind. The deceased gave birth to a female child during the last month of January. After that, the accused persons subjected her to cruelty and harassment when they demanded Rs.30,000/- and a gas stove and had also given threatening to face with dire consequences, if that demand was not fulfilled. Hence, the F.I.R.

4. The prosecution, in order to bring home charges examined total 15 witnesses to prove its case whereas the defence examined six witnesses. P.W.1 was the informant and the brother of the deceased Sunita Mishra. P.W.2 Ramakrushna Padhy was the resident of the same locality where the rented house of the accused persons was situated. He also found some persons standing in front of the house of the accused persons on 24.09.1995 at about 4.30 P.M. He came to know that the deceased Sunita died being on flame. He also found the lady burning inside the house in a sleeping condition. He collected the information regarding the cause of the burning and death of Sunita. P.W.3 was Sagadia Durja, who does not know anything about the case and she has been cross-examined by the prosecution. P.W.4 was Subash Chandra Ratha, who says about the marriage between Laxmikanta Mishra and Sunita. He also says about demand of the accused persons and payment of Rs.23,000/- towards purchase of a Scooter by the parents of the deceased. Accused Umakanta Mishra received such amount at the time of negotiation in his presence. P.W.5 was Iswar Ganta, who was present, when the Constable produced the belongings of the deceased at the Police Station after the post-mortem examination. P.W.6 was Purna Chandra Rath, who was present on 25.09.1995, when the police held inquest over the dead body of Sunita and prepared the report-Ext.2. He has signed on the seizure list and certain other papers. P.W.7 was Kunjabihari Mishra, who says about the marriage and about the demand of the accused persons for dowry. He also says about the payment of cash of Rs.23,000/- and five tolas of gold ornaments at the time of negotiation. Certain gold ornaments were also given to the accused persons. He says about the demand of Rs.30,000/- by the accused persons for construction of a house on the vacant site belonging to them. He has also stated about the payment of Rs.5,000/- by the father of the deceased to the accused persons. P.W.8 was Saroj Kumar Mishra being the Additional Tahasildar, Rayagada, who attended the inquest proceeding held inside a small size store room. P.W.9 was Kailash Pujari was the Constable, who guarded the dead body during the night of 24.09.1995. He produced the wearing clothes of the deceased at the Police Station after the post-mortem examination. P.W.10 was Dr. Jaydev, who conducted the post-mortem examination of the deceased Sunita Mishra on 25.09.1995 at 2.45 P.M. Ext.10 was his report. According to him, Sunita had 70 to 80 % burn injuries and those were the proximate cause of the death of the deceased. P.W.11 was Dr. Hemanta Kumar Sahu, who was the Head of the Department of F.M. & T, who examined certain articles produced by the I.O. and opined that it was not a case of accidental burn. The injuries were ante-mortem in nature and kerosene was poured

to the body before setting fire. Ext.11 was his report and Ext.11/1 was his signature. P.W.12 was Rajendra Prasad Ratha Sharma, the Priest, who was present during the marriage and he said about the payment of dowry consisting of cash, and five tolas of gold to the accused persons. P.W.13 was Kali Prasad Mishra, who said that he was present at the time of negotiation. He says that cash of Rs.23,000/- was paid towards purchase of a Scooter. Accused Umakanta Mishra received the same from Haribandhu Mishra. He said that Haribandhu Mishra also gave cash of Rs.5,000/- towards purchase of sofa set, dressing table and godrej almirah. He also stated that the accused persons demanded Rs.30,000/- from the father of the deceased for construction of a house over a vacant site. P.W.14 Parsuram Sahu was the S.I. of Police, who registered the case and visited the spot. He found various burnt articles inside the room and sent the dead body for post-mortem examination. P.W.15 D. Krishna Rao, who was the Inspector, conducted the investigation.

5. The learned Trial Court, by heavily relying upon the testimonies of P.Ws. 1, 2, 7, 8, 12 and 13, recorded the findings highlighting the complicity of the three appellants. For the sake of convenience, the same are reproduced under:

> *"ACCUSED SATYABATI MISRA:*
>
> *17. This accused is the widow mother of rest of the accused persons and mother in law of deceased Sunita. The marriage took place on her consent, Laxmikanta Misra, her elder son married to Sunita on 23.5.93. This is clear from the invitation card Ext.1 seized in this case by the I.O. Accused Laxmikanta was serving as a Clerk in C.C.D. High School Rayagada. All the accused persons are staying in a rented house at Brahmin Street, Rayagada. Sunita used to stay with them after marriage and a female child was born though her wedlock. On 27.1.93 there was a premarriage negotiation when there was a demand of dowry from the side of the accused persons, Five tolas of gold, cash of Rs, 20,000/- utensils and clothings were given as demanded by them. The cash of Rs. 23,000/- was also paid for the purchase of a Scooter. P.W. 1 says that after one year of his sister's marriage, accused Satyabati demanded a sofa-set, Godrej almirah and a dressing table from them, His father came to their house and gave them Rs. 5,000/- towards purchase of aforesaid articles. P.W.1 has stated that she was not allowed to come to the house though they called her. She (Sunita) also complained against her mother in law at the house of her father. She was subjected to cruelty and harassment without supply of food and also by assault against her P.W.1 says that Satyabati demanded a Gas stove and cash of Rs. 30,000/- for construction of a house towards May or June, 1995. They could not fulfil the demand and on 24.9.95 his sister died. Accused Satyabati was found sitting on the next room when P.W.1 arrived to see the dead body of his Sister. P.W.1 also enquired the reason of death from accused Satyabati. She gave prevaricating statement telling that fire could have been touched her from the lamp and subsequently she denied to have any knowledge, regarding her death. Satyabati is the eldest adult person in the family and she was looking after all the affairs of the family. P.W.1 has stated that accused Laxmikanta took the plea that his mother had made a demand for sofa-set and other furnitures. Laxmikanta also told to P.W.1 and his family members that if his motherls demand would not be fulfilled, then his sister(Sunita) would be put into trouble. The accused persons have landed property near Arabinda Nagar, Rayagada, P.W.1 has stated that they felt sorry when Satyabati demanded cash and other articles after the marriage. The eye witness (P.W.2) says that*

by entering into the house he met first the female accused Satyabati, but she covered her face at his appearance. P.W2 has stated that when he enquired, from the child (D.W4) she stated that her uncle had already assaulted the victim lady and the old mother set fire to the lady by pouring kerosene on her body. There is no reason to discard the evidence this independent witness (P. W. 2). P.W.4 has stated that the female accused was found inside the house on a cot. The female accused was found crying at that time and mother of Tukuli was giving consolation to the female accused. P. W.7 says that after some days the accused persons demanded Rs. 30,000/- for construction of their house. He has stated that Sunita complained that her husband and mother-in-law used to assault her many a time. Heavy work was also allotted to her and her hands were affected with fongus. When P.W. 7 visited the room, he house kerosene stove (M.O.I) inside the room. There were injuries on the back portion of her head. P.W.12 says that female accused was also present at the time of Nirabandha and when cash of Rs. 23,000/- was paid by the father of the deceased. P.W.13 says that the female accused also demanded the articles like sofa-set, dressing table and Godrej Almirah after the marriage, Haribandhu Misra gave cash of Rs. 5000/- towards purchase of these articles. Accused persons were in need of Rs. 30,000/- for construction of a house. He has also stated it before the I. O. during investigation. The mother in law of the deceased demanded sofa-set, dressing table and Godrej Almirah. Thus, presumption U/s 113-B of the Evidence Act is attracted against this female accused."

This accused is the widow mother of rest of the accused persons and mother-in-law of the deceased Sunita. The marriage took place on her consent. Laxmikanta Misra, her elder son married to Sunita on 23.05.1993. This is clear from the invitation card Ext.1 seized in this case by the I.O. Accused Laxmikanta was serving as a Clerk in C.C.D. High School, Rayagada. All the accused persons were staying in a rented house at Brahmin Street, Rayagada. Sunita used to stay with them after the marriage and a female child was born through her wedlock. On 27.01.1993, there was a pre-marriage negotiation when there was a demand of dowry from the side of the accused persons. Five tolas of gold, cash of Rs.20,000/-, utensils and clothing were given at the time of marriage as demanded by them. The cash of Rs.23,000/- was also paid for purchase of a scooter. P.W.1 says that after one year of his sister's marriage, accused Satyabati demanded a sofa-set, Godrej Almirah and a dressing table from them.

"ACCUSED LAXMIKANTA MISRA:

18. He is the husband of the deceased. Cash and valuables were given to him during the marriage and even after the marriage. A cash of the Rs.23,000/- was received by his bother on his behalf for purchase of the Scooter. P.W.4 found all these accused persons by reaching the house of the deceased. He could not give proper answer to P.W.1 regarding the reason of death. Accused Laxmikanta Produced all the dowry articles before the Police and P.W.1 received the same in zima under Exts. 4 and 5. P.W.2 enquired from the child (D.W.4) and came to know that her uncle assaulted the victim lady. Accused laxmikanta also demanded cash in the name of his mother towards purchase of furnitures. He also demanded cash of Rs.30,000/- for construction of a house. Police seized the dowry articles from this accused under Ext.9. P.W.7 has stated about demand of Rs. 30,000/- by this accused. P.W.15 has stated in his cross-examination that Namita Misra (D.W.4) was examined during investigation, She remained silent. There is nothing in the evidence of P.W.15 that this accused Laxmikanta was absent at the time of occurrence. Everything was paid and further demand was made on account of his marriage with the deceased. So presumption U/s. 113-B Evidence Act is also fully applicable to this accused.

ACCUSED UMAKANTA MISHRA.

19. Now this accused is an Advocate of Rayagada Bar. It is not in the evidence as to what this accused was doing at the time of occurrence. P.Ws. 1, 4,7, 12 and 13 have categorically stated that on the Nirbandha day this accused Umakanta Mishra received cash of Rs 23,000/- from Haribandhu Misra towards purchase of Scooter for his elder brother Laxmikanta Misra. He also received the other articles like golden ornaments, T.V. and clothings during the marriage, He participated in the pre-marriage negotiation and received all the valuables and cash on behalf of other accused persons. He could not give proper answer to P.W.2 regarding cause of death of Sunita According to P.W.2, no male accused persons were present in the house at that time. P.W.4 says that accused Umakanta Mishra received such cash from Haribandhu. According to P.W.4, P.W.2 was on the road when he reached the spot. The other accused persons arrived subsequently. P.W.7 says that Umakanta Misra received the cash from Haribandhu Mishra. P.W.8, the Executive Magistrate says that the female accused and the male accused persons excepting accused Laxmikanta were Present in the house when inquest was held over the dead body. P.W.12 says that father of the deceased gave cash to Umakanta Misra on the day of Nirbandha. P.W.13 says that Umakanta Mishra received the cash from Haribandhu Misra in his presence. On the date of marriage also cash of Rs.20,000/-was paid by the father of the bride and Umakanta Mishra accepted the cash on behalf of the bride-groom. So this accused Umakanta Mishra had also implied consent to get cash of Rs.30,000/- towards the construction of the house. He is also liable for the dowry death in application of presumption U/s: 113-B of the Evidence Act."

6. On the basis of the aforementioned findings, the learned trial Court found the appellants guilty of the offence under Section 304-B and Section 498-A of the IPC. At the same time, the learned trial Court has also acquitted the appellants for the alleged commission of offence under Section 4 of the D.P. Act, arriving at a conclusion that there was no demand of dowry.

7. The appellants are aggrieved because their plea of defence has not been appreciated by the learned trial Court. They have asserted that there was no demand of dowry at any point of time and that the appellants were not present at the house when the incident occurred. It was also pleaded by the appellants that the death of the deceased Sunita was purely an accidental death and the allegation of harassment and dowry demand are/were completely baseless and misconceived in nature.

8. The appellants are seriously aggrieved by the findings recorded by the learned trial Court leading to their conviction under Section 304B and Section 498-A of the IPC.

9. Mrs. Suvra Mohapatra, learned counsel for the appellants, by taking me to the evidence of all the 15 prosecution witnesses and the 6 witnesses examined by the defence have pointed out the glaring contradictions in the prosecution evidence and also tried to persuade this Court that the case is falsely foisted upon the appellants.

10. While pointing out the contradictions, learned counsel for the appellants has submitted that during the investigation of the U.D. Case, P.Ws. 1, 2, 4, 7, 9, 12 and 13 have not even whispered regarding any demand of dowry or any type of mental

or physical torture meted out to Sunita. However, when they came to the witness box, they have exaggerated the narratives. She has also pointed out that there is a delay of four days in registration of the case which has gone unexplained.

11. Learned counsel for the appellants has elaborately read out the evidence of P.W.1 to say that the trustworthiness of the testimony of the said witness is under serious cloud. P.W.1 has stated in his testimony that the coal, firewood and other unusable articles were found in the room where the dead body of the deceased was lying and he saw the dead body was covered by a gunny bag, which indicates that there was an attempt by someone to douse the fire. She has also deposed that the father and brother-in-law of the appellant no.2 had arrived at a mutual consensus in the marriage regarding the expenses, which was voluntarily paid by his father. That cannot be termed as demand of dowry; rather it was exhibition of love and affection by the father towards the daughter. The testimony of the said witness, if compared with the F.I.R. version, it is quite contradictory and non-corroborative, rather it was exaggerated version.

12. Similarly, P.W.2 has deposed before the Court that none of the male members were present in the house at the time of the occurrence of the incident. He stated as under:

> *"None of the male accused persons were present in the house at that time. The smell of kerosene was coming and the drops of kerosene were also on the floor at that time. The kerosene which was on the floor was also in a burning condition. The lady who was on flame had no capacity for movement and she was unable to speak at that time. When I saw her the fire was found from the waist level to upwards. Neither chest portion nor the back portion were found burning at that time."*

This version of P.W.2 is not only stood corroborated with the statements of the appellants recorded under Section 313 of the Cr. P.C. but also the evidence adduced by the defence through their witnesses.

P.W.3 was examined as an independent witness, but her evidence has not added to the advantage of the prosecution version in any manner.

P.W.4 was examined by the prosecution to establish the demand of dowry. In cross-examination, however, he admitted that there was no disturbance on account of presentation from the side of the deceased and that he was not aware of any demand of further cash of Rs.5,000/-. He further stated that his cousin, who was staying in front of the accused persons' house, had never informed him about any difficulty being faced by the deceased.

P.W.7 deposed that there was no negotiation for payment of dowry on the date of marriage and he was also unable to say when the accused had demanded cash towards furniture from the father of the deceased. His testimony thus does not support the allegation of demand of dowry or cruelty.

P.W.10, the doctor who conducted the post-mortem examination, stated in cross-examination that when a person falls down after receiving burn injuries, he or she cannot cry out for survival, and in such cases the palm would not normally come into contact with fire. He also opined that the possibility of accidental death could not be ruled out.

P.W.12, the priest who had solemnised the marriage, admitted that his knowledge regarding the exchange of articles was only based on what he had heard from the father of the deceased. His evidence, therefore, is purely hearsay and carries no weight against the accused.

P.W.13 clearly deposed that he had never dealt with appellant no.2 regarding any negotiations for dowry. His statement again rules out the element of dowry demand.

P.W.14, in his cross-examination, admitted that P.W.1, who is the brother of the deceased, had not stated before him about any demand of dowry by the accused persons, including sofa set or cash of Rs.30,000/-. This contradiction raises a serious doubt about the credibility of P.W.1 and his allegations.

P.W.15 testified that P.W.1 had stated before him about a demand for scooter, T.V., and Rs.20,000/-. However, the same was never deposed before P.W.14, making his version inconsistent and contradictory.

On the side of defence, D.W.1 deposed that appellant no.2 was at the G.O.D. High School, Rayagada, on the date of the occurrence, working as a clerk during examinations, and had rushed home only after receiving a telephonic message about the incident.

D.W.4, a minor witness, testified that appellant no.1 was moving on the road with her at the relevant time, and that the deceased went to apply alata when suddenly she caught fire. According to D.W.4, the deceased called appellant no.1 at that time, and no other local persons enquired about the incident. She denied all allegations put forth by the prosecution in the cross-examination.

13. On the basis of the aforementioned analysis of the evidence adduced by the prosecution, learned counsel for the appellants submitted that this is a case of clear acquittal and invocation of the presumptive clause under Section 113 B of the Evidence Act is misplaced in the present case, as the essential ingredient of neither Section 304B or Section 498A of the IPC is made out.

14. Learned counsel for the State also relied upon the portion of the version of the P.Ws. which supports the prosecution narrative. It is apparent on record that on the basis of the evidence adduced by the prosecution, the learned Trial Court has rightly appreciated the non availability of evidence in so far as the demand of dowry is concerned. Hence, while concluding regarding the aspect of demand of dowry, the learned trial Court arrived at the following conclusion:

"23. For bringing a case U/s. 4 D.P. Act, there must be a demand of dowry. This offence cannot be brought into operation as one party made the demand, but other party did not agree to pay that amount. It is clear in the evidence that the parents of the deceased did not agree to give Rs. 30,000/- and no demand was made for cash of Rs. 5,000/- though it was paid by the father of the deceased towards purchase of Godrej Almirah and dressing table The ratio decided in the case of Shankar. Rao Abasaheb Pawar and others vs. L.V. Jadav and another (1983 Cri.L.J. 269) has application to this case so far as section 4 D.P. Act is concerned. None of the accused persons are found liable for this offence and they are acquitted accordingly, from the charge."

15. In the absence of any challenge to the said finding by the State, I completely agree and accept the said finding. In the light of the said findings, the evidence on record is evaluated so as to arrive at a conclusion whether the case under Section 498-A or 304B of the IPC is made out or not.

16. Section 304B of the IPC reads as under:

304B. Dowry death. *-- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.*

Explanation*- For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).*

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Two essential ingredients are required to bring home the charge under Section 304B of the IPC under the aid of Section 113 of the Evidence Act.

(i) Soon before the death of the deceased, evidence should be enough looming to show that victim was subjected to cruelty or harassment by her husband or relatives.

(ii) The harassment or cruelty meted out to her should be in connection with the demand of dowry.

It is no more *res integra* that in absence of the satisfactory evidence to establish the two aforementioned two ingredients, the offence under Section 304B is not made out.

17. Relevant would be to rely upon the judgment in the case of **Sunil Bajaj vs. State of Madhya Pradesh**, reported in **(2001) 9 SCC 417**. The Hon'ble Supreme Court has also held that the offence under Section 304B of the IPC is related to dowry death. Therefore, from the evidence, the demand of dowry is required to be established by the prosecution so as to bring home the charge under Section 304B of IPC, if there is an unnatural death occurs. In that regard, the judgment of the Hon'ble Supreme Court in the case of ***Durga Prasad and others vs. State of***

Madhya Pradesh, reported in ***(2010) 9 SCC 73***, is also relevant to be relied upon, in which it was held that:

> *"16. Having carefully considered the submissions made on behalf of the respective parties, we are inclined to allow the benefit of doubt to the appellants having particular regard to the fact that except for certain bald statements made by PWs 1 and 3 alleging that the victim had been subjected to cruelty and harassment prior to her death, there is no other evidence to prove that the victim committed suicide on account of cruelty and harassment to which she was subjected just prior to her death, which, in fact, are the ingredients of the evidence to be led in respect of Section 113-B of the Evidence Act, 1872, in order to bring home the guilt against an accused under Section 304-B IPC.*
>
> *17. As has been mentioned hereinbefore, in order to hold an accused guilty of an offence under Section 304-B IPC, it has to be shown that apart from the fact that the woman died on account of burn or bodily injury, otherwise than under normal circumstances, within 7 years of her marriage, it has also to be shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. Only then would such death be called "dowry death" and such husband or relative shall be deemed to have caused the death of the woman concerned.*
>
> *18. In this case, one other aspect has to be kept in mind, namely, that no charges were framed against the appellants under the provisions of the Dowry Prohibition Act, 1961 and the evidence led in order to prove the same for the purposes of Section 304-B IPC was related to a demand for a fan only.*
>
> *19. The decision cited by Mr R.P. Gupta, learned Senior Advocate, in Biswajit Halder case [(2008) 1 SCC 202 : (2008) 1 SCC (Cri) 172] was rendered in almost similar circumstances. In order to bring home a conviction under Section 304-B IPC, it will not be sufficient to only lead evidence showing that cruelty or harassment had been meted out to the victim, but that such treatment was in connection with the demand for dowry. In our view, the prosecution in this case has failed to fully satisfy the requirements of both Section 113-B of the Evidence Act, 1872 and Section 304-B of the Penal Code.*
>
> *20. Accordingly, we are unable to agree with the views expressed both by the trial court, as well as the High Court, and we are of the view that no case can be made out on the ground of insufficient evidence against the appellants for conviction under Sections 498-A and 304-B IPC. The decision cited by Ms Makhija in Anand Kumar case [(2009) 3 SCC 799 : (2009) 2 SCC (Cri) 28] deals with the proposition of shifting of onus of the burden of proof relating to the presumption which the court is to draw under Section 113-B of the Evidence Act and does not help the case of the State in a situation where there is no material to presume that an offence under Section 304-B IPC had been committed."*

Similar was the view of the Hon'ble Supreme Court in the case of Biswajit Haldar @ Babu Haldar and another vs. State of West Bengal, reported in (2008) 1 SCC 202. It would be further relevant to rely upon the judgment in the case of Bholram vs. State of Punjab, reported in (2013) 16 SCC 421 wherein it is held as under:

"25. Merely making a demand for dowry is not enough to bring about a conviction under Section 304-B IPC. As held in Kans Raj [Kans Raj v. State of Punjab, (2000) 5 SCC 207 : 2000 SCC (Cri) 935] a dowry death victim should also have been treated with cruelty or harassed for dowry either by her husband or a relative. In this case, even assuming the silent or conniving participation of Bhola Ram in the demands for dowry, there is absolutely no evidence on record to suggest that he actively or passively treated Janki Devi with cruelty or harassed her in connection with, or for, dowry. The High Court has, unfortunately, not adverted to this ingredient of an offence punishable under Section 304-B IPC or even considered it."

18. In view of the settled position of law as discussed hereinabove, when the findings of the learned trial Court in the present case are examined with regard to the evidence relating to demand of dowry, it becomes evident that the prosecution failed to establish such demand beyond reasonable doubt. Consequently, the trial Court rightly proceeded to acquit all the accused persons of the charge under Section 4 of the Dowry Prohibition Act. Hence sustaining the conviction U/s.304B of I.P.C. may not be safe.

19. It is trident law that main cruelty or harassment dehors demand of dowry cannot satisfy the ingredient required to establish the offence under Section 304B of the IPC. Hence, on the basis of the available evidence on record and the findings recorded by the learned trial Court, this Court is satisfied that the prosecution has miserably failed to bring home the charge under Section 304 IPC, as the basic ingredient requires to bring the case under the mischief of Section 304B IPC is missing. Hence, the accused persons are entitled to the benefit of doubt and accordingly acquitted of the said charge of Section 304B.

20. Coming to the offence under Section 498A of the IPC, the findings recorded by the learned trial Court cannot be faulted with. Because the evidence of all the prosecution witnesses, if read in unison and conjunctively, there is no escape from the findings that the appellants have subjected the deceased to cruelty and harassment, which is apparent from the factum of unhappy marriage between the appellant no.2 and the deceased which is borne out from the record. Therefore, this Court affirms the findings recorded by the learned trial Court in so far as the recording of the guilt of the appellants under Section 498A of the IPC is concerned.

21. Having regard to the aforesaid discussions, the appellants are acquitted of the charge under Section 304B of the IPC. However, they stand convicted under Section 498-A of the IPC.

On the question of sentence, considering the advanced age of accused-appellant No.1, who is in her early seventies, a sentence of three months' simple imprisonment is suffice to be awarded. Insofar as accused-appellants No.2 and 3, being the husband and brother-in-law of the deceased respectively, this Court deems it appropriate to impose a sentence of six months' rigorous imprisonment. The sentenced undergone by the convicts be set off against the sentence of imprisonment as per the provisions of Section-428 of Cr.P.C.

In addition, a fine of Rs.10,000/- is imposed on each of the convicts, and in default of payment, they shall further undergo imprisonment equivalent to half of their substantive sentence, i.e., one and a half months for accused-appellant No.1 and three months for accused-appellants No.2 and 3. The fine to be deposited shall be compensated to the parents of the deceased as per Section 357 Cr.P.C.

22. The appellants have been directed to be released on bail by the order of this Court dated 29.07.1998. The appellants shall surrender within a period of four weeks from today to undergo the sentence, failing which, they shall be taken into judicial custody.

23. Accordingly, the appeal is partly allowed.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
CRA partly allowed.

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2025 (III) ILR-CUT-757

TANSUKHA RAI AGARWAL
(SINCE DEAD) THROUGH HIS LRs
V.
STATE OF ODISHA & ORS.

[C.R.P. NOS. 34 & 35 OF 2013]

24 SEPTEMBER 2025

[ANANDA CHANDRA BEHERA, J.]

Issue for Consideration

1. Whether rejection order of Land Acquisition Officer is sustainable, once a dispute arises with regard to the apportionment and enhancement of the compensation amount.

2. Whether revision is maintainable U/s. 115 of C.P.C. against the order of rejection with regard to reference of matter U/s. 10, 18 r/w 30 of the Land Acquisition Act,1894.

Headnotes

(A) LAND ACQUISITION ACT, 1894 – Sections 10, 18, 30 r/w section 115 of Code of Civil Procedure – Petitioners filed Misc Case before the Land Acquisition Officer Angul for consideration of the objection U/s. 10 & 18 r/w section 30 of the 1894 Act for referring the matter to the Civil Court for determination of apportionment and enhancement of the

compensation – The Land Acquisition Officer rejected the objection of the petitioners assigning the reason that they have no interest over the properties – Aggrieved with the order of rejection petitioner filed revision U/s. 115 of the C.P.C – Whether rejection order of Land Acquisition Officer is sustainable, once a dispute arises with regard to the apportionment and enhancement of the compensation amount.

Held: No – The law has also further been clarified in the ratio of the above decisions that, once a dispute arises with regard to the apportionment and enhancement of the compensation amount, the Land Acquisition Officer is duty bound to make a reference to the said matter to the Civil Court for its adjudication, but, the Land Acquisition Officer has no jurisdiction to enquire into the title of the properties referring to the documents and to give a finding relating to the title of the Parties in respect of the said acquired properties like a Civil Court. (Para 12)

(B) CODE OF CIVIL PROCEDURE, 1908 – Section 115 r/w Sections 10, 18, 30 of Land Acquisition Act, 1894 – Revision – The Land Acquisition Officer rejected the application for reference of the matter to the Civil Court – Whether revision U/s. 115 of C.P.C is maintainable against such rejection?

Held: Yes – It is held that, these revisions filed by the Petitioners are maintainable (entertainable) under the law for adjudication. (Para 10)

(C) LAND ACQUISITION ACT, 1894 – Sections 18 & 30 – Scope, Power and Jurisdiction of the Land Acquisition Officer – Discussed with reference to case law. (Paras 11-12)

Citations Reference

Narayan Das Vrs. Kasinath Pani and others, **Civil Revision No.25 of 1965 on dated 12.12.1967;** Sharda Devi Vrs. State of Bihar, **(2003) 3 SCC 128;** Sayed Mohd. Shah Abdul Hamid Kadri Vrs. State of Maharashtra and another, **2005 (4) Mh.L.J. 1060;** M.Santama Vrs. State of Orissa and another, **2003 (I) OLR 540;** Bidyadhar Mahalik Vrs. Land Acquisition Officer, Kalahandi, **111 (2011) CLT 764;** G.H.Grant Vrs. State of Bihar, **AIR 1966 (SC) 237;** Sri Prasada Rao Mikkilineni and others Vrs. State of A.P. and others, **2000 (4) CCC (SC) 28;** Sri Narasingha Jena Vrs. State of Orissa, **(93) 2002 CLT 389;** Neelagangavva Vrs. Basayya (deceased) by LRs. and another, **II (2005) Civil Law Times 69 (Karnataka);** Bighnaraj Sai Vrs. Special Land Acquisition Officer, Lower Suktel Irrigation Project, Bolangir and others, **2007 (I) OLR 44 – referred to.**

List of Acts

Land Acquisition Act, 1894; Code of Civil Procedure, 1908.

Keywords

Land Acquisition; Dispute; Reference; Compensation; Apportionment; Enhancement; Revision; Reference to Civil Court; Jurisdiction of Civil Court; Power of land acquisition officer

Case Arising From

Order dated 19.11.2013 passed in Misc. Case No.4 of 2013 by the Land Acquisition Officer, Angul.

Appearances for Parties

For Petitioner : Mr. G.N.Mishra
For Opp. Parties : Mr.U.C.Mishra, Mr.A.Pattnaik,(for the O.P. Nos.3 and 4)
Mr.B.Bhuyan,Sr.Adv. & Mr.S.S.Bhuyan,
(for the O.P. Nos.5(a) to 5(c))
Mr.K.K. Mishra, (for the O.P. Nos.7(a) to 7(c))
Mr.P.K.Mohapatra (for the O.P. No.9)
Mr.S.K. Dash (for O.P. Nos.6 and 8)
Mr.G.Mohanty S.C. (for the O.P. Nos.1 and 2)

Judgment/Order

Judgment

ANANDA CHANDRA BEHERA, J.

1. Since, both the revisions under Section 115 of the C.P.C., 1908 have been filed by the Petitioners challenging one order i.e. an order dated 19.11.2013 passed in Misc. Case No.4 of 2013 by the Land Acquisition Officer, Angul (O.P. No.2), then, both the revisions have been taken up together analogously for their final disposal through this common judgment.

2. The factual back grounds of these revisions, which prompted the Petitioners for filing of the same is that, the properties covered under Hal Khata Nos.259 and 64 in Mouza Nandichhod @ Gopiballavpur corresponding to Sabik Khata No.161/6 and 90 were acquired by the State Government as per notification dated 19.01.2008 for M/s. Tata Sponge Iron Limited.

3. When, during the course of land acquisition proceedings, compensation amount of the above acquired properties was passed in favour of the O.P. Nos.3 to 5 by the Land Acquisition Officer, Angul (O.P. No.2), then, the Petitioners filed application under Sections 10, 18 and 30 of the Land Acquisition Act, 1894 before the O.P. No.2 claiming their shares in the compensation amounts of the said acquired properties on the ground that, they are the persons interested in the said acquired properties having their interest in the same and prayed before the O.P. No.2 to refer the said dispute to the Civil Court for apportionments as well as enhancement of the compensation amount, but, the O.P. No.2 rejected their application.

For which, they (Petitioners) challenged the same filing a writ petition vide W.P.(C) No.6645 of 2011 before the High Court of Orissa. As per the judgment dated 16.05.2011 passed in W.P.(C) No.6645 of 2011, the High Court set aside to the order passed by the O.P. No.2 refusing to refer the matter to the Civil Court and directed to deposit the compensation amount of the acquired properties in the Bank without disbursing the same to the O.P. Nos.3 to 5 till the proper apportionments are made by the Civil Court through reference.

Thereafter, the O.P. Nos.3 to 5 filed a review petition bearing No.125 of 2011 praying for reviewing the above order dated 16.05.2011 passed in W.P.(C) No.6645 of 2011. That review petition No.125 of 2011 was disposed of on dated 27.10.2011 by the High Court modifying the order dated 16.05.2011 to a little extent directing the O.P. No.2 to deposit the awarded compensation amount in any one of the Nationalized Banks and the objection of the Petitioners shall be decided by the O.P. No.2 and the deposited compensation amount shall not be withdrawn by the O.P. Nos.3 to 5 till then.

Thereafter, the O.P. Nos.3 to 5 approached the Hon'ble Supreme Court by filing Civil Appeal No.918 of 2013 challenging the order of the High Court. That, Civil Appeal No.918 of 2013 was disposed of by the Hon'ble Supreme Court on dated 01.02.2013 directing the O.P. No.2 to reconsider the objections of the Petitioners under Sections 10 and 18 read with Section 30 of the Land Acquisition Act, 1894 and to decide the same through a speaking order within a maximum period of three months from the date of receipt/production of the copy of the judgment of the Hon'ble Supreme Court.

Thereafter, on the basis of the aforesaid directions made by the Hon'ble Supreme Court as per judgment dated 01.02.2013 passed in Civil Appeal No.918 of 2013, the Land Acquisition Officer, Angul (O.P. No.2) initiated Misc. Case No.4 of 2013 for reconsideration of the objection under Sections 10 and 18 read with Section 30 of the Land Acquisition Act, 1894 of the Petitioners relating to their prayer for referring the matter to the Civil Court and provided opportunity of being heard to the Parties.

4. After hearing from both the sides, the O.P. No.2 disposed of the said Misc. Case No.04 of 2013 finally on dated 19.11.2013 rejecting the objection of the Petitioners assigning the reasons that,

> *"the Petitioners have no interest in the acquired properties, for which, the prayer of the Petitioners in their objection to refer the matter to the Civil Court under Sections 10 and 18 read with Section 30 of the L.A. Act, 1894 rejected".*

5. On being aggrieved with the said order of rejection to the objection under Sections 10 and 18 read with Section 30 of the Land Acquisition Act, 1894 of the Petitioners passed by the O.P. No.2, the Petitioners challenged the same by filing this revision under Section 115 of the C.P.C., 1908 being the Petitioners against the O.P. Nos.3 to 5 arraying the O.P. Nos.6 to 9 as proforma O.P.s and also arraying the State of Orissa and Land Acquisition Officer-cum-Special Land Acquisition Officer, Angul as O.P. Nos.1 and 2 respectively.

6. I have already heard from the learned counsel for the Petitioners, the learned counsels for the O.P. Nos.3 and 4, O.P. Nos.5(a) to 5(c), O.P. Nos.6 and 8, O.P. Nos.7(a) to 7(c), O.P.No.9 and the learned standing counsel for the O.P.Nos.1 and 2.

7. In order to assail the impugned order dated 19.11.2013, the learned counsel for the Petitioners relied upon the decision between ***Narayan Das Vrs. Kasinath Pani and others*** decided in ***Civil Revision No.25 of 1965 on dated 12.12.1967***.

On the contrary in support of the impugned order, the learned counsel for the O.P. No.5 relied upon the following decisions:-

(i) ***Sharda Devi Vrs. State of Bihar and another*** reported in ***(2003) 3 SCC 128***.

(ii) ***Sayed Mohd. Shah Abdul Hamid Kadri Vrs. State of Maharashtra and another*** reported in ***2005 (4) Mh.L.J. 1060***.

8. In the objection of the Petitioners under Sections 10 and 18 read with Section 30 of the L.A. Act, 1894 before the O.P. No.2, the Petitioners had claimed their share in the awarded compensation of the acquired properties stating that, Khubiram Agarwal was the common ancestor of the Petitioners and O.P. Nos.3 to 9. The acquired properties along with other properties were their ancestral properties, those were devolved upon them from Khubiram Agarwal. The acquired properties are the joint and undivided properties of the Petitioners and O.P. Nos.3 to 9. There was a registered deed of partition on dated 30.05.1963 in respect of their some joint properties between them, but, the acquired properties were kept out of that registered partition deed to be partitioned later on. So, the acquired properties have not been partitioned between them (Petitioners and O.P. Nos.3 to 9) through any metes and bounds partition as yet.

Therefore, the Petitioners and the O.P. Nos.3 to 9 have their shares in the compensation of the acquired properties. For which, the Petitioners are entitled to get their shares from the compensation amount of the acquired properties.

To which, the O.P. Nos.3 to 5 objected stating that, the R.o.Rs of the acquired properties stand in the name of Gourishankar Agarwal vide Hal Khata No.64 and Santosh Kumar Agarwal vide Hal Khata No.259 and both the Khatas corresponds to Sabik Khata No.161/6 and 90 and the said properties were the self-acquired properties of their predecessors i.e. Gourishankar Agarwal and Sontosh Kumar Agarwal, in which, the Petitioners have no interest on the basis of the unchallenged R.o.Rs of the Sabik and Hal settlement in their favour.

After taking into account the claim of the Petitioners, objection of the O.P. Nos.3 to 5 and the documents relied by both the sides in respect of the title of the acquired properties, it was held by the Land Acquisition Officer, Angul (O.P. No.2) in the impugned order dated 19.11.2013 (Annexure-1) that,

> *"the Petitioners have not been able to establish their prima facie title or interest in respect of the acquired properties in their favour. For which, the case of the Petitioners before him (O.P. No.2) is not covered under Sections 10 and 18 read with Section 30 of the LA Act, 1894 for its reference to the Civil Court. Therefore,*

the Land Acquisition Officer, Angul (O.P. No.2) rejected to the prayer of the Petitioners for referring the matter to the Civil Court".

9. Now, the question arises, whether these revisions under Section 115 of the C.P.C., 1908 filed by the Petitioners challenging the order of rejection to their application for referring the matter under Sections 10 and 18 read with Section 30 of the L.A. Act, 1894 to the Civil Court for adjudication are maintainable under law?

On this aspect, the propositions of law has already been clarified in the ratio of the following decision:-

In a case between ***M. Santama Vrs. State of Orissa and another*** reported in ***2003 (I) OLR 540*** in Para No.4 that,

application for reference under Section 18 of the Land Acquisition Act when rejected by the Land Acquisition Officer, then, against such order, revision under Section 115 of the CPC maintainable.

10. So, in view of the propositions of law enunciated in the ratio of the aforesaid decision, it cannot be held that, the revisions filed by the Petitioners challenging the order of rejection to the application under Sections 10 and 18 read with Section 30 of the Land Acquisition Act, 1894 passed by the Land Acquisition Officer (O.P. No.2) in Misc. Case No.4 of 2013 are not maintainable under law. For which, in other words, it is held that, these revisions filed by the Petitioners are maintainable (entertainable) under law for adjudication.

11. The law concerning the scope, power and jurisdiction of the L.A. Collector like the O.P. No.2 for referring a matter under Sections 30 and 18 of the Land Acquisition Act, 1894 relating to apportionments and enhancement of the compensation amount has already been clarified in the ratio of the following decisions:-

(i) In a case between ***Bidyadhar Mahalik Vrs. Land Acquisition Officer, Kalahandi*** reported in ***111 (2011) CLT 764*** in Para No.13 that,

right of land looser, which is not only a constitutional right guaranteed to the citizen, but, also a human right as held by the Supreme Court. If, the award is not satisfactory, the land looser have got every right to file a petition under Section 18 of the L.A. Act, 1894 to make reference to the appropriate Court for proper adjudication and consideration of the matter on the basis of the market value.

(ii) In a case between ***G.H.Grant Vrs. State of Bihar*** reported in ***AIR 1966 (SC) 237*** in Para No.19 that,

The Land Acquisition Collector is not authorized to decide finally the conflicting rights of the persons interested in the amount of compensation. He is primarily concerned with the acquisition of the land. The dispute relating to the conflicting rights of the Parties in the acquired properties as to be decided either in a reference under Section 18 or 30 of the L.A. Act, 1894 or in a separate suit.

(iii) In a case between ***Sri Prasada Rao Mikkilineni and others Vrs. State of A.P. and others*** reported in ***2000 (4) CCC (SC) 28*** in Para No.4 that,

when, there is dispute about title as also computation of appropriate compensation exist, in that case Land Acquisition officer is directed to make a reference to Appropriate Court.

(iv) In a case between ***Sri Narasingha Jena Vrs. State of Orissa*** reported in ***(93) 2002 CLT 389*** in Para No.5 that,

once dispute arises with regard to apportionment, Land Acquisition Officer is obliged to make a reference under Section 30 of the LA Act, 1894. He has no jurisdiction to enquire into the title and give a binding decision, which only a Civil Court could do. Therefore, the Land Acquisition Officer in the event of dispute being raised has no jurisdiction to decide the question of title and is obliged to make a reference to the civil Court for adjudication. Since, the Land Acquisition Officer has no jurisdiction to decide the question of title, it is not necessary for him to refer to the documents to find out the title in respect of any claim.

(v) In a case between ***Neelagangavva Vrs. Basayya (deceased) by LRs. and another*** reported in ***II (2005) Civil Law Times 69 (Karnataka)*** in Para Nos.7 and 8 that,

When dispute arising after award filing of award, it is open to appellant to seek reference under Section 30 of the L.A. Act, 1894 or to institute appropriate proceeding to claim her share in compensation awarded by reference Court on the ground that, she is also entitled for share in properties.

(vi) In a case between ***Bighnaraj Sai Vrs. Special Land Acquisition Officer, Lower Suktel Irrigation Project, Bolangir and others*** reported in ***2007 (I) OLR 44*** in Para No.12 that,

a person, who has right in acquired property has a locus standi to make an application under Section 30 of the Land Acquisition Act, 1894 for reference of dispute.

12. In the ratio of the aforesaid decisions of the Hon'ble Courts and Apex Court, the propositions of law has already been clarified that, a person, who has right or interest in the acquired land has locus standi to make an application for reference of the dispute as per Section 30 and 18 of the LA Act, 1894 to the Civil Court.

The law has also further been clarified in the ratio of the above decisions that, once a dispute arises with regard to the apportionment and enhancement of the compensation amount, the Land Acquisition Officer is duty bound to make a reference to the said matter to the Civil Court for its adjudication, but, the Land Acquisition Officer has no jurisdiction to enquire into the title of the properties referring to the documents and to give a finding relating to the title of the Parties in respect of the said acquired properties like a Civil Court.

For which, in the event of a dispute being raised concerning the apportionment and enhancement of the awarded compensation amount of the acquired properties, the Land Acquisition Officer like the O.P. No.2 in these revisions at hand has no jurisdiction to decide the disputed question of title of the acquired properties, but, to make a reference to the Civil Court for adjudication. Because, the Land Acquisition Officer has no authority or jurisdiction under law to decide the disputed question of title of the acquired properties and the Land Acquisition Officer has no power under law to

give a finding in respect of the disputed title of the acquired properties referring the documents.

13. Here in these matters at hand, when, there is serious dispute between the Petitioners, O.P. Nos.6 to 9 and O.P. Nos.3 to 5 relating to the title as well as compensation amount of the acquired properties, then at this juncture, there was no other alternative for the Land Acquisition Officer, Angul (O.P. No.2) , but, to refer the said disputed matters between the Parties as per Section 30, 18 read with Section 10 of the Land Acquisition Act, 1894 to the Civil Court for its proper adjudication.

For which, the impugned order i.e. to the rejection of the application of the Petitioners for referring the matter under Section 10 and 18 read with Section 30 of the Land Acquisition Act, 1894 passed on dated 19.11.2013 (Annexure-1) in Misc. Case No.4 of 2013 by the Land Acquisition Officer, Angul (O.P. No.2) held as not in inconformity with law.

Therefore, the said impugned order dated 19.11.2013 (Annexure-1) passed in Misc. Case No.4 of 2013 by the O.P. No.2 cannot be sustainable under law.

14. As such, there is justification under law for making interference with the impugned order dated 19.11.2013 (Annexure-1) passed in Misc. Case No.4 of 2013 by the Land Acquisition Officer-cum-Special Land Acquisition Officer, Angul (O.P. No.2) through these revisions filed by the Petitioners.

15. Therefore, there is merit in the revisions filed by the Petitioners. The same must succeed.

16. In result, both the revisions filed by the Petitioner are allowed on contest.

17. The impugned order dated 19.11.2013 (Annexure-1) passed in Misc. Case No.4 of 2013 by the Land Acquisition Officer-cum Special Land Acquisition Officer, Angul (O.P. No.2) is set aside.

18. The Land Acquisition Officer-cum-Special Land Acquisition Officer, Angul (O.P. No.2) is directed to refer the matters of dispute between the Parties concerning the apportionment and enhancement of the awarded compensation amount as per Section 30 and 18 of the Land Acquisition Act, 1894 to the local jurisdictional Civil Court for its proper adjudication as per law and the Land Acquisition Officer-cum-Special Land Acquisition Officer, Angul (O.P. No. 2) shall disburse the compensation amount only on the basis of the decisions made by the Civil Court.

19. Registry is directed to communicate the copy of this judgment to the Land Acquisition Officer-cum-Special Land Acquisition Officer, Angul (O.P. No.2) immediately.

20. As such, both the revisions filed by the Petitioners are disposed of finally.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter Petitions allowed &disposed of.
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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2025 (III) ILR-CUT-765

SABITRI PALEI
V.
BHIKARI PALEI & ORS.

[C.M.P. NO. 1697 OF 2015]

24 SEPTEMBER 2025

[ANANDA CHANDRA BEHERA, J.]

Issue for Consideration

Whether allowing amendment of the written statement of the defendants at the bleated stage of the suit can be held as correct.

Headnotes

CODE OF CIVIL PROCEDURE, 1908 – Order 6, Rule 17 – Amendment of pleadings – In the present case after closure of evidence from the side of the plaintiff the defendants filed petition under Order 6 Rule 7 of the C.P.C. praying for amendment of their written statement – Trial Court allowed such amendment without giving opportunity to the plaintiff for amending his plaint commensurate to the proposed amendment of the written statement of the defendants – Whether allowing amendment of written statement at the bleated stage of the suit can be held as correct.

Held: – Even though, the learned Trial Court allowed the petition for proposed amendment of the written statement of the defendants, but, the learned Trial Court has not given any opportunity to the Plaintiff for amending his plaint commensurating the proposed amendment of the written statement of the defendants and for adducing rebuttal evidence concerning the amendments of the written statement of the defendants and for framing of any additional issues in respect of the same. (Para 13)

The impugned order dated 08.12.2015 (Annexure-5) passed by the learned Trial Court in C.S. No.501 of 2013 concerning the allowing of the proposed amendment under Order 6 Rule 17 of the CPC of the Defendants for amendment of their written statement is confirmed, but, the cost imposed in the impugned order dated 08.12.2015 (Annexure-5) i.e. Rs.500/- (five hundred) for allowing such amendment is enhanced from Rs.500/- (five hundred) to Rs.5000/-(five thousand) giving liberty to the Plaintiff (Petitioner in this CMP) to amend his plaint according to the proposed amendment of the written statement of the Defendants and for framing of any additional issues relating to the said amendment and for adducing any additional evidence by the Plaintiff concerning the amendment of the written statement of the defendants, if he (Plaintiff) desires for the same. (Para 16)

Citations Reference

Sova Dei & Another Vrs. Krushna Chandra Pratap Singh & Others, **2012 (II) CLR 53 – referred to.**

List of Acts

Code of Civil Procedure, 1908.

Keywords

Amendment of pleadings; Necessary criteria for an amendment; Multiplicity of litigation; Stage of Amendments; Amendment of Written Statement; Assignment of reason; Additional evidence

Case Arising From

Order dated 08.12.2015 passed by learned Civil Judge, Sr. Division, Kendrapada in C.S. No. 501/2013.

Appearances for Parties

For Petitioner : Mr. B.C.Panda
For Opp. Parties : Mr. N.Lenka

Judgment/Order

Judgment

ANANDA CHANDRA BEHERA, J.

1. This Civil Miscellaneous Petition under Article 227 of the Constitution of India, 1950 has been filed by the Petitioner (Plaintiff in the suit vide C.S. No.501 of 2013) against the O.Ps (Defendants in the suit vide C.S. No.501 of 2013) praying for quashing (setting aside) the impugned order dated 08.12.2015 (Annexure-5) passed in C.S. No.501 of 2013 by the learned Civil Judge, Senior Division, Kendrapara.

2. The factual backgrounds of this Civil Miscellaneous Petition, which prompted the Petitioner for filing of the same is that, the Petitioner being the Plaintiff filed the suit vide C.S. No.501 of 2013 against the O.Ps (arraying them as Defendants) praying for declaration that, the sale deed dated 06.09.2013 said to have been executed by the Defendant Nos.1 and 2 in favour of Defendant No.3 in respect of the suit properties as illegal and collusive and to injunct the Defendants permanently from entering into the suit property.

Having been noticed from the learned Trial Court in the suit vide C.S. No.501 of 2013, the Defendants filed their joint written statement denying the allegations alleged by the Plaintiff against them taking their stands that, the Defendant Nos.1 and 2 were the lawful owners and in possession over the suit properties and they (Defendant Nos.1 and 2) have sold the same to the Defendant No.3 through R.S.D. dated 06.09.2013, for which, the Plaintiff has no right, title,

interest and possession over the same. Therefore, the suit of the Plaintiff is liable to be dismissed.

3. On the basis of the aforesaid pleadings and matters in controversies between the Parties, issues were framed and trial was commenced in the suit vide C.S. No.501 of 2013.

After closure of the evidence from the side of the Plaintiff, when, the suit was fixed for evidence from the side of the Defendants, the defendants file a petition on dated 24.09.2015 under Order 6 Rule 17 read with Section 151 of the C.P.C., 1908 praying for amendment of their written statement in order to insert some Paras in the written statement concerning their title in the suit properties on the basis of R.S.D. No.126 of 1936, to which, he (Defendant No.1) got from his old "Sinduka".

4. To which, the Plaintiff objected on the ground that, after closure of evidence from his side, the proposed amendment sought for by the Defendants cannot be allowed. If, the proposed amendment of the Defendants will be allowed, the same shall cause serious prejudice to him (Plaintiff). For which, the Petition under order 6 Rule 17 of the C.P.C. of the Defendants is liable to be rejected.

5. After hearing from both the sides, as per order dated 08.12.2015 (Annexure-5), the learned Trial Court allowed that Petition under Order 6 Rule 17 of the C.P.C, 1908 of the Defendants on dated 24.09.2015 and allowed the Defendants to amend their written statement subject to payment of cost of Rs.500/- (Five hundred) to the Plaintiff assigning the reasons that,

> *"the prayer for amendment of the written statement of the Defendants should not be considered with the same rigor and strictness as the amendment sought for by the Plaintiff for the amendment of its plaint and the delay in filing of the proposed amendment may be compensated by way of cost against the Defendants".*

6. On being dissatisfied with the said impugned order dated 08.12.2015 (Annexure-5) passed in C.S. No.501 of 2013, the Plaintiff challenged the same by filing this CMP under Article 227 of the Constitution of India, 1950 praying for quashing the same against the Defendants arraying them (Defendants) as Opposite Parties.

7. I have heard already heard from the learned counsels of both the sides.

8. According to the rival submissions of the learned counsels of both the sides, the crux of this Civil Miscellaneous Petition is that,

> *Whether, the impugned order dated 08.12.2015 (Annexure-5) passed by the learned Civil Judge (Sr.Division), Kendrapara in C.S. No.501 of 2013 allowing the Petition for amendment of the written statement of the Defendants (O.Ps in this CMP) subject to payment of cost of Rs.500/- (Five hundred) after closure of evidence from the side of the Plaintiff (Petitioner in this CMP) is legally sustainable under law?*

9. It is the established propositions of law that, at the time of consideration of the petition for amendment of the pleadings of the Parties, it is the duty of the Court

to see that, whether the proposed amendment of the pleadings is relevant for the purpose of just decision of the suit or not.

Because, the intention of the legislature for inclusion of the provisions under Order 6 Rule 17 of the CPC, 1908 is for no other reason, but, for the compliances of the principles of natural justice i.e. in order to give opportunity to the Parties for ventilating their all grievances relating to the subject matter of the suit against each other for the full and final adjudication of all controversies between them in one suit/lis for all times to come in order to avoid multiplicity of litigations between them.

10. The prayer for amendment of the written statement should not be considered with the same rigor and strictness as a prayer for amendment of the plaint. Because, Parameters for amending written statement are different from amendment of the plaint, only for the reasons that, the Defendants has right to take many pleas, which may be inconsistent or alternative, which is not as like as plaintiff in its plaint. An amendment of the pleadings can be allowed, when, the same satisfied two criterias i.e.:-

> *(i) If, the proposed amendment is allowed, the same will not cause injustice to other side.*
>
> *(ii) If, the proposed amendment is allowed, the same will be unnecessary for the purpose of determining real questions in controversies between the parties.*

11. The law has also been settled that, if any amendment is sought after commencement of the trial of the suit as in this matter at hand, then, it is to be shown by the applicant that, in spite of due diligence, such proposed amendment could not have been sought for earlier. The object behind it, is that, to prevent frivolous applications, which are filed to delay the trial.

12. Here in this matter at hand, when, after closure of evidence from the side of the plaintiff in the suit vide C.S. No.501 of 2013, the Defendants filed Petition under Order 6 Rule 17 of the CPC, 1908 praying for amendment of their written statement in order to insert some Paras relating to the tracing out of the old registered sale deed of the year 1936 from their old "Sinduka" in respect of the tile of the properties and when, the Trial Court has allowed such proposed amendment of the Defendants through the impugned order dated 08.12.2015 (Annexure-5) subject to payment of Cost of Rs.500/- (Five hundred) to the Plaintiff, then at this juncture, by applying the propositions of law concerning the main object/purpose of the Order 6 Rule 17 of the CPC, 1908 to this matter at hand, it is held that, the impugned order dated 08.12.2015 (Annexure-5) passed by the learned Trial Court allowing the proposed amendment of the written statement of the Defendants cannot be held as erroneous, but, the order concerning payment of Cost i.e. Rs.500/- (Five hundred) to the Plaintiff (Petitioner) for allowing such amendment of written statement of the Defendants at the belated stage of the suit cannot be held as adequate.

Because, it is very fundamental in Civil law that, in case of allowing any application of any party in delay, other party should be compensated properly for such delay, as the said delay ultimately protracts the litigation causing some pecuniary loss to the other side.

13. Here in this matter at hand, when the petition for amendment of the written statement was filed by the defendants at the midst of the trial after closure of evidence from the side of the Plaintiff and when it is the law as per the ratio of the decision between ***Sova Dei & Another Vrs. Krushna Chandra Pratap Singh & Others*** reported in ***2012 (II) CLR 53*** in Para No.8 that,

> *"when amendment to the pleading, is allowed, the same relates back to the date of filing of the original pleadings except in a case where the amendment is relatable to the law of limitation".*

For which, due to relate back to the date of filing of the written statement by the defendants through the proposed amendment, the Trial Court should have imposed more cost than Rs.500/- (Five hundred) against the Defendants for allowing their prayer for amendment of written statement in order to compensate the pecuniary losses of the Plaintiff properly, but, the learned Trial Court has not done so.

That apart, even though, the learned Trial Court allowed the petition for proposed amendment of the written statement of the defendants, but, the learned Trial Court has not given any opportunity to the Plaintiff for amending his plaint commensurating the proposed amendment of the written statement of the defendants and for adducing rebuttal evidence concerning the amendments of the written statement of the defendants and for framing of any additional issues in respect of the same.

For which, when the learned Trial Court allowed the petition under Order 6 Rule 17 of the CPC of the Defendants for amendment of their written statement through the impugned order dated 08.12.2015 (Annexure-5), the learned Trial Court should have allowed the Plaintiff to amend his plaint relating to the amendment of the pleadings of the defendants as well as for framing new issues relating to the amended portions of the written statement and to adduce any additional evidence in respect of the same.

Therefore, there is justification under law for making some interference with the impugned order dated 08.12.2015 (Annexure-5) passed by the learned Civil Judge, Senior Division, Kendrapara in C.S. No.501 of 2013 through this Civil Miscellaneous Petition filed by the Plaintiff by this Court exercising its supervisory jurisdiction for the reasons stated above.

14. So, there is some merit in this Civil Miscellaneous Petition filed by the Petitioner (Plaintiff). The same is to be allowed in part on contest.

15. In result, the Civil Miscellaneous Petition filed by the Petitioner is allowed in part.

16. The impugned order dated 08.12.2015 (Annexure-5) passed by the learned Trial Court in C.S. No.501 of 2013 concerning the allowing of the proposed amendment under Order 6 Rule 17 of the CPC of the Defendants for amendment of their written statement is confirmed, but, the cost imposed in the impugned order dated 08.12.2015 (Annexure-5) i.e. Rs.500/- (five hundred) for allowing such amendment is enhanced from Rs.500/- (five hundred) to Rs.5000/-(five thousand) giving liberty to the Plaintiff (Petitioner in this CMP) to amend his plaint according to the proposed amendment of the written statement of the Defendants and for framing of any additional issues relating to the said amendment and for adducing any additional evidence by the Plaintiff concerning the amendment of the written statement of the defendants, if he (Plaintiff) desires for the same.

17. So, for the reasons stated above, modifying the impugned order passed on dated 08.12.2015 (Annexure-5) by the learned Civil Judge, Sr.Division, Kendrapara in C.S. No.501 of 2013 to the extent as indicated above, this CMP is disposed of finally.

18. The learned Trial Court is directed to conclude the trial vide C.S. No.501 of 2013 as expeditiously as possible within a period of four months from the filing of the certified copy of this judgment by the Parties in the said suit vide C.S. No.501 of 2013 before the learned Trial Court.

19. The Parties of this CMP are directed to appear before the learned Trial Court in the suit vide C.S. No.501 of 2013 on dated 16.10.2025 to file the certified copy of this judgment for the purpose of receiving the directions of the learned Trial Court as to further proceedings of the suit vide C.S. No.501 of 2013 for its final disposal within stipulated period as indicated above.

20. As such, this CMP filed by the Petitioner (Plaintiff) is disposed of finally.

Headnotes prepared by:
Smt. Madhumita Panda, Law Reporter
(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:
CMP partly allowed and disposed of finally.

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