

THE INDIAN LAW REPORTS ALLAHABAD SERIES



सत्यमेव जयते

CONTAINING ALL A.F.R. DECISIONS OF THE
HIGH COURT OF JUDICATURE AT ALLAHABAD

2025 - VOL. IV
(APRIL)

PAGES 1 TO 1034

PUBLISHED UNDER THE AUTHORITY OF THE GOVERNMENT OF UTTAR PRADESH
COMPOSED AT INDIAN LAW REPORTER SECTION, HIGH COURT, ALLAHABAD.

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2. Brief facts as culled out from the record are that the applicant filed an application under Section 457 read with Section 451 of Cr.P.C. for release Indian Currency Rs. 1,87,00,000/- which has been recovered and seized during investigation of Case Crime No. 46 of 2022 registered at Police Station Chetganj, District Varuna (Commissionerate Varanasi) from co-accused Sachin Sharma. As per the recovery memo dated 28.04.2022, Indian currency has been recovered in denomination of Rs. 2000/-, Rs. 500/-, Rs. 200/-, Rs. 100/- as 983, 33088, 600 and 700 respectively stating that the applicant is the real owner of the aforesaid case property.

2(i). After lodging of the First Information Report dated 21.04.2022, which has been registered by private opposite party no. 2 against four named accused persons by first informant who is admittedly an agent of Sapos Services Pvt. Ltd. (collection company). During the investigation Police seized the Indian currency of Rs. 1,87,00,000/- by recovery memo dated 28.04.2022.

2(ii). After completing the investigation, charge sheet has been submitted against four accused persons under Sections 419, 420, 406, 120-B, 411, 467, 468, 471 of I.P.C. and the trial of the aforesaid case is pending.

2(iii). The present applicant filed an application on 13.05.2022 under Section 457 read with Section 451 of Cr.P.C. to release the seized Indian currency on behalf of his father, on the basis of authority which has been given by his father as the applicant is sole son, who look after the business of his father, passed for interim custody in favour of the applicant, who claimed himself to be the owner of the property seized, which has been dismissed by learned Magistrate on 13.10.2022.

Being aggrieved by the order of the learned Magistrate, applicant filed Criminal Revision which has also been dismissed on July 1, 2024.

2(iv). The accused persons have not filed any application to release the Indian currency till today.

2(v). The first informant has not filed any application to release the aforesaid cash in his favour till today and admittedly he gave consent to release the aforesaid Indian currency in favour of present applicant.

3. The Learned Magistrate observed that the present Indian currency is a case property of the aforesaid Case Crime. However, observed that the applicant is real owner of the seized Indian currency. There is no dispute with regard to the ownership of the aforesaid currency. As per pre-summoning evidence (statement of first informant), the first informant collected the aforesaid amount on behalf of father of the applicant.

4. The Income Tax Commissioner filed an application to release aforesaid cash stating that the source and nature of seized cash could not be explained. On 07.09.2022, the S.H.O. Chetganj, Varanasi was issued requisition letter which has been served but the S.H.O. has not delivered cash to Income Tax Department. It is further alleged that the seized amount represented is undisclosed income, the objection of the assessee have to be decided under Section 132 of the Income Tax Act itself and the court has no power to decide the application in similar proceedings under Section 457 of Cr.P.C., which has been rejected vide order dated 13.10.2022, and Criminal Revision has also been filed against the order dated 13.10.2022, which has also been rejected by Additional

Sessions Judge Court No. 2, Varanasi on 02.07.2024.

no other case has been lodged under any other Act.

5. Learned Senior Counsel submits that the impugned order has been passed without considering the facts and circumstances and position of law. It is further submitted that there is no dispute with regard to the ownership of the aforesaid Indian currency, which has been recovered and seized during the investigation of case crime no. 46 of 2022. There is no argument so far as the offences of prevention of corruption Act are concerned. There is no reason as well as argument by the State as to why the money is required to be detained when it is the contention of the prosecution that the investigation is completed.

6. Learned Senior Counsel for the applicant relied upon the judgment of Apex Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat, 2002 (10) SCC 283**. The applicant expressed his readiness and willingness to execute a bond to produce the same before the Court as and when required to do so as per Section 102(3) of Cr. P.C.

7. Sri Gaurav Mahajan, learned counsel for Income Tax Department requested to assist the Court in the matter, in response to aforesaid request and after receiving instruction, who admits that no other proceeding has been filed against the order dated 02.07.2024.

8. **Per Contra**, learned AGA as well as Sri Gaurav Mahajan, learned counsel for Income Tax Department have not denied the factual matrix of the present matter and also admitted that the aforesaid Indian currency has not been seized under Section 132(A) of Income Tax Act, 1961 or

9. Heard, Sri Manish Tiwary, learned Senior Counsel assisted by Sri Atharva Dixit and Sri Pranav Tiwary, learned counsels for the applicant, Sri Gaurav Mahajan, learned counsel for Income Tax Department, Sri Vedanta Agarwal, learned counsel for opposite party no. 2 and Sri Tej Bhan Singh, learned A.G.A for the State and perused the material on record.

10. Present matter is related to interim custody of seized Indian Currency in the above noted case. Learned Magistrate dismissed the release application of the applicant and a Criminal Revision has been filed against the order dated 13.10.2022 passed by the learned Magistrate, before the Sessions Judge, which has been decided by Additional Sessions Judge/Special Judge (POCSO Act), Court No. 2, Varanasi on July 1, 2024 and affirmed the order passed by the Magistrate.

11. Before advertng to the relief sought by the applicant, it would be essential to mention few more facts which are relevant. A brief reference of the authority given by father of the applicant in favour of the applicant as well as consent of the opposite party no. 2/first informant are essential for further consideration, which are as under:

11(i). F.I.R. dated 21.04.2022 has been lodged by the opposite party no. 2 against the four named persons namely Amit Mittal, Sonu Lakda, Sandeep Khatri and Abhishek Goyal as:

“सेवा में श्रीमान प्रभारी निरीक्षक साहब
थाना चेतगंज वाराणसी महोदय निवेदन है कि मैं प्रार्थी अंकित

शुक्ला पुत्र सोमेश्वर नाथ शुक्ला ग्राम ममुआ थाना राबर्टसगंज सोनभद्र का निवासी हूँ हाल पता अकथा चौराहा थाना लालपुर पांडेपुर वाराणसी मैं प्रार्थी सापोस सर्विसेज प्रा० लि० कंपनी में सेल्स मैनेजर के पोस्ट पर काम करता हूँ मैं कंपनी के भेजे गए रेशम को बुनकरो को थोड़ा थोड़ा करके बेचता हूँ और उनसे नकद कलेक्शन करता हूँ दिनांक 16.04.2022 को मेरे रिश्तेदार अश्वनी कुमार पाण्डे के मोबाइल नंबर 8400412764 पर अभिषेक गोयल मोबाइल नंबर 7506721039 से फोन आया और उनसे कहा कि मैं आप से कैश पैसे लेकर आपके अकाउंट में उतने ही पैसे कुछ कमीशन लेकर ट्रांसफर करा दूंगा और उसने अमित मित्तल उर्फ यश मित्तल मोबाइल नंबर 8427612327 और कहा कि यह चार्टर्ड अकाउंटेंट है आप इनसे बात करके मिल लीजिए आपका काम हो जाएगा दिनांक 18.04.2022 को मैं अमित मित्तल उर्फ यश मित्तल से बात करके उसके मलदहिया स्थित ऑफिस पर मिलने गये था मैं उसकी बातों से संतुष्ट हो गया आज दिनांक 20.04.2022 को समय सुबह 10.00 बजे बुनकरो से इकट्ठा किए हुए कुल कैश 2 करोड़ रुपये लेकर टैक्स बचाने के नियत से अमित उर्फ यश मित्तल के मलदहिया स्थित ऑफिस पर पहुंचा वहां पर अमित उर्फ यश मित्तल व उसके 2 साथी जो क्रमशः सोनू लाकड़ा व सदीप खत्री जो बोलचाल से हरियाणा के लगते थे पहले से मौजूद थे लोगो ने कहा कि कैश गिन कर अकाउंट में ट्रांसफर कर देते हैं और ऑफिस के अंदर ही दूसरे कमरे में पूरे कैश गिनवाने के लिए रखवा दिया और मेरे साथ धोखाधड़ी करते हुए बारी बारी से मेरा सारा कैश लेकर वहां से चले गए मेरे साथ मेरे रिश्तेदार अश्वनी कुमार पांडे भी ऑफिस में मौजूद थे उन्हें कुछ शक हुआ तो वह बगल वाले कमरे में गए तो वे चिल्लाए की ना तो कमरे में कैश है और ना ही वे लोग हैं वे सभी ऑफिस के दूसरे रास्ते से धोखाधड़ी करते हुए मेरा सारा कैश लेकर फरार हो गए उन लोगों का काफी तलाश किया लेकिन नहीं मिले। अतः महोदय से अनुरोध है कि उचित कानूनी कार्यवाही करने की कृपा करें। प्रार्थी अंकित शुक्ला मो० नं० 8299046897 दिनांक 20.04.2022 नोट मुझ का०मु०मो० सारिक द्वारा बोल बोल कर टाइप कराया गया।"

11(ii). Opposite party no. 2/ first informant filed no objection against the release application of the applicant which is as follows:

"2. यह कि उक्त अ० सं० में वसीम रियाज पुत्र मुस्तफा कमाल निवासी एन० 12/361 सी-7 आजाद नगर बजरडीहा थाना भेलपुर जनपद वाराणसी धारा मु 0

1,87,00,000/- (एक करोड़ सत्तासी लाख रु०) का रिलीज प्रार्थनापत्र दिनांकित 13.05.2022 मा० न्यायलय में दाखिल है उसकी पूर्ण जानकारी प्रार्थी/वादी को हैं। संपूर्ण धनराशि वसीम रियाज के फर्म कमल साड़ीज की थी।

3. यह कि उक्त धनराशि मा० न्यायलय द्वारा वसीम रियाज के पक्ष में अवमुक्त की जाती है तब प्रार्थी/वादी को उक्त धनराशि वसीम रियाज के पक्ष में अवमुक्त किये जाने से कोई आपत्ति नहीं है ऐसी स्थिति में उक्त धनराशि वसीम रियाज के पक्ष में रिलीज किया जाना न्यायसंगत होगा।"

11(iii). The applicant filed release application aforesaid, as son of the owner of the firm Kamal Sarees i.e. on behalf of his father on the basis of following authority:

"मैं मुस्तफा कमाल पुत्र स्व० मोहम्मद रफीक निवासी - एन० 12/ 361 सी-7 आजाद नगर बजरडीहा, थाना - भेलपुर, जनपद वाराणसी का निवासी हूँ व कमल साड़ीज नामक फर्म का प्रोपराईटर हूँ। फर्म का GST. IN\UIN नम्बर-09ANPPK48371ZI है चूंकि मेरी उम्र ज्यादा है व मुझे कई गम्भीर रोग है इसी कारण उक्त फर्म का सभी कार्य/विधिक कार्य मेरे पुत्र वसीम रियाज पुत्र मुस्तफा कमाल निवासी - एन० 12/361 सी- 7 आजाद नगर बजरडीहा, थाना - भेलपुर, जनपद वाराणसी द्वारा किया जायेगा उक्त सम्बन्ध में मैं यह सहमति पत्र अपने पूर्ण होशो-हवाश में बिना किसी जोर जबरदस्ती के हस्ताक्षरित कर रहा हूँ।"

12. It is admitted fact that the aforesaid seizure has been made under Section 102 of Cr.P.C. The scheme of seizure under Section 102 of Cr.P.C. is material different from other Act. Section 102 of Cr.P.C. reproduced as under:

"102. Power of police officer to seize certain property:- (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer-in-charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.

13. A plain reading of sub-section (1) of Section 102 indicates that the Police Officer has the power to seize any property which may be found under circumstances creating suspicion of the commission of any offence. The legislature having used the expression 'any property' and 'any offence' have made the applicability of the provisions wide enough to cover offences created under any Act. But the two pre-conditions for applicability of Section 102(1) are that it must be firstly; 'property' and secondly; in respect of the said property there must have suspicion of commission of any offence. However, the said order of seizure is only a temporary order and in terms of sub-section (3) of Section 102 of Cr. P.C., the police officer seizing any property on the grounds of suspicion of an offence is required to forthwith report the seizure to the Magistrate having jurisdiction.

14. The said property seized is required to be produced before a Court and/or reported to a Magistrate. In such cases, the court would have the power to pass necessary orders with regard to the

said property. In terms of Section 457 of the Cr.P.C., whenever a property is seized by any police officer and is reported to the Magistrate, the Magistrate is empowered to make such orders as he thinks fit in respect of disposal of the property or the delivery of such property to the person entitled to the possession thereof. In cases where such person cannot be ascertained, the Magistrate can pass orders in respect of the custody and production of such property.

15. It would be useful to refer the provisions of Section 451 and 457 of Cr.P.C. which reproduced as under:

"451. Order for custody and disposal of property pending trial in certain cases.-When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation- For the purposes of this section, "property" includes (a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

457. Procedure by police upon seizure of property.- (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate

may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

16. Section 451 clearly empowers the Court to pass appropriate orders with regard to such property, *Firstly*; for the proper custody pending conclusion of the inquiry or trial; *Secondly*; to order it to be sold or otherwise disposed of, after recording such evidence as it think necessary; *Thirdly*; if the property is subject to speedy and natural decay, to dispose of the same.

17. In **Sunderbhai Ambalal Desai Vs. State of Gujarat, 2002 (10) SCC 283**, the Supreme Court observed that application under Section 451 Cr.P.C with regard to perishable goods, narcotics, contraband, vehicles, cash and ornaments that are subject matter of criminal proceedings to be decided expeditiously and judiciously. The various guidelines and direction issued by the Apex Court after referring the judgment of Smt. Basawa Kom Dyanmangouda Patil v. State of Mysore and Anr., (1977) 4 SCC 358, are

relevant to reproduce as paragraphs 7, 8, 9, 10, 11 and 12 which are as under:

"7. In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail ; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

8. The question of proper custody of the seized article is raised in number of matters. In Smt. Basawa Kom Dyanmangouda Patil v. State of Mysore and Anr., [1977] 4 SCC 358, this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under-

"4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by

the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

9. The Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

10. To avoid such a situation, in our view, powers under Section 451

Cr.P.C. should be exercised promptly and at the earliest.

11. Valuable Articles and Currency Notes With regard to valuable articles, such as golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, the Magistrate should pass appropriate orders as contemplated under Section 451 Cr.P.C. at the earliest.

12. For this purposes, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:-

s(1) preparing detailed proper panchanama of such articles;

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security."

18. In the case of General Insurance Council v. State of A.P., (2010) 6 SCC 768 the Supreme Court reiterated that need for compliance of directions given in the case of *Sunderbhai Ambalal Desai (supra)*. A similar view has also been taken in the case of **Biswajit Dey v. State of Assam, 2025 SCC OnLine SC 40** at para 23.

19. It is settled position of law that no person shall be deprived of his or her property without the authority of law, as declared by Article 300A of the Constitution of India. Therefore, when the property, so seized by the investigating agency, need not physically remain with the prosecution to bring the trial or

litigation, relating to or connected with the seized property, to its logical conclusion, then the seized property shall be released to the rightful owner, or the person who is entitled thereto. As to who is the rightful owner or the person entitled to the possession of the property shall be guided by the proof based on preponderance of the probabilities.

20. However, it is made clear that the release of the property in favour of the owner or the person found to be entitled to the possession of the properties shall not operate as the declaration of title of that person to the property which shall always be subject to the litigation, if any pending or to be instituted before the Civil Court.

21. After having gone through the entire material on record the following facts emerged:

(i) The Indian currency of Rs. 1,87,00,000/- has been seized under Section 102 of Cr.P.C. on 28.04.2022 from co-accused Sachin Sharma and a recovery memo has been prepared.

(ii) F.I.R. of the present case has been lodged on 21.04.2022 at 00:32 A.M. The applicant filed the present release application before learned Magistrate on behalf of his father on 13.05.2022 stating that father of the present applicant run a firm Kamal Sarees, due to illness and old age of his father, the applicant solely look after the aforesaid firm. The applicant contracted Sapos Services Pvt. Ltd. situated at Bangalore. The amount of Rs. 2,00,00,000/- has been delivered to Sapos Services Pvt. Ltd. which is endorsed in the cash book and ledger account of the firm. Ankit Shukla agent of Sapos Services Pvt. Ltd., who delivered the aforesaid amount to the accused persons and except the present

applicant, there is no other owner of the aforesaid Indian currency.

(iii) Accused persons have not filed any release application claiming the owner of the aforesaid Indian currency in their favour.

(iv) The opposite party no. 2 / first informant have a collective agents has given a consent in favour of the present applicant for release the aforesaid amount.

(v) The Income Tax Department has not filed any proceedings against the order passed by Additional Sessions Judge, Court No. 2, Varanasi on 02.07.2024 in a Criminal Revision.

(vi) The learned Magistrate has observed that applicant is prima-facie owner of the aforesaid Indian currency.

23. In view of the aforesaid facts and circumstances and keeping in mind the position of law in the judgment of **Sunderbhai Ambalal Desai (Supra)**, the present application under Section 482 of the Code stands **allowed**. The impugned orders dated 13.10.2022 and 01.07.2024 passed by the Additional Civil Judge (Sr. Division)/Judicial Magistrate, Court No. 2, Varanasi and Additional District and Sessions Judge/Special Judge (POCSO Act), Court No. 2, Varanasi, arising out of Case Crime No. 0046 of 2022, under Sections 419, 406, 420, 120B, 411, 467, 468, 471 of I.P.C., P.S. Chetganj, District Varanasi, are hereby quashed and Indian currency, which has been seized by the police under Section 102 of Cr.P.C. during the investigation of Case Crime No. 46 of 2022, under Sections 419, 420, 406, 120-B, 411, 467, 468, 471 of I.P.C. is liable to be released as interim release subject to the judgment of case in favour of the applicant after submitting indemnity bond with undertaking that after decision of this case, if aforesaid released amount is found to be

paid to any other person, applicant will return within stipulated time as directed by the trial court as well as after furnishing a surety of immovable property having value of Rs. 2,00,00,000/- by the applicant on following conditions:

(i) The learned Magistrate is directed to release the aforesaid Indian currency in favour of the applicant an interim release subject to the decision of the case;

(ii) After preparing a detail Panchnama/ inventory of the seized Indian currency of Rs. 1,87,00,000/- which has been seized by the police on 28.04.2022 with their numbers or denomination and the accused persons, first informant and the applicant shall sign the said inventory, after taking colour photographs of Indian currency.

(iii) The photographs of such Indian currency notes should be attached and counter signed by the first informant, accused persons and the present applicant.

(iv) The court concerned is directed to interim release the aforesaid amount as ordered, within a week after submitting the indemnity bond as well as surety aforesaid.

(2025) 4 ILRA 13
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.04.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE JITENDRA KUMAR SINHA, J.

Criminal Appeal No. 1216 of 1984

Prem & Anr. ...Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
Nitansh Kumar Roy

Counsel for the Respondent:
D.G.A.

Criminal Law-Code of Criminal Procedure, 1973-Section 374- Indian Penal Code, 1860 - Sections 302, 328 r/w section 34 Appeal against conviction under section 302, 328 r/w section 34 of Indian Penal Code--- Case of suspected poisoning---It is a case of circumstantial evidence and there is no direct ocular evidence available to prove the guilt of the accused persons. The chain of circumstances is not so complete in the present case to prove the guilt of the accused with reasonable definiteness--- The prosecution has failed to prove the charges levelled against the accused persons beyond any reasonable doubt particularly in respect of factum of administration of poison and even mixing or adulteration of poison in laddus that were given to the children--- No poisonous substance was found in their stomach wash--- Impugned judgement set aside, appellants are acquitted of all the charges.

Appeal Allowed. (Para 16 & 18) (E-15)

List of Cases referred-:

1. Sharad Birdhichand Sarda Vs St. of Mah., (1984) 4 SCC 116
2. Bhagwan Singn & anr.Vs St. of M.P., AIR 2003 SC 1088
3. Hari Prashad @ Kishan Sahu Vs St. of Chhatisgarh, (2024) 2 SCC 557
4. St. of U.P. Vs Brijesh & anr., 2022 (119) ACRC 574.
5. Hari Prashad @ Kishan Sahu Vs St. of Chhatisgarh, (2024) 2 SCC 557

(Delivered by Hon'ble Vivek Kumar Birla, J.
&
Hon'ble Jitendra Kumar Sinha, J.)

1. Heard Sri Nitansh Kumar Roy, learned counsel for the appellants and Sri O.P. Dwivedi, learned Additional Government Advocate for the State respondents.

2. This criminal appeal has been preferred assailing the judgement and order dated 25.4.1984 passed by Officiating Sessions Judge, Saharanpur, in Criminal Sessions Trial No. 205 of 1982 convicting and sentencing the appellants to undergo imprisonment for life under Section 302 read with Section 34 of the Indian Penal Code. The appellants are further convicted and sentenced to undergo five years' R.I. under Section 328 read with Section 34 of the Indian Penal code, both the sentence shall run concurrently.

3. Vide order of this Court dated 2.2.2024, the appeal stood abated in respect of appellant no. 2-Genda son of Baroo. Now, the appeal is surviving only in respect of appellant no. 1-Prem son of Genda.

4. The prosecution story, in brief is that on 2nd of May 1981 at about 10 AM, three children, namely, Raj Kumar (aged about 2 year), Chandra Kiran (aged about 3 years) and Vishwas (aged about 6 years) were returning home after playing. When they reached near the house of accused Prem and Genda, they gave Laddu of white colour to each of the children. This incident was seen by two persons, namely, Nanu and Giana, whose house is near the accused's house. When the children reached home, they fell and become unconscious. They were rushed to Primary Health Centre, Nanauta, where doctor after examining declared Chandra Kiran brought dead and found a case of suspected poisoning. He referred Raj Kumar and

Vishwas to S.B.D. Hospital, Saharanpur and dead body of Chandra Kiran was sent for Post Mortem. Raj Kumar after being conscious returned to home with father Dharampal on whose information F.I.R. was registered.

5. On the basis of written report of the informant Dharampal, a first information report was registered on 2.5.1981 against the accused persons, as Case Crime no. 7 of 1981, under Section 302/34 and 334/34 IPC and investigation was started by the Investigating Officer, who investigated the matter and after concluding investigation submitted a chargesheet on 23.2.1982 against the accused persons. On being committed to the Court of Sessions, the accused were charged as above. The accused denied the charges framed against them and claimed to be tried.

6. In order to establish the prosecution case, PW-1 Dharampal, PW-2 Nanu, PW-3 Bhanwar Singh, PW-4 Huras Singh, PW-5 Munna Singh, PW-6 Ram Prakash, PW-7 Gyana, PW-8 Vishwas, PW-9 Pritam Singh, PW-10 Naipal Singh, PW-11 Dr. A.L. Dheegra, PW-12 Dr. M.L. Ansari and PW-13 Dr. Anil Bhatnagar were examined and certain documents were exhibited before the Court concerned. In addition to this, the prosecution produced certain documents, which were exhibited during the trial as under:

(i) First information report as Ext. Ka-2, (ii) Written report as Ex. Ka-1, (iii) Injury report as Ex. Ka-15, (iv) Letter to Station Officer as Ext. Ka-17 and 18, (v) Post-mortem report as Ext. Ka-16, (vi) Chemical examination report as Ext. Ka-19 and 20, (vii) Panchayatnama as Ext. Ka-7, and (viii) Chargesheet as Ext. Ka-14.

7. Submission of Sri Nitansh Kumar Roy, learned counsel for the appellants is that it is a case of circumstantial evidence only and unless the chain of circumstances is so complete that it leaves no scope for any other doubt except the conclusion of the guilt of the accused persons, the accused cannot be convicted. He submits that the first information report was lodged only on the basis of receiving information that the informant was informed by his sister Omwati that the condition of Vishwas, Chandra Karan and Raj Kumar who were at home was not well. It is submitted that in cross-examination, the informant Dharampal (PW-1) has accepted that the information of illness was given by her sister Omwati only and the villagers Nanu son of Chuhada (PW-2) and Gyana son of Ghasi (PW-7) informed about it at around 10:00 am that in front of their house accused persons Prem s/o Genda (the surviving appellant no. 1 herein) and Genda s/o Baroo (now dead) administered poisonous laddus to the children. He submits that the informant had no direct information in respect of giving of poisonous laddus to the children, out of which one child Chandra Kiran died. It was next submitted that PW-1 Dharampal (informant) in his cross-examination stated that there was some enmity between the parties wherein Inder, Nanu and Bhulla were involved. He submitted that Omwati was not produced as witness who had given information to Dharampal. He next submitted that PW-7 Gyana, one of the persons who had stated to have informed Dharampal (informant) turned hostile and did not support the prosecution version. He categorically stated that in his presence the accused persons did not give poisonous laddus to the children. Insofar as statement of Nanu (PW-2) who claims to be an eyewitness is concerned, he submitted that

his house is adjacent to the house of accused persons and had stated that he along with Gyana (PW-7) saw the accused persons giving laddus to the children whereas Gyana (PW-7) had turned hostile and about his own presence he said that on 2.5.1981 he had come from his own residence to the residence of Atma Ram s/o Chimman Harijan and that he had no enmity with the accused Prem and Genda. It was further stated that even Nanu (PW-2) had stated that he had seen the accused persons giving laddus to the children, however, he had not stated that accused persons had poisoned the laddus before giving them to the children and in his cross-examination he has accepted that Bhullu informed about illness of children and Bhullu was never examined by the prosecution. He further submitted that it is important to notice that PW-2 Nanu was in village for two days, however, the Investigating Officer has recorded his statement after 10 to 12 days, which by itself creates suspicion in the truthfulness of his statement. He further submitted that insofar as the statement of child witness Vishwas (PW-8) is concerned, he was aged about 6 years at the time of incident and was aged about 9 years at the time of recording of his statement. He submitted that extremely simple questions were asked from the child witness Vishwas (PW-8) whereas while answering one question he had stated that he even does not know how many months are there in a year and that he had accepted that he was tutored outside the Court by the prosecution side. He further submitted that chemical examination report are at variance as the presence of organo phosphorus insecticide was found in viscera of the deceased whereas no such poisonous substance was found from the stomach wash of the other surviving children. Submission, therefore,

is that if the same laddus were administered to all the children, the chemical examination report could not have been at variance. He submits that even the evidence of PW-13 Dr. Anil Bhatnagar is to the effect that poison may or may not dissolve in stomach. Submission, therefore, is that administration of same poisonous substance in the same form i.e. laddu at the same point of time draws a suspicion about the cause of death of Chandra Kiran and the prosecution could not prove the story beyond doubt. He also submitted that the statement of Inder (father of the deceased child Chandra Kiran) was not recorded and Dharampal (PW-1) is the uncle of the victim. By drawing attention to the statement of Nepal Singh (PW-10), it is submitted that he has accepted that he was not told about the illness of Nanu (PW-2) who is first cousin of Dharampal and his statement was recorded after 10 to 12 days after the incident, therefore, truthfulness of statement is highly doubtful and the presence of Nanu (PW-2) on the spot seeing the accused persons giving laddus is not proved. He further submitted that no motive could be proved in the present case as the same was specifically denied from the other side. He submitted that the motive due to enmity between the accused persons and Nanu, Inder and Bhulla was incorrectly presumed by the trial Court and no such motive can be presumed in a case of death. Submission, therefore, is that the prosecution has clearly failed to prove all the charges against the accused persons beyond any reasonable doubt. Submission is that insofar as the factum of administration of poison by the accused persons is concerned, in a case of circumstantial evidence that too when poisonous substance is administered, the motive must be proved and the chain of circumstances must be complete and must

be proved beyond any shadow of doubt. In support of his submissions, he has placed reliance on the judgements of Hon'ble Apex Court in Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116; Bhagwan Singn and Another vs. State of M.P., AIR 2003 SC 1088; Hari Prashad @ Kishan Sahu vs. State of Chhatisgarh, (2024) 2 SCC 557 and the judgement of Coordinate Bench of this Court (wherein one of us, Justice Vivek Kumar Birla, is a member) rendered in State of U.P. vs. Brijesh and another, 2022 (119) ACRC 574.

8. *Per contra*, Sri O.P. Dwivedi, learned AGA appearing for the State respondents has contended that PW-1 Dharampal acted immediately after receiving the information and it is a case of prompt FIR. It is submitted that the delay, if any has been explained properly as the victims were small children and the informant was attending the children, which was quite natural in the circumstances. It is submitted that information of illness of children was received by him from his sister Omwati and he moved forward towards his home and he was told by villagers Nanu and Gyana that accused persons administered the poisonous laddus to the children. He submitted that both the accused persons are real brothers. It was next submitted that even though PW-7 Gyana had turned hostile, however, this will not affect the case of the prosecution, inasmuch as it is the quality of evidence that is to be seen and not the quantity and that as per law, even the evidence of the hostile witness can be looked into if needed to corroborate other facts. It was submitted that PW-2 Nanu was eyewitness who has seen the accused persons giving poisonous laddus to the children and immediately thereafter

they, while eating them were approaching their home and soon after eating such *laddus* they fell seriously ill. He next submitted that it is proved beyond doubt that Chandra Kiran died because of administration of poisonous substance, which was also proved from the medical evidence. It is submitted that the medical opinion in respect of presence and absence of poisonous substance may not be categorical in nature, however, in view of the ocular evidence and that of one child, out of three children, does not give any benefit to appellant. He submitted that PW-11 Dr. A.L. Dheegra, who had examined Vishwas aged about 6 years at that point of time, had clearly stated that when he examined Vishwas, he was having symptoms of poison. He submitted that the death of Chandra Kiran took place because of administration of poisonous substance i.e. organo phosphorus insecticide and it could not be disputed that all the children have eaten same *laddus*. It is submitted that in the present case PW-2 Nanu is the eyewitness and his testimony could not be dislodged by the defence and therefore, the prosecution has proved its case beyond any shadow of doubt.

9. We have considered the rival submissions and perused the paper book.

10. Before proceeding further, it would be appropriate to take note of the fact that it is a case of circumstantial evidence and no one has seen the incident although PW-2 Nanu has stated that he had seen the accused persons administering *laddus* to all the three children, however, administration of poisonous *laddus* to children was not seen by any of the witnesses.

11. Before proceeding further, it would be appropriate to quote paragraphs

153, 154, 159, 163, 164 and 165 of the judgement of Hon'ble Apex Court rendered in ***Sharad Birdichand Sarada*** (supra):

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human

probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,

(2) the said circumstance points to the guilt of the accused with reasonable definiteness, and

(3) the circumstance is in proximity to the time and situation.

163. We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In *Kali Ram v. State of Himachal Pradesh* [(1973) 2 SCC 808 : 1973 SCC (Cri) 1048 : AIR 1973 SC 2773 : (1974) 1 SCR 722 : 1974 Cri LJ 1] this Court made the following observations: [SCC para 25, p. 820: SCC (Cri) p. 1060]

“Another golden thread which runs through the web of the administration of justice in criminal cases, is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused

should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence.”

164. We now come to the mode and manner of proof of cases of murder by administration of poison. In *Ramgopal case* [(1972) 4 SCC 625 : AIR 1972 SC 656] this Court held thus: (SCC p. 629, para 15)

“Three questions arise in such cases, namely (firstly), did the deceased die of the poison in question? (secondly), had the accused the poison in question in his possession? and (thirdly), had the accused an opportunity to administer the poison in question to the deceased? It is only when the motive is there and these facts are all proved that the court may be able to draw the inference, that the poison was administered by the accused to the deceased resulting in his death.”

165. So far as this matter is concerned, in such cases the court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction:

(1) there is a clear motive for an accused to administer poison to the deceased,

(2) that the deceased died of poison said to have been administered,

(3) that the accused had the poison in his possession,

(4) that he had an opportunity to administer the poison to the deceased.”

12. Following the aforesaid proposition of law, the same view has been reiterated by Hon'ble Apex court in a recent judgement rendered in **Hari Prashad alias Kishan Sahu vs. State of Chhatisgarh**, (2024) 2 SCC 557, paragraph 27 whereof are quoted as under:

“27. Having regard to such scanty evidence, it is difficult to hold that the

prosecution had proved the four important propositions laid down by this Court in case of allegation of murder by poisoning, namely, (1) the accused had a clear motive to administer poison to the deceased; (2) the deceased died of poison said to have been administered; (3) the accused had the poison in his possession; and that (4) the accused had an opportunity to administer the poison to the deceased. It is also pertinent to note that the chemical examination report (Ext. P-14) though was an incriminating piece of evidence, was not brought to the notice of the appellant during the course of his examination under Section 313CrPC. All these circumstances put together, have made the case of prosecution very vulnerable.”

(Emphasis Supplied)

13. On perusal of record and re-appreciation of evidence, We find substance in the arguments of learned counsel for the appellants to the effect that the informant was firstly informed by his sister Omwati about the illness of three children who were at home and he has stated that he subsequently received information from PW-2 Nanu and PW-7 Gyana that the accused persons have given all the three children *laddus* in front of them at about 10 AM, therefore, clearly PW-1 Dharampal is not having personal knowledge of children being given laddus by the accused persons, moreso, administration of poisonous substance to the children. Applying the principles in ***Sharad Birdhichand Sarda*** (supra) as quoted above, it is clear that no one has seen the accused persons having given poison in their presence or mixing the poison with *laddus* that they have given to the children. A faint suggestion of enmity between the parties has also been given by the informant Dharampal to the effect that

he was having old enmity with Genda, however, the same could not be proved to the hilt and in any case enmity cuts both the ways and in case of absence of direct evidence, the motive becomes important and must be proved by cogent evidence, which, in our opinion, is lacking in the present case. One of the alleged eyewitnesses PW-7 Gyana has clearly turned hostile and nothing could be extracted from his cross-examination in favour of the prosecution.

14. Perusal of the chemical examiner report clearly indicates that in stomach wash of the surviving children no poisonous substance was found. Under these circumstances, when one of the alleged eyewitnesses, namely, PW-7 Gyana has turned hostile and statement of PW-2 Nanu was recorded by the police after 10 to 12 days although he was available in the village, the statement child witness Vishwas becomes important and needs close scrutiny. We have closely scrutinized the statement of child witness Vishwas who was aged about 9 years at the time of recording of his statement and was six years old when the incident had taken place. From his statement we find that extremely simple questions were put to him while ascertaining as to whether he understood the questions. Be that as it may, in his examination-in-chief he had stated that accused Prem stopped them and asked them to have Prashad and they were handed over Prashad in the shape of white laddus and that accused Prem had given laddu to him and Chandra Kiran whereas Genda had given laddu to Raj Kumar and while eating laddus they had proceeded to their home and fell unconscious. However, in his cross-examination he had stated that PW-2 Nanu and PW-7 Gyana have told him that he is 9 years old and that he does not know

how many months are there in a year. He had come with Dharampal (PW-1) and he stated that prior to this date, he had not told anything about the incident to anyone. In paragraph 6 of the cross-examination he had stated that he has come to this place since morning and was sitting under a tree and was taken to big room of tile roof (khaprail) wherein he was told as to what is to be stated before the Court and thus he had stated in the same manner. This clearly reflects that this child witness was tutored before producing before the Court. Relevant extract of the statement of PW-8 Vishwas (child witness) is quoted as under:

“6- आज से सुबह मैं आया फिर पेड़ के नीचे बैठा व खपड़ैल वाले कमरे में मैं गया वहाँ मुझे बतलाया गया कि हमें क्या-2 बात कहना है। उसी तरह से हमने यह बात यहाँ कह दी।”

15. In the case of *Bhagwan Singh* (supra), it has been held that a child of six years was not found worth belief as because of immaturity of understanding. The ratio of the case is that the evidence of the child is required to be evaluated carefully because he is an easy prey of tutoring, paragraphs 19 and 22 of the said judgement is quoted as under:

“19. The law recognises the child as a competent witness but a child particularly at such a tender age of six years, who is unable to form a proper opinion about the nature of the incident because of immaturity of understanding, is not considered by the Court to be a witness whose sole testimony can be relied without other corroborative evidence. The evidence of child is required to be evaluated carefully because he is an easy prey to tutoring. There-fore, always the Court looks for adequate corroboration from other evidence to his testimony. See *Panchhi and others v. State of U.P.*, (1998) 7 SCC 177.

22. It is hazardous to rely on the sole testimony of the child witness as it is not available immediately after the occurrence of the incident and before there were any possibility of coaching and tutoring him. See *Paras 14-15 of State of Assam v. Mafzuddin Ahmed* (1983) 2 SCC 14. In that case evidence of child witness is appreciated and held unreliable thus :

"14. The other direct evidence is the deposition of PW 7, the son of the deceased, a lad of 7 years. The High Court has observed in its Judgment :-

.....the evidence of a child witness is always dangerous unless it is available immediately after the occurrence and before there were any possibility of coaching and tutoring.

15. A bare perusal of the deposition of PW-7 convinces us that he was vacillating throughout and has deposed as he was asked to depose either by his Nana or by his own uncle. It is true that we cannot expect much consistency in the deposition of this witness who was only a lad of 7 years. But from the tenor of his deposition it is evident that he was not a free agent and has been tutored at all stages by someone or the other".

(Emphasis Supplied)

16. We, therefore, find that it is a case of circumstantial evidence and there is no direct ocular evidence available to prove the guilt of the accused persons. The chain of circumstances is not so complete in the present case to prove the guilt of the accused with reasonable definiteness as per the law discussed hereinabove. On re-appreciation of evidence, we, therefore, find that the prosecution has failed to prove the charges levelled against the accused persons beyond any reasonable doubt particularly in respect of factum of administration of poison and even mixing

or adulteration of poison in *laddus* that were given to the children as per law laid down in *Sharad Birdhichand Sarda* (supra) and *Hari Prashad* (supra) as noted above. In any case administration of poisonous substance to three children though only one child Chandra Kiran, out of three children died because of poisonous substance and chemical examiner report is not categorical to the effect that any poisonous substance that was found in stomach wash of the other two children. On the contrary, it records that no poisonous substance was found in their stomach wash (at page 9 of the paper book).

17. Thus, in the present case, as laid down by Hon'ble Apex Court in the case of *Sharad Birdhichand Sarda* (supra) and *Hari Prashad* (supra), the circumstances from which the conclusion of guilt is to be drawn have not been fully established. In other words, prosecution has failed to establish the act of administration of poisonous substance to the deceased, which must have been proved beyond any shadow of doubt even though there may be a strong suspicion, as one child, out of three children died. We find that in the present case the chain of evidence and circumstances is not complete and it could not be approved by the prosecution that in all human probability the act must have been done by the accused persons.

18. Consequently, the present appeal is accordingly **allowed**. The impugned judgement and order dated 25.4.1984 convicting and sentencing appellants is hereby set aside and the appellants are acquitted of all the charges levelled against them. Bail bonds are cancelled and sureties are discharged. The surviving appellant no. 1-Prem son of Genda need not surrender.

19. Copy of this judgement be sent to the court concerned for necessary compliance.

(2025) 4 ILRA 21
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.04.2025

BEFORE

THE HON'BLE MAHESH CHANDRA
TRIPATHI, J.
THE HON'BLE PRASHANT KUMAR, J.

Criminal Misc. Writ Petition No. 934 of 2025

Manjeet Singh @ Inder @ Manjeet Singh
Chana **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Counsel for the Petitioner:
 Sri Praveen Shrivastav, Sri Anupam Verma

Counsel for the Respondents:
 G.A., Sri Vinod Singh

Arrest-Remand Order-Arrest memo on a printed proforma -did not contain any column specifying the grounds or reasons for arrest-arrest violates Article 22 of the Constitution of India- no such effort had been made by the learned Magistrate to ensure adequate legal aid to the accused petitioner and no appropriate opportunity of hearing at the time judicial remand-Remand order and arrest quashed.

W.P. allowed. (E-9)

Cases Cited:

1. Ashish Kakkar Vs UT of Chandigarh-Criminal Appeal No.1518 of 2025 @ SLP [CrI] No.1662 of 2025
2. Prabir Purkayastha Vs St. (NCT of Delhi) (2024) 8 SCC 254

3. Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid Vs St. of Maharashtra, (2012) 8 S.C.R. 295

4. Vihaan Kumar Vs St. of Har., LAWS(SC)-2025-2-20 (Para 21)

(Delivered by Hon'ble Mahesh Chandra
Tripathi, J.
&
Hon'ble Prashant Kumar, J.)

1. Heard Shri Anupam Verma, learned counsel for the petitioner, Shri Paritosh Malviya, learned AGA-I for the State-respondents, and Shri Vinod Singh, learned counsel for the informant – respondent No. 4.

2. The instant writ petition has been preferred under Article 226 of the Constitution of India for issuance of an appropriate writ, order, or direction in the nature of *certiorari* for quashing the impugned remand order dated 26.12.2024 passed by the learned Magistrate in First Information report dated 15.02.2024 registered as Case Crime No.77 of 2024, under Sections 420, 467, 468, 469, 406, 504, 506 IPC, Police Station Milak, District Rampur, and to direct the release of the petitioner on personal bond as the investigation is still ongoing.

3. **Shri Anupam Verma, learned counsel for the petitioner** submits that the core issue involved in the petition is not the merits of the allegations mentioned in the FIR but the illegality in the process of arrest and procedural lapses during the remand proceedings. He places reliance upon the arrest memo and states that it was a printed proforma which did not contain any column specifying the grounds or reasons for arrest. It is argued that neither the reasons for the arrest nor the grounds

were communicated in writing to the petitioner at the time of arrest, as per mandate of Article 22(1) of the Constitution of India as well as the statutory provisions under Section 50 CrPC.

4. Learned counsel for the petitioner further argues that immediately after the arrest, the petitioner was produced before the learned remand Magistrate on 26.12.2024 and was remanded to judicial custody through a printed remand order, which does not mention whether any opportunity of hearing was granted to the accused to contest his custodial detention. He further submits that the petitioner has confined his relief to the extent that he was not provided with any grounds of arrest or particulars, whereas the arrest memo merely mentions the petitioner's name and place of arrest.

5. In this backdrop, learned counsel for the petitioner submits that the arrest violates Article 22 of the Constitution of India, which guarantees protection against arrest and detention without being informed of the grounds thereof. He also submits that, as per constitutional mandate, the right to consult and be defended by a legal practitioner of one's choice must be ensured. These rights are designed to ensure that no person is arrested or detained without being informed of the reasons for such action. He also refers to Section 50 Cr.P.C. (now Section 47 BNSS), which provides that every police officer or other person arresting any person without a warrant shall forthwith communicate to him the full particulars of the offence or other grounds for such arrest. He places further reliance upon Section 50A Cr.P.C. (now Section 48 BNSS), which imposes an obligation on the arresting officer to inform

a nominated person about the arrest and mandates that such information must be recorded in a register maintained at the police station. It is further submitted that the Magistrate, before whom the arrested person is produced, must ensure compliance with sub-sections (2) and (3). It is argued that the remand order is mechanical and does not reflect any judicial satisfaction regarding the necessity of judicial custody.

6. Lastly, learned counsel for the petitioner submits that the arrest of the petitioner and the consequential remand order are liable to be set aside due to non-communication of the grounds of arrest.

7. Per contra, **Shri Paritosh Malviya, learned AGA-I**, opposed the relief and has placed instructions on record. He submits that considering the FIR dated 15.02.2024 and the alleged complicity of the petitioner, no relief should be accorded to the petitioner in the instant case.

8. The relief is also opposed by **Shri Vinod Singh, learned counsel for the informant**. He vehemently contends that no relief may be accorded and the writ petition deserves to be dismissed as devoid of merit.

9. We have heard the rival submissions and perused the record.

10. The impugned order dated 26.12.2024 was passed by the learned remand Magistrate in FIR dated 15.02.2024 registered as Case Crime No.77 of 2024, under Sections 420, 467, 468, 469, 406, 504, 506 IPC, Police Station Milak, District Rampur based on application by the investigating officer. However, the arrest and remand order are under challenge in

the present petition mainly on three grounds, namely "*(a) the reason of arrest and ground of arrest were not communicated to the petitioner; (b) arrest memo does not contain any column on ground of arrest and reason of arrest; and (c) no opportunity of hearing or no opportunity to the petitioner was given for defending his custodial remand.*" The petitioner was not furnished with the grounds of arrest as mandated under Section 50 Cr.P.C. (now Section 47 BNSS), and only an arrest memo lacking such details was provided. Upon examination of the record and instructions, we have no hesitation in holding that neither the reasons nor grounds for arrest were communicated in writing to the petitioner at the time of arrest, thereby violating the constitutional safeguards under Article 22(1) and the statutory mandate under Section 50 Cr.P.C. The arrest memo and remand orders on record (Annexure-1 to the writ petition) reflect that only a printed format memo was provided, without mentioning grounds of arrest. Further, the right to access legal aid is a valuable right of the accused, who must be informed of his right to consult and be defended by a legal practitioner. In case the accused is unable to engage counsel, the State must provide legal aid. These rights flow from Articles 21, 22(1) and 39A of the Constitution of India. Adequate legal aid to the accused at State expenses is also enshrined in Section 304 Cr.P.C. (now Section 341 BNSS).

11. The importance of the remand Magistrate's duty to apply judicial mind and afford an opportunity to the accused to oppose remand was emphasized by the Supreme Court in *Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid v. State of Maharashtra, (2012) 8 S.C.R.*

295 (Paras 484–488). Further, the right of an arrested person to be informed in writing of the grounds of arrest and furnishing of such written grounds to the arrested person was made an imperative requirement of law in *Prabir Purkayastha v. State (NCT of Delhi)*, LAWS(SC)-2024-5-46, and *Pankaj Bansal v. Union of India*, LAWS(SC)-2023-10-3.

12. Similarly various protections afforded under the Constitution to a person facing arrest were expounded by the Supreme Court in *Vihaan Kumar v. State of Haryana*, LAWS(SC)-2025-2-20 (Para 21), which is reproduced below:

"(21.) Therefore, we conclude:

a) The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);

b) The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;

c) When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1);

d) Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1)

vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1);

e) When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and

f) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established."

13. In a recent judgment of Apex Court dated 25.03.2025 passed in **Criminal Appeal No.1518 of 2025 @ SLP [Crl] No.1662 of 2025** (**Ashish Kakkar vs. UT of Chandigarh**) has considered the similar issue. The judgment and order dated 25.03.2025 is reproduced below:

"Leave granted.

2. The appellant was arrested on 30.12.2024 in connection with FIR No. 33/2022 registered under Sections 384, 420, 468, 471, 509 and 120B of the Indian Penal Code, 1860 and remanded to police custody for a period of 3 days.

3. Vide the present appeal, the appellant has challenged both his arrest and the remand order dated 30.12.2024 on three grounds, namely, there is a clear non-compliance of the mandate under Section

41-A of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'); the appellant was not heard at the time of remand and the grounds of arrest as mandated under Section 50 of the Code have not been furnished to the appellant as against the mere arrest memo.

4. We are inclined to consider only the last issue raised by the appellant with respect to the non- furnishing of the grounds of arrest.

5. Upon perusing annexure P-3, we can see that what has been provided to the appellant is only an arrest memo in the prescribed format, which is meant to be given to the appellant by way of an intimation. It has been filled up with the name of the appellant along with the place of arrest. Additionally, it has been written that he has been arrested based upon the statement of the co- accused.

6. We are in agreement with the submission made by the learned senior counsel appearing for the appellant that the said arrest memo cannot be construed as grounds of arrest, as no other worthwhile particulars have been furnished to him.

7. This, being a clear non-compliance of the mandate under Section 50 of the Code which has been introduced to give effect to Article 22(1) of the Constitution of India, 1950 we are inclined to set aside the impugned judgment, particularly, in light of the judgment rendered by this Court reported as **Prabir Purkayastha v. State (NCT of Delhi) (2024) 8 SCC 254**.

8. In such view of the matter, the impugned judgment stands set aside and the arrest of the appellant followed by the consequential remand order are also set aside.

9. The appellant shall be set at liberty, until and unless he is required in

any other case. The appeal stands allowed accordingly.

10. Pending application(s), if any, shall also stand disposed of."

14. In the instant matter, admittedly, no such effort had been made by the learned Magistrate to ensure adequate legal aid to the accused petitioner and appropriate opportunity of hearing at the time judicial remand. Even the arrest memo does not contain any column regarding grounds of arrest of the petitioner. This very issue is primarily the bone of contention between the parties in the instant matter. Accordingly, this, being a clear non-compliance of the mandate under Section 50 of the Code which has been introduced to give effect to Article 22(1) of the Constitution of India, 1950, we are inclined to set aside the impugned order in view of law laid down by the Apex Court in **Prabir Purkayastha (supra)**, **Pankaj Bansal (supra)** and **Ashish Kakkar (supra)**.

15. In such view of the matter, the impugned order dated 26.12.2024 is hereby set aside. The arrest of the petitioner is also quashed.

16. The petitioner shall be set at liberty, unless required in connection with any other case.

17. In light of the above, the writ petition is allowed.

18. Let the order be communicated to Director General of Police, Uttar Pradesh through Registrar General of this Court and accordingly, a circular be issued to all the Commissioners of Police/ SSPs/ SPs for necessary compliance of Section 50 and

XXXXXXXXXXXX

BEFORE

9. KSL and Industries Ltd. Vs Arihant Threads Ltd. & ors.; (2009) 9 SCC 763

10. Managing Director, Chhattisgarh St. Co-Operative Bank Maryadit Vs Zila Sahkari Kendriya Bank Maryadit & ors.; (2020) 6 SCC 411

11. Interplay Between Arbitration Agreements Under Arbitration & Conciliation Act 1996 and Stamp Act, 1889; (2024) 6 SCC 1

12. Life Insurance Corporation of India Vs D.J. Bahadur & ors.; (1981) 1 SCC 315

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Present petition has been filed challenging the order dated 12.07.2022 passed by District Judge, Unnao in Civil Revision No.16 of 2022 (Smt. Kusum vs. Anand Kumar & Ors.).

2. The facts, in brief, are that the petitioner claims that she had taken out 15 life insurance in the name of her daughter namely Ranjeeta when she was unmarried and subsequently, the daughter was married to respondent no.1, and respondent no.2 – the granddaughter of the petitioner – was born out of the wedlock in between the daughter of the petitioner and respondent no.1. Unfortunately, daughter of the petitioner died on 01.09.2021 when respondent no.2 was about 11 months' old. It is claimed that in the 15 life insurance policies, the petitioner was the nominee as named by her daughter before her death. However, to resist the said claim, respondent no.1 and respondent no.2 filed Civil Misc. Case No.08/2022 under Section 372 of Indian Succession Act before the Civil Judge (Senior Division), Unnao claiming succession including the claim arising out of life insurance policies. It is claimed that the petitioner was not even made a party. Subsequently, the said case was disposed off in the Lok Adalat on 12.03.2022 without hearing the petitioner. Aggrieved against the said judgment, the

petitioner preferred an petition being Matters Related Under Article 227 No.2114 of 2022 in which an order came to be passed on 07.06.2022 holding that a revision would lie against the said order passed by the Civil Judge before the competent Court. In terms of the said order, Civil Revision No.16 of 2022 was preferred before the District Judge, Unnao. Ultimately, the revision came to be decided by means of the order impugned vide which the succession certificate was modified to the extent that the amount of all the 15 life insurance policies was directed to be excluded from the list of assets and further directions were issued to the revisionist for depositing the same in the form of Fix Deposit Receipts in the name of respondent no.2 till her attaining the age of 18 years.

3. Neat contention of learned counsel for the petitioner is that in terms of the mandate of Section 39(7) read with Section 39(8) of the Insurance Act, it is the petitioner who was named as a nominee, is entitled to the amounts under the policies as being a beneficial nominee. It is not denied that apart from the amounts under the policies, the respondent no.2 would be entitled to succession to her estate as admittedly the daughter of the petitioner died intestate.

4. Thus, the issue that arises for consideration is on the one hand the claim of the petitioner by virtue of her being nominee to be entitled to the beneficial interest arising out of the amounts payable for the insurance policies by virtue of Section 39(7) of the Insurance Act to the exclusion of respondent no.2 vis-a-vis the rights of succession in respect to the amounts under policies of the daughter flowing from the Hindu Succession Act.

5. It is essential to notice that Section 39(7) of Insurance Act was amended in the year 2015 by virtue of Act No.5 of 2015 on the recommendations made by the Law Commission. Section 39 after its amendment is recorded as under:

“39. Nomination by policyholder.— (1) *The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:*

Provided that, where any nominee is a minor, it shall be lawful for the policyholder to appoint any person in the manner laid down by the insurer, to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policyholder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge such fee as may be specified by

regulations for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with Section 38 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy:

Provided further that the transfer or assignment of a policy, whether wholly or in part, in consideration of a loan advanced by the transferee or assignee to the policyholder, shall not cancel the nomination but shall affect the rights of the nominee only to the extent of the interest of the transferee or assignee, as the case may be, in the policy:

Provided also that the nomination, which has been automatically cancelled consequent upon the transfer or assignment, the same nomination shall stand automatically revived when the policy is reassigned by the assignee or re-transferred by the transferee in favour of the policyholder on repayment of loan other than on a security of policy to the Insurer.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policyholder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) *Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.*

(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

(9) Nothing in sub-sections (7) and (8) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.

(10) The provisions of sub-sections (7) and (8) shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance Laws (Amendment) Act, 2015.

(11) Where a policyholder dies after the maturity of the policy but the proceeds and benefit of his policy has not

been made to him because of his death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy.

(12) The provisions of this section shall not apply to any policy of life insurance to which Section 6 of the Married Women's Property Act, 1874 (3 of 1874), applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of the Insurance Laws (Amendment) Act, 2015, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said Section 6 shall be deemed not to apply or not to have applied to the policy."

6. The reasons for amendment were the recommendations of the Law Commission, which are as under

"The Law Commission's views

7.1.12 There appears to be a consensus of sorts on the need for drawing a clear distinction between a beneficial nominee and a collector nominee. It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee. Although it is true that this is the law in USA, Canada and South Africa, the social realities of our country where the death of a sole breadwinner of the family immediately throws the remaining family into hardship cannot be lost sight of. To deny, in such instance, the right of the legal representatives to the policy amount on the basis that the nominee is a different person

seems harsh. On the other hand, what appears reasonable is to give an option to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee. Public interest and the peculiar social realities in India cannot permit the adoption of the procedures followed in Canada, USA or South Africa. The Commission is not agreeable to the suggestion that a provision similar to s.45 ZA as in the Banking Regulation Act, 1949 should be adopted.

7.1.13 The suggestion that a proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed, has also been welcomed by the responses, and is hereby recommended.

Final recommendations of the Law Commission in regard to s.39

7.1.14 After considering all the responses and reexamining the entire issue, the final recommendations of the Law Commission regard to s.39 may be summarised as under:

(a) A clear distinction be made in the provision itself between a beneficial nominee and a collector nominee.

(b) It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee.

(c) An option be given to the policyholder to clearly express whether the

nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee.

(d) A proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed.

Suggested amendment of s.39

7.1.15 To give effect to the above recommendations, the Law Commission is of the view that s.39 be recast as follows:

(1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death: Provided that, where any nominee is a minor, it shall be lawful for the policyholder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the

text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policy-holder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge such fee as may be specified by regulations for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with s.98 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its re-assignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.

Provided that the transfer or assignment of a policy, whether wholly or in part, in consideration of a loan advanced by the transferee or assignee to the policyholder, will not cancel the nomination but shall affect the rights of the nominee only to the extent of the interest of the transferee or assignee as the case may be in the policy.

Provided that the nomination, which has been automatically cancelled consequent upon the transfer or assignment, the same nomination shall stand automatically revived when the policy is reassigned by the assignee or retransferred by the transferee in favour of the policy holder on repayment of loan other than on a security of policy to the insurer.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all

the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

(9) Nothing in sub-sections (7) and (8) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.

(10) The provisions of sub-sections (7), (8) and (9) shall apply to all

policies of life insurance maturing for payment after the commencement of this Act.

(11) Every policyholder shall have an option to indicate in clear terms whether the person or persons being nominated by the policyholder is/ are a beneficiary nominee(s) or a collector nominee(s).

Provided where the policyholder fails to indicate whether the person being nominated is a beneficiary nominee or a collector nominee it will be deemed that the person nominated is a beneficiary nominee.

Explanation: For the purposes of this sub-section the expression 'beneficiary nominee' means a nominee who is entitled to receive the entire proceeds payable under a policy of insurance subject to other provisions of this Act and the expression 'collector nominee' means a nominee other than a beneficiary nominee.

(12) The collector nominee shall make payment the benefits arising out of policy to the beneficiary nominee or his legal heirs or representative in accordance with the regulations made by the Authority.

(13) Where a policyholder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy.

(14) The provisions of this section shall not apply to any policy of life insurance to which s.6 of the Married Women's Property Act, 1874, applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of this Act, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this

section, the said s.6 shall be deemed not to apply or not to have applied to the policy."

7. It is admitted at the Bar that prior to the amendment in Section 39 by virtue of Act No.5 of 2015, the law was very well settled in the case of ***Smt. Sarbati Devi and Anr. v. Smt. Usha Devi; (1984) 1 SCC 424*** to the effect that the nominee of a policy is entitled to hold the amount for the benefit of the successor and the nominee cannot be treated as being equivalent to an heir or legatee, and the amounts can be claimed by the heirs in terms of the provisions governing the Succession Act applicable to them.

8. On the plain reading of the opinion expressed by the Law Commission which resulted in the amendment to Section 39, it is clear that the same was done at the instance of insurance companies who wanted the same to be brought at par with Section 45-ZA of the Banking Regulation Act so as to discharge the insurance companies from their burden of payment of the amount to the nominee.

9. It is also essential to notice that all the recommendations of the Law Commission were not accepted while enacting and amending the provisions of Section 39, specifically the explanation proposed in the amendments by the Law Commission was not incorporated while amending the Act.

10. It is also essential to notice that Section 45-ZA of the Banking Regulation Act also made prescriptions for payment of the amounts of the depositors' money on the basis of nomination. Section 45-ZA reads as under:

“45-ZA. Nomination for payment of depositors' money.—*(1) Where a deposit is held by a banking company to the credit of one or more persons, the depositor or, as the case may be, all the depositors together may nominate in the prescribed manner, one or more persons not exceeding four, either successively or simultaneously to whom in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the banking company.*

(2) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such deposit, where a nomination made in the prescribed manner purports to confer on any person the right to receive the amount of deposit from the banking company, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(3) Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint in the prescribed manner any person to receive the amount of deposit in the event of his death during the minority of the nominee.

(4) Payment by a banking company in accordance with the provisions of this section shall constitute a full discharge to the banking company of its liability in respect of the deposit:

Provided that nothing contained in this sub-section shall effect the right or claim which any person may have against the person to whom any payment is made under this section.”

11. Thus, on plain reading of Section 45-ZA(2), it is clear that the same is *pari materia* with Section 39(7) of the Insurance Act.

12. Section 45-ZA came up for interpretation before the Hon'ble Supreme Court in the case of **Ram Chander Talwar & Anr. v. Devender Kumar Talwar & Ors.; (2010) 10 SCC 671** wherein the rights of the nominee vis-a-vis the right of the successor was considered and the Supreme Court held as under:

“5. Section 45-ZA(2) merely puts the nominee in the shoes of the depositor after his death and clothes him with the exclusive right to receive the money lying in the account. It gives him all the rights of the depositor so far as the depositor's account is concerned. But it by no stretch of imagination makes the nominee the owner of the money lying in the account. It needs to be remembered that the Banking Regulation Act is enacted to consolidate and amend the law relating to banking. It is in no way concerned with the question of succession. All the monies receivable by the nominee by virtue of Section 45-ZA(2) would, therefore, form part of the estate of the deceased depositor and devolve according to the rule of succession to which the depositor may be governed.”

13. Thus, the *pari materia* provision contained in Section 39(7) of the Insurance Act cannot be interpreted in contradiction to the interpretation of the *pari materia* provision contained in Section 45-ZA(2) of the Banking Regulation Act and thus, on that count the submission of counsel for the petitioner merits rejection.

14. Besides the rejection of the contention of counsel for the petitioner on

the ground that *pari materia* provision has been interpreted in the case of **Ram Chander Talwar (supra)** and would be binding, it is essential to see the interpretation of Section 39(7) as interpreted by various High Courts.

15. The amended Section 39(7) came up for interpretation in the case of **Shweta Singh Huria & Ors. v. Santosh Huria & Ors.; AIR 2021 Delhi 121** wherein the Delhi High Court considered the earlier judgment in the case of **Sarbati Devi (supra)** and the subsequent amendment and also recorded the recommendations of the Law Commission in its 190th Report, which reads as under:

“The Law Commission's views:—

7.1.12. *There appears to be a consensus of sorts on the need for drawing a clear distinction between a beneficial nominee and a collector nominee. It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee. Although it is true that this is the law in USA, Canada and South Africa, the social realities of our country where the death of a sole breadwinner of the family immediately throws the remaining family into hardship cannot be lost sight of. To deny, in such instance, the right of the legal representatives to the policy amount on the basis that the nominee is a different person seems harsh. On the other hand, what appears reasonable is to give an option to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector*

nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee. Public interest and the peculiar social realities in India cannot permit the adoption of the procedures followed in Canada, USA or South Africa. The Commission is not agreeable to the suggestion that a provision similar to s.45 ZA as in the Banking Regulation Act, 1949 should be adopted.

7.1.13. *The suggestion that a proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed, has also been welcomed by the responses, and is hereby recommended.*

Final recommendations of the Law Commission in regard to Section 39:—

7.1.14. *After considering all the responses and reexamining the entire issue, the final recommendations of the Law Commission regard to s.39 may be summarised as under:*

(a) *A clear distinction be made in the provision itself between a beneficial nominee and a collector nominee.*

(b) *It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee.*

(c) *An option be given to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which*

case such nominee will be the beneficial nominee.

(d) A proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed.

Suggested Amendment of Section 39:—

“7.1.15 To give effect to the above recommendations, the Law Commission is of the view that s.39 be recast as follows:

xxx xxx xxx

(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom subsection (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

xxx xxx xxx

(10) The provisions of sub-sections (7), (8) and (9) shall apply to all policies of life insurance maturing for

payment after the commencement of this Act.

(11) Every policyholder shall have an option to indicate in clear terms whether the person or persons being nominated by the policyholder is/are a beneficiary nominee(s) or a collector nominee(s).

Provided where the policyholder fails to indicate whether the person being nominated is a beneficiary nominee or a collector nominee it will be deemed that the person nominated is a beneficiary nominee.

Explanation : For the purposes of this sub-section the expression ‘beneficiary nominee’ means a nominee who is entitled to receive the entire proceeds payable under a policy of insurance subject to other provisions of this Act and the expression ‘collector nominee’ means a nominee other than a beneficiary nominee.”

And ultimately carved out a difference between a ‘beneficiary nominee’ and a ‘collector nominee’ to hold that prior to the amendment in the Insurance Act, the nominee was only a collector nominee, however, after the amendment, the nominee became a beneficiary nominee to the exclusion of others. The relevant portions are contained in Para – 31, 32 & 33, which are as under:

“31. As is evident from a reading of the recommendations of the Law Commission, a distinction was carved out between ‘beneficiary nominee’ and ‘collector nominee’ and Section 39 of the Insurance Act, 1938 was amended accordingly, adding sub-Section (7). Beneficiary nominee means a nominee who was entitled to receive the entire proceeds under an insurance policy and a collector nominee means a nominee other than a beneficiary nominee. Keeping this distinction in mind, sub-section (7) of

Section 39 was carefully and cautiously drafted and the words used by the legislature are 'beneficial interest'.

32. Perusal of the impugned order of the Trial Court shows that the Appellants had brought the 2015 Amendment to the notice of the Trial Court, including the judgment of the Rajasthan High Court in *Ramgopal (supra)*. But the Trial Court has not even dealt with the legal issue raised before it and allowed the application under Order XII Rule 6 CPC, based on the unamended provisions of Section 39. It is a settled law that the rights of the parties to a lis have to be decided in accordance with the statutory provisions and law that prevails on the day the cause of action arises.

33. In the present case, Appellants had specifically flagged the issue of applicability of the amendment to Section 39 on the ground that Late Shri Vineet Huria died on 11.07.2018 and the policy had matured after the Amendment to Section 39, came into force. It was thus incumbent upon the Trial Court to have considered and examined the issue, once the same was raised and highlighted by the Appellants and taken a decision accordingly, with respect to the benefits accruing under the insurance policies, in question."

16. Similarly, the matter came up for interpretation before the Andhra Pradesh High Court in the case of *Mallela Manimala v. Mallela Lakshmi padmavathi and Ors.*; 2023 SCC OnLine AP 459 wherein the amended Section 39(7) was taken into consideration and the judgment of the Delhi High Court in the case of *Shweta Singh Huria (supra)* was also considered and ultimately, the High Court recorded as under:

"17. Thus, the above jurisprudence tells that the consistent view of the High Courts is that after amendment of Section 39, a beneficial nominee takes the insurance amount after the demise of the holder of the policy for his beneficial enjoyment in exclusion of other legal heirs. To this extent change is brought in the law.

18. The above being the law, the facts of the case are that admittedly Ramesh Babu, the son of petitioner, who obtained the insurance policies, died on 04.06.2021, as is evident from the copy of Death Certificate issued by the Greater Hyderabad Municipal Corporation, filed along with material papers in the writ petition, and as such the two insurance policies shall be deemed to have matured on the date of his death. Admittedly, he died after the amendment to Section 39 of Insurance Act, 1938 came into force. In that view, the law prevailing on the date of maturity of insurance policies would be applicable to this case, meaning thereby, the 1st respondent, the wife of the deceased, who is shown as nominee in the two policies, shall be beneficially entitled to receive the policy amounts in exclusion of the other heirs. Ergo, this writ petition is not maintainable."

17. The matter also came up for consideration before the High Court of Madras in the case of **K.R. Sakthi Murugeswari v. The Division Manager, Life Insurance Corporation of India and Ors.**; W.P. (M.D.) No.11044 of 2021 decided on 16.10.2023 : 2023/MHC/4812 wherein the Court ultimately held that a beneficiary nominee under the amended Section 39(7) would be entitled to the amounts. The relevant paragraph reads as under:

“12. A beneficiary nominee means a nominee who is entitled to receive the entire sum assured under the insurance policy absolutely. On the other hand, a collector nominee means a nominee other than a beneficiary nominee. It is true that on a plain reading of Section 39(7) of the Act, this distinction has been done away with. However, the legislature was careful enough to identify who all will fall within the category of nominees who in law will be considered as a beneficiary nominee. While categorizing those persons, the legislature was careful enough to bring in the parents, spouse, children, spouse and children or any of them. If the legislature had thought it fit to make everyone as a beneficiary nominee, there was no need for the legislature to specifically prescribe those persons who will fall within the ambit of Section 39 (7) of the Insurance Act, 1938. The fact that such a conscious description of persons, who fall under Section 39(7) of the Act has been prescribed by the legislature, shows that the legislature only wanted those persons who are closely related to the deceased policy holder alone to be treated as beneficiary nominees. In the instant case, the third respondent is admittedly the brother of the deceased policy holder and the third respondent cannot be brought within the scope of Section 39(7) of the Act. If the third respondent cannot be brought within the scope of Section 39(7) of the Act, it would only mean that he will be treated as a collector nominee. The Insurance Company cannot deal with the inter-se rights and the claim between the petitioner and the third respondent and the company has to entrust the sum assured to someone who has been nominated under the policy. By handing over the sum assured to the nominee, the job of the Insurance Company comes to an end. Thereafter, it is not the

concern of the Insurance company to see as to who has the rightful claim over the sum assured and whether it actually goes into their hands as per the personal law governing the parties. Therefore, the concept of nomination is only to ensure that the Insurance Company does not get into the area of dispute and the Company washes of its hands by handing over the sum assured to the nominee. If the nominee falls within the scope of Section 39(7) of the Act, those persons described therein automatically takes it as a beneficiary nominee. If the person does not fall within the scope of Section 39(7) of the Act, he can only be treated as a collector nominee and he has to hold the money in trust subject to the claims made by the legal representatives who are entitled to a share in the sum assured. This position continues even after the amendment made to the Insurance Act in the year 2015. If every nominee is brought within the scope of Section 39(7) of the Act, this Court will be doing violence to the plain language used in the said provision and it will be certainly beyond the scope of the said provision.”

18. However, the High Court of Karnataka in the case of **Smt. Neelavva @ Neelamma v. Smt. Chandravva @ Chandrakala @ Hema & Ors.; RFA No.100471 of 2023 decided on 20.02.2025** took a different view and also noticed the judgment of the Supreme Court in the case of **Shakti Yezdani and Anr. v. Jayanand Jayant Salgaonkar and Ors.;**(2024) 4 SCC 642 and held as under:

“36. Keeping in mind, the ratio laid down in Shakti Yezdani's case supra, and the recommendations made by the Law Commission of India, and partial acceptance and partial (implied) rejection of the recommendations by the Parliament,

and the application of Heydon's Rule for the reasons assigned above, this Court has to conclude that amended Section 39 is not intended to override the provisions of law relating to succession.

37. However, Sections 39(7) and (8) should carry some meaning and cannot be rendered otiose. By taking into consideration the recommendations of the Law Commission, the effect of ratio in Shakti Yezdani's case supra, which has held that the nominee will not acquire a better right than the natural heir, this Court is of the view that the expression "beneficial interest" appearing in Section 39(7) and "beneficial title" appearing in Section 39(8) should be interpreted to say, that such nominee/s or their legal representatives recognised in Sections 39(7) and 39 (8) will get beneficial title over the benefits flowing from the insurance policy, if the testamentary and non-testamentary heirs do not claim the benefits flowing from the insurance policy. To put it differently, under the unamended provision, the nominee had an obligation to distribute the benefits flowing from the policy to the legal heirs. Under Section 39(7), there is no such obligation as long as there is no claim by the legal heirs. In the absence of any claim by legal heirs, the title vests in beneficiary nominee. However, if there is a claim by the legal heir/s, then the nominee's claim has to yield to the personal law governing succession. "

The following was also recorded in Para 39:

"39. In addition to the reasons assigned, this Court has also noticed the following things to arrive at a different view than the view taken by Andhra Pradesh and Rajasthan High Courts:

(a) The Objects and Reasons are silent as to why the amendment was introduced. The mischief in the old provision is not discussed and so also no discussion as to what is sought to be remedied by way of an amendment.

(b) The provision does not define the expression "beneficial interest". Does it mean "beneficial title" or not is not clarified.

(c) The provision does not provide for an option to declare the nominee named in Section 39 (7) as a "collector nominee" and by default he becomes "beneficiary nominee" though the policy holder may not carry such intention.

(d) The provision does not say as to whether it overrides the personal law relating to succession. The personal law, passed by the Parliament, providing a particular mode of succession, which at times run contrary to nomination is not amended and still operates. Two conflicting legislations (relating to succession) are not envisaged in the scheme of the Constitution.

(e) The nominees grouped as the "beneficiary nominee" include the 'father' of the policyholder who is a Class II heir and other nominees are Class-I heirs namely spouse, mother and children. At the same time, Class-I heirs namely the children of a predeceased son or daughter or widow of a predeceased son who are Class - I heirs are left out from the category of "beneficiary nominees" which tend to run contrary to the object of insurance which is aimed at covering the risk of the family of the policyholder. "

The Court also suggested the following in Para 41:

"41. Being conscious of the fact that Courts do not have legislative power, a few things are discussed below to invite the attention of the stakeholders to

debate/deliberate and to come out with better practices when it comes to enacting or amending a law.

(i) The Objects and Reasons for enacting or amending a law must contain a clear unambiguous statements as to why the law is introduced, what is the mischief sought to be remedied by way of amendment.

(ii) Whenever the law is amended, the law must in clear specific terms state as to whether the amendment is prospective or retrospective in its operation. Whether the amendment is prospective or retrospective should not be left to speculation or interpretation by resorting to tools/rules of interpretation by interpreting the terms like “inserted” “amended” “substituted” and the like which are used to amend the law. Rules of interpretation cannot have a universal application and it will have its own limitation in ascertaining the intention of the legislator.

(iii) Acts like the Indian Contract Act, Transfer of Property Act, Indian Evidence Act etc have plenty of illustrations which explain the law with clarity and precision. Wherever needed, the law should be explained with illustrations which provide clarity to the provision of law. The practice appears to have been completely forgotten, and it is high time that such good practice is revived to bring in much needed clarity in law.

(iv) Whenever different High Courts take a different view in interpreting the law, the law maker should spring into action and clarify the position by way of an amendment and should not wait for the issue to be resolved by the Apex Court as the process may take a considerably long time. To cite an example, the controversy, whether Section 6 of the Hindu Succession Act, 1956 as amended in 2005, is prospective or retrospective is finally

resolved in 2019, 14 years after the amendment. As soon as different High Courts took a different view, an amendment clarifying the position would ensure the timely resolution of many cases.

(v) There should be a conscious endeavor to frame/structure the law in simplest and easy to follow short sentences. The wholly undesirable practice of framing law, with long and complicated sentences is to be discarded at any cost. After all, the law is meant for a common man to understand and follow. The law should never be a riddle or puzzle to be solved by a trained legal mind.”

19. It is essential to notice the judgment of the Madhya Pradesh High Court in the case of **Arun Kumar Singh v. Jaya w/o Chetan Singh Chouhan and Ors.; 2022 SCC OnLine MP 5948** wherein the Court had held that the nominee under the amended Section 39(7) would not be an absolute beneficial nominee and the rights of the successors can be claimed in accordance with the law of succession governing them.

20. The conflicting judgments as recorded above by the Delhi High Court, Andhra Pradesh High Court and Madras High Court on the one hand and by the Karnataka High Court and Madhya Pradesh High Court on the other hand, clearly establishes that there is no common opinion with regard to the effect of change in Insurance Act, particularly Section 39(7), on the rights of the successors. In fact, the Delhi High Court, Andhra Pradesh High Court and the Madras High Court have not gone into the effect of Amendment in Section 39 of the Insurance Act vis-a-vis the rights flowing in favour of heirs under the Succession Act.

21. It is also essential to notice the judgment of the Supreme Court in the case of *Shakti Yezdani (supra)* wherein the rights of the nominee in the ownership of the shares in a company came up for consideration and the view of the Supreme Court was to hold that the nomination process would not override the succession laws. The observations of the Supreme Court are as under:

“59. Consistent interpretation is given by courts on the question of nomination i.e. upon the holder's death, the nominee would not get an absolute title to the subject-matter of nomination, and those would apply to the Companies Act, 1956 (pari materia provisions in the Companies Act, 2013) and the Depositories Act, 1996 as well.

60. An individual dealing with estate planning or succession laws understands nomination to take effect in a particular manner and expects the implication to be no different for devolution of securities per se. Therefore, an interpretation otherwise would inevitably lead to confusion and possibly complexities, in the succession process, something that ought to be eschewed.

61. At this stage, it would be prudent to note the significance of a settled principle of law. In Shanker Raju v. Union of India [Shanker Raju v. Union of India, (2011) 2 SCC 132 : (2011) 1 SCC (L&S) 161], the Court held:

“10. It is a settled principle of law that a judgment, which has held the field for a long time, should not be unsettled. The doctrine of stare decisis is expressed in the maxim stare decisis et non quieta movere, which means “to stand by decisions and not to disturb what is settled”. Lord Coke aptly described this in his classic English version as “those things

which have been so often adjudged ought to rest in peace”. The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible.”

62. The vesting of securities in favour of the nominee contemplated under Section 109-A of the Companies Act, 1956 (pari materia Section 72 of the Companies Act, 2013) & Bye-Law 9.11.1 of the Depositories Act, 1996 is for a limited purpose i.e. to ensure that there exists no confusion pertaining to legal formalities that are to be undertaken upon the death of the holder and by extension, to protect the subject-matter of nomination from any protracted litigation until the legal representatives of the deceased holder are able to take appropriate steps. The object of introduction of nomination facility vide the Companies (Amendment) Act, 1999 was only to provide an impetus to the investment climate and ease the cumbersome process of obtaining various letters of succession, from different authorities upon the shareholder's death.

*63. Additionally, there is a complex layer of commercial considerations that are to be taken into account while dealing with the issue of nomination pertaining to companies or until legal heirs are able to sufficiently establish their right of succession to the company. Therefore, offering a discharge to the entity once the nominee is in picture is quite distinct from granting ownership of securities to nominees instead of the legal heirs. **Nomination process therefore does not override the succession laws. Simply said, there is no third mode of succession that the scheme of the Companies Act, 1956 (pari materia provisions in the Companies Act, 2013) and the***

Depositories Act, 1996 aims or intends to provide.

64. *Upon a careful perusal of the provisions within the Companies Act, it is clear that it does not deal with the law of succession. Therefore, a departure from this settled position of law is not at all warranted. The impugned decision [Shakti Yezdani v. Jayanand Jayant Salgaonkar, 2016 SCC OnLine Bom 9834] takes the correct view. The appeal is accordingly dismissed without any order on costs.*”

22. In view of the conflicting opinions in respect of the rights of a nominee under the amended Insurance Act and the right of the successors by virtue of Hindu Succession Act (as the parties are governed by the Hindu Succession Act in the present case), the same is to be reconciled in light of arguments raised.

23. It is essential to notice the scheme of the Insurance Act and the purpose for which it was enacted in the year 1938. The reasons for enactment clearly indicate that the Act was enacted to consolidate and amend the law relating to the business of insurance. The said Insurance Act underwent amendment on various occasions and ultimately by virtue of Act No.5 of 2015 on the recommendation of the Law Commission, Section 39 apart from the other sections, was amended to include the amended Section 39(7) and 39(8) of the Act, as quoted herein above.

24. In contradistinction of the said Act, the succession amongst Hindus is governed by The Hindu Succession Act, 1956 which was enacted to amend and codify the law relating to intestate succession and received the assent of the President on 17.06.1956. The said Act

governs intestate succession amongst the Hindus, and Section 15 of the said Act prescribes for general rules of succession in the case of female Hindus, which reads as under:

“Section 15. General rules of succession in the case of female Hindus. -

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16, -

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1), -

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.”

25. Thus, on the one hand, the benefits arising out of an insurance policy

which are estate of the deceased which have to be divided and paid to the successors in terms of the provisions of the Hindu Laws, however, the beneficial nominee claims the payment of the estate to the exclusion of the heirs as flow from the Hindu Succession Act.

26. In the present case, two conflicting provisions have to be interpreted so as to reconcile the two statutes without doing violence to either of them as both are validly enacted by Parliament.

27. It is well settled that when two statutes operating in different fields are called upon for conciliation, harmonious construction is to be adopted. It is also well settled that when two statutes which are operating in different fields are up for interpretation, the Special Act would prevail over the General Act (*generalia specialibus non derogant* and *generalibus specialia*). The issue with regard to interpretation of two conflicting provisions contained in two different statutes has attracted the attention of the Supreme Court on various occasions.

28. In the judgment in the case of ***KSL and Industries Limited v. Arihant Threads Limited and Ors.***; (2009) 9 SCC 763, although, there was a difference of opinion, however, Hon'ble Mr. Justice C.J. Thakker in his opinion recorded as under:

"70. I am thus at a point where two statutes employ non obstante clause having "overriding effect". Such a conflict, as laid down in several cases, may be resolved by judiciary on various considerations: such as the policy underlying the enactments, the language used, the object intended to be achieved, or

mischief sought to be remedied, etc. One of the tests applied by courts is that normally a later enactment should prevail over the former. The courts would also try to reconcile both Acts by adopting harmonious interpretation and applying them in their respective fields so that both may operate without coming into conflict with each other. In resolving the clash, the court may further examine whether one of the two enactments is "special" and the other one is "general". There can also be a situation in law where one and the same statute may be held to be a "special" statute vis-à-vis one legislation and "general" statute vis-à-vis another legislation. On the basis of one or more tests, the court will try to salvage the situation by giving effect to non obstante clause in both the legislations.

76. In *Sanwarmal Kejriwal v. Vishwa Coop. Housing Society Ltd.* [(1990) 2 SCC 288] this Court applied the test as to "general" and "special" Act and held that special law would have primacy over the general law.

77. In *LIC v. D.J. Bahadur* [(1981) 1 SCC 315 : 1981 SCC (L&S) 111] before this Court two Acts came up for consideration: (1) the Industrial Disputes Act, 1947 (the ID Act), and (2) the Life Insurance Corporation Act, 1956 (the LIC Act). One of the questions before the Court was which of the two should be considered as "special law". It was urged that the Industrial Disputes Act should be regarded as "general law" relating to workmen and the Life Insurance Corporation Act should be considered as "special law" in relation to employees engaged by LIC. It was, therefore, submitted that when a complaint is made by an employee of LIC, he cannot invoke the provisions of the ID Act and the matter must be decided in accordance with the LIC Act."

29. The law with regard to interpretation of two statutes which are apparently in confliction also came up for consideration before the Supreme Court in the case of **Managing Director, Chhattisgarh State Co-Operative Bank Maryadit v. Zila Sahkari Kendriya Bank Maryadit and Ors.; (2020) 6 SCC 411** wherein the following was recorded:

“33. It is a settled principle of law that where two provisions of an enactment appear to conflict, courts must adopt an interpretation which harmonises, to the best extent possible, both provisions. Justice G.P. Singh in his seminal work Principles of Statutory Interpretation states:

“To harmonise is not to destroy. A familiar approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one as to exclude the more specific... The principle is expressed in the maxims generalia specialibus non derogant and generalibus specialia.”

Similarly, Craies in Statute Law states:

“The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.”

Where two provisions conflict, courts may enquire which of the two provisions is specific in nature and whether it was intended that the specific provision is carved out from the application of the general provision. The general provision operates, save and except in situations

covered by the specific provision. The rationale behind this principle of statutory construction is that where there appears a conflict between two provisions, it must be presumed that the legislature did not intend a conflict and a subject-specific provision governs those situations in exclusion to the operation of the general provision.

34. In an early decision of this Court in J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. State of U.P. [J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. State of U.P., AIR 1961 SC 1170] , a three-Judge Bench of this Court considered whether the principle applied to conflicts within the same enactment. Clause 5(a) of the Government Order dated 10-5-1948 conferred upon, inter alia, any employee or a registered trade union of employers the right to move the Board constituted under the order to initiate an enquiry into an industrial dispute. Clause 23 stipulated that where an enquiry is pending before the Regional Conciliation Officer, notwithstanding the pendency of a case before the Board or Industrial Court, no employer shall discharge or dismiss any workman. Under Clause 24, an order of the Board, unless modified in appeal, was final and conclusive. The appellant, representing the employer's union, contended that once an order is made under Clause 5(a), Clause 23 has no application and the employer may proceed to dismiss the workmen. The Court rejected the contention noting that any employer could defeat the provisions of Clause 23 merely by an application under Clause 5(a). The Court held that Clause 23 was made with a definite purpose. Consequently, where an enquiry was pending under Clause 23, an application under Clause 5(a) was barred. The Court held : (AIR pp. 1174-75, paras 9-10)

“9. ... We reach the same result by applying another well-known rule of construction that general provisions yield to special provisions. The learned Attorney General seemed to suggest that while this rule of construction is applicable to resolve the conflict between the general provision in one Act and the special provision in another Act, the rule cannot apply in resolving a conflict between general and special provisions in the same legislative instrument. This suggestion does not find support in either principle or authority. The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. ...

10. Applying this rule of construction that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision, we must hold that Clause 5(a) has no application in a case where the special provisions of Clause 23 are applicable.”

(emphasis supplied)

This Court affirmed that the principle that the general excludes the specific is a tool of statutory interpretation even in cases of conflict within the same enactment. Where one of the conflicting provisions is general in nature and the other is specific, “common understanding” dictates that the specific provision is given effect, while the general provision continues to apply to all other situations.

35. In *CTO v. Binani Cements Ltd.* [*CTO v. Binani Cements Ltd.*, (2014) 8 SCC 319], the question concerned whether the respondent assessee was entitled for the grant of an eligibility certificate for exemption from payment of Central Sales Tax and Rajasthan Sales Tax under Entry 4 in Annexure ‘C’ of the Sales Tax New Incentive Scheme for Industries, 1989. Annexure ‘C’ to the Scheme was titled the “Quantum of Sales Tax Exemption under the new Scheme”. Entry 4 of the Annexure stipulated that “prestigious units” would be entitled to a 75% exemption from tax liability with 100% in terms of fixed capital investment. By an amendment, Entry 1-E was inserted which covered “new cement units” and stipulated that large-scale units would be entitled to 25% tax exemption. A two-Judge Bench of this Court held : (SCC pp. 331-32, paras 32 & 34)

“32. Before we deal with the fact situation in the present appeal, we reiterate the settled legal position in law, that is, if in a statutory rule or statutory notification, there are two expressions used, one in general terms and the other in special words, under the rules of interpretation, it has to be understood that the special words were not meant to be included in the general expression. Alternatively, it can be said that where a statute contains both a general provision as well as specific provision, the latter must prevail.

* * *

34. It is well established that when a general law and a special law dealing with some aspect dealt with by the general law are in question, the rule adopted and applied is one of harmonious construction whereby the general law, to the extent dealt with by the special law, is impliedly repealed. This principle finds its origins in the Latin maxim of *generalia specialibus non derogant*...”

36. The Court held that where two provisions are in question — one of general application and the other specific in nature, a harmonious interpretation would mean that the general law, to the extent it is dealt with by the special law, is impliedly repealed. This Court, relying on the principle *generalalia specialibus non derogant* held that Item 1-E is a “subject specific provision”. The Court noted that the amendment removed “new cement industries” from the non-eligible Annexure ‘B’ and placed it into Annexure ‘C’ amongst the eligible industries. Consequently, the Court rejected the contention of the respondent assessee and held that as Item 1-E concerned the more specific unit, it was excluded in its application from other general entries. The principle that the general provision excludes the more specific has been consistently applied by this Court in *South India Corpn. (P) Ltd. v. Board of Revenue* [South India Corpn. (P) Ltd. v. Board of Revenue, AIR 1964 SC 207], *Paradip Port Trust v. Workmen* [Paradip Port Trust v. Workmen, (1977) 2 SCC 339 : 1977 SCC (L&S) 253 : AIR 1977 SC 36], *Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh Bhupeshkumar Sheth* [Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, (1984) 4 SCC 27], *CCE v. Jayant Oil Mills (P) Ltd.* [CCE v. Jayant Oil Mills (P) Ltd., (1989) 3 SCC 343 : 1989 SCC (Tax) 423], *P.S. Sathappan v. Andhra Bank Ltd.* [P.S. Sathappan v. Andhra Bank Ltd., (2004) 11 SCC 672], *Sarabjit Rick Singh v. Union of India* [Sarabjit Rick Singh v. Union of India, (2008) 2 SCC 417 : (2008) 1 SCC (Cri) 449] and *Pankajakshi v. Chandrika* [Pankajakshi v. Chandrika, (2016) 6 SCC 157 : (2016) 3 SCC (Civ) 105].

37. While sub-section (3) of Section 54 deals with a class of societies, clauses (a) and (b), as inserted by the 2016 Amendment Act are specific in their application to only cooperative banks. Furthermore, while Section 54(3) deals with the appointment of deputed cadre officers on cadre posts, clauses (a) and (b) deal only with the appointment of CEOs of cooperative banks. Clause (a) contemplates that the eligibility guidelines prescribed by RBI will apply to officers holding the post of CEO of a cooperative bank. Significantly, clause (b) of Section 54(3) begins with the words “if the concerning cooperative bank fails to appoint” which denotes an intention to vest with cooperative banks the power to appoint their CEO. The provision also stipulates that where the cooperative bank fails to appoint CEO within a specified period, the Registrar may appoint an eligible officer of the bank. The stipulation that in the case of default, CEO shall be an officer of the bank and not an officer from the cadre as notified under Section 54(3) demonstrates the intention of the legislature to vest with cooperative banks the power to appoint their CEO.

38. Evidently, by virtue of the 2016 Amendment Act, clauses (a) and (b) were inserted as specific provisions for the appointment of CEO of cooperative banks, vesting in them the power of appointment. Where two interpretations of potentially conflicting provisions are possible, courts must adopt the interpretation that furthers the intention of the legislature as encapsulated in the maxim *verba ita sunt intelligenda ut res magis valeat quam pereat*. Craies on Legislation states:

“... if two constructions of a provision are possible on its face, and one would clearly advance the legislative purpose and the other would clearly

achieve little or nothing, the former is to be preferred."

39. *In this view of the matter, a harmonious construction of Section 54(3) and clauses (a) and (b) of the 2016 Amendment Act leads to the conclusion that clauses (a) and (b) are special provisions concerning the appointment of CEO of cooperative banks which are carved out of power of the State Government to issue a notification under Section 54(3). We are strengthened in this view by the deletion of Section 57-B(19) and the simultaneous insertion of clauses (a) and (b) in Section 54(3).*

40. *The difficulty in the present matters arises from the contention of the first respondent that the exception carved out by clauses (a) and (b) of Section 54(3) also applies to Central Societies that fall within the ambit of Section 49-E(2) of the 1960 Act. In this submission, where a cooperative bank as a Central Society has received funds from the State Government in the manner stipulated in Section 49-E(2), such Central Banks may independently appoint a CEO and would not be obligated to appoint its CEO from the cadre constituted under Section 54, even if such cadre has been constituted.*

41. *As we have noted, both sub-section (2) and sub-section (3) of Section 54 are not provisions confined only to cooperative banks. However, clauses (a) and (b) of sub-section (3) specifically deal with the appointment of CEOs of cooperative banks. While introducing clauses (a) and (b) into sub-section (3) of Section 54 by the 2016 Amendment Act, the legislature has nonetheless left intact the provisions of Section 49-E. Section 49-E(2) stipulates that CEO shall be appointed from among the officers of the cadre maintained under Section 54, where such cadre has been constituted. Section 49-E is*

a provision governing Apex and Central Societies to whom financial assistance has been extended by the State Government in the forms stipulated therein. The expression "Central Society" is defined to mean a Cooperative Land Development Bank or any other society whose operation is confined to a part of the State, as noticed earlier in Section 2(c-i). The provisions contained in Section 49-E are intended to bring about regulatory control of the State Government by requiring the appointment of CEO from among the officers of the cadre maintained under Section 54. The 2016 Amendment Act which brought in the provision of clauses (a) and (b) of sub-section (3) has not affected the operation of Section 49-E. Hence, the appointment of a CEO of Central Society governed by Section 49-E(2) has to be from the officers of the cadre maintained under Section 54. Significantly, sub-section (2) of Section 49-E contains a non obstante stipulation. As a consequence, notwithstanding the 2016 Amendment Act, CEO of a Central Society falling within the description of sub-section (2) of Section 49-E has to be appointed from among the officers of the cadre maintained under Section 54, if such cadre has been constituted.

42. *It is necessary here to note that Section 49-E(2) is not a self-contained provision. Section 49-E(2)(b)(i) merely stipulates that CEO of a Central Society that falls within its ambit, shall be appointed from among the officers of the cadres maintained under Section 54. Thus, where a cadre under Section 54 has been constituted, a Central Society falling within the ambit of Section 49-E(2) is obligated to appoint its officer from such cadre. Neither Section 49-E nor Section 54(2) specify whether the appointment is to be made from the cadre of the Apex Society or Central Society as constituted under*

Section 54(2). Section 54(3) empowers the State Government to issue a notification specifying the class of societies which shall employ officers from such cadres maintained by Apex or Central Societies as may be specified therein. In addition to conferring upon the State Government the general power to notify the class of societies which would employ officers from the cadres maintained by Apex or Central Societies, the notification under Section 54(3) operationalises the regulatory control of the State Government envisaged in Section 49-E(2) in the manner specified therein.

43. This is evident in the Notification dated 12-1-1971 issued by the State Government in exercise of the power conferred upon it which stipulated that the first respondent (as a District Central Cooperative Bank) is obligated to accept and appoint the officer deputed by the appellant (as the Apex Society) as CEO. Had Section 49-E(2) an inbuilt mechanism for the determination of the officer who would be appointed as CEO, no difficulty would arise given the use of a non obstante provision therein. The difficulty arises precisely because of the link between Section 49-E and the notification issued by the State Government under Section 54(3). To hold that clauses (a) and (b) vest in cooperative banks which are Central Societies falling within the ambit of Section 49-E(2) the overriding power to appoint their CEO would render the provision inoperative. This would defeat the salient purpose of ensuring the regulatory control of the State Government over Societies to which it has made a financial contribution. On the other hand, to hold that a cooperative bank which is a Central Society within the ambit of Section 49-E(2) must accept and appoint the cadre officer deputed by the Apex Society, defeats the

special provision inserted for cooperative banks in clauses (a) and (b) of Section 54(3). Both Section 49-E(2)(b) and clauses (a) and (b) of Section 54(3) deal with the appointment of a CEO.

44. As we have noted before, it is settled principle of law that where two provisions of an enactment appear to conflict, courts must adopt an interpretation which harmonises, to the best extent possible, both provisions. Justice G.P. Singh in his seminal work Principles of Statutory Interpretation states:

“... It is the duty of the court to avoid “a head on clash” between two sections of the same Act and, whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise.”

Francis Bennion in his work Statutory Interpretation states:

“Inconsistent enactments — A common application of the principle is in relation to contradictory enactments within the same Act. Enactment A may in itself be clear and unambiguous. So may enactment B, located elsewhere in the Act. But if they contradict each other, they cannot both be applied literally. A undoes B, and B undoes A. The court must do the best it can to reconcile them, but this can be achieved only by giving one or both a strained construction.”

Where two provisions of an enactment appear to be in conflict, courts do not readily presume an “either/or” situation. Courts must construe the provisions harmoniously to ensure, as far as possible, the effective operation of both provisions in a manner that furthers the purpose of the enactment. Every provision, phrase, clause and word must be interpreted in a manner to further the object of the enactment. No word or part of

a statute can be construed in isolation. Courts must be mindful that an interpretation which renders either provision otiose must be avoided unless the conflict does not yield any possible reconciliation.

45. In *Krishan Kumar v. State of Rajasthan* [*Krishan Kumar v. State of Rajasthan*, (1991) 4 SCC 258], the Rajasthan State Road Transport Corporation, Jaipur proposed a scheme in 1977 under Section 68-C of the Motor Vehicles Act, 1939 (the 1939 Act) for the exclusive operation of the disputed road. Upon the enactment of the Motor Vehicles Act, 1988 (the 1988 Act), a writ petition was filed contending that due to undue delay in notifying the scheme under the 1939 Act, the scheme was not saved by the 1988 Act. Section 100(4) of the 1988 Act stipulated that a draft scheme must be finalised within one year from the date of its publication, failing which it would lapse. Section 217(2)(e) stipulated that notwithstanding the repeal of the 1939 Act, a scheme proposed under Section 68-C, if pending immediately before the commencement of the 1988 Act, shall be finalised in accordance with the provisions of Section 100 of the 1988 Act. The Court noted that, contrary to legislative intent, no scheme under the 1939 Act would be saved if schemes under that Act were to be assessed with reference to the date of their publication. Noting the apparent conflict between the two provisions, a two-Judge Bench of this Court interpreted both provisions harmoniously and held : (SCC pp. 266-67, paras 10-11)

“10. There appears to be some apparent conflict between Section 100(4) and Section 217(2)(e) of the Act. While Section 217(2)(e) permits finalisation of a scheme in accordance with Section 100 of the new Act sub-section (4) of Section 100

lays down that a scheme if not finalised within a period of one year shall be deemed to have lapsed. If the appellant's contention is accepted then Section 217(2)(e) will become nugatory and no scheme published under Section 68-C of the old Act could be finalised under the new Act. On the other hand if the period of one year as prescribed under Section 100(4) is not computed from the date of publication of the scheme under Section 68-C of the old Act and instead the period of one year is computed from the date of commencement of the Act both the provisions could be given full effect.

11. It is settled principle of interpretation that where there appears to be inconsistency in two sections of the same Act, the principle of harmonious construction should be followed in avoiding a head on clash. It should not be lightly assumed that what Parliament has given with one hand, it took away with the other. The provisions of one section of statute cannot be used to defeat those of another unless it is impossible to reconcile the same.”

The Court held that where Parliament confers a benefit, it must not be readily assumed that it intends to withdraw a benefit at the same time. Furthermore, the provisions of one section cannot be used to defeat another, unless there is no possibility of reconciling the two conflicting provisions.

46. In *British Airways Plc. v. Union of India* [*British Airways Plc. v. Union of India*, (2002) 2 SCC 95], the appellant was an aircraft carrier engaged in the business of international air transport of passengers and cargo. It was contended that as they were not a “person-in-charge” as defined in Section 2(31) of the Customs Act, 1962, no penalty can be imposed upon them under Section 116 for shortages in offloading the quantity of

goods consigned. Section 42 required an officer under the Act to issue a written order for the conveyance of the goods from the customs house. Clause (e) of sub-section (2) of Section 42 prescribes that no such order shall be given until the person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on them under Section 116 or the payment of any penalty that may be levied upon them under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct. The appellant contended that once a clearance order is issued, no liability can be imposed on them.

47. A two-Judge Bench of this Court noted held that while Section 42 operated to expedite the clearance of goods, Section 116 operated to ensure the protection of cargo. Consequently, the two provisions subserved different purposes. Further, by an amendment in Section 148 which was a provision for the liability of an agent of the person-in-charge, sub-section (2) was inserted which stipulated that any person who represents himself to any officer of customs as an agent of any such person-in-charge, and is accepted as such by that officer, shall be liable for the fulfilment of any obligation of the person-in-charge. The Court held that effect must be given to the amendment, which would be rendered redundant if the contention of the appellant was accepted. Relying on the principle of harmonious interpretation, the Court held : (British Airways Plc. case [British Airways Plc. v. Union of India, (2002) 2 SCC 95] , SCC p. 100, para 8)

“8. ... It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given.

The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the court to make such construction of a statute which shall suppress the mischief and advance the remedy.”

This Court held that courts must ensure that every provision is construed in a manner to render seemingly contradictory provisions workable. In interpreting two provisions of a statute, courts must adopt the interpretation which does not defeat either provision and advances the remedy envisaged by their enactment.”

30. The matter once again came up for consideration before the Supreme Court in the case of **Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act 1996 and Stamp Act, 1889; (2024) 6 SCC 1** wherein the following was recorded:

“178. It is trite law that a general law must give way to a special law. This rule of construction stems from the doctrine *generalalia specialibus non derogant*. In *LIC v. D.J. Bahadur* [*LIC v. D.J. Bahadur*, (1981) 1 SCC 315 : 1981 SCC (L&S) 111] , this Court held :

“52. In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law.”

179. *In Sundaram Finance Ltd. v. T. Thankam* [Sundaram Finance Ltd. v. T. Thankam, (2015) 14 SCC 444], this Court held :

“13. ... Once it is brought to the notice of the Court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance with the procedure under the special statute. The general law should yield to the special law—*generalia specialibus non derogant*. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the Court.”

31. However, the classic text of ‘harmonious interpretation’ of two statutes which are apparently in conflict was considered extensively by the Supreme Court in the case of ***Life Insurance Corporation of India v. D.J. Bahadur and Ors.***; (1981) 1 SCC 315, wherein the following was recorded:

“29. Interpretative insight will suffer, even as the judicial focus will blur, if the legislative target is not sharply perceived. Indeed, I lay so much stress on this facet because Brother Koshal's otherwise faultless logic has, if I may say so with great deference, failed to convince me because of this fundamental misfocus. To repeat for emphasis, the meat of the statute is industrial dispute, not conditions of employment or contract of service as such. The line of distinction may be fine but is real.

30. *Be that as it may, a bird's eye view of the ID Act reveals the statutory structure and legal engineering centering round dispute settlement in industries according to the rule of law and away from fight with fists or economic blackmail. This large canvas once illumined, may illustrate the sweep of awards and settlements by reference to the very agreement of 1974 we have before us. It goes far beyond bonus and embraces a wide range of disputes and rainbow of settlements in a spirit of give and take. One may visualise the bargaining process. Give in a little on bonus and get a better deal on salary scale or promotion prospects; relent a wee-bit on hours of work but bargain better on housing facilities, and so on. The soul of the statute is not contract of employment, uniformity of service conditions or recruitment rules, but conscionable negotiations, conciliations and adjudications of disputes and differences animated by industrial justice, to avoid a collision which may spell chaos and imperil national effort at increasing the tempo of production.*

31. *If there is no dispute, the ID Act is out of bounds, while the LIC Act applies generally to all employees from the fattest executive to the frailest manual worker and has no concern with industrial disputes. The former is a “war measure” as it were; the latter is a routine power when swords are not drawn if we may put it metaphorically. When disputes break out or are brewing, a special, sensitive situation fraught with frayed tempers and fighting postures springs into existence, calling for special rules of control, conciliatory machinery, demilitarising strategies and methods of investigation, interim arrangements and final solutions, governed by special criteria for promoting industrial peace and justice. The LIC Act is not a law for employment or disputes arising*

therefrom, but a nationalisation measure which incidentally, like in any general takeover legislation, provides for recruitment, transfers, promotions and the like. It is special vis-a-vis nationalisation of life insurance but general regarding contracts of employment or acquiring office buildings. Emergency measures are special, for sure. Regular nationalisation statutes are general even if they incidentally refer to conditions of service.”

49. The next logical question then is as to whether the ID Act is a general legislation pushed out of its province because of the LIC Act, a special legislation in relation to the Corporation employees. Immediately, we are confronted with the question as to whether the LIC Act is a special legislation or a general legislation because the legal maxim *generalia specialibus non derogant* is ordinarily attracted where there is a conflict between a special and a general statute and an argument of implied repeal is raised. Craies states the law correctly: [craies on statute law, 1963 Edn, PP 376-77]

“The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior enactment is special and the subsequent enactment is general, the rule of law being, as stated by Lord Selbourne in *Sewards v. Vera Cruz* [*Mary Sewards v. Owner of the “Vera Cruz”, (1884) 10 AC 59, 68*] , ‘that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular

intention to do so. There is a well-known rule which has application to this case, which is that a subsequent general Act does not affect a prior special Act by implication. That this is the law cannot be doubted, and the cases on the subject will be found collected in the third edition of Maxwell is generalia specialibus non derogant — i.e. general provisions will not abrogate special provisions.’ When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms.”

50. The crucial question which demands an answer before we settle the issue is as to whether the LIC Act is a special statute and the ID Act a general statute so that the latter *pro tanto* repeals or prevails over the earlier one. What do we mean by a special statute and, in the scheme of the two enactments in question, which can we regard as the special Act and which the general? An implied repeal is the last judicial refuge and unless driven to that conclusion, is rarely resorted to. The decisive point is as to whether the ID Act can be displaced or dismissed as a general statute. If it can be and if the LIC Act is a special statute the proposition contended for by the appellant that the settlement depending for its sustenance on the ID Act cannot hold good against Section 11 and Section 49 of the LIC Act, read with Regulation 58 thereunder. This exercise constrains me to study the scheme of the two statutes in the context of the specific controversy I am dealing with.

51. There is no doubt that the LIC Act, as its long title suggests, is an Act to

provide for the nationalisation of life insurance business in India by transferring all such business to a corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and for matters connected therewith or incidental thereto. Its primary purpose was to nationalise private insurance business and to establish the Life Insurance Corporation of India. Inevitably, the enactment spelt out the functions of the Corporation, provided for the transfer of existing life insurance business to the Corporation and set out in detail how the management, finance, accounts and audit of the Corporation should be conducted. Incidentally, there was provision for transfer of service of existing employees of the insurers to the Corporation and, sub-incidentally, their conditions of service also had to be provided for. The power to make regulations covering all matters of management was also vested in appropriate authorities. It is plain and beyond dispute that so far as nationalisation of insurance business is concerned, the LIC Act is a special legislation, but equally indubitably, is the inference, from a bare perusal of the subject, scheme and sections and understanding of the anatomy of the Act, that it has nothing to do with the particular problem of disputes between employer and employees, or investigation and adjudication of such disputes. It does not deal with workmen and disputes between workmen and employers or with industrial disputes. The Corporation has an army of employees who are not workmen at all. For instance, the higher echelons and other types of employees do not fall within the scope of workmen as defined in Section 2(s) of the ID Act. Nor is the Corporation's main business investigation and

adjudication of labour disputes any more than a motor manufacturer's chief business is spraying paints!

52. In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity, not absolutes — so too in life. The ID Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission — the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, the ID Act is a special statute, and the LIC Act does not speak at all with specific reference to workmen. On the other hand, its powers relate to the general aspects of nationalisation, of management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such, are beyond the orbit of and have no specific or special place in the scheme of the LIC Act. And whenever there was a dispute between

workmen and management the ID Act mechanism was resorted to.

53. What are we confronted with in the present case, so that I may determine as between the two enactments which is the special? The only subject which has led to this litigation and which is the bone of contention between the parties is an industrial dispute between the Corporation and its workmen qua workmen. If we refuse to be obfuscated by legal abracadabra and see plainly what is so obvious, the conclusion that flows, in the wake of the study I have made, is that vis-a-vis "industrial disputes" at the termination of the settlement as between the workmen and the Corporation, the ID Act is a special legislation and the LIC Act a general legislation. Likewise, when compensation on nationalisation is the question, the LIC Act is the special statute. An application of the generalia maxim as expounded by English textbooks and decisions leaves us in no doubt that the ID Act being special law, prevails over the LIC Act which is but general law.

54. I am satisfied in this conclusion by citations but I content myself with a recent case where this Court tackling a closely allied question came to the identical conclusion. [U.P. State Electricity Board v. H.S. Jain, (1978) 4 SCC 16 : 1978 SCC (L&S) 481 : (1979) 1 SCR 355] The problem that arose there was as to whether the standing orders under the Industrial Employment (Standing Orders) Act, 1946, prevailed as against Regulations regarding the age of superannuation made by the Electricity Board under the specific power vested by Section 79(c) of the Electricity (Supply) Act, 1948 which was contended to be a special law as against the Industrial Employment (Standing Orders) Act. This Court (a Bench of three

Judges) speaking through Chinnappa Reddy, J. observed:

The maxim generalia specialibus non derogant is quite well known. The rule flowing from the maxim has been explained in Mary Seward v. Owner of the 'Vera Cruz' [craies on statute law, 1963 Edn, PP 376-77] as follows:

"Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so.' "

55. In J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. [AIR 1961 SC 1170, 1174 : (1961) 3 SCR 185 : (1961) 1 LLJ 540 : (1960-61) 19 FJR 436], this Court observed at p. 1174:

"The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect.

We have already shown that the Industrial Employment (Standing Orders) Act is a special Act dealing with a specific subject, namely with conditions of service, enumerated in the Schedule, of workmen in industrial establishments. It is impossible to conceive that Parliament sought to abrogate the provisions of the Industrial Employment (Standing Orders) Act

embodying as they do hardwon and precious rights of workmen and prescribing as they do an elaborate procedure, including a quasi-judicial determination, by a general, incidental provision like Section 79(c) of the Electricity (Supply) Act. It is obvious that Parliament did not have before it the Standing Orders Act when it passed the Electricity (Supply) Act and Parliament never meant that the Standing Orders Act should stand pro tanto repealed by Section 79(c) of the Electricity Supply Act. We are clearly of the view that the provisions of the Standing Orders Act must prevail over Section 79(c) of the Electricity Supply Act, in regard to matters to which the Standing Orders Act applies.”

I respectfully agree and apply the reasoning and the conclusion to the near-identical situation before me and hold that the ID Act relates specially and specifically to industrial disputes between workmen and employers and the LIC Act, like the Electricity (Supply) Act, 1948, is a general statute which is silent on workmen's disputes, even though it may be a special legislation regulating the take over of private insurance business.

56. A plausible submission was made by the appellants, which was repelled by the High Court, that the LIC Act contained provisions regarding conditions of service of employees and they would be redundant if the ID Act was held to prevail. This is doubly fallacious. For one thing, the provisions of Sections 11 and 49 are the usual general provisions giving a statutory corporation (like a municipality or university) power to recruit and prescribe conditions of service of its total staff — not anything special regarding “workmen”. This Court in Bangalore Water Supply and Sewerage case (7 Judges' Bench) [(1978) 2 SCC 213, 232 : 1978 SCC (L&S) 215, 234] and long ago in D.N. Banerji v. P.R.

Mukherjee (5 Judges' Bench) [(1952) 2 SCC 619 : AIR 1953 SC 58 : 1953 SCR 302 : (1953) 1 LLJ 195] has held that the ID Act applied to workmen employed by those bodies when disputes arose. The general provision would still apply to other echelons and even to workmen if no industrial dispute was raised. Secondly, no case of redundant words arose because the Corporation, like a university, employed not only workmen but others also and to regulate their conditions of service, power was needed. Again, in situations where no dispute arose, power in the employer to fix the terms of employment had to be vested. This is a common provision of a general sort, not a particularised provision to canalise an industrial dispute.

57. What is special or general is wholly a creature of the subject and context and may vary with situation, circumstances and angle of vision. Law is no abstraction but realises itself in the living setting of actualities. Which is a special provision and which general, depends on the specific problem, the topic for decision, not the broad rubric nor any rule of thumb. The peaceful coexistence of both legislations is best achieved, if that be feasible, by allowing to each its allotted field for play. Sense and sensibility, not mechanical rigidity gives the flexible solution. It is difficult for me to think that when the entire industrial field, even covering municipalities, universities, research councils and the like, is regulated in the critical area of industrial disputes by the ID Act, Parliament would have provided an oasis for the Corporation where labour demands can be unilaterally ignored. The general words in Sections 11 and 49 must be read contextually as not covering industrial disputes between the workmen and the Corporation. Lord Haldane had, for instance, in 1915 AC 885 (891)

[Watney Combe Reid & Co. v. Berners, 1915 AC 885 : 84 LJ KB 1561 : 113 LT 518] observed that:

“General words may in certain cases properly be interpreted as having a meaning or scope other than the literal or usual meaning. They may be so interpreted where the scheme appearing from the language of the legislature, read in its entirety, points to consistency as requiring modification of what would be the meaning apart from any context, or apart from the general law.”

To avoid absurdity and injustice by judicial servitude to interpretative literality is a function of the court and this leaves me no option but to hold that the ID Act holds where disputes erupt and the LIC Act guides where other matters are concerned. In the field of statutory interpretation there are no inflexible formulae or foolproof mechanisms. The sense and sensibility, the setting and the scheme, the perspective and the purpose — these help the Judge navigate towards the harbour of true intendment and meaning. The legal dynamics of social justice also guide the court in statutes of the type we are interpreting. These plural considerations lead me to the conclusion that the ID Act is a special statute when industrial disputes, awards and settlements are the topic of controversy, as here. There may be other matters where the LIC Act vis-a-vis the other statutes will be a special law. I am not concerned with such hypothetical situations now.”

32. In the light of the judgment of the Supreme Court in the case of **Life Insurance Corporation of India (supra)**, it is essential to notice that the insurance policy is basically a contract and the said contract is subject to the limitations and the restrictions as imposed by virtue of the

Insurance Act which itself was enacted for regulating the business of insurance in India. The said Act was never enacted by the Parliament to govern the rights of succession in respect of the persons who are governed by their individual succession laws, whereas the Hindu Succession Act was specifically enacted to codify the law of succession in respect of Hindus dying intestate. Clearly the issue of succession would be governed by a specific statute being The Hindu Succession Act and to that extent, the general law as flows from Section 39(7) under the Insurance Act has to give way.

33. It is also fairly well settled that the statutes are considered to be intra vires and thus, the phrase ‘beneficial nominee’ as flows from Section 39(7) has to be interpreted in the light of law as explained in the case of **Sarbaty Devi (supra)** prior to the amendment under Section 39(7).

34. Holding the beneficiary to be a beneficial nominee to the exclusion of the heirs would lead to absurdity which was never intended by the statutes while amending the provisions of Section 39(7). Any other interpretation would be doing violation to the delicate balance of rights in between the nominee and the legal heirs whose rights flow from the Hindu Succession Act.

35. Thus, the contention of the petitioner is rejected for the following reasons:

i. Section 39(7) of the Insurance Act which is pari materia to Section 45-ZA(2) and was incorporated to achieve similar objective having been interpreted in **Ram Chander Talwar (supra)** to hold that the nominee cannot be held to be the owner

of the money lying in the account. Section 39(7) also has to be interpreted to hold that the beneficial nominee cannot be said to be the owner of the money out of the proceeds of policy.

ii. In view of the similar provision being interpreted in the case of *Shakti Yezdani (supra)*, it has to be held that the nominee would not unsettle the rights of the legal heirs by virtue of the respective succession act.

iii. On harmonious interpretation of the two provisions i.e. Insurance Act and Hindu Succession Act, the rights conferred by Hindu Succession Act will prevail over the rights claimed by the nominee under Section 39(7) of the Insurance Act, the succession act being specific to succession in contradiction to the Insurance Act which is general.

36. In the light of the said, present petition deserves to be dismissed and the judgment passed by the revisional Court is liable to be upheld.

37. Ordered accordingly.

38. As the issue is of seminal importance and affecting the public at large coupled with the fact that different High Courts have taken different views, I deem it appropriate to grant certificate of appeal under Section 134-A of Constitution of India to the Hon'ble Supreme Court.

(2025) 4 ILRA 56

APPELLATE JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 30.04.2025

BEFORE

**THE HON'BLE ASHWANI KUMAR MISHRA, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.**

Special Appeal No. 652 of 2024

With
Other connected cases

**Secretary U.P. Basic Education Board &
Ors. ...Appellants**

Versus
Tripurari Dubey & Ors. ...Respondents

Counsel for the Appellants:

Ashish Kumar (Nagvanshi), Kushmondeya
Shahi, Pankaj Kumar Ojha

Counsel for the Respondents:

Alok Kumar Gupta, C.S.C., Satyendra
Chandra Tripathi, Shiv Poojan Yadav

**Service Law-Allahabad High Court
Rules,1952-Chapter VIII, Rule 5-U.P.
Basic Education(Teachers) Service
Rules,1981-Entitlement to salary-Right to
Education Act,2009-TET Qualification-
NCTE Regulations-Assistant Teachers
officiating as Headmasters in primary and
junior high schools are entitled to receive
salary for the higher post if they have five
years of teaching experience, even in
absence of TET qualification, provided
their appointment preceded the
enforcement of TET requirement-The
absence of a formal mechanism from the
State to facilitate obtaining TET cannot be
used to deny salary benefits-The Right to
Education Act,2009 does not
automatically abolish existing posts of
Headmaster due to change in pupil-
teacher ratio; such abolition requires
express administrative re-determination-
However, arrears of salary are restricted
to a maximum of three years prior to the
filing of the writ petition, in line with
Supreme Court precedent.(Para 1 to 20)**

The appeals are disposed of. (E-6)

List of Cases cited:

1. Tripurari Dubey & anr.Vs St. of U.P. & ors.,
Writ-A No. 18228 of 2022.

2. Dr. Jai Prakash Narayan Singh Vs St. of U.P.,
in CMWP No 23627 of 2014 (2014) 8 ADJ 617

3. Arindam Chattopadhyay & ors. Vs St. of W. B. & Ors(2013) 4 SCC 152 Smt Raj Kishori Kushwaha Vs St. of U.P. & ors.Writ-A No 3863 of 2018

4. St. of M.P. Vs R.D Sharma & anr.(2022) 2 Scale 398

5. UOI & ors.Vs Tarsem, (2008) 8 SCC 648

6. Bichitrnanda Behera Vs St. of Ori. & ors.(2023) SCC OnLine SC 1307

7. Urmila Devi Pal Vs St. of U.P. & ors.(2023) 6 ADJ (DB) LD

(Delivered by Hon'ble Ashwani Kumar
Mishra, J.

&

Hon'ble Praveen Kumar Giri, J.)

1. Heard Sri Kushmondeya Shahi, learned counsel for the appellants, Sri V.K. Singh, Senior Advocate, assisted by Sri Alok Kumar Gupta, Sri Sudheer Rana, Sri Kamal Kumar Kesharwani, Sri Man Bahadur Singh, Sri Agnihotri Kumar Tripathi, Sri Jitendra Kumar Yadav, Sri Anurag Shukla and Sri Pankaj Kumar Ojha, learned counsel for the respondent-writ petitioner.

2. This bunch of special appeal is preferred by the U.P. Basic Education Board through its Secretary challenging an order passed by learned Single Judge granting salary of the post of headmaster to the writ petitioners who are working as such since long. In the leading case, the writ petitioner has been working as headmaster since 2014, yet, the salary for the post of headmaster has not been paid to him. Under the orders of learned Single Judge, such person has been held entitled to the salary for the higher post on which he is allowed to function. In other cases, the situation is more or less similar and those

petitions have been disposed of in terms of order passed by this Court in the leading case of **Tripurari Dubey and another Versus State of U.P. and others passed in Writ-A No. 18228 of 2022**. Learned Single Judge has returned a finding that the writ petitioner has been discharging the duties of headmaster since 31.05.2014 and is otherwise qualified for appointment to the post of headmaster. Reliance is placed upon a Full Bench decision of this Court in **Dr. Jai Prakash Narayan Singh Vs. State of U.P., in Civil Misc. Writ Petition No. 23627 of 2014**, decided on 26th September 2014, 2014(8) ADJ 617 as well as the judgment of Hon'ble Supreme Court in **Arindam Chattopadhyay and others Versus State of West Bengal and others, (2013) 4 SCC 152** and the judgment of this Court passed in **Writ-A No. 3863 of 2018 (Smt. Raj Kishori Kushwaha Versus State of U.P. and others**, decided on 07.05.2014.

3. Before learned Single Judge the claim of petitioner was resisted by the appellants relying upon the judgment of the **Hon'ble Supreme Court in State of Madhya Pradesh Vs. R.D. Sharma and another, (2022) 2 Scale 398**. Having examined the respective claim of the parties, learned Single Judge has allowed the writ petition and a mandamus has been issued to pay the salary for the post of head master alongwith arrears to the writ petitioner from 31.05.2014.

4. The judgement of learned Single Judge is challenged on following grounds: (i) that the determination of post of headmaster in the primary school in question is regulated by the provisions of Right to Education Act, 2009 (hereinafter referred to as 'RTE Act 2009') and by virtue of section 25 read with the schedule,

the strength of teachers required in the institution is prescribed. It is the case of the appellants that in most of the primary schools the strength of the students is below 150 and in junior high schools the strength of students is below 100 and, therefore, there exists no post of headmaster and, therefore, the question of payment of salary for the post of headmaster does not arise. A chart in respect of two blocks of District Gorakhpur has been placed on record in order to submit that in most of the institutions there is no requirement of a post of headmaster. It is, therefore, submitted that the direction to pay the salary for the post of headmaster is impermissible; (ii) that the qualification of teachers in primary and junior schools is prescribed by the notification issued by NCTE. An amendment was introduced in 2011 incorporating Section 12A in the NCTE Act, 1993, as per which for maintaining standards of education in schools, the NCTE may, by regulations, determine the qualifications of persons who have been recruited as teachers in any pre-primary, upper primary, secondary, senior secondary or intermediate school or college. The proviso, however, stipulates that nothing in this section shall adversely affect the continuance of any person recruited in such institution immediately before the commencement of NCTE (Amendment) Act. A notification of 12 November 2014 is also relied upon, as per which, even for the promotion of teachers the relevant minimum qualification as specified in First and Second schedule are applicable. It is, therefore, urged that the post of headmaster mandatorily requires passing of TET qualification which is not possessed by the writ petitioners and, therefore, the salary of promoted post cannot be paid to him; (iii) it is also urged that the principle laid down by the Full

Bench of this Court in **Dr. Jai Prakash Narayan Singh (supra)** will not be attracted in the facts of this case since the judgment of **Dr. Jai Prakash Narayan Singh (supra)** related to a university, whereas, the statutory scheme is different in the present case.

5. Sri V.K. Singh, learned Senior Counsel, on the other hand, has placed reliance upon the judgment of Supreme Court in **Arindam Chattopadhyay and others Versus State of West Bengal and others, (2013) 4 SCC 152**; the judgment of this Court passed in **Writ-A No. 3863 of 2018 (Smt. Raj Kishori Kushwaha Versus State of U.P. and others**, decided on 07.05.2014, and **Dr. Jai Prakash Narayan Singh (supra)** to submit that the principle in law is well settled that where the management promotes a person to higher post such that the responsibility of higher post is discharged by the employee concerned, he would be entitled to payment of salary for such promoted post, unless there is any bar in the statute to such effect. It is also submitted that the rationale and legality of such a provision denying salary (if at all it existed) would also be under serious cloud. Sri Singh further submits that all the writ petitioners were appointed by the Board on the basis of open competition and they possess the qualification prescribed for the post of assistant teacher. The writ petitioners also possess qualification for appointment to the post of headmaster. So far as the provision of the NCTE Amendment Act and the notification of 2014 is concerned, it is stated that the writ petitioners are already in employment and on the date of their appointment there was no requirement of obtaining TET qualification. It is submitted that if the State so intended it could have required the petitioners to undergo TET

qualification, which has not been done by the State. Argument is that on their own the writ petitioners could not have secured the TET qualification nor it was required when they were appointed. It is, therefore, urged that the Board/State having failed to take any steps to equip the writ petitioners with the TET qualification, it (Board) cannot take this as a ground to deny the salary for the higher post of which responsibility is being discharged by the writ petitioners. It is further urged that in the primary and junior high schools run by the basic education Board the post of headmaster has existed since long. The post is also not being disputed. The only argument now advanced by learned counsel for the appellant-State is that by virtue of provisions contained under the RTE Act, lesser post would be required in the institution. It is submitted that the specification of post in the schedule read with section 25 of the RTE Act provides for minimum number of post that are required in an educational institution and does not forbid continuance of posts in excess if it existed from before. It is further argued that the educational authorities have not taken any exercise to re-determine the post in accordance with RTE Act nor any order has been passed reducing the number of posts and, therefore, merely on the strength of lesser requirement of post under the RTE Act, it cannot be said that the existing posts of teachers including Headmaster in these institutions are reduced or that the post of headmaster stands abolished.

6. We have heard learned counsel for the parties and have perused the materials on record.

7. It is undisputed that all the writ petitioners have been appointed as assistant

teachers pursuant to open recruitment undertaken by the Board in accordance with the provision of U.P. Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as 'Rules of 1981'). The service conditions of the writ petitioners are governed by the Rules of 1981. The strength of service has been specified in Rule 4. The qualification for appointment of teachers is prescribed in Rule 8. It is, however, settled that by virtue of notifications issued under the NCTE Act the prescription of qualification of teachers stands substituted in terms of notification issued by NCTE. The Regulations of NCTE protect those teachers who have already been appointed prior to the notification issued requiring possessing of TET qualification.

8. Learned counsel for the Board argues that the notification of 12th November 2014 requires that the qualification for promotion must be such as is specified in the the NCTE Regulation. The post of headmaster is a promotional post under the Rules of 1981. Rule 8(3) specifies the eligibility for promotion to the post of headmaster. The requirement under the Rule is at least 5 years of teaching as a permanent assistant master of junior basic school. The additional requirement of possessing TET has come into being on account of the NCTE Regulation, 2010.

9. The first submission of Sri Kushmondeya Shahi, learned counsel for the appellants, is that most of the teachers are not possessing requisite qualification for appointment to the post of headmaster inasmuch as they do not possess TET qualification.

10. Under the Rules of 1981, the only qualification required for assistant

teacher for promotion to the post of headmaster is five years teaching experience. This is an essential condition and unless the teacher possess such eligibility he would be lacking the eligibility for promotion to the post of headmaster. Such assistant teacher who lacks such experience would clearly not be entitled to salary for the post of headmaster. The authorities shall be at liberty to examine the individual cases of assistant teachers in this bunch and exclude their claim for payment of salary of Headmaster.

11. The only other requirement is possessing of TET qualification. We have already noticed that possessing TET was not a qualification for appointment to the post of assistant teacher at the time when the writ petitioners were appointed. Continuance of assistant teachers even without TET qualification is permissible under the NCTE Regulations. The petitioners, who are the assistant teachers, are already in employment of the State. Once the requirement of TET for promotion is made essential under the Regulations of 2014 then it would be for the State to ensure that the existing teachers in Basic schools are permitted to undergo TET qualification. The object of NCTE Regulation is to ensure quality education for students in the age group of 6 to 14 years. It would thus be desirable for the State to frame appropriate scheme so that assistant teachers are allowed to undergo TET qualification. Since all assistant teachers appointed in basic schools prior to 2010 do not possess TET. These teachers would become ineligible even for regular promotion to the post of headmaster. Arrangement will thus be required to be made for such assistant teachers to acquire TET or else only teachers appointed with

TET alone will qualify for promotion. Denial of promotion to such assistant teachers, for no fault of theirs, would wholly be arbitrary. Therefore, so long as the State does not provide for mechanism to acquire TET, it would be difficult to resist the claim of the writ petitioners for payment of salary of post of Headmaster only because the State has not extended opportunity to them for undergoing TET qualification. It is admitted that on their own the existing teachers cannot obtain TET qualification. A qualification which is dependent upon the action of the State if is not allowed to be possessed by any existing teacher, it would be improper to deny entitlement of salary for the post of headmaster even though such assistant teachers are working in such capacity. In case, if we accept the stand of the Board it would only amount to putting premium on the default of the State. In such circumstances, we are of the view that the assistant teachers who possess experience of five years or above and are working as headmaster would be entitled to the salary for such post.

12. Coming to the aspect to post of headmaster we find that the petitioners contention that in all institutions the post of headmaster existed from before is not seriously disputed. What is stated is that on account of RTE Act the requirement of headmaster has reduced in large number of schools because of low availability of students. In this regard, we would like to observe that section 25 as well as the schedule specify the pupil-teacher ratio in each school as per the schedule. The mandate of section 25 as well as the schedule to the Act of 2009 reads as under:

“Section 25 seeks to provide for maintenance of pupil teacher ratio, by the

appropriate government and local authority. An apparent contradiction between this provision, which requires that the pupil teacher ratio shall be maintained within a period of six months, vis-à-vis the provision under section 19 mandating that the norms and standards prescribed in the Schedule should be met within three years, is proposed to be corrected through the Amendment Bill introduced in the Parliament.

The proviso to this section also provides that teachers shall not be deployed for nonacademic work, barring those specified in section 27, viz., (i) decennial population census, (ii) disaster relief and (iii) elections to Parliament, State Legislatures and Local Bodies.”

13. Combined reading of section 25 read with schedule would indicate that the norms and standards for a school are prescribed such that minimum number of teachers in an institution exist. The very purpose and object of introducing RTE Act is to ensure that quality education is provided to the students. Such quality education cannot be provided unless minimum number of teachers required in an institution are available. Section 25 read with the schedule, however, cannot be construed to mean that higher number of posts already existing in such institution would automatically stand reduced. That would neither be the purpose nor the object of the Act of 2009.

14. The only permissible course for the employer in such circumstances would be to undertake an exercise to re-determine the post of teachers required in an institution based upon the availability of strength of students for a minimum period of three years. This, however, has not been done so far.

15. Sri K. Shahi, learned counsel for the appellants, has placed reliance upon a chart annexed alongwith counter affidavit to show that as per the student strength in a particular year the availability of post of headmaster in a particular Block would only be 22 out of total number of 160 institutions. This aspect of the matter requires a little deeper examination. It is a matter of common experience that the strength of students in an institution may vary from year to year. If the argument of learned counsel for the appellant is accepted then there would be no post of headmaster in the junior school if the student strength is 97 but such a post would become admissible if the strength is 101. Varying the strength of teachers depending upon the strength of students each year would create a unworkable situation. Merely by taking student strength in a particular year to hold that the post of headmaster is not available would lead to irrational consequences. Even otherwise, we have not been apprised as to what is the system proposed to be followed by the State for managing its basic and primary institutions even in the absence of Headmaster. Ordinarily, somebody would be the supervising authority for an educational institution. Generally, it is the headmaster or the principal who is authority entrusted with various task including task of supervision and taking decision etc. in respect of the affairs of the institution. In the event it is to be treated that no post of headmaster exist it would be difficult to imagine as to how such institution would function. Even if the students strength is low in a particular institution some authority would have to be given to a person to supervise the affairs of educational institution at the level of institution itself. Unless the State comes up with some credible alternative mechanism

in which the institution could function even without the headmaster, we would be inclined to hold that such a post of headmaster would continue in the institution. It is otherwise admitted that in all the institutions the headmaster has been continuing for long and it is only on account of section 25 and the schedule to section 25 that an argument is raised by learned counsel for the appellant that post of headmaster ceases to exist. Having examined the matter in the light of the discussion aforesaid we are not inclined to accept the argument of Sri Shahi that the post of headmaster continuing in the basic institutions from before would suddenly come to an end, on account of section 25 of RTE Act readwith the schedule. In para 14 some doubts are raised with regard to continuance of the writ petitioners as headmaster. We make it clear that this aspect of the matter is not being adjudicated by us and we grant liberty to the concerned educational authority to determine the factual issue as to whether the petitioners have actually been continuing as headmaster of the institution or not. Payment of salary for the post of headmaster will be dependent upon such examination, of individual claim, by the Basic Shiksha Adhikari of the District concerned.

16. Those of the assistant teachers who are allowed to discharge the work of headmaster discharge various administrative and supervisory duties in addition to the post of assistant teacher. Such teachers when are allowed to discharge additional work would be entitled to payment of salary. Though in somewhat different factual scenario, a Full Bench of this Court in **Dr. Jai Prakash Narayan Singh** (supra) has observed as under:

“If no power is to be construed to exist in a management to make an officiating appointment, when a vacancy arises in the office of a principal until a regular appointment is made in accordance with the provisions of the Commission Act, serious prejudice would have been caused in the functioning of educational institutions including affiliated colleges. There is a vital element of public interest in the proper functioning of educational institutions and if the cause of education is not to suffer, some arrangement would have to be made during the period when there is a vacancy in the office of a principal. The power to make an officiating appointment is traceable to the provisions of the Statutes of the State Universities, analogous to Statute 10-B of the First Statutes. Once the nature of that power is construed as a power to make an appointment albeit on an officiating basis till a regularly selected candidate becomes available, there would be no justification to deny a claim for the payment of salary to such a person who has been appointed on an officiating basis. The power to make an officiating appointment under the Statutes of the University after the deletion of Section 16 from the Commission Act with effect from 22 November 1991 is preserved. Such a provision in the Statutes would not be inconsistent with or contrary to the Commission Act so as to attract the overriding provisions contained in Section 30. Where a person has been appointed as an officiating principal until a regularly selected candidate takes charge, this involves an assumption of duties and responsibilities of a greater importance than those attaching to the post of a teacher. The Universities Act in several provisions, which have been noted earlier, adverts to the duties and responsibilities

*which are required to be performed by a principal. **Hence, a person who is appointed as an officiating principal under the Statutes of the University until a regularly selected candidate is made available, would be entitled to the payment of salary attached to the post of principal.***

17. We are thus of the view that headmaster's salary ought not be denied to the assistant teachers when they are regularly performing work on the higher post of headmaster for the last several years.

18. Lastly, learned counsel for the appellants submits that the direction of learned Single Judge to pay the salary for the post of headmaster since 2014 is otherwise impermissible in as much as no grievance was earlier raised by the writ petitioners with regard to denial of salary for the higher post and the writ petitions have been filed only in the year 2022 to 2024. Reliance is placed upon the judgment of Supreme Court in **Union of India and others Versus Tarsem Singh, (2008) 8 SCC 648** to contend that at best a direction for arrears up to a period of three years could have been issued in favour of the writ petitioners. The judgment in **Tarsen Singh** (supra) has been followed in subsequent judgment of Supreme Court in **Bichitranda Behera Versus State of Orissa and others, 2023 SCC OnLine SC 1307**. A Lucknow Bench of this Court in **Urmila Devi Pal Versus State of U.P. and others, [2023(6) ADJ (DB)(LB)]** also followed the similar judgment.

19. We find substance in the contention of Sri K. Shahi that the direction to pay arrears could not have been issued in a mechanical manner particularly when no grievance was raised by such persons earlier. Though it is stated that previous representations were made by the writ petitioners but such grievance apparently was not pressed till filing of the writ we are thus of the view that even if the petitioners have continued for

long as headmaster the direction to pay the arrears could only extend up to three years prior to filing of the writ petition.

20. In view of the discussions and deliberations held above this bunch of special appeal stands **disposed of** with following observation: (i) we grant liberty to the concerned District Basic Education Officer to examine and determine the factual issue as to whether the petitioner has experience of five years and has actually been continuing as headmaster of the institution; (ii) if the petitioners have continued for long as headmaster the direction to pay the arrears would only extend up to three years prior to filing of the writ petition; (iii) we also make it open for the District Basic Education Officer to ensure at the district level that only senior assistant teachers are allowed to officiate in the educational institution, as far as, it is possible. This would eliminate possibility of heart burning on account of junior assistant teachers functioning as officiating headmaster; (iv) requisite exercise in this regard shall be undertaken within a period of two months and the amount in term of above determination shall be calculated and released without any further loss of time.

(2025) 4 ILRA 63

**APPELLATE JURISDICTION
CIVIL SIDE**

**DATED: ALLAHABAD 10.04.2025
BEFORE**

**THE HON'BLE MAHESH CHANDRA TRIPATHI,
C.J.**

THE HON'BLE PRASHANT KUMAR, J.

Special Appeal No. 788 of 2024

**Banaras Hindu University Varanasi
Appellant
Versus
Dr. Bhaktipurtra Rohtam & Anr.
...Respondents**

Counsel for the Appellant:

Hem Pratap Singh

Counsel for the Respondents:

Priyansh

Service Law-Allahabad High Court Rules, 1952-Chapter VIII, Rule 5-Banaras Hindu University challenged a judgment by the Single Judge, which had directed the university to grant notional promotion under the Career Advancement Scheme(CAS) and consider re-employment of Dr. Bhaktiputra Rohtam, a retired Associate Professor-He retired in December 2022 and later sought notional promotion and re-employment-The University denied his requests citing the absence of Executive Council and reliance on the UGC Guidelines of 2008, which allow re-employment only for retired professors, not Associate professors-The court held that the unavailability of the Executive Council or failure to constitute a Selection Committee cannot prejudice the teacher's claim- The judgment of the single Judge was modified-Dr. Rohtam's promotion claim must be assessed via Screening cum Evaluation Committee-Since Dr. Rohtam applied before retirement and met eligibility criteria, BHU must constitute a Screening-cum-Evaluation Committee to examine his claim-If found eligible, notional promotion with consequential monetary benefits- the Court clarified that Regulation 2.1 of the UGC Regulation, 2018, while permitting re-employment, is subject to the UGC Guidelines of 2008-The bench criticized the University for failing to conduct CAS promotions Since November 2020, calling it an artificial vacuum caused by the administration-It emphasized that the Vice chancellor had powers under the BHU Act to act in urgent situations, including constituting committees.(Para 1 to 44)

The appeal is partly allowed. (E-6)

List of Cases cited:

1. Sirsi Municipality Vs Cecelia Kom Francis Tellis

2. Sukhdev Singh & ors. Vs Bhagatram Sardar Singh Raghuvanshi & anr.

3. Ambica Quarry Works etc. Vs St. of Guj. & Ors. & Commr. of Police, Bom. Vs Gordhandas Bhanji

Julius Vs Lord Bishop of Oxford.

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.

&

Hon'ble Prashant Kumar, J.)

1. Heard Shri Ajit Kumar Singh, learned Senior Counsel assisted by Shri Hem Pratap Singh, learned counsel for the appellant-respondents and Shri Sanjeev Singh, learned Senior Counsel assisted by Shri Priyansh, learned counsel for the opposite party-petitioner.

ORDER PASSED BY WRIT COURT

2. The instant intra court special appeal under Chapter VIII Rule 5 of the High Court Rules has been preferred against the judgment and order dated 13.2.2024 passed by learned Single Judge in Civil Misc. Writ Petition No.18332 of 2023 (Dr. Bhaktiputra Rohtam v. Banaras Hindu University & Ors.), whereby the writ petition has been allowed. The order passed by the Registrar and Vice Chancellor of the Banaras Hindu University¹ dated 22.5.2023 and 09.10.2023 have been quashed with further direction to Vice Chancellor to immediately constitute a Screening-cum-Evaluation Committee to look into and screen out documents of self appraisal etc. submitted by the petitioner on 04.11.2021 received in Career Advancement Scheme² Promotion Cell on 05.01.2022 and take a decision whether the petitioner was eligible on merit on the basis

of documents produced by him to be promoted as Professor under CAS. It was further directed that if it finds favour with the claim of the petitioner, it shall accord notional promotion to the petitioner with consequential benefits of pay in question as admissible to such promotional post of Professor for revision of pension and other retirement dues with effect from the date the petitioner attained the age of superannuation and accordingly arrears of difference of pension and other retirement dues shall be paid. Learned Single Judge has also directed the BHU to accord re-employment to the petitioner as teacher in the Department of Dharmagam, Faculty of Sanskrit Vidya Dharm Vigyan, BHU, Varanasi, if vacancy exists and appropriate order shall be passed in this regard within three weeks from the date of production of certified copy of this order. For ready reference, the operative portion of the judgment and order dated 13.02.2024 is reproduced as under:-

".....44. In Rejoinder affidavit pleadings have been raised vide paragraph 12 that U.G.C. guidelines being statutory would prevail and that it provides for extension of retired teachers upon re-employment upto 70 years of age and it has also been pleaded vide paragraph 13 of the rejoinder affidavit that post still exists in the department. Thus, it is sought to be pleaded that selection could not be held despite advertisement.

45. I have already held above that U.G.C. Regulations would prevail over the guidelines and whenever guidelines are contrary to regulations, these guidelines would be taken to have stood repealed. So if regulations provide for Assistant Professor and Associate Professor also to be entitled for re-employment, petitioner would be equally entitled. Since it is not the

case of respondent- University that petitioner is not entitled to re-employment on his merit, it is held that he is entitled for re-employment as teacher in the department of Dharmagam if vacancy is existing.

46. Thus, in view of the above, writ petition succeeds and is allowed. The orders passed by the Registrar and Vice Chancellor dated 22.05.2023 and 09.10.2023; respectively, impugned in the writ petition and filed as Annexure-1 & 2, are hereby quashed and following directions are issued:-

(i) The Vice Chancellor shall immediately constitute a Screening-cum-Evaluation Committee to look into and screen out documents of self appraisal etc. submitted by the petitioner on 04.11.2021 received in CAS promotion cell on 05.01.2022 and take a decision whether petitioner was eligible on merits on the basis of documents produced by him to be promoted as professor under CAS and if it finds favour with the claim of the petitioner, it shall accord notional promotion to the petitioner with consequential benefits of pay in question as admissible to such promotional post of Professor for revision of pension and other retirement dues only w.e.f. the date petitioner attained his age of superannuation and, accordingly, arrears of difference of pension and other retirement dues shall be paid. Appropriate decision shall be taken within a maximum period of three months from the date of production of certified copy of this order.

(ii) The respondent- University is directed to give re-employment to petitioner as teacher in the department of Dharmagam, Faculty of Sanskrit Vidya Dharm Vigyan, Banaras Hindu University, Varanasi if vacancy exists and appropriate

order shall be passed in the above regard within three weeks of production of certified copy of this order.

47. Cost made easy."

FACTUAL MATRIX

3. Facts in brief giving rise to this intra Court appeal are as under:

4. The appellant-BHU is a Central University enacted by Act No.XVI of 19153. The services of employees of BHU are governed by the Act as well as Rules and Regulations framed under the Act. The BHU being Central University is also governed by the Rules, Regulation, Guidelines & Office Memorandum issued from time to time by the Central Government and University Grants Commission⁴. The Executive Council of BHU shall, subject to control of BHU, be Executive Body and shall conduct all administrative affairs of the BHU. As per Section 18 (k) of BHU Act, the emoluments, term and conditions of service of employees of BHU is governed by Ordinance framed by Executive Council. As per Section 18 (3) of BHU Act, the Ordinances may be amended, repealed or added to at any time by the Executive Council of the BHU. The Statute 14 of the BHU Act deals with constitution of the Executive Council. The UGC vide notification dated 18.07.2018 in exercise of powers conferred under Clause (e) and (g) of sub-section (I) of Section 26 read with Section 14 of the University Grants Commission Act, 1956⁵ and in supersession of the "UGC Regulations on Minimum Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education 2010" together with all

amendments made therein from time to time, has framed "UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018"⁶.

5. The opposite party-petitioner was appointed on the post of Lecturer/ Assistant Professor in the Department of Dharmagam Faculty of Sanskrit Vidya Dharm Vigyan, BHU, Varanasi vide order dated 02.11.2006 of the BHU. Later on he was confirmed on the post of Lecturer/ Asstt. Professor in the said department vide order dated 30/31.01.2008. Thereafter, he was promoted on the post of Associate Professor (Stage-IV) in the Department of Dharmagam vide order dated 04.11.2018 under the CAS and joined on 04.11.2018 itself. According to the CAS of the BHU Teachers, the petitioner was eligible for promotion on the post of Professor after completion of 3 years of service in the Associate Professor Grade i.e. 04.11.2021. As the Selection Committee was not convened, his candidature was not considered for promotion. As such he moved detailed representation dated 21.09.2022 to the BHU. However, nothing was done in this regard. Eventually the petitioner superannuated on 31.12.2022 as Associate Professor (Stage-IV). It is relevant to indicate that he was accorded sessions benefit and he continued to impart education in the department till 30.06.2023.

6. The petitioner made two representations dated 14.03.2023 and 09.06.2023 to the Vice Chancellor, BHU requesting to promote him on the post of Professor in the Department of Dharmagam w.e.f. 04.11.2021 under CAS and further appoint him on contractual basis for a

period of five years till the age of 70 years on contract basis in accordance with Regulation 2.1 of the Regulations, 2018. The representation of the petitioner was turned down by the respondent on 23.05.2023 on the ground that since the petitioner had retired as an Associate Professor and not as a Professor, thus, he was not entitled to be considered for grant of engagement on contractual basis till 70 years. The said order was challenged in Writ-A No.11409 of 2023 (Dr. Bhaktiputra Rohtam v. Union of India & Ors.). Finally, the said writ petition was disposed of on 07.08.2023, the operative portion of same, for ready reference, is reproduced as under:-

"6. This Court entertained the writ petition on 18.07.2023 and pass the following orders.-

"Sri Sanjiv Singh, Senior Advocate assisted by Sri Priyansh, who appears for the writ petitioner, has submitted that the order dated 22.5.2023 passed by the fifth respondent, Registrar (Administration) Recruitment and Assessment Cell, Banaras Hindu University, Varanasi proceeds on misconception of facts and law particularly in view of the fact that as per the U.G.C. Regulations dated 30.6.2010 in particular "UGC Regulations On Minimum Qualifications For Appointment Of Teachers And Other Academic Staff In Universities And Colleges And Measures For The Maintenance Of Standards In Higher Education, 2010". Clause 2.3.2 itself provides for reemployment on contract basis beyond the age of superannuation till attaining 70 years subject to availability of vacant positions and fitness, teachers such as Assistant Professor, Associate Professor and Professor.

According to Sri Singh, Senior Advocate on the date of his retirement as on Associate Professor thus he stands covered by the said Regulations. According to Sri Singh, he was legally entitled be accorded promotion as a Professor as per the Regulations but he had been denied the same thus, he can be accorded notional promotion and then considered for extension.

Sri Hem Pratap Singh, who appears for the University has relied upon the U.G.C. guideline dated 15.2.2008 while drawing attention towards Clause 3 at page 2 of the same so as to contend that under the eligible category, the category of superannuated teachers eligible for reemployment is of Professor only and not any other post. According to him the Regulations of the U.G.C. dated 15.2.2008 has not been superseded by virtue of the U.G.C. Regulations dated 30.6.2010.

Matter requires consideration.

Sri H.P. Singh, submits that he shall be filing a counter affidavit within a week.

Put up this case on 27th July, 2023 as fresh."

7. Pursuant to the order passed by this Court a counter affidavit has been filed on behalf of the University sworn by the Law Officer, Banaras Hindu University, Varanasi dated 05.08.2023.

8. Sri Sanjeev Singh, learned Senior Counsel on instructions submits that he does not proceed to file any rejoinder to the counter affidavit and according to him the writ petition be decided at the fresh stage itself without seeking any further response.

9. With the consent of the parties and the joint statement made by them that they do not propose to file any further affidavits the writ petition is being decided at the fresh stage.

10. Sri Sanjeev Singh, learned Senior Counsel has sought to argue that there are two facets of the matter, firstly the fact that the writ petitioner was entitled to be considered for promotion under CAS from the post of Associate Professor to the post of Professor in terms of the UGC guidelines governing the field by the name and nomenclature of UGC Regulation On Minimum Qualification For Appointment Of Teachers And Other Academic Staff In Universities And Colleges And Measures For Maintenance Of Standard In Higher Education, 2018 and according to him the promotion exercise ought to have been conducted in accordance with the said regulation in particular Clause 6.1 which deals with the assessment Clause 6.3 which deals for the criteria for promotion under Career Advancement Scheme laid down under the regulation and according to him Clause 6.3-I an exercise is to be undertaken by the Selection Committee within the three months in advance from the due date subject to the fulfillment of the candidates for being accorded promotion under CAS and the process should be completed within six months from the receipt of the application. He further submits that had the said procedure been put to service and completed within the time bound period the writ petitioner obviously would have been considered for promotion on the post of Professor. Since the said procedure was not adopted and the proceedings were not drawn for conducting exercise for promotion under CAS thus, the petitioner's legitimate right for being promoted on the post of Professor stood extinguished and post retirement now he is being denuded for being considered for extension as a Professor for a further period of 5 years post attainment of 65 years till 70 years. The second argument is this that in the wake of the provisions

contained under Clause 2.3.2 of the UGC notification dated 30 June, 2010 as well as the UGC notification dated 18.08.2018 Clause 2.1 which *pari materia* the earlier provisions he had a legitimate claim for being granted extension.

11. Countering the said submission, Sri Hem Pratap Singh, learned counsel for the University, on the other hand, submits that the claims so set up by the writ petitioner is not tenable in the eyes of law as mere attainment of the qualifications and the eligibility does not *ipso facto* confer any right to be promoted as the same is subject to various criteria which is in the shape of the assessment to be done by the Selection Committee duly constituted by the University as per the Act and the statutes and further the availability of the vacancies. He, thus, submits that though the writ petitioner claims to be possessing the relevant qualifications and might be for whatever reasons the meetings of the selection committee was not convened but that does not confer an indefeasible right as the writ petitioner himself was happy about what he had been conferred with as he though claims to have represented on two occasions but post retirement he also was granted the session benefit and now he is coming in writ jurisdiction claiming his right. Sri Hem Pratap Singh further submits that though the writ petitioner seeks extension on the ground that he was not made entitled for being promoted on the post of Professor, however, again the issue arises, i.e. with regard to the fact that there is no vacancy lying vacant so as to give a room and to accommodate him is there. Sri Singh who appears for the respondent further argues that though the legal proposition is being sought to be argued by the learned Senior Counsel for the petitioner that in the wake of the provisions contained under

Clause 2.3.2 of the 2010 Regulations and Clause 2.1 of the 2018 the Assistant Professors, Associate Professors and Professors are to be considered for re-employment on contractual basis and they would occupy the field and the model guidelines will not play into role as the regulations are after the issuance of the model guidelines of the year 2008, 2010 and 2018 but it would also not be matter to be gone into at this stage particularly when there is no post lying vacant.

12. At this stage, Sri Sanjeev Singh learned Senior Counsel who appears for the writ petitioner on instructions submits that the writ petitioner shall be representing his cause before the third respondent, Vice Chancellor, Banaras Hindu University, Varanasi raising all his grievances, thus, he confines the relief in such a manner.

13. On such a submission being made by Sri Sanjeev Singh learned Senior Counsel for the writ petitioner and Sri Hem Pratap Singh has invited the attention of the court towards Annexure 7 which starts from page 46 and concludes at page 51 of the paper book reference whereof has been given in paragraph 7 of the writ petition so as to contend that the writ petitioner claims to have represented the matter before the Visitor of B.H.U Varanasi and two parallel proceedings cannot be permitted to be availed by the writ petitioner.

14. To such a submission, Sri Sanjeev Kumar Singh submits that he has sent his complaint/representations through E Mail and he does not propose to press it and he submits that the same be treated to be redundant as the writ petition is being decided by this Court itself. Sri Hem Pratap Singh submits that if it is the stand of Sri Sanjeev Singh learned Senior Counsel for the writ petitioner then he has no objection, he submits that a fresh

representation be preferred by the writ petitioner before the third respondent who shall advert to all the legal issues.

15. Now since in the writ petition itself an order has been subject matter of challenge dated 22.05.2203 which according to the writ petitioner does not have any legs to stand for the reasons mentioned that it only takes into the 2008 guidelines which accord to learned Senior Counsel for the writ petitioner would not play a role in view of the fact that there are 2010 and 2018 regulations framed by the University, thus, this Court is of the opinion that the writ petition be disposed of granting liberty to the writ petitioner to prefer a comprehensive representation along with the self attested copy of the writ petition before the third respondent, Vice Chancellor, B.H.U., Varanasi who shall consider each and every aspect of the matter within a period of two months from the date of production of certified copy of the order.

16. Since an order has been put to challenge and as per the parties in question including Sri Hem Pratap Singh while deciding the representation of the writ petitioner the order which is being subject matter of challenge would not come in the way as independent application of mind will be made by the third respondent, thus, this Court in the circumstances of the case is declining to quash the same but the said order shall abide by the final outcome of the orders to be passed therein.

17. Needless to point out that the writ petition has been decided on the basis of the statement made by the parties and, thus, passing of this order may not be construed to be an expression that this Court has adjudicated on the merits of the matter.

18. With the aforesaid observations, the writ petition stands disposed of.

7. In response to the aforesaid direction issued by the Writ Court, the Vice Chancellor, BHU had considered and rejected the claim of the petitioner vide order dated 09.10.2023. The orders dated 22.05.2023 and 09.10.2023 were again subjected to challenge in writ petition in question, to wit, Writ-A No.18332 of 2023 (Dr. Bhaktiputra Rohtam v. Banaras Hindu University & Ors.). The said writ petition was pressed before learned Single Judge for two reliefs viz. (I) Promotion under the CAS from the date he became entitled and (II) for re-employment as a teacher in the department as per Regulation 2.1 of the Regulations, 2018. Eventually, the said writ petition was allowed vide order dated 13.02.2024, which is impugned in this intra court special appeal. The relevant paragraphs 44 to 46 of the judgment dated 13.02.2024 have already been reproduced in paragraph 2 of this judgment.

ARGUMENTS ON BEHALF OF APPELLANTS

8. Shri Ajit Kumar Singh, learned Senior Counsel appearing for the appellant had vehemently argued that the impugned order passed by learned Single Judge is manifestly erroneous and the finding so returned is also contrary to Regulations 2.1, 5, 6, 6.1, 6.2 and 6.3 of the Regulations, 2018. In an arbitrary manner, learned Single Judge has also overlooked the mandatory provisions of Clause 5, 6 and 6.2, which also deal with constitution of Selection Committee and guidelines on selection procedure. Moreso, selection procedure is enumerated in detail in Regulation 2018, which would not only be

applicable for direct recruitment but also for promotion under CAS. For considering the candidature under CAS, the Selection Committee is to be constituted. There is also prescribed criteria for promotion of Associate Professor (Academic Level 13A) to Professor (Academic Level 14). (Ref. Regulation 6.4 C IV (ii) of Regulations, 2018). It was contended that while dealing with the matter, learned Single Judge has erred in law and returned the erroneous finding, which is contrary to the Scheme in question. He submitted that by no stretch of imagination the Statutory Selection Committee as contemplated under Regulations 2018, could be bypassed as such the direction of learned Single Judge directing the Vice Chancellor to constitute Screening-cum-Evaluation Committee for screening of documents and if his claim finds favour, he shall be accorded notional promotion with consequential benefits is contrary to the Regulations, 2018.

9. Learned Senior Counsel appearing for the appellant further submitted that while passing the impugned order, learned Single Judge has not only directed for considering the promotion but in arbitrary manner had also directed to consider the claim of the petitioner-opposite party for considering his re-employment as a teacher in the department, if vacancy exists. He submitted that the BHU, while filing the counter affidavit, had taken a specific stand that since November, 2020 to till date, no selection committee for promotion of teachers under CAS has been conducted in the University. After expiry of tenure of Executive Council in June, 2021 to till date, the Executive Council has not been constituted in the University. Therefore, the promotion of the petitioner

under CAS could not be considered by the University due to non-availability of appointing authority i.e. Executive Council.

10. He vehemently submitted that the learned Single Judge has also misconstrued in interpreting the Regulation 6.3 (V) of the Regulations, 2018, which provides, "For the promotion under the CAS, the applicant teacher must be on the role and in active service of the University/ College on the date of consideration by the Selection Committee. Admittedly, in the instant matter, the petitioner was superannuated way back on 31.12.2022. As he was not on roll of the University, the direction of learned Single Judge is totally misdirected and contrary to the Scheme.

11. He submitted that being a Central University, the BHU has to follow the instructions/ guidelines/ Rules issued by the Government of India and the UGC under the UGC Act from time to time in accordance with the provisions contained in Ordinance of BHU for selection of teaching and non-teaching post either by direct recruitment or by promotion. He emphatically argued that the UGC Guidelines, which were issued for re-employment of superannuated teachers in the Central Universities in the year 2008 has not been superseded by the Regulations, 2018 and still holds the field. There is no conflict between UGC Model Guidelines for Re-employment of Superannuated Teachers, 2008⁷ and Regulations, 2018. Moreso, in case the Guidelines, 2008 goes, then there would be complete chaos and vacuum. Both the Guidelines, 2008 and Regulations, 2018 hold different field. Learned Single Judge was not justified in holding that the UGC Regulations would prevail over the guidelines and whenever guidelines are

contrary to Regulations, these guidelines would be taken to have stood repealed.

12. He further submitted that the finding returned in para 45 of the impugned judgment and order was infact uncalled for and the same would have very serious ramifications in the Central Universities. Learned Single Judge has nowhere considered that the Guidelines, 2008 deals with the re-employment of superannuated teachers and eligibility criteria of superannuated teachers eligible for re-employment. Successively, the same has been followed and while rejecting the claim he has also relied upon Guidelines, 2008. There was no conflict between Guidelines, 2008 and Regulations, 2018 and both hold different fields and as such the finding returned by learned Single Judge in para 45 is perverse.

13. He lastly submitted that the learned Single Judge had failed to take note of Regulation 2.1, wherein it is also provided further that all such re-employment shall be strictly in accordance with the guidelines prescribed by the UGC from time to time. Regulation 2.1 clearly deals with the situation, wherein subject to the availability of vacant positions and fitness, teachers may be re-employed on contract appointment beyond the age of superannuation. He, therefore, submitted that no such direction can be issued, which is contrary to BHU Act, Statute and Ordinance of University nor any such mandamus can be issued directing the University to pass order, which is directly in conflict with the Regulations, 2018.

ARGUMENTS ON BEHALF OF OPPOSITE PARTY

14. Per contra, Shri Sanjeev Singh, learned Senior Counsel appearing for the petitioner-opposite party has vehemently contended that it is not in dispute that the petitioner was inhering all the requisite qualification/ experience and fulfilled the benchmark, which is required to be considered as Professor under CAS. His candidature was liable to be considered under CAS on 04.11.2021. Towards his claim, without any delay, he had submitted complete details on a format in accordance with Regulations, 2018, which is required for selection and assessment under CAS. Admittedly the application was received in the Selection and Assessment Cell of BHU on 05.01.2022. He was accorded sessions benefit and he continued in the department till 30.06.2023. He submitted that while the petitioner was imparting education in the department, for according promotion under CAS, he has made repeated representations but in arbitrary manners the University had passed orders dated 22.05.2023 and 09.10.2023 denying the claim of the petitioner. The same was subject matter of challenge in the writ petition and learned Single Judge had taken note of the fact that while rejecting the claim in arbitrary manner the BHU had deliberately taken note of only Guidelines 2008. As such while quashing the orders dated 22.5.2023 and 09.10.2023, the matter was remitted by learned Single Judge with a direction to decide the claim of the petitioner with independent application of mind.

15. Learned counsel for the opposite party/petitioner, in this backdrop, submitted that learned Single Judge has rightly appreciated the facts and law and found that the petitioner, without any fault on his part, had been denied the rightful claim, even though he was eligible to be accorded promotion under the CAS. He

submitted that the UGC had formulated the Scheme and specially Regulations, 2018 with an object to accord financial upgradation to a teacher, who is stagnated in the department. Under the CAS in case an incumbent fulfills the minimum required eligibility, the rightful claim of a teacher cannot be denied.

16. He vehemently argued that only objection had been taken by the appellant-respondents for denial of rightful claim that no selection committee for promotion of teachers under CAS has been constituted in the University after November, 2020. The plea was taken that in absence of Executive Council/Appointing Authority in the University, the promotion under CAS could not be considered by the University. Only on account of non-availability of Executive Council, the process related to direct recruitment as well as promotion of teachers under the CAS could not be considered. Nowhere the University had taken any objection qua the eligibility of the petitioner under CAS. He submitted that on account of non-functioning of Executive Council in the University, the rightful claim of the petitioner could not be denied. Learned Single Judge has also extensively considered the Regulations, 2018 and held that the University was not justified in denying the promotion to the petitioner on the ground that no Executive Council was functional in the University. Nowhere the Act or the Ordinance creates any such vacuum and the Vice Chancellor of the BHU also exercises ample power under Section 7-C (5) of the BHU Act. In case any such emergent situation has arisen, which requires immediate action to be taken, the Vice Chancellor shall take such action as he deems necessary and shall report the same for approval at the next meeting to the authority which, in the

ordinary course, would have dealt with the matter.

17. He, therefore, submitted that in absence of any such timely decision by the Vice Chancellor and on account of fault of the Vice Chancellor of the University, the petitioner may not be made to suffer for no fault on his part. Moreso, the University has not taken any specific stand, as to what was the impediment and where is the restriction imposed to the Vice Chancellor, who is Executive Head of the University, that he could not even direct for constitution of Screening Committee. He submitted that the objection of the University is totally devoid of merit. Rightful claim had been set up under the Regulations, 2018 and once rightful claim had been denied on a wrong presumption, learned Single Judge had rightly intervened and the matter was remitted to the University to examine the claim of the petitioner. Learned Single Judge while considering the instant matter had considered each and every facet of the Regulations, 2018 and has passed the order with cogent reasons, which requires no interference.

ISSUES BEFORE THE COURT

18. Heard rival submissions and perused the record. From the submissions of learned counsel for the parties, we find that following issues arise for consideration before this Court:-

“(i) Whether under the Regulations, 2018 the petitioner-opposite party is entitled to be accorded promotion under the CAS from the date he became eligible;

(ii) Whether the petitioner-opposite party is entitled to be accorded re-employment as teacher in the Department

as per Regulation 2.1 of the Regulations, 2018?

19. Issue No.(i)

Whether under the Regulations, 2018 the petitioner- opposite party is entitled to be accorded promotion under the CAS from the date he became eligible;

The Regulations, 2018 are issued for minimum qualifications for appointment and other service conditions of University and College teachers and cadres of Librarians, Directors of Physical Education and Sports for maintenance of standards in higher education and revision of pay-scales. Under the CAS Promotion Criteria, detailed procedure is provided under Regulations, 2018 from Associate Professor (Academic Level 13A) to Professor (Academic Level 14). The stages of promotion under Career Advancement Scheme of incumbent and newly appointed Asstt. Professors/ Associate Professors/ Professors is dealt under Regulation 6.4 of the Regulations, 2018. For ready reference, Regulation 6.4, which deals with promotion under CAS from Association Professor (Academic Level 13A) to Professor (Academic Level 14) is reproduced as under:-

“C. Career Advancement Scheme (CAS) for University teachers

I. Assistant Professor (Academic Level 10) to Assistant Professor (Senior Scale/Academic Level 11)

Eligibility:

i) An Assistant Professor who has completed four years of service with a Ph.D. degree or five years of service with a M.Phil. / PG Degree in Professional Courses, such as LLM, M.Tech, M.V.Sc.and M.D., or six years of service in case of those without a Ph.D./M.Phil./ PG

Degree in a Professional course and satisfies the following conditions:

ii) Attended one Orientation course of 21 days duration on teaching methodology;

iii) Any one of the following: Completed Refresher/ Research Methodology Course/ Workshop/ Syllabus Up-gradation Workshop/ Training Teaching-Learning-Evaluation, Technology Programmes/ Faculty Development Programmes of at least one week (5 days) duration, or taken one MOOCs course (with e-certification) or development of e-contents in four-quadrants / MOOC's course during the assessment period; and

iv) Published one research publication in the peer-reviewed journals or UGC-listed journals during assessment period.

CAS Promotion Criteria :

A teacher shall be promoted if;

i) He/she gets a 'satisfactory' or 'good' grade in the annual performance assessment reports of at least three/four/five of the last four/five/six years of the assessment period as the case may be (as provided in Appendix II, Table 1), and;

ii) The promotion is recommended by the screening-cum evaluation committee.

II. Assistant Professor (Senior Scale/Academic Level 11) to Assistant Professor (Selection Grade/Academic Level 12)

Eligibility:

i) Assistant Professors who has completed five years of service in Academic Level 11/Senior Scale.

ii) A Ph.D. Degree in the subject relevant/allied/relevant discipline.

iii) Has done any two of the following in the last five years of Academic Level 11/Senior Scale: Completed a course

/ programme from amongst the categories of Refresher Courses/Research Methodology/ Workshops/ Syllabus Up-gradation Workshop/ Teaching-Learning-Evaluation/ Technology Programmes / Faculty Development Programme of at least two weeks (ten days) duration (or completed two courses of at least one week (five days) duration in lieu of every single course/programme of at least two weeks (ten days) duration), or, completed one MOOCs course in the relevant subject (with e-certification); or contribution towards the development of e-content in 4-quadrant (at least one quadrant) minimum of 10 modules of a course/contribution towards the development of at least 10 modules of MOOCs course/ contribution towards conduct of a MOOCs course during the period of assessment.

iv) Published three research papers in the peer-reviewed journals or UGC-listed journals during assessment period.

CAS Promotion Criteria:

A teacher shall be promoted if;

i) The teacher gets a 'satisfactory' or 'good' grade in the annual performance assessment reports of at least four of the last five years of the assessment period, (as prescribed in Appendix II, Table 1) and;

ii) The promotion is recommended by the Screening-cum-evaluation committee.

III. Assistant Professor (Selection Grade/Academic Level 12) to Associate Professor (Academic Level 13A)

1) Assistant Professor who has completed three years of service in Academic Level 12/ Selection grade.

2) A Ph.D Degree in the subject concerned/allied/relevant discipline.

3) Any one of the following during last three years: completed one course / programme from amongst the

categories of Refresher Courses/ Research Methodology Workshops/Syllabus Up-gradation Workshop/ Teaching-Learning-Evaluation Technology Programme/ Faculty Development Programme of at least two weeks (ten days) duration (or completed two courses of at least one week (five days) duration in lieu of every single course/programme of at least two weeks (ten days) duration); or completed one MOOCs course (with ecertification); or contribution towards the development of e-content in 4-quadrant (at least one quadrant) minimum of 10 modules of a course/contribution towards development of at least 10 modules of MOOCs course/ contribution towards conduct of a MOOCs course during the period of assessment.

4) A minimum of seven publications in the peer-reviewed or UGC-listed journals out of which three research papers should have been published during the assessment period.

5) Evidence of having guided at least one Ph.D. candidate.

CAS Promotion Criteria:

A teacher shall be promoted if;

i) He/she gets a 'satisfactory' or 'good' grade in the annual performance assessment reports of at least two of the last three years of the assessment period as specified in Appendix II, Table 1, and has a research score of at least 70 as per Appendix II, Table 2.

ii) The promotion is recommended by a selection committee constituted in accordance with these Regulations.

IV. Associate Professor (Academic Level 13A) to Professor (Academic Level 14)

Eligibility:

1) An Associate Professor who has completed three years of service in Academic Level 13 A.

2) A Ph.D degree in the subject concerned/allied/relevant discipline.

3) A minimum of ten research publications in the peer- reviewed or UGC-listed journals out of which three research papers should have been published during the assessment period.

4) Evidence of having successfully guided doctoral candidate.

5) A minimum of 110 Research Score as per Appendix II, Table 2.

CAS Promotion Criteria:

A teacher shall be promoted if;

i) He/she gets 'satisfactory' or 'good' grade in the annual performance assessment reports of at least two of the last three years of the assessment period, as per Appendix II, Table 1, and at least 110 research score, as per Appendix II, Table 2.

ii) The promotion is recommended by a selection committee constituted in accordance with these Regulations.

V. Professor (Academic Level 14) to Senior Professor (Academic Level 15)

A Professor can be promoted to the post of Senior Professor under the CAS. The promotion shall be based on academic achievement, favourable review from three eminent subject -experts who are not of the rank lower than the rank of a Senior Professor or a Professor having at least ten years' of experience. The selection shall be based on 10 best publications during the last 10 years and interaction with a Selection Committee constituted in accordance with these Regulations."

20. It is not in dispute that the petitioner-opposite party had moved the application before the Vice Chancellor, BHU for consideration of his candidature for promotion under CAS on 04.11.2021, which was admittedly received in the

relevant department i.e. Selection and Assessment Cell of BHU on 05.01.2022. He made repeated representations and attained the age of superannuation with unblemished track record and later on sessions benefit had also been accorded till 30.06.2023. Under the CAS, the petitioner's claim stood matured as Professor way back on 04.11.2021 as per the procedure prescribed for consideration. Regulation 6.2 provides that the constitution of the Selection Committees and Selection procedure as well as the Assessment Criteria and Methodology for the different posts through direct recruitment or through Career Advancement Scheme shall be in accordance with the Regulations, 2018. Regulation 6.3 provides as under:-

“6.3 The criteria for promotions under Career Advancement Scheme laid down under these Regulations shall be effective from the date of notification of these Regulations. However, to avoid hardship to those faculty members who have already qualified or are likely to qualify shortly under the existing regulations, a choice may be given to them, for being considered for promotions under the existing Regulations. This option can be exercised only within three years from the date of notification of these Regulations.”

21. Regulations 6.3 (I) provides that a teacher who wishes to be considered for promotion under the CAS may submit in writing to the university/college, within three months in advance of the due date. Admittedly, in the instant matter the petitioner had submitted details as required under the Regulation, which is also brought on record along with the writ petition. Nowhere in the counter affidavit or in the instant appeal the BHU had denied the

submission of relevant documents, which were required to be considered under the CAS.

22. The Regulation 6.3 (II) provides as under:-

“II. The Selection Committee specifications as contained in Clauses 5.1 to 5.4 shall be applicable to all direct recruitments of faculty positions and equivalent cadres and Career Advancement promotions from Assistant Professor to Associate Professor, from Associate Professor to Professor, Professor to Senior Professor (in University) and for equivalent cadres.”

23. The Regulation 6.3 (III) provides that the CAS promotion from a lower stage to a higher stage of Assistant Professor shall be conducted through a “Screening-cum-Evaluation Committee” following the criteria laid down in Table 1 of Appendix II of the Regulations, 2018. Regulation 6.3 (V) provides that for the promotion under the CAS, the applicant teacher must be on the roll and in active service of the University/ College on the date of consideration by the Selection Committee.

24. In the instant matter much emphasis has been laid by the appellant-University that learned Single Judge has erred while directing for holding the Screening-cum-Evaluation Committee to consider the claim of the petitioner under CAS as admittedly he had already superannuated and not on the roll and in active service of the University and the Selection Committee could also not be held.

25. While deciding the instant issue, we have taken note of entire

Regulations, 2018 and the object of CAS, which is to accord promotion from lower stage to higher stage. Detailed tables of Appendix are also provided therein for assessment criteria and methodology (Ref. Regulation 6.1 of Regulations, 2018). The scheme is formulated to accord benefit to the teachers at large under CAS, in case they fulfill the benchmark and minimum grading specified in the relevant assessment criteria and methodology tables. We have also taken note of Regulation 6.3 (VI), wherein time is stipulated for the candidate to offer himself/ herself for assessment for promotion. The scheme conceptualised to give time bound upgradation to the teachers at large and no such leverage is given to the University or colleges not to proceed under CAS in time bound manner. Accordingly, in Regulation 6.3 (VI), it is provided that he/ she can do so three months before the due date. Thereafter, the University shall send a general circular twice a year inviting applications for CAS promotion from the eligible candidates. Regulation 6.3 (VI) sub-clause (i) provides that if a candidate applies for promotion on completion of the minimum eligibility period and is successful, the date of promotion shall be from that of minimum period of eligibility. Regulation 6.3 (VI) sub-clause (ii) provides that if, however, the candidate finds that he/ she would fulfill the CAS promotion criteria, as defined in Tables 1, 2, 4 and 5 of Appendix II at a later date and applies on that date and is successful, his/ her promotion shall be effected from that date of the candidate fulfilling the eligibility criteria. The welfare scheme under the CAS is also extended, which is writ large in Regulation 6.3 (VI) (iii), which provides that the candidate, who does not succeed in the first assessment, he/ she shall have to be re-assessed only after one year. When such a candidate succeeds in the eventual

assessment, his/ her promotion shall be deemed to be one year from the date of rejection.

26. In the instant matter, as per the scheme formulated under Regulation 6.3 of the Regulations, 2018, nothing is brought on record that the petitioner lacked any minimum eligibility criteria. We are surprised that on one hand the appellant heavily relied upon Regulation 6.3 (V), which deals with the situation, wherein for promotion under CAS the applicant teacher must be on roll and in active services of the University and on the other hand they themselves had deviated from the next mandate, which is given in detail in para 6.3 (VI), as enumerated above, that the said exercise is to be conducted by the University twice a year inviting applications for CAS promotion from the eligible candidates. The petitioner was eligible to be promoted under CAS w.e.f. 04.11.2021 and admittedly the said application was received on 05.01.2022 in the Selection and Assessment Cell of BHU. Finally he left the department after around 18 months i.e. 30.06.2023. Said situation cannot be appreciated that for vacuum period, wherein Executive Council was not available in the University, the Vice Chancellor was bereft of authority/ power not even to constitute Screening-cum-Evaluation Committee as per the mandate under Regulation 6.3 (III). More so it was not a fresh selection. Under the CAS, promotion is to be accorded purely on the basis of relevant assessment criteria and methodology as enumerated and detailed in the tables under the Regulations, 2018 and that too is to be moved by the candidate himself/ herself on required assessment criteria and methodology proforma.

27. We also take note of the submission and stand of the University taken in the counter affidavit, wherein it has acknowledged that the petitioner's application for promotion under CAS was received on 05.01.2022 and no Selection Committee for promotion under CAS had been constituted by the University since November, 2020 to December, 2023. We are constrained to observe that instead of rectifying or ameliorating the said situation, the University has come with a lame excuse that in absence of Executive Council the University had failed to hold any Screening-cum-Evaluation Committee and accordingly under CAS no benefits have been extended to the teachers since November, 2020. For ready reference, paragraphs 14, 15 & 16 of the counter affidavit filed by BHU in the writ petition before learned Single Judge are reproduced as under:-

“14. That as per record of the University, after completion of 3 years of service as Associate Professor i.e. on 04.11.2021, Dr. Bhaktiputra Rohtam (Petitioner) applied for the promotion on the post of Professor under Career Advancement Scheme (hereinafter referred as CAS). The application of Dr. Bhaktiputra Rohtam (Petitioner) was received on 05/01/2022, by the Recruitment and Assessment Cell, BHU. A true copy of application made by petitioner for promotion as Professor under CAS, dated 05/01/2022 is being filed herewith and marked as Annexure No.CA-4 to this counter affidavit.

15. That as per record of the University, no Selection Committee for promotion of the teachers under CAS has been conducted in the University after November 2020 to till date. It is further submitted that after expiry of tenure of

Executive Council in June 2021, till date. Executive Council of the University has not been constituted. The case of promotion of petitioner under CAS could not be considered by University due to non-availability of appointing authority i.e. Executive Council of the University.

16. That it is pertinent to mention her that, after expiration of tenure of Executive Council in June 2021, till date the new Executive Council of the University has not been constituted, due to which the process related to direct recruitment as well as promotion of teachers under CAS could not be considered.”

28. In this backdrop, we have no hesitation to hold that the objection so taken by the University in the light of Regulation 6.3 (V) cannot sustain on account of fault committed by the University itself in not even constituting the Screening-cum-Evaluation Committee for considering the CAS promotion from lower stage to higher stage as per criteria laid down in Table-1 of Appendix-II. In such situation, it can be safely inferred that for the vacuum, which was artificially created by the administration of BHU and specially the Vice Chancellor, the University is responsible.

29. Under the Regulations, 2018 detailed procedure is provided. Each and every University is to ensure to send general circular twice a year inviting applications for CAS promotion from eligible candidates. In absence of any material, the rightful claim of the petitioner cannot be denied taking solitary ground of Regulation 6.3 (V), whereas time bound consideration of claim has also been provided under Regulation 6.3 (VI).

30. It is well settled that when the action of the State or its instrumentalities is not as per the rules or regulations and supported by a statute, the Court must exercise its jurisdiction to declare such an act to be illegal and invalid. Hon'ble the Apex Court in **Sirsi Municipality Vs. Cecelia Kom Francis Tellis**⁸, observed that "the ratio is that the rules or the regulations are binding on the authorities." A Constitution Bench of Hon'ble Apex Court in **Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr.**⁹, has observed as under:-

"The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by Courts to invalidate actions in violation of rules and regulations. The existence of rules and regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory regulations in the cases under consideration give the employees a statutory status and impose restrictions on the employer and the employee with no option to vary the conditions.....In cases of statutory bodies there is no personal element whatsoever because of the impersonal character of statutory bodies.....the element of public employment or service and the support of statute require observance of rules and regulations. Failure to observe requirements by statutory bodies is enforced by courts by declaring (action) in violation of rules and regulations to be void. This Court has repeatedly observed that whenever a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and

compliance with rules and regulations imposed by statute."

31. Similar view has also been taken by Hon'ble Apex Court in **Ambica Quarry Works etc. Vs. State of Gujarat & Ors.**¹⁰ and **Commissioner of Police, Bombay Vs. Gordhandas Bhanji**¹¹. In both the cases, Hon'ble Apex Court relied upon the judgment of the House of Lord in **Julius Vs. Lord Bishop of Oxford**¹², wherein it was observed as under:-

"There may be something in the nature of thing empowered to be done, something in the object for which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so."

32. In this backdrop, we have carefully examined the Regulations, 2018 and we find that on one hand objection has been raised that the incumbent must be in service/ on roll and on the other hand there is strict provision that twice the reminder is to be given to all the employees for availing the benefit under the scheme in question. Admittedly, the petitioner was on role while moving application and thereafter continued to impart education in the faculty for more than 18 months. In absence of Executive Council of the University a plea was taken that no positive direction could be issued for convening the Screening Committee. In Commissioner of Police (supra), the Apex Court observed as under:-

"Public authorities cannot play fast and loose with the powers vested in

them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order.....An enabling power of this kind conferred for public reasons and for the public benefit is, in our opinion, coupled with a duty to exercise it when the circumstances so demand. It is a duty which cannot be shirked or shelved nor it be evaded, performance of it can be compelled."

33. The University has to act in accordance with Regulations, 2018, and the burden cannot be shifted upon the teacher, who was well deserving and fulfilling all the basic eligibility for upgradation and that so only to the extent of financial upgradation. Strict provisions are incorporated in the Regulations, 2018 with an object to evaluate the teachers, their credentials, their work publications etc. The provisions are in the nature of welfare and in case there is no cadre vacancy available on higher post, financial benefit can be accorded under CAS. The rightful claim cannot be denied merely on the ground that the petitioner was not on roll and therefore his claim could not sustain.

34. Learned Single Judge has also considered in detail the powers, which are vested in the Vice Chancellor under Section 7-C (5) of the BHU Act. Under the facts and circumstances, we are unable to accept the main objection of the University that in absence of Executive Council, the Screening-cum-Evaluation Committee could not be constituted and in the said period no promotion could be accorded under the CAS, which is only a financial upgradation. We are in respectful agreement with learned Single Judge while

directing the Vice Chancellor of the University to immediately constitute Screening-cum-Evaluation Committee.

35. Issue No. (ii)

Whether the petitioner-opposite party is entitled to be accorded re-employment as teacher in the Department as per Regulation 2.1 of the Regulations, 2018?

The second issue is having wide ramification. Regulations, 2018 has been issued under the UGC Act with an object for providing minimum qualification for appointment of teachers and other academic staff of the University and Colleges and measures for the maintenance of standards in Higher Education. Learned Senior Counsel for BHU has placed heavy reliance upon the Model Guidelines for re-employment of superannuated teachers, which was issued by the UGC on 15.02.2008. The Model Guidelines for Re-employment of Superannuated Teachers was formulated by UGC, considering the number of sanctioned teaching posts lying vacant for long period across the country, might be on account of various reasons like non-availability of funds, ban on recruitment, non-availability of suitable candidates, difficulties in filling posts earmarked for reserved category and problems brought out by litigation. In that eventuality institutions were required to have the services of contract appointees and teachers engaged on per lecture basis as well as of research students for performing required academic activities. As a result, such institutions were not able to maintain the quality and standards of their academic programmes and were unable to keep pace with the growing expectations from their stake holders particularly the students.

36. In this backdrop, UGC had also alternatively recommended (as early as in the year 1990) to take care of this problem by selective re-employment of superannuated teachers upto their reaching the age of 65 years. Later on, the Ministry of Human Resource Development vide notification dated 23.03.2007 has extended the age of superannuation to 65 years with a provision for re-employment upto 70 years in case of Centrally funded institutes. The said guidelines were framed by the UGC to facilitate the implementation of the recommendation in the higher education system in the country. The Model Guidelines provide a framework for the re-employment of superannuated teachers at Universities and Colleges in India.

37. Heavy reliance has been placed by the appellant-University on the letter dated 15.02.2008 of UGC by which it had approved the Model Guidelines, 2008, whereby eligibility criteria of the superannuated teachers for re-employment had to be considered. It has been heavily contended that still the Guidelines, 2008 has not been superseded or rescinded. The Guidelines provides that the category of superannuated teachers eligible for re-employment shall be Professor only in case of Universities and Professors, Readers and Lecturers (Selection Grade) only in the case of Colleges. The Guidelines also provide that the institution shall follow the following principles, while taking up the cases of superannuated teachers for re-employment:-

“a) There shall be vacancies of teachers at the University Department or at the College, remaining unfilled for at least one year.

b) The number of teachers to be re-employed in a University Department

and/ or College at any given time shall be limited to 50% of the vacancies identified as above.....”

38. In this backdrop, initially the University, while rejecting the claim of the petitioner-opposite party, had taken specific stand that in view of Model Byelaws, 2008 no such re-engagement could be accorded to the petitioner, who had superannuated as Associate Professor. The Model Guidelines, 2008 does not contemplate any such re-engagement of Associate Professor in the University, the same is only available in the College. The Model Guidelines, 2008 deals with the re-employment of superannuated teachers and detailed procedure is provided therein for tenure of appointment, selection criteria, re-employment procedure, emoluments and other privileges.

39. In the impugned judgment, learned Single Judge has failed to appreciate that the Model Guidelines was issued in different perspective for providing minimum qualification for appointment of teachers and other academic staff in the University and Colleges and the measures for the maintenance of standard in higher education. The Regulation 2.1 of Regulations, 2018 clearly provides:-

*“2.1 Subject to the availability of vacant positions and fitness, teachers such as Assistant Professor, Associate Professor, Professor and Senior Professor only, may be re-employed on contract appointment beyond the age of superannuation, as applicable to the concerned University, college and Institution, up to the age of seventy years. **Provided further that all such re-employment shall be strictly in***

accordance with the guidelines prescribed by the UGC, from time to time.”

(Emphasis supplied)

40. From the bare perusal of the aforesaid provision, it is clear that even though no exhaustive procedure is given under Regulations, 2018. It does provide that subject to the availability of vacant positions and fitness, teachers may be re-employed on contract appointment beyond the age of superannuation, as applicable to the concerned University, college and Institution, upto the age of seventy years and all such re-employment **shall be strictly in accordance with the guidelines prescribed by the UGC, from time to time.**

41. We find that learned Single Judge failed to distinguish the Guidelines, 2008, which have provided exhaustive procedure for re-employment of superannuated teachers, whereas Regulations, 2018 has been issued in different context. Nowhere learned Single Judge has dealt with the matter that in absence of any detailed guidelines, which method is to be adopted and by which mode/ method the superannuated teachers could be re-employed. Once the BHU has come up with a categorical stand that still the Model Guidelines, 2008 holds the field, we have no hesitation to hold that Regulations, 2018 deals with entirely different situation. The petitioner-opposite party had not placed any guidelines issued by UGC, which deals with re-employment of superannuated teachers. In such situation, the reasoning and observations made in this regard by learned Single Judge in para 45 of the impugned judgment cannot sustain.

42. This can be viewed from another aspect that in case Model Guidelines, 2008 framed by UGC goes, then there would remain no other detailed provisions in this regard. Once BHU has come with categorical stand that re-

employment is accorded in the light of the Guidelines, 2008, we have no hesitation to say that the reasons assigned by learned Single Judge in para 45 of the impugned judgment that in case there is conflict between Regulations and Guidelines framed thereunder, definitely Regulations would prevail, would not sustain. Under the facts and circumstances, as Guidelines, 2008 and Regulations, 2018 are distinct and deal with different situations, there is infact no conflict between the two.

CONCLUSION

43. Considering both the issues as answered above, we find that even otherwise in view of direction issued by learned Single Judge in Para 46 (I), wherein he had directed for constitution of Screening-cum-Evaluation Committee, in case the Committee extends benefit to the petitioner-opposite party under the CAS as Professor, it is always open for him to press an application for re-employment on a contract basis, if any vacancy is available in the Department.

44. In view of above, the impugned judgment and order dated 13.02.2024 stands modified. The special appeal stands partly **allowed.**

(2025) 4 ILRA 82

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 29.04.2025

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.

Writ A No. 1558 of 2025

Avesh

...Petitioner

Versus

U.P. Awas Evam Vikas Parishad Lko. & Ors.

...Respondents

Counsel

for

the

Petitioner:

Apoorva Tewari, Ajeet Singh, Girdhari Lal Yadav, Vivek Kumar

Counsel for the Respondents:

Rama Pati Shukla

A. Service Law – UP Awas Evam Vikas Parishad (Conditions of Service) Regulations, 1996 – Reg. 27(10) – Disciplinary proceeding – Enquiry was concluded – On being disagreement with the finding of enquiry report, the Disciplinary Authority directed for denovo enquiry – Permissibility – Held, Regulation 27 (10) (i) (a) of the Regulations, 1966 clearly mandates that the Disciplinary Authority may issue show cause notice on disagreement if he disagrees from the findings of the Enquiry Officer and may pass any appropriate punishment order as he deems fit and proper considering the allegations and reply of the charge employee but denovo enquiry has not been mandated – High Court quashed the punishment order directing the respondent to reinSt. the petition in service and pay the salary. (Para 15 and 18)

Writ petition allowed. (E-1)

List of Cases cited:-

1. K.R. Deb Vs The Collector of Central Excise, Shillong; 1971 (2) SCC 102
2. Kanailal Bera Vs U.O.I.& ors.; (2007) 11 SCC 517
3. U.O.I.& ors. Vs P. Thayagarajan; 1998 SUPP 3 SCR 114

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. Heard Sri Apoorva Tewari, learned counsel for the petitioner and Sri Rama Pati Shukla (R.P. Shukla), learned counsel for the opposite parties.

2. Sri R.P. Shukla, learned counsel for the opposite parties has filed counter affidavit, the same is taken on record and the rejoinder affidavit thereof has already been filed, which is on record.

3. By means of this writ petition, the petitioner has prayed for the following reliefs:-

"(a) to issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 21.01.2025 passed by the Respondent No.2 as contained in Annexure No.1 to the writ petition;

(b) to issue a writ, order or direction in the nature of certiorari to quash the impugned office order dated 22.02.2024 passed by the Respondent No.2, after summoning the original from the respondents;

(c) to issue□ a writ, order or direction in the nature of mandamus commanding the Respondent No.2 to reinstate the petitioner in service and to pay full salary to the petitioner for the period the petitioner remained under suspension."

4. So far as the Prayer No.(b) of the writ petition is concerned, Sri R.P. Shukla has informed, on the basis of instructions, that by means of order dated 22.02.2024 only this much has been directed that in the present matter setting aside the first enquiry report, the denovo enquiry be conducted against the petitioner considering the representation of the complainant dated 09.01.2024, which has been filed as Annexure No.CA-1 to the counter affidavit. Though copy of order dated 22.02.2024 has not been enclosed with the counter affidavit.

5. This Court on the first date of admission i.e. 06.02.2025 passed the following order:-

"Heard.

Under challenge is the order dated 21.01.2025, a copy of which is annexure 1 to the writ petition whereby the petitioner has been placed suspension. Also under challenge is the office order dated 22.02.2024.

Bereft of unnecessary details, the facts are that the petitioner claims to be working on the post of Executive Engineer. A complaint was submitted by a lady against the petitioner. In pursuance to the said complaint, the matter was referred to the committee as has been constituted in terms of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as "Act, 2013"). The committee submitted its report dated 16.05.2023, a copy of which is annexure 6 to the writ petition whereby the allegations were not proved against the petitioner.

Subsequently, with the change in the committee, another report dated 30.08.2023, a copy of which is annexure 8 to the writ petition was submitted whereby the charges sheet have been found to be proved.

Subsequent thereto, the petitioner was issued with a charge sheet dated 12.10.2023, a copy of which is annexure 9 to the writ petition. An inquiry report dated 23.01.2024, a copy of which is annexure 11 to the writ petition was submitted whereby the charges were not found proved against the petitioner.

Subsequently, vide order dated 30.04.2024, a copy of which is annexure 12 to the writ petition, upon a complaint being submitted by the complainant/lady, a de-novo inquiry was directed. As per the

averments made in paragraphh 21 of the writ petition, the inquiry report was submitted in which again the petitioner has been exonerated. It is also contended that by means of the order dated 22.02.2024, the first inquiry report had been set aside and a fresh inquiry had been directed.

Now, by means of the order impugned dated 21.01.2025, upon a complaint being submitted by the complainant levelling various allegations against the petitioner in pursuance to the earlier complaint submitted by the complainant, the petitioner has been placed under suspension and the inquiry officer has been required to submit a fresh inquiry report after inquiring into the charges.

Contention of learned counsel for the petitioner is that the service rules with which the petitioner is governed namely Uttar Pradesh Avas Evam Vikas Parishad (Condition of Service) Regulations, 1966 (hereinafter referred to as "Regulations, 1966) contains the complete procedure as prescribed under Rule 27 of the Regulations, 1966 which does not empower the disciplinary authority to direct for a fresh inquiry.

*Reliance has also been placed on the Constitution Bench judgment of the Apex Court in the case of **K.R. Deb Vs. Collector of Excise- (1971) 2 SCC 102** to contend that the Apex Court has held that the disciplinary authority cannot be permitted to hold one inquiry after the other till the charges are found proved against a delinquent employee.*

Sri Sampurna Nand Shukla, learned counsel for the respondents prays for and is granted a week's time to seek instructions in the matter and to indicate under which provisions of law more particularly considering the Regulations, 1966, has the disciplinary authority directed for a fresh inquiry into the

allegations as levelled against the petitioner.

List thereafter as fresh."

6. In the aforesaid order, the specific legal query of the Court was that as to whether there is any provision of law authorizing the Disciplinary Authority to direct a fresh denovo enquiry into the allegations wherein the enquiry has already been concluded.

7. In the counter affidavit, no such provision has been quoted or shown as neither any material nor any provision of law has been shown or enclosed to that effect.

8. Sri Apoorva Tewari has drawn attention of this Court towards Annexure No.2 of the writ petition, which is the U.P. Awas Evam Vikas Parishad (Conditions of Service) Regulations, 1996 (here-in-after referred to as the "Regulations, 1966").□ Regulation 27 of the Regulations, 1966 provided the procedure for imposing major penalty.□ Perusal thereof reveals that the Regulation 27 is a complete code in respect of the procedure for imposing major penalty. The relevant regulation for the present controversy would be□ Regulation 27 (10), which reads as under:-

"27 (10) (i) If the disciplinary authority, having regard to its findings on the charges is of the opinion that any of the penalties specified in clauses (e) to (g) of regulation 25 should be imposed it shall-

(a) furnish to the officer or servant a copy of the report of the inquiring authority and where the disciplinary authority is not the inquiring authority a statement of the findings together with brief reasons for disagreement, if any, with the findings of the inquiring authority; and

(b) give him a notice stating the action proposed to be taken in regard to him and calling upon him to submit within a specified time such representation as he may wish to make against the proposed action.

(ii) The disciplinary authority shall consider the representation, if any made by the officer or servant in response to the notice under clause (i) and determine what penalty, if any, should be imposed on the officer or servant and pass appropriate orders in the case."

9. The Regulation 27 (10) (i) (a) of the Regulations, 1996 categorically provides that in case of disagreement on the findings of the enquiry report, the Disciplinary Authority may issue a show cause notice on such disagreement seeking explanation from the charge employee but this provision does not permit the Disciplinary Authority to direct for denovo enquiry.

10. In the present case, even if the representation of the complainant dated 09.01.2024 is considered as a reason to direct for denovo enquiry, which should have not been directed after completion of the enquiry as the enquiry concluded on 23.01.2024. The Disciplinary Authority could have asked the Inquiry Officer to consider such representation dated 09.01.2024 of the complainant while concluding the enquiry proceedings but after conclusion of the enquiry proceedings on 23.01.2024 issuing direction for denovo enquiry along with suspension order dated 21.01.2025 is not permissible under law. The aforesaid submission of Sri Apoorva Tewari finds strength in view of the dictum of the Constitution Bench of Apex Court rendered in the case in re: **K.R. Deb vs. The Collector of Central Excise, Shillong**

reported in **1971 (2) SCC 102**. Paras-11, 12 & 13 thereof have been referred by Sri Tewari, which read as under:-

"11. Rule 15(1) of the Classification and Control Rules reads as follows:

"(1) Without prejudice to the provisions of the Public Servants (Inquiry) Act, 1950, no order imposing on a government servant any of the penalties specified in clauses (iv) to (vii) of Rule 13, shall be passed except after an inquiry, held as far as may be, in the manner hereinafter provided."

Clause (2) of Rule 15 provides for framing of charges and communication in writing to the government servant of these charges with the statement of allegations on which they are based, and it also provides for a written statement of defence. Under clause (3) the government servant is entitled to inspect and take extracts from such official records as he may specify, subject to certain exceptions. Under clause (4) on receipt of the written statement of defence the Disciplinary Authority may itself enquire into such of the charges as are not admitted, or if it considers it necessary so to do, appoint a Board of Inquiry or an Inquiring Officer for the purpose. Clause (7) provides that at the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons therefor. If in the opinion of such authority the proceedings of the inquiry establish charges different from those originally framed it may record findings on such charges provided that findings on such charges shall not be recorded unless the government servant has admitted the facts constituting them or has had an opportunity of defending himself against

them. Under clause (9) "the Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the inquiry and record its findings on each charge." Clause (10) provides for issue of show-cause notice.

12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.

13. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant."

11. In para-12 of the aforesaid judgment of the Constitution Bench of the Apex Court has held that if the findings of the Enquiry Officer are not appropriate, the Disciplinary Authority may ask the Enquiry Officer to record further evidence□ but denovo enquiry may not be directed.

12. The aforesaid judgment in re: K.R. Deb (supra) has been considered and

followed by the Apex Court in the subsequent judgment in re: **Kanailal Bera vs. Union of India and others** reported in (2007) 11 SCC 517. The relevant para-6 thereof reads as under:-

"6. The question as to whether a punishment of confinement to Civil Lines could have been directed or not should not detain us as we agree with the contention raised by learned counsel for the appellant that the purported order dated 5.4.1995 of the disciplinary authority was unsustainable in law. Rule 27 of the Central Reserve Police Force Rules 1955, inter alia, lays down the procedure for conducting a departmental inquiry. Once a disciplinary proceeding has been initiated, the same must be brought to its logical end meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges levelled against him or not. In a given situation further evidences may be directed to be adduced but the same would not mean that despite holding a delinquent officer to be partially guilty of the charges levelled against him another inquiry would be directed to be initiated on the self same charges which could not be proved in the first inquiry."

13. Per contra, Sri R.P. Shukla, learned counsel for the opposite parties has placed reliance of the judgment of the Apex Court rendered in re: **Union of India and others vs. P. Thayagarajan** reported in 1998 SUPP 3 SCR 114, wherein para-12 of the judgment in re: **K.R. Deb** (supra) has been referred and the Apex Court has held that the Disciplinary Authority may direct for denovo enquiry if he is satisfied that the Enquiry Office has not conducted enquiry strictly in accordance with law.□ The relevant portion of the aforesaid judgment reads as under:-

"A careful reading of this passage will make it clear that this court notices that if in a particular case where there has been no proper enquiry because of some serious defect having crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined, the Disciplinary Authority may ask the Inquiry Officer to record further evidence but that provision would not enable the Disciplinary Authority to set aside the previous enquiries on the ground that the report of the Enquiry Officer does not appeal to the Disciplinary Authority. In the present case the basis upon which the Disciplinary Authority set aside the enquiry is that the procedure adopted by the Enquiry Officer was contrary to the relevant rules and affects the rights of the parties and not that the report does not appeal to him. When important evidence, either to be relied upon by the department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand result in a miscarriage thereof. Therefore we are of the view that Rule 27(c) enables the Disciplinary Authority to record his findings on the report and to pass an appropriate order including ordering a de novo enquiry in a case of present nature."

14. Therefore, Sri Shukla has stated, on the basis of aforesaid judgment, that the Disciplinary Authority may direct for denovo enquiry.

15. Having heard learned counsel for the parties and having perused the material available on the record, at the very outset, I would like to advert the dictum of Apex Court in re: **Union of India and others vs. P. Thayagarajan** (supra) wherein the relevant service rules of the Central Reserve Police Force Rules, 1955

were under consideration and under Rule 27 (c) of the Rules, 1966, there was a mandate to the effect that the Disciplinary Authority may direct for denovo enquiry if he is not satisfied with the findings of the Enquiry Officer,□ but in the present case, there is no such provision, rather, Regulation 27 (10) (i) (a) of the Regulations, 1966 clearly mandates that the Disciplinary Authority may issue show cause notice on disagreement if he disagrees from the findings of the Enquiry Officer and may pass any appropriate punishment order as he deems fit and proper considering the allegations and reply of the charge employee but denovo enquiry has not been mandated. Therefore, the judgment in re: *Union of India and others vs. P. Thayagarajan (supra)* would not be applicable in the present case. Besides, the judgment of the Constitution Bench of the Apex Court would have binding effect over the judgment of the Apex Court having quorum of two Hon'ble judges, and the aforesaid Constitution Bench judgment has been followed by the Apex Court in subsequent judgment in re: *Kanailal Bera (supra)*.

16. Therefore, in the present case, the judgment of the Constitution Bench of the Apex Court rendered in re: *K.R. Deb (supra)* would be applicable.

17. Since there is no provisions of law authorizing the Disciplinary Authority to direct for denovo enquiry, therefore, the impugned order dated 21.01.2025 (Annexure No.1) is patently illegal and uncalled for. Besides, if denovo enquiry may not be directed in the present case so placing the petitioner under suspension pending that denovo enquiry would also be unwarranted and uncalled for. Though the order dated 22.02.2024 has not been

produced or filed by the learned counsel for the opposite parties, but as per submission of Sri Shukla that by means of the aforesaid order the decision for conducting denovo enquiry had been taken by the Disciplinary Authority, setting aside the first enquiry report, which is not permissible under law, therefore, that impugned order dated 22.02.2024 is also liable to be set aside.

18. Having considered the submissions of learned counsel for the parties and the case laws so cited, I find that the impugned order dated 21.01.2025 (Annexure No.1) passed by the opposite party No.1 and the order dated 22.02.2024 passed by the opposite party No.2 are hereby set aside/ quashed. The opposite party No.2 is directed to reinstate the petitioner in service and pay him salary as and when the same falls due as well as arrears of salary during the period of suspension.

19. It is needless to say that the Disciplinary Authority may pass appropriate order strictly in accordance with law and the Regulation 27 of the Regulations, 1966, if it is so required, in view of the facts and circumstances of the present case and the allegations so considered by him, but such order may pass with expedition, strictly in accordance with law.

20. In view of the aforesaid terms, the writ petition is *allowed*.

21. No order as to cost.
(C.M. Application (IA) No.04 of 2025)

22. Heard learned counsel for the applicant on the application for impleadment.

23. The applicant is a complainant, filed complaint against the petitioner and while considering the arguments of learned counsel for the parties such fact has been considered and the writ petition has been allowed giving liberty to the Disciplinary Authority to take appropriate steps strictly in accordance with law, to be more precise, under Regulation 27 of the Regulations, 1966, if it is so needed, then there is no need to allow this application.

24. Accordingly, the instant application is *rejected*.

**(2025) 4 ILRA 89
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.04.2025
BEFORE**

THE HON'BLE AJAY BHANOT, J.

Writ A No. 1680 of 2025

Chanchal Sonkar ...Petitioner
Versus
Chairman, SBI & Ors. ...Respondents

Counsel for the Petitioner:
Ajay Kumar Singh, Ashish Kumar Singh

Counsel for the Respondents: Satish Chaturvedi

Civil Law - Scheme for Compassionate Appointments or Payment of Ex Gratia Financial Relief to Dependents of Deceased Employees on Compassionate Grounds, 2022 - Clause 5 - Constitution of India, 1950 - Articles 12, 14 to 16 - Petitioner's husband, an employee of respondent Bank, passed away on 17.11.2022 - His last drawn gross salary was ₹1,18,800.14 - Claim of petitioner for grant of appointment on compassionate grounds, declined on ground that compassionate appointment is allowed if family's monthly income is less than 75%

of deceased employee's last drawn salary - Clause 5 of said scheme outlines how monthly family income is assessed to determine financial status after employee's death - Impugned order records family's income from all sources - Calculated income exceeds 75% of deceased employee's last drawn salary, indicating family was not in financial distress - Petitioner was rightly found ineligible for compassionate appointment under applicable scheme. (Para 2, 3, 21, 25)

Petition dismissed. (E-13)

List of Cases cited:

1. Umesh Kumar Nagpal Vs St. of Har., 1994 (4) SCC 138, (Para 2)
2. Director of Education (Secondary) Vs Pushpendra Kumar, 1998 (5) SCC 192, (Para 8)
3. Roopam Mishra Vs St. of U.P. & ors., Writ A No. 15512 of 2019, (Para 16)
4. Director of Treasuries in Karnataka & anr. Vs Somyashree, Civil Appeal No. 5122 of 2021, (Para 7)
5. Ipsita Chakrabarti Vs St. of W. B., 2018 (2) Cal LT 177 (HC)
6. Sri Bijon Mukherjee Vs The St. of W. B. & ors., 2018 (3) Cal LT 136 (HC), (Para 26)
7. Ankita Saha & anr. Vs The St. of W.B. & ors., WPA No. 12287 of 2019 (Calcutta High Court)

(Delivered by Hon'ble Ajay Bhanot, J.)

1. By the impugned order date 24.07.2023, the competent authority has rejected the claim of the petitioner for grant of appointment on compassionate ground.
2. The admitted facts of the case are these. The husband of the petitioner was an employee in the respondent Bank.

He died on 17.11.2022. The last drawn gross salary of the deceased was 1,18,800.14/-

3. By the impugned order dated 24.07.2023 the claim of the petitioner for grant of appointment on compassionate grounds has been declined on the following footing:

"7.3 Financial Condition of the family:

The family is indigent and deserves immediate assistance for relief from financial destitution. The following guidelines should be taken into account for determining the financial condition/eligibility for compassionate appointment of dependents of the family:

Compassionate Appointment will be sanctioned to the dependents of the deceased/premature retired employees where the monthly income of the family will be less than 75% of the last drawn gross salary."

4. Heard Sri Raghav Arora, learned counsel for the petitioner and Sri Pankaj Srivastava, learned counsel for the respondent.

5. Appointments to public posts, government services and to various instrumentalities of the State within the meaning of Article 12 of the Constitution of India are governed and regulated by comprehensive provisions contained in the Constitution. The constitutional scheme envisages an open recruitment and a transparent procedure which enables maximum participation from all the eligible segments of the citizenry at large. The final appointments are made after a fair selection based on competitive merit. While making the said appointments the reservation

policy or affirmative action under the Constitution for representation and empowerment of backward classes, SCs/STs and other sections of the society identified as per law have to be duly adhered to. The recruitment and appointment to government services and government undertakings were examined by constitutional Courts in the context of Articles 14, 15 and 16 of the Constitution of India. Holdings of the constitutional Courts have irretrievably entrenched the aforesaid modes and procedures for appointments to posts in the government and Article 12 instrumentalities in the body of the constitutional law.

6. The compassionate ground appointments to the contrary are not made through a transparent and public process of recruitment after inviting the applications from the open market. The appointments on compassionate ground entail deviation from regular processes of recruitment and other relaxations as well. Appointments under the Dying-in-Harness Rules, 1974, are an exception to the aforesaid constitutionally mandated scheme for appointments to posts in the government and in government undertakings. Compassionate appointments emanate from specific service rules holding the field and rationalized by service law jurisprudence evolved by Constitutional Courts.

7. The appointments on compassionate ground passed the test of constitutional validity by a slender margin. The sole justification to make compassionate ground appointments is that the dependants of the deceased employee face unforeseen financial destitution after the death of the latter and need urgent succour. Compassionate appointments are provided to the family to immediately tide

over the sudden financial crisis so caused by the death of the employee. This feature alone constituted the kin of a deceased employee into one class and on this sole footing the rationale of compassionate ground appointments was justified by Constitutional Courts.

8. The sole purpose of grant of appointment on compassionate ground is to enable the family to tide over the immediate financial crises resulting from the death of the sole earning member of the family.

9. The discussion has the benefit of authorities in point.

10. Supreme Court in **Umesh Kumar Nagpal Vs. State of Haryana** explained the purpose of compassionate in following terms:

"2.The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In

such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the

family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

11. A similar sentiment was echoed by the Supreme Court in **Director of Education (Secondary) v. Pushpendra Kumar**² :

"8.The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would

have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee....."

12. This Court in **Roopam Mishra v. State of U.P. and 4 others**³ held as under:

"16. The purpose of compassionate appointments provides their justification. The death of a bread winner forces the family of the deceased into penury. The immediacy of the financial crisis creates the requirement for urgent redressal. The concept of compassionate appointments is created only to enable the bereaved family to tide over the immediate financial crisis".

13. The need to make appointments on compassionate grounds in conformity with the Rules governing the grant of such appointments was emphasized by the Supreme Court in **the Director of Treasuries in Karnataka & Anr. v. Somyashree**⁴ by summarizing the law as follows:

"7.....(i) that the compassionate appointment is an exception to the general rule;

(ii) that no aspirant has a right to compassionate appointment;

(iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

(iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;

(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.”

14. Similarly, the necessity to strictly adhere to rules relating to compassionate grounds was succinctly summarized by the Calcutta High Court in **Ipsita Chakrabarti v. State of West Bengal**⁵. **Ipsita Chakrabarti (supra)** upon consideration of holdings of various Constitutional Courts held:

“(a) Appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process.

(b) The right of a dependent of an employee who died in harness for compassionate appointment is based on the scheme, executive instructions, rules etc. framed by the employer and there is no right to claim compassionate appointment on any other ground apart from the above scheme conferred by the employer.

(c) Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground it should be kept confined only to the purpose it seems to achieve, the idea being not to provide for endless compassion.

(d) Compassionate appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family.”

15. Furthermore, the Calcutta High Court in **Sri Bijon Mukherjee v. The State of West Bengal and others**⁶ again stated what is by now the settled position of law that the appointments on compassionate ground must be made only in conformity with the specific rules applicable to the employee :

“26. After observing the ratio and the legal positions contended by the Counsels appearing on behalf of the parties as well as the precedents examined above, I am persuaded to opine that appointment on compassionate grounds seeks to relieve the immediate financial hardship faced by the dependants of the deceased. It acts as an exception to Articles 14 and 16 of the Constitution as the defendant are given preferential appointment ahead of other equally meritorious candidates similarly placed and hence it cannot be claimed as a right. With the object of appointment on compassionate grounds in mind, it is palpably clear to me that this appointment must be done in accordance with the rules for such appointment. The dependant seeking such appointment must be eligible for such consideration and facing financial hardship to the extent delineated by the rules.”

16. **Ipsita Chakrabarti (supra)** and **Sri Bijon Mukherjee (supra)** were followed by the Calcutta High Court in **Ankita Saha and Anr. v. The State of West Bengal and Ors**⁷

17. The concept of compassionate ground appointments is a welfare measure taken by a model employer. However, there is a caution. An overliberal interpretation of the right to the appointments on compassionate ground will open a floodgate of such appointments and turn

them into a veritable source of recruitment. An unjustified generous approach in compassionate ground which is not consistent with the applicable service rules will confer benefit to underserving and ineligible candidates, and simultaneously deny the rights and lawful claims of eligible and meritorious candidates from getting appointment to government posts. The merit is not to be assumed from parentage but has to be achieved through open competition. Treating compassionate ground appointments as an unconditional and vested right and making it a source of recruitment will shear the thin veil of legality which protects such appointments from the vice of unconstitutionality. The very concept of compassionate ground will then be exposed to the wrath of Articles 14, 15, 16 of the Constitution of India.

18. The purpose of grant of compassionate ground appointments can be subverted and their constitutionality can be saved only by strict compliance of the rules governing the grant of compassionate ground appointments.

19. The preceding discussion discloses that determination of the financial condition or the nature of financial crises being faced by the family after the death of employee is thus a mandatory pre condition for appointment on compassionate grounds.

20. Financial penury has not been defined in the holdings of various constitutional courts. The same has to be examined in light of applicable provisions of law. The compassionate ground appointments are not intended to create a windfall for the kin of the deceased. The employer is only required to assess the financial condition which keeps the kitchen fire burning. Further the aforesaid

provisions are liable to be strictly adhered to in light of the cases in point discussed earlier.

21. The relevant rules which govern and regulate the appointment on compassionate grounds in the respondent Bank are the Scheme for Compassionate Appointments of Payment of Ex gratia Financial Relief to dependants of deceased employees on Compassionate Grounds, 2022. Clause 5 of the aforesaid scheme provides for the manner of determination of the monthly family income to determine the financial status of the family of the deceased after the death of the latter. The provision being relevant is extracted hereinunder:

"5.1. Monthly Family Income:

The application for Compassionate Appointment/Ex-Gratia financial relief shall be considered only if the family is indigent and deserves immediate assistance for relief from financial destitution. The condition of the family shall be held indigent only if the monthly income of the family from all the sources is

a) Less than 50% of the last drawn Gross Salary of the deceased, where the dependent family is survived by only the spouse and/or one child.

b) Less than 60% of the last drawn Gross Salary of the deceased, in all other cases

If the total monthly income of the family arrived at, is less than 50%/60% of the last drawn Gross salary of the deceased employee, Compassionate Appointment or Ex-gratia financial relief may be granted, subject to fulfillment of other eligibility criteria as detailed herein."

(emphasis supplied)

22. Clause 5 of the said scheme provides for a sound and a rationale criteria for determining the financial condition of the family of the deceased and to make a finding on eligibility for grant of compassionate appointment.

23. This exercise has been undertaken by the Bank. The phrase “monthly income of the family from all the” sources includes financial benefits given to the family of the deceased, the family pension and assets from where income can accrue. Total income of the family as calculated by the bank in accordance with Rule 5.1 is as under:

Name of the deceased	
— Late Dharmendra Kumar	
Name and relation of the eligible dependant for compassionate appointment of deceased employee	— Smt. Chanchal Sonkar
Computation of Monthly income	
I. Monthly Income of the family	
A. Terminal Benefits	
— 59,43,651/-	
1. Provident Fund	-
28,37,574.00	
2. Gratuity	-
12,88,350.00	
3. Leave Encashment	
- 9,50,401.20	
4. NPS Scheme	-
NIL	
Sub Total (A)	-
50,76,325.12	
B. Liability	
Sub Total	—
50,76,325.12/-	
C. Gross corpus available (A-B)	
- 50,76,325.12/-	
D. Investments (LIC/other polcies)	
-1,04,42,704/-	

E. Net corpus available (C+D)

-1,55,19,029.12/-

F. Total monthly income of the family from all sources

i. Monthly notional interest at the Bank's maximum term deposit rate applicable to public on 80% amount of the net corpus available (E) @ 6.10 (Applicable ROI) – 63,110.71/-

2. Family Pension – 36445.00/-

G. Total monthly income of the family (1+2+3+4) – 99,555.71/-

H. (i) Last drawn Gross salary of Late Dharmendra Kumar(sic) – 1,18,800.14/-

(ii) Last drawn Defence pension (if applicable) – NA

Total of (I) + (ii)
– 1,18,800.14/-

I. 75% of last drawn Gross salary
– 89,100.10/-

24. The aforesaid chart appended to the writ petition has not been disputed by the petitioner.

25. The impugned order clearly discloses the income of the family of the deceased from various sources as contemplated in Clause 5 of the compassionate ground scheme cited earlier. The income of the family of the deceased so calculated is more than 60% of the last salary drawn by the deceased. In fact as per the aforesaid calculations, the family income of the petitioner is more than 75% of the last salary drawn. The income of the family so determined establishes that the family does not face financial destitution as a result of the death of the employee. The respondents in the impugned order have been thus correctly found that the petitioner does not fulfil the criteria for grant of compassionate ground appointment as per

the provisions of the compassionate ground appointment scheme applicable to the bank.

26. In wake of the preceding discussion, there is no infirmity in the impugned order. The writ petition is liable to be dismissed and is dismissed.

(2025) 4 ILRA 96
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 11.04.2025
BEFORE
THE HON'BLE BRIJ RAJ SINGH, J.

Writ A No. 1717 of 2000

Hanumant Lal ...**Petitioner**
Versus
State of U.P. & Ors. ...**Respondents**

Counsel for the Petitioner:

Anil Kumar, Anurag Srivastava, Illegible,
 Ravindra Kumar Ravi, Som Kartik Shukla

Counsel for the Respondents:

C.S.C., Dr. L.P. Mishra

Civil Law - Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981 - Clause 3 - Ad hoc appointment - Salary payment - Vacancy for Assistant Teacher (Hindi), L.T. Grade arose due to promotion of one teacher - As per Regulations under Act, 1921, required qualification is B.A. with Hindi and Sanskrit - Petitioner holds B.A. in Hindi, Economics, and Social Science, and lacks mandatory qualification of Sanskrit - Petitioner is not eligible for said post - As per Serial No. 55 of Appendix-A of relevant Regulations, essential qualification for post of Assistant Teacher (Social Science), L.T. Grade, was Bachelor's Degree (B.A.) with at least two subjects out of four namely History, Political Science, Geography and Economics - Petitioner has pursued B.A. with only one subject i.e Economics from prescribed list - Thus petitioner does not

fulfill minimum eligibility criteria for appointment - Therefore, action of authorities in not permitting petitioner to continue or in withholding salary cannot be said to suffer from any legal infirmity. (Para 8, 9)

Petition dismissed. (E-13)

(Delivered by Hon'ble Brij Raj Singh, J.)

1. This writ petition has been filed for the following reliefs:-

"1) To issue a writ order or direction in the nature of mandamus thereby commanding the opposite party no.3 to make the payment of salary to the petitioner on the post of Assistant Teacher in L.T. Grade on the basis of ad hoc appointment of the petitioner in L.T. Grade as per the provisions of Second Removal of Difficulties (Order), 1981 i.e. with effect from 1.9.97

11) To issue a writ order or direction in the nature of mandamus thereby commanding the opposite party no.3 to accord his sanction/approval for payment of salary to the petitioner as per provisions of sub-clause (iii) and Clause (iv) respectively of Clause-3 of the Removal of Difficulties (Second) Order 1981 and to pay the same in the form of his current salary as and when the same falls due during the pendency and final disposal of present writ petition

III) To issue a writ order or direction in the nature of mandamus thereby directing the opposite parties to dispose of the petitioner's representation as contained in Annexure-11 to the writ petition."

2. The facts giving rise to the present writ petition are that Bappa Srinarain Vocational Inter College,

Charbagh, Lucknow (for short “College”) is a recognized Intermediate College by the Board of high School and Intermediate Education, U.P., Allahabad and is governed by the provisions of Uttar Pradesh Intermediate Education Act, 1921 and the Regulations framed thereunder as also by the provisions of Uttar Pradesh High School and Intermediate Colleges (Payment of Salaries of Teacher and other Employees) Act, 1971. A short term vacancy in Assistant Teacher (Hindi), L.T. Grade occurred due to promotion of one Chandramauli Shukla on the post of Lecturer (Hindi). The committee of management adopted the section procedure in view of the provisions of The Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981 and the petitioner was appointed on 27.08.1997 after following the due procedure. The petitioner joined the services as Assistant Teacher (Hindi), L.T. Grade on 01.09.1997. Thereafter, papers were forwarded to the District Inspector of Schools, Lucknow by the committee of management for approval and payment of salary on 02.07.1998. When the salary was not paid to the petitioner, he filed the present writ petition with a prayer to make payment of salary to him. This Court vide order dated 07.04.2000 passed an interim order to the effect that the District Inspector of Schools, Lucknow will pay salary to the petitioner. It is, however, admitted that till date the interim order passed by this Court is not complied with. The writ petition has remained pending since 2000 and is ripe for hearing as the pleadings have been exchanged.

3. Learned counsel for the petitioner has submitted that though the vacancy was short term i.e. Assistant

Teacher (Hindi), L.T. Grade, but while the requisition sent for making appointment, the committee of management could have treated the subject as Social Science and the petitioner being Graduate in B.A. with Social Science as one of the subject, could have been appointed on the post in question. He has further submitted that the committee of management can change the vacancy as per subject-wise requirement. Learned counsel has submitted that petitioner has been appointed after following the due procedure and thereafter requisite papers along with relevant documents have been forwarded to the District Inspector of Schools, Lucknow for approval and payment of salary, but the opposite parties were adamant not to pay salary to the petitioner and in spite of the interim order being passed by this Court way back in 2000, the petitioner is neither allowed to work nor paid any salary.

4. Learned Standing Counsel has filed counter affidavit on 04.07.2000 along with an application for vacation of the interim order dated 07.04.2000, in which a specific stand has been taken that petitioner was appointed without following the due procedure. Appointment letter was issued by the Manager on 27.08.1997 and joining was also given to the petitioner on 01.09.1997, but the papers for approval of payment of salary was sent on 02.07.1998 i.e. after one year.

5. Learned Standing Counsel has also drawn the attention of the Court towards Regulations under the U.P., Intermediate Education Act, 1921 and more particularly Appendix-A of the said Regulations, which deals with the minimum qualification for appointment of Head Master and Teachers in private recognized Higher Secondary Schools. In

paragraph-7 of the supplementary counter affidavit filed on 04.05.2001, a specific stand has been taken that petitioner has been appointed as Assistant Teacher (Social Science), L.T. Grade, but he is not qualified as per Serial No.55 of Appendix-A of the aforesaid Regulations, which provides that for appointment of Assistant Teacher (Social Science), L.T. Grade, a candidate must have possess at least two subjects in B.A. out of the four subjects i.e. History, Political Science, Geography and Economics. However, application of the petitioner contained as Annexure-3 to the writ petition indicates that he possessed B.A. qualification with subjects Hindi, Economics and Social Science. Thus, out of the four subjects, the petitioner has passed only one subject i.e. Economics, therefore, it can safely inferred that he does not possess the essential qualification as mentioned at Serial No.55 of Appendix-A of the Regulations to be appointed on the post of Assistant Teacher (Social Science), L.T. Grade. Further, in paragraph-9 of the supplementary counter affidavit, it has been stated that short term vacancy on the post of Assistant Teacher (Hindi), L.T. Grade occurred on the promotion of Chandramauli Shukla to the post of Lecturer (Hindi), for which the essential qualification as prescribed at Serial No.2 of Appendix-A of the Regulations is B.A. with subjects Hindi and Sanskrit, whereas the petitioner does not possess the qualification of B.A. with Sanskrit as he possessed B.A. with Hindi, Economics and Social Science.

6. Learned counsel for the committee of management has filed counter affidavit and in paragraph-10, a stand has been taken that appointment letter of the petitioner contained as Annexure-6 to the writ petition has been issued by the

Assistant Manager, Ram Chandra Mishra on 27.07.1997 and he was not the Manager of the committee of management at that point of time. It is further pointed out that the committee of management did not take any decision to appoint the petitioner as Assistant Teacher (Social Science), L.T. Grade. It is further mentioned in paragraph-10 of the counter affidavit that the committee of management did not resolve at any point of time to appoint the petitioner as Assistant Teacher (Social Science), L.T. Grade and all the selection proceedings took place in collusion of Principal with Ram Chandra Mishra, Assistant Manager.

7. Heard Som Kartik Shukla, learned counsel for the petitioner, Sri Sudhir Kumar Singh, learned Standing Counsel and none appears for the committee of management and perused the record.

8. After going through the record, it appears that short term vacancy of Assistant Teacher (Hindi), L.T. Grade arose on the promotion of one Chandramauli Shukla on the post of Lecturer (Hindi), therefore, vacancy is to be filled up according to the existing Rules and Regulations. The petitioner passed B.A. Degree with subjects Hindi, Economics and Social Science, whereas the essential qualification as prescribed at Serial No.2 of Appendix-A of the Regulations is B.A. with subjects Hindi and Sanskrit and the petitioner did not pass B.A. Degree with Sanskrit, therefore, the petitioner is essentially lacking the prescribed qualification to be appointed on the post in question.

9. There is also force in the argument of learned Standing Counsel that

Serial No.55 of Appendix-A of the Regulations, which is also relevant to be considered, prescribed that out of four subjects i.e. History, Political Science, Geography and Economics, an Assistant Teacher (Social Science), L.T. Grade must possess B.A. Degree with two subjects out of the aforesaid four subjects. However, the record shows that petitioner has only possessed the B.A. Degree with Economics out of the aforesaid four subjects. Thus, the petitioner was not essentially qualified to be appointed as Assistant Teacher (Social Science), L.T. Grade and there is no error apparent in the action of the opposite parties for not allowing the petitioner to work or to pay salary to him.

10. In view of the aforesaid discussion, I find no good ground to interfere in the writ petition while exercising extra ordinary jurisdiction under Article 226 of the Constitution of India.

11. Writ petition is devoid of merit. It is accordingly *dismissed*.

(2025) 4 ILRA 99
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 30.04.2025
BEFORE
THE HON'BLE RAJESH SINGH CHAUHAN, J.

Writ A No. 2603 of 2025

**C/M Ram Bharose Maikulal Inter College,
 Lko. ...Petitioner**
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
 Mahendra Bahadur Singh, Vikas Singh

Counsel for the Respondents:
 C.S.C., Hari Prasad Gupta, Hari Ram Gupta

Civil Law - U.P. Intermediate Education Act, 1921 - Section 16-G - By order dated 11.02.2025 DIOS disapproved suspension order dated 04.01.2025 issued against opposite party no. 5 - As per law, suspension order remains valid for a maximum of 60 days unless approved by DIOS within that period - In instant case, opposite party no. 5 was suspended on 04.01.2025 - On 09.01.2025, DIOS directed that he continue to function as Officiating Principal during suspension, pending a decision - No provision under relevant Act, 2021, allowing suspended teacher to perform official duties during suspension - Order dated 09.01.2025 passed in violation of legal provisions - Petitioner objected to order dated 09.01.2025 by filing representation on 11.01.2025 - DIOS withdrew said order on 20.01.2025 - Impugned order shows opposite party no. 5 was heard, but no such opportunity was given to petitioner, matter remanded to pass fresh order, after providing opportunity of hearing to concerned parties. (Para 2, 7, 8, 12, 13)

Petition allowed. (E-13)

List of Cases cited:

1. Satya Pal Singh Vs St. of U.P. & ors., 2006 SCC OnLine All 602, (Para 12)
2. Committee of Management, Maharajganj Inter College & anr. Vs District Inspector of Schools, Maharajganj & anr., 1999, SCC OnLine All 693, (Para 4)
3. C/M of Janta Inter College & anr. Vs St. of U.P. & ors., Writ-A No.909 of 2020, order dated 06.05.2020, (Para 20)
4. Committee of Management, D.P.S.N. Inter College, Kanpur & anr. Vs St. of U.P. & ors., 2018 (2) ADJ 840

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. Heard Sri M.B. Singh, learned counsel for the petitioner, Sri Vivek Shukla, learned Additional Chief Standing Counsel for opposite party nos. 1, 2, 3 and 6 and Sri H.P. Gupta, learned counsel for the opposite party no. 5.

2. Application for dismissal of the writ petition filed by Sri Hari Prasad Gupta, learned counsel for the opposite party no. 5 and application for taking short rejoinder affidavit filed by Sri Vikas Singh, learned counsel for the petitioner is taken on record.

3. Since, DIOS has been impleaded by name as opposite party no. 4, and no notice was issued to him, therefore, no one has appeared on behalf of opposite party no. 4, though, in the present writ petition malafide has been alleged against the opposite party no. 4 vide paragraph no. 29 but without adverting to those allegations of malafide, I am testing the impugned order only in the light of Section 16-G of the U.P. Intermediate Education Act, 1921 (hereinafter referred as 'Act, 1921') and also in the light of the judgements rendered by this court interpreting the relevant provisions of Section 16-G of the Act 1921. By means of impugned order dated 11.02.2025, the DIOS, Lucknow has disapproved the suspension order dated 04.01.2025 passed against the opposite party no. 5. The relevant provision for the controversy in question would be sub-Section 7 and 8 of Section 16- G of the Act, 1921, which reads as under:-

"(7) No such order of suspension shall, unless approved in writing by the Inspector, remain in force more than sixty days from the date of commencement of the Uttar Pradesh Secondary Education Laws (Amendment) Act, 1975, or as the case may

be, from the date of such order, and the order of the Inspector shall be final and shall not be questioned in any Court.

(8) If, at any time, the Inspector is satisfied that disciplinary proceedings against the Head of Institution or teacher are being delayed, for no fault of the Head of Institution or the teacher, the Inspector may, after affording opportunity to the Management to make representation revoke an order of suspension passed under this section."

4. The decisions of the constitutional Courts clearly mandate that if any Teacher or Head of the institution, as the case may be, has been placed under suspension, it shall be approved or disapproved by the DIOS within time frame and if the suspension order is disapproved, an opportunity of hearing should be given to the Committee of Management and the charged employee, failing which that disapproval order would vitiate. This Court in para 12 in re:- **Satya Pal Singh Vs. State of U.P. and others, 2006 SCC OnLine All 602** has observed as under:-

"12. Under Clause (5) of section 16-G, the Committee of Management could suspend a teacher or a Head of the Institution on certain grounds mentioned therein. The order was forwarded under Clause (6) along with the papers prescribed under Regulation 39 of Chapter-III. These papers were required to be considered and the Inspector was required to apply his mind and was required to give the reasons while according approval or disapproval of the suspension order. In the present case, no reasons have been recorded and, therefore, it is clear, that the Inspector did not apply his mind to the facts and the circumstances

of the case. There is another aspect of the matter. The Committee of Management while issuing the suspension order is not required to give an opportunity of hearing to the teacher or the head of the institution. Therefore, at the stage when the order of suspension is being approved and the Inspector is required to apply his mind, it is at that stage, a bare minimum opportunity of hearing is required to be given to the suspended teacher or the Principal, as the case may be. This is the bare minimum requirement of the principles of natural justice, which is required to be given at that time, by the Inspector, while approving or disapproving the suspension order. This is on account of the fact, that the papers forwarded by the Committee of Management under Regulation 39 of Chapter III may contain the reasons, which are only one sided. The other side of the coin should also be considered and that is when the suspended teacher or the Principal would come into the picture. Consequently, in the opinion of the Court, the Inspector is also required to give an opportunity of hearing and hear the version of the suspended teacher or the principal before approving or disapproving the order of suspension. In the present case, no opportunity of hearing was provided to the petitioner."

5. Division Bench of this Court in para 4 in re:- **Committee of Management, Maharajganj Inter College and another Vs. District Inspector of Schools, Maharajganj and another, 1999, SCC OnLine All 693** has observed as under:-

"4. Having heard learned counsel for the parties, we are of the view that the order passed by the District Inspector of Schools cannot be sustained in law. A Division Bench of this Court in Committee

of Management S.M.R.K. Inter College v. District Inspector of Schools, Ballia, has clearly held that order approving or disapproving resolution of Committee of Management to suspend Principal or teacher must contain reasons and further that absence of reasons would vitiate the order. Admittedly, the District Inspector of Schools did not address himself to relevant papers forwarded alongwith the letter seeking approval of the suspension and declined to accord approval on consideration of the representation made by the respondent-teacher. Section 16-G(5) of the U.P. Intermediate Education Act, 1921 provides that no head of institution or teacher shall be suspended by the Management, unless in the opinion of the Management-(a) the charges against him are serious enough to merit his dismissal or removal or reduction in rank; or (b) his continuance in office is likely to hamper or prejudice the conduct of the disciplinary proceedings against him; or (c) any criminal case for an offence involving criminal turpitude against him is under investigation, inquiry or trial. Sub-section (6) requires that where any head of the institution or teacher is suspended by the Committee of Management, it shall be reported to the Inspector within a period stipulated therein and it further provides that the report shall contain such particulars as may be prescribed and be accompanied by all relevant documents. Regulation 39 of Chapter III of the Act provides the particulars, which the report regarding suspension of the head of institution or of the teacher to be submitted to the Inspector is to contain and also provides the documents, which are to accompany the report. Sub-section (7) of Section 16 clearly provides that no order of suspension shall, unless approved in writing by the Inspector, remain in force

for more than 60 days. Section 16-G empowers the District Inspector of Schools to revoke an order of suspension after affording opportunity to the management in case he is satisfied that the disciplinary proceedings against the head of the institution or the teacher are being delayed for no fault of the concerned teacher. These provisions clearly demonstrate that approval or disapproval of suspension of a teacher including the Principal is not an empty formality. The Inspector is required to address himself to the grounds on which the order of suspension is founded as also the documents, if any, prima facie supporting the charges levelled against the Head of the Institution or the teacher, as the case may be. In case the charges of the nature referred to in sub-section (5) of Section 16-G are prima facie supported by evidence then in that event the Inspector can not withhold approval. On the other hand in case the charges are of trivial nature and are not covered by the charges mentioned in sub-section (5) of Section 16-G and/or there are no prima facie documents or material in support of the charges then the Inspector may disapprove of the suspension of the Principal or the teacher as the case may be. In the instant case the District Inspector of Schools appears to have failed to discharge his statutory duty and given no reasons in support of the order. In the circumstances, therefore, the order passed by the District Inspector of Schools was liable to be quashed and the learned Single Judge erred in law in dismissing the writ petition. In fact the question was not examined by the learned Single Judge in the above perspective and instead the learned Single Judge dismissed the writ petition holding that while considering the approval or disapproval of suspension order no opportunity of hearing was required to be

given by the District Inspector of Schools. It is true that a Division Bench of this Court has held in the case of Managing Committee, Dayanand Inter College v. District Inspector of Schools, that at the stage of approval or disapproval of the suspension order the Inspector is not required to afford any opportunity of hearing to the management and that he is only to consider the relevant material referred to in Regulation No. 39 of Chapter III of the Regulations. The said decision, in our opinion, is of no avail. In the instant case, however, as pointed out above, the District Inspector of Schools did not address himself to the charges and the relevant documents and disapproved the suspension order on the basis of the representation made by the teacher concerned. If the suspension is to be disapproved on consideration of any defect pointed out by the concerned teacher by means of a representation, opportunity has to be afforded to the Management before disapproving of the suspension on any such defect in the proceedings."

6. This Court in re:- **C/M of Janta Inter College and Another Vs. State of U.P. and 3 Others, Writ-A No.909 of 2020**, vide judgment and order dated 06.05.2020 in para 20 observed as under:-

"20. Scope of consideration under Section 16G(7) read with Regulation 39 is very limited as has also been explained in the case of Ram Autar Verma (supra). Thus, a conjoint reading of the afore-noted four judgments reveal that if all the required papers and informations as prescribed under sub-section (7) of Section 16G of the Act, 1921 and Regulation 39 have been submitted by the Management to the District Inspector of Schools to obtain approval of suspension, then opportunity of

hearing at the stage of granting approval or disapproval is not required to be afforded to the Management or the employee. But if the employee has submitted any representation or objection against the order of suspension, then the District Inspector of Schools shall afford an opportunity of hearing to the Management and the concerned employee while passing the order of approval or disapproval which must contain brief reasons. This view is further supported by the provisions of sub-Section (8) of Section 16G, which specifically provides for an opportunity of hearing at the subsequent stage to the Management by the District Inspector of Schools while considering to revoke an order of suspension passed under sub-section (7) when the Inspector is satisfied that the disciplinary proceedings against the head of the Institution or teacher, is being delayed for no fault of the head of the Institution or the teacher."

7. Perusal of the aforesaid provisions and case laws makes it crystal clear that the life of the suspension order would be maximum 60 days unless it is approved by the DIOS within a period of 60 days. However, in the present case, the opposite party no. 5 was kept under suspension on 04.01.2025, but the DIOS has passed an order dated 09.01.2025 (Annexure No. 8), directing the petitioner to permit the opposite party no. 5 to discharge his duties as Officiating Principal during the period of suspension until the decision is taken on his suspension order. There is no provision under Section 16-G of the Act, 2021 to permit any suspended Teacher or Head of the Institution to discharge his duties as Officiating Principal during his period of suspension pending required exercises of approval/disapproval of the suspension order.

8. Therefore, the order dated 09.01.2025 (supra) has been passed in utter violation of provisions of the law. Though the suspension order has been disapproved by the impugned order dated 11.02.2025 (Annexure No. 1). Notably, against the order dated 09.01.2025 (Annexure No. 8), the petitioner preferred a representation on 11.01.2025 (Annexure No. 9), raising objection on such order and the DIOS thereafter passed an order dated 20.01.2025 (Annexure No. 10) withdrawing its earlier order dated 09.01.2025.

9. I am unable to understand or comprehend as to why the DIOS has passed the order dated 09.01.2025, whereas, he was having power under the Act to disapprove the suspension order, but without disapproving this suspension order, he circumvent the provision of law authorising the opposite party no. 5 to discharge his duties as Officiating Principal till any appropriate order is passed regarding approval/disapproval of the suspension. After the order dated 09.01.2025 having been passed, the suspension order had lost its efficacy for all practical purposes, though the suspension order lost its efficacy after passing the impugned order dated 11.02.2025. There is a trite law in the light of various judgements of this Court on the point that if the suspension order of any Teacher or Headmaster of the Institution is disapproved by the DIOS, an opportunity of hearing would be given to the Committee of Management as well as to the charged Teacher/Head of Institution. The purpose of this settled provision of law is that if the order of Committee of Management suspending any Teacher or any Headmaster is disapproved, it must be passed by affording an opportunity of hearing so that the Committee of

Management could know about the shortcomings of the suspension order. In the impugned order dated 11.02.2025, whereby, the suspension order of opposite party no. 5 has been disapproved, it has been indicated that the petitioner appeared before the DIOS along with charged employee on 10.02.2025, but what has been stated by the petitioner before the DIOS defending suspension order has not been indicated in the order dated 11.02.2025. Though this fact has been improved in the short counter affidavit of the opposite party no. 6 by submitting that on 10.02.2025, the petitioner was present before the DIOS, but he has stated that the matter be placed before any other DIOS as he has preferred an application to the Director (Education) for seeking transfer of the issue placing the same before any other DIOS levelling allegations against him.

10. Learned counsel for the petitioner has stated that in more or less similar facts and circumstances, this Court in **Committee of Management, D.P.S.N. Inter College, Kanpur and Another Vs. State of U.P. and Others, 2018 (2) ADJ 840** has observed that if the Committee of Management approaches any higher authority seeking transfer of the issue before any other authority to decide the issue, the same exercises may be undertaken and in that case no decision should be taken by the DIOS till any decision is taken by the authority before whom any application has been preferred.

11. However, at this stage, Sri M.B. Singh has submitted that since the present DIOS has not afforded any opportunity of hearing to the petitioner properly, therefore, he will not press his request to transfer the issue before any other authority, but the

issue may be decided a fresh by the same DIOS by affording him an ample opportunity of hearing.

12. Having considered the arguments of the learned counsel for the parties as well as the aforesaid case laws and having considered the impugned order dated 11.02.2025, wherein, this fact has not been disclosed as to whether any opportunity of hearing was provided to the petitioner before passing the impugned order dated 11.02.2025, and if the petitioner had denied to avail the opportunity of hearing by submitting any other plea, the same fact must have been indicated and reflected in the impugned order dated 11.02.2025, I find that the impugned order has not been properly issued in terms of Section 16-G of the Act, 1921. In the impugned order, the opportunity of hearing so given to the employee, i.e., opposite party no. 5 is being reflected, but no such opportunity is being reflected so far as the present petitioner is concerned.

13. Therefore, on the aforesaid limited grounds, the impugned order dated 11.02.2025 is hereby set aside/quashed, remanding the same before the DIOS, Lucknow to pass a fresh order strictly in accordance with law by affording opportunity of hearing to the parties concerned. The DIOS, after receipt of this order, may fix any date, providing opportunity of hearing to the parties within seven days and any appropriate decision may be taken approving or disapproving the suspension order within a further period of three weeks.

14. It is needless to say that the parties shall cooperate in the proceedings.

15. The writ petition is allowed in view of the aforesaid terms.

(2025) 4 ILRA 105

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 05.04.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ A No. 4118 of 2025

Simmi Kumari & Anr. ...Petitioners
Versus
Union of India & Ors. ...Respondents

Counsel for the Petitioners:

Rajesh Kumar Dubey

Counsel for the Respondents:

A.S.G.I., Anoop Tiwari, Ashutosh Mani Tripathi, Siddharth Singhal

Civil Law - Life Insurance Corporation of India (Recruitment of Class-III and Class-IV Staff) Instructions, 1979 - Clause 21 - Petitioner No.1 is daughter and Petitioner No.2 is wife of deceased employee, who died in harness on 19.05.2024 - Petitioner No.2 applied for compassionate appointment in favour of her daughter, submitting that her son, employed with Punjab National Bank, had severed ties with family and was living separately - Both petitioners were dependants of deceased employee - Application Rejected - Under applicable Rules, authorities must examine whether deceased employee's gainfully employed son is maintaining dependants - If he has no connection with them or fails to provide support, his employment should not affect decision on compassionate appointment - Any contrary view defeats purpose of such appointments - These crucial aspects overlooked in impugned order - Matter is remitted to respondent authorities to reconsider petitioner's claim, taking into account

all relevant factors, including financial condition of deceased's family. (Para 4, 9, 13)

Petition allowed. (E-13)

(Delivered by Hon'ble Ajay Bhanot, J.)

1. Heard Shri Rajesh Kumar Dubey, learned counsel for the petitioner, Shri Ashutosh Mani Tripathi, learned counsel for the respondent Nos.2 to 3 and Shri Anoop Tiwari, learned Central Counsel for the respondent No.1-Union of India.

2. By the impugned order dated 18.10.2024 the claim of the petitioner No.1 has been declined. The order dated 18.10.2024 is cryptic and does not disclose any reasons for invalidating the claim of the petitioner No.1 for grant of appointment on compassionate ground.

3. By the impugned order dated 06.12.2024 the application of the petitioner No.1 for grant of appointment on compassionate ground has been rejected on the footing that the son of the petitioner No.2 was gainfully employed in a bank.

4. The petitioner No.1 is the daughter and the petitioner No.2 is the wife of the deceased-employee respectively who died in harness on 19.05.2024. The petitioner No.2 submitted an application for appointment of her daughter (petitioner No.1) on compassionate grounds. An affidavit submitted by the petitioner No.2 in support of the application for appointment on compassionate grounds asserted that her son was working in the Punjab National Bank. According to the said affidavit, after his appointment the son had severed all connections with the family and was staying separately. The petitioner

No.2 is dependant on her daughter (petitioner No.1). Both were dependants of the deceased employee.

5. The relevant rules governing the grant of appointment on compassionate grounds are extracted hereunder:

"21. RELAXATION IN FAVOUR OF NEAR RELATIVES OF AN EMPLOYEE WHO DIES WHILE IN SERVICE OR RETIRES AT LEAST 5 YEARS PRIOR TO THE DATE OF SUPERANNUATION:

(iii) The relaxations shall be admissible only where none of the members of the family - spouse, son or unmarried daughter - is gainfully employed. However, if the widow is already employed elsewhere in Private Sector she will be allowed to take up a job in the Corporation in Class III or Class IV Cadre commensurate with her qualifications if she opts for the same (Circular No. MPP&R Desk/ZD/3/2001 dated 29/12/2001). Further provided that the condition regarding gainful employment, shall not be applicable where it is established by documentary evidence that the death of the employee is caused by his/her employment.

Provided further that this provision is meant only to recognize the act of courage and bravery displayed by such an employee."

6. The rules for appointment on compassionate ground have to be interpreted in a manner that they achieve the aforesaid legislature as stated above.

7. The appointments on compassionate ground passed the test of constitutional validity by a slender margin. The sole justification to make

compassionate ground appointments is that the dependants of the deceased employee face unforeseen financial destitution after the death of the latter and need urgent succour. Compassionate appointments are provided to the family to immediately tide over the sudden financial crisis so caused by the death of the employee. This feature alone constituted the kin of a deceased employee into one class and on this sole footing the rationale of compassionate ground appointments was justified by Constitutional Courts.

8. In this wake determination of the financial condition or financial crisis being faced by the family as a result of the death of the employee is thus a mandatory pre condition for appointment on compassionate grounds.

9. The scope of the aforesaid Rules has to be interpreted in light of the above said holdings of constitutional courts and in the facts of this case. Under the said Rules the authorities has to examine as to whether the son of the deceased who is gainfully employed is maintaining the dependants of the deceased or not. If the member of the family who is gainfully employed has no connection with the dependants of the deceased or does not cater to their needs or fails to maintain them, the said employment shall not influence the decision for grant of appointment on compassionate grounds. Any contrary interpretation will defeat the purpose of grant of compassionate grounds appointment. These material aspects have been overlooked in the impugned order dated 06.12.2024.

10. As seen earlier the impugned order dated 18.10.2024 is devoid of any reasons.

11. The impugned orders dated 18.10.2024 and 06.12.2024 neglect to consider the aforesaid germane aspects while invalidating the claim of the petitioners. The impugned orders dated 18.10.2024 and 06.12.2024 are vitiated on account of non application of mind to relevant consideration.

12. In this wake, the impugned letters dated 18.10.2024 and 06.12.2024 are quashed.

13. The matter is remitted to the respondents-authorities who shall decide the claim of the petitioner after considering all relevant factors including the financial condition of the family of the deceased in light of above observations and as per law within a period of three months from the date of receipt of a certified copy of this order.

14. The writ petition is allowed to the extent indicated above.

(2025) 4 ILRA 107
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.04.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 7119 of 2023

Ram Sundar ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Sri Ram Krishna Yadav, Sri Jitendra Kumar Singh

Counsel for the Respondents:
C.S.C.

Service Law — Police Constable Recruitment — Suppression of criminal antecedents — False affidavit — Scope of judicial review — Applicability of Avtar Singh principles — Clean acquittal — Trivial case — Ghost Goondas Act case — Failure to apply mind— Suppression of criminal case must be viewed in light of circumstances, acquittal nature, and severity — Goondas Act proceedings are not criminal cases — Employment cannot be denied mechanically without meaningful inquiry — Non-application of mind renders cancellation order arbitrary and unsustainable. (Paras 15 to 27, 32 to 36)

Petition allowed. (E-14)

HELD:

The principles laid down in Avtar Singh do not universally and without exception forbid the consideration of a person's candidature, guilty of suppression or furnishing false information of involvement in a criminal case, at the time he makes his application for employment or at the time of verification of his character, post selection. (Para 17)

The general rule is that there should be no suppression of information by the candidate as to conviction, acquittal, arrest or the pendency of a criminal case, whether before or after entering service. But, if information is suppressed about the involvement in a criminal case, what would be the impact thereof upon the candidature of a person, or so to speak, his right to appointment. It would depend on a variety of factors. The principles, that are summed up in paragraph No.38 of the report in Avtar Singh, are backed by elaborate reasons, which broadly frown upon suppression or furnishing of false information of involvement in a criminal case by a candidate, but does not make it an infeasible ground, leading to rejection of candidature in all cases. No doubt, the principle in paragraph No.38.4 applies to a case, where suppression or false information of involvement in a criminal case is given, where a conviction or acquittal has already happened, but it is not a mathematical formula where pending judgment, the same principles cannot be rationally extended. It is a well regarded principle that a judgment is to be understood for

the principle that it lays down and never read like a statute. The principles in Avtar Singh give ample play for the exercise of discretion in the matter to the Appointing Authority. It makes provision for taking notice of the special circumstances of a case by the employer before passing an order of termination of service or cancellation of candidature for giving false information about the criminal case. This contingency is contemplated even in cases where judgment has not been delivered. (Para 18)

Peeping behind all these principles, one cannot miss the fact that in case of suppressed information about the pendency of a criminal case, where a judgment had already been passed, whether of acquittal or conviction, or may be in a case where it is shortly afterwards passed, the first thing to be seen is if the offence, that has been charged against the employee, is of a petty nature or heinous. If it is heinous, still the employer may consider relevant facts as to antecedents of the employee before arriving at a decision. (Para 20)

No doubt, the decisions in Sandeep Kumar and Ram Kumar have in the foreground the later decision in Avtar Singh, which has assimilated and summarized principles, but there is no departure or dissent from the rules adumbrated in Sandeep Kumar and Ram Kumar. A careful look at the record of this case would show that in adherence to the procedure of seeking the District Magistrate's opinion for suitability of the petitioner's appointment, his case too was referred to the District Magistrate. And, the District Magistrate, upon a consideration of the circumstances, appears to have favoured the petitioner for appointment in government service as a Police Constable. This fact is evident upon a perusal of a memo, bearing No. Bha-38/2017 dated April 18th, 2021, addressed to the Senior Superintendent of Police, Etawah by the Superintendent of Police, Hathras.... (Para 39)

For all these fallacies, the impugned order has to perish and the matter sent back to the Superintendent of Police, Hathras for the making of fresh orders in accordance with law and the guidance in this judgment. We would add that in judging the suitability of the

petitioner for appointment, the Superintendent of Police, Hathras will bear in mind and look to telltale circumstances regarding the crime, in which the petitioner was implicated and now acquitted, if it was a typical case of service related implication by natives of the village, as the petitioner had staked his candidature for Police Service. One of the things that would have to be seen and borne in mind by the Superintendent of Police, is the general reputation of the petitioner in order to find out whether he was a person with criminal propensities or a man belonging to the main stream of life. This we say particularly because except for Case Crime No.564 of 2015, that was registered about the time relating to his recruitment, no criminal history of the petitioner showing him as a wayward man, has surfaced during a keen search of his background. (Para 45)

Petition allowed. (E-14)

List of Cases cited:

1. Avtar Singh Vs U.O.I. & ors., (2016) 8 SCC 471
2. Special Appeal Defective No. 734 of 2016, St. of U.P. & ors. Vs Vijay Kumar & ors., decided on 06.12.2016
3. Pawan Kumar Vs U.O.I. & anr., (2023) 12 SCC 317
4. Shivam Yadav Vs St. of U.P. & ors., 2024 (11) ADJ 749
5. Commissioner of Police & ors. Vs Sandeep Kumar, (2011) 4 SCC 644
6. Ram Kumar Vs St. of U.P. & ors., (2011) 14 SCC 709

(Delivered by Hon'ble J.J. Munir, J.)

1. The petitioner is aggrieved by an order of the Superintendent of Police, Hathras dated 19.03.2023, cancelling his candidature for appointment as a Police Constable, a post for which he was selected after a recruitment held in accordance with rules, pursuant to an advertisement issued

by the Police Recruitment and Promotion Board, Lucknow. The petitioner has also sought consequential reliefs.

2. The Chairman, Uttar Pradesh Police Recruitment and Promotion Board, Lucknow, published an advertisement for recruitment of Police and PAC Constables on their website, called PRPB-1 (82)/15. The petitioner applied for the post of Police and PAC Constable (Male) in the direct recruitment of the year 2015, for which, he says, he was eligible. It would be utterly unnecessary to mention details of the petitioner's candidature for those are not in dispute or issue. The petitioner was selected and his name appeared in the merit list. He was issued a provisional admit card to appear in the physical efficiency test, scheduled to be held on 05.05.2016. He appeared in the physical efficiency test and declared successful. The petitioner was then called for character verification, medical examination and the verification of his Classes X and XII mark-sheets. He was directed to appear for the purpose on 14.06.2018 at the Police Lines, Etawah in the morning hours at 8 O' clock. The petitioner's candidature was accepted during the said verification and medical test. The selection being complete, the petitioner, along with other selected candidates, was allotted his district of posting. The petitioner was allotted District Hathras for his posting. Despite being allotted a district, the petitioner was not issued with an appointment letter. When the petitioner approached the Senior Superintendent of Police, Etawah, he was informed that his appointment had been withheld due to a criminal case pending against him, to wit, Case Crime No.564 of 2015, under Sections 147, 452, 323, 504, 506 IPC and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes

(Prevention of Atrocities) Act, 1989 (for short, 'the SC/ST Act'), Police Station Jaswant Nagar, District Etawah.

3. It is the petitioner's case that not only was he falsely implicated in the crime, but it was not within his knowledge that the case was pending against him. He was never arrested or summoned by the Police in connection with the crime, that was based on an incident dated 17.12.2015. The petitioner was served with a notice by the Police to appear in Court for the first time on 16.03.2016. This notice was issued by the Court of the Additional Chief Judicial Magistrate-II, Etawah and required his presence on 17.03.2016 at 10.30 a.m. at the time of submission of the charge-sheet. The petitioner was tried vide Sessions Trial No.236 of 2016 and acquitted on 17.07.2018. After his acquittal, the petitioner submitted an application dated 25.07.2018 to the Senior Superintendent of Police, Etawah, bringing the fact to the S.S.P.'s knowledge that he had been acquitted after trial. When the petitioner was not called or a letter of appointment issued, he instituted Writ-A No.17523 of 2018 before this Court, seeking to enforce his right to appointment on the basis of selection to the post of a Constable.

4. This Court disposed of the said writ petition vide order dated 18.08.2018 with a direction that the petitioner shall be at liberty to annex all materials in support of his claim and represent his grievance to the Senior Superintendent of Police, Etawah, who will examine the claim in accordance with law, keeping in view the law laid down by the Supreme Court in **Avtar Singhv. Union of Indian and others, (2016) 8 SCC 471** and followed in the Bench decision of this Court in Special Appeal Defective No. 734 of 2016, **State of**

U.P. and others v. Vijay Kumar and others, decided on 06.12.2016. The petitioner submitted a representation dated 04.09.2018 along with a certified copy of the order dated 18.08.2018 passed by this Court in Writ-A No.17523 of 2018 *vide* registered post, but this Court's order was not complied with. This compelled the petitioner to institute Contempt Application (Civil) No.2070 of 2020, Ram Sundar v. Dr. Raj Kumar Vishwakarma, U.P. Police Recruitment and Promotion Board and another, where *vide* order dated 23.06.2020 notice was issued to the contemnors to show cause why contempt proceedings be not initiated against them.

5. It is the petitioner's case that when the petitioner was directed to submit his affidavit regarding verification of his character etc., the petitioner sought advice of his learned Counsel in Court, where he had been arraigned and the learned Counsel informed the petitioner that as he had been acquitted, no criminal case was pending against him. It is the petitioner's case that the learned Counsel, representing him in the criminal case, dictated the affidavit for being filed before the Senior Superintendent of Police, Etawah. A copy of the affidavit dated 09.06.2018 is placed on record of the writ petition.

6. Upon receipt of notice of contempt issued by this Court, the petitioner's candidature was cancelled by the Senior Superintendent of Police, Etawah by the order dated 25.02.2021. The order dated 25.02.2021 passed by the Senior Superintendent of Police, Etawah was questioned by the petitioner before this Court *vide* Writ-A No.4831 of 2021. During the course of hearing of the aforesaid writ petition, the Senior Superintendent of Police, Etawah was

directed to appear in person on 24.03.2021 before this Court. The S.S.P., Etawah, *vide* order dated 22.03.2021, proceeded to withdraw the order dated 25.02.2021, cancelling the petitioner's selection.

7. In consequence, this Court disposed of Writ-A No.4831 of 2021 *vide* order dated 24.03.2021, noting that the order impugned in that petition had been withdrawn and that the petitioner's case ought be considered in accordance with the principles laid down by the Supreme Court in *Avtar Singh (supra)* *vide* paragraph Nos.38.5 and 38.6, which cast an obligation upon the Appointing Authority to consider the suitability of the candidate for induction in service, notwithstanding his arraignment in a criminal case, especially in view of the fact of his acquittal. This Court clarified that it was for the Appointing Authority to judge the petitioner's suitability by an independent evaluation and the Court had not expressed any opinion on the merits. The order dated 24.03.2021 passed by this Court was presented by the petitioner along with an application dated 27.03.2021 to the Superintendent of Police, Hathras by registered post. The Superintendent of Police, Hathras, according to the petitioner, by an order dated 02.06.2021, proceeded to reject the petitioner's claim without application of mind and without complying with the directions and remarks of this Court carried in the order dated 24.03.2021 passed in Writ-A No.4831 of 2021.

8. The petitioner, faced with a rejection of his candidature again, instituted Writ-A No.6576 of 2021 before this Court, which was heard and

allowed vide judgment and order dated 19.12.2022, in terms of the following order:

*“The contention of the Counsel for the petition is that mere suppression of the fact would not disqualify the petitioner from service as has been law laid down by Hon'ble Supreme Court in the case of **Pawan Kumar vs Union of India; 2022 LiveLaw (SC) 441** and the respondents are bound to consider the relevant facts including the effect of suppression on the services as sought by the incumbent, as such, the order impugned in view of the law laid down in the case of Pawan Kumar (Supra), I do not find that the order impugned is unsustainable.*

Accordingly, the order impugned dated 02.06.2021 is set aside with directions to the respondents to pass fresh orders in the light of the judgment of Pawan Kumar's Case (Supra).

While passing the fresh order, the respondent shall categorically consider the effect that the petitioner has been acquitted and the effect of the said case.

The respondent no.4 shall pass the order within a period of three months from the date of production of certified copy of this order.

*In view of above terms, the writ petition is **allowed.**”*

9. A certified copy of the order dated 19.12.2022 passed in Writ-A No.6576 of 2021 along with a copy of the judgment dated 02.05.2022 passed by the Supreme Court in **Pawan Kumar v. Union of India and another, (2023) 12 SCC 317** were laid by the petitioner before the Superintendent of Police, Hathras annexed to his representation dated 26.12.2022. It is the petitioner's case that after acquittal in Sessions Trial No.236 of 2016 vide judgment and order dated 17.07.2018, the

petitioner had brought the fact to the notice of the Senior Superintendent of Police, Etawah vide his application dated 25.07.2018.

10. According to the petitioner, so far as the case under Section 3(1) of the Uttar Pradesh Control of Goondas Act, 1970 (for short, 'the Goondas Act') is concerned, it was not within his knowledge at all. He says that even in the police report, that was submitted in the year 2018, there is no mention of it. The said fact, according to the petitioner, makes it evident that the case, said to be registered against the petitioner under the Goondas Act, was not within the respondents' knowledge as well. It was subsequently considered in compliance with the orders of this Court passed in Writ-A No.4831 of 2021.

11. It is also the petitioner's case that when he moved an application to seek information about the pending case under the provisions of Section 3(1) of the Goondas Act on 09.06.2021, invoking the provisions of the Right to Information Act, his application was referred to the Additional District Magistrate, Etawah. The Additional District Magistrate, Etawah has furnished information in 'question' and 'answer' form that Case Crime No.108 of 2016, under Section 3(1) of the Goondas Act, P.S. Jaswant Nagar, District Etawah, State v. Ram Sundar Pal, was not pending. The petitioner pleads that case, giving rise to Case Crime No.564 of 2015, under Sections 147, 452, 323, 504, 506 IPC and Section 3(1)(x) of the SC/ST Act, Police Station Jaswant Nagar, District Etawah, was a case of trivial nature, wherein the petitioner has been acquitted, albeit giving him the benefit of doubt. It is averred that the petitioner's case is fully covered by the law laid down by the Supreme Court in

Pawan Kumar (supra). It is also pleaded that the impugned order has been passed disregarding the order of remand passed by this Court dated 19.12.2022 in Writ-A No.6576 of 2021 and is one rendered in breach of the principles laid down by the Supreme Court in **Avtar Singh** and **Pawan Kumar**. Much emphasis has been laid by the petitioner on paragraph No.38.4.1. of **Avtar Singh** to say that the principles in this case have been utterly violated while passing the impugned order.

12. Aggrieved, the petitioner has instituted this writ petition under Article 226 of the Constitution.

13. A notice of motion was issued on 10.05.2023. A counter affidavit was filed on behalf of respondent No.2 on 13.07.2023, to which no rejoinder has been filed. A counter affidavit dated 25.07.2023 was filed on behalf of respondent Nos.3 and 4, but during the course of proceedings, it was discovered that the same was not traceable. Accordingly, a reconstructed copy of the said affidavit was accepted on record on 31.08.2024. The petitioner filed a rejoinder to the counter affidavit filed by respondent Nos.3 and 4 on 13.09.2023. Pending admission on 13.08.2024, the parties having substantially exchanged affidavit, the petition was admitted to hearing, which proceeded on that day. The hearing was adjourned to 26.09.2024. The hearing was resumed on 24.10.2024, after a nomination by the Chief Justice, there being a change of roster in the meantime. The hearing concluded on 24.10.2024 and judgment reserved.

14. Heard Mr. Jitendra Kumar Singh, learned Advocate holding brief of Mr. Ram Krishna Yadav, learned Counsel for the petitioner and Mr. Roopesh Tiwari,

learned Standing Counsel appearing on behalf of the State-respondent.

15. We have perused the impugned order and the respondents' stand in the counter affidavit as also the other circumstances relevant to a fair decision of the petitioner's claim to appointment by the respondents. There is no denying the fact that on 09.06.2018, the petitioner put in a notarized affidavit for the verification of his character, where he stated that no criminal case or matter has ever been registered against him nor any police investigation pending. He also said that he has never been arrested in any criminal case and that he has never been *challaned* by the Police in a crime. Admittedly, on 16.03.2016, the petitioner was served with a notice to remain present in the Court of the Additional Chief Judicial Magistrate-II, Etawah on 17.03.2016, at the time of submission of the charge-sheet against him in Case Crime No.564 of 2015, under Sections 147, 452, 323, 504, 506 IPC and Section 3(1)(x) of the SC/ST Act, Police Station Jaswant Nagar, District Etawah. Therefore, on 16.03.2016, the petitioner had acquired knowledge of the case registered against him and being investigated by the Police that had led to the then proposed filing of a charge-sheet against him. In course of time, the charge-sheet was filed, the petitioner tried and acquitted. Therefore, on the day, the petitioner filed the affidavit for the verification of his character dated 09.06.2018, he was very well cognizant of the fact that a criminal case had been registered against him, investigated and that he was still facing trial. The judgment of acquittal was delivered on 17.07.2018.

16. No doubt, the petitioner had deliberately suppressed the criminal case

pending against him. The petitioner's explanation, that the learned Counsel, appearing for him in the criminal case, had advised him that since a judgment of acquittal had been entered, there was no case against him, is not acceptable. The judgment came on 17.07.2018, whereas the affidavit was filed on 09.06.2018. There is no way, the learned Counsel appearing for the petitioner in the criminal case could have told the petitioner that he had been acquitted on 09.06.2018, when the learned Counsel dictated the affidavit that the petitioner filed, as asserted in paragraph No.19 of the writ petition. Therefore, this is indeed a case where the petitioner suppressed from the respondents the fact that he was facing trial in a criminal case, after investigation by the Police.

17. The principles laid down in **Avtar Singh** do not universally and without exception forbid the consideration of a person's candidature, guilty of suppression or furnishing false information of involvement in a criminal case, at the time he makes his application for employment or at the time of verification of his character, post selection. The principles laid down in **Avtar Singh** are enumerated below:

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer

still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

18. The general rule is that there should be no suppression of information by the candidate as to conviction, acquittal, arrest or the pendency of a criminal case, whether before or after entering service. But, if information is suppressed about the involvement in a criminal case, what would be the impact thereof upon the candidature of a person, or so to speak, his right to appointment. It would depend on a variety of factors. The principles, that are summed up in paragraph No.38 of the report in *Avtar Singh*, are backed by elaborate reasons, which broadly frown upon suppression or furnishing of false information of involvement in a criminal case by a candidate, but does not make it an indefeasible ground, leading to rejection of candidature in all cases. No doubt, the principle in paragraph No.38.4 applies to a case, where suppression or false information of involvement in a criminal case is given, where a conviction or acquittal has already happened, but it is not a mathematical formula where pending judgment, the same principles cannot be rationally extended. It is a well regarded principle that a judgment is to be understood for the principle that it lays down and never read like a statute. The principles in *Avtar Singh* give ample play for the exercise of discretion in the matter to the Appointing Authority. It makes provision for taking notice of the special circumstances of a case by the employer before passing an order of termination of service or cancellation of candidature for giving false information about the criminal case. This contingency is contemplated even in cases where judgment has not been delivered.

19. There is also provision in paragraph No.38.3 to take into consideration government orders/instructions/ rules applicable to employees at the time of deciding, whether their candidature is liable to be cancelled on the ground of suppression of involvement in a criminal case etc. In cases, where there is suppression and a judgment of conviction or acquittal already there, cases of a trivial nature, conviction being recorded, have been held as ones not entitling the employer to cancel the candidature or appointment on the premise that if the petty offence had been disclosed, it would not have rendered the employee unfit for appointment to the post. The case of shouting slogans etc. at a young age has been mentioned as an illustration of the petty nature of a crime that does not disentitle. Paragraph Nos.38.4.3 speaks of the contingency if acquittal has already been recorded in a case involving moral turpitude or an offence, that is heinous, on technical ground and it is not a case of clean acquittal or benefit of reasonable doubt has been given. In such cases, the employer has been given the freedom to consider all relevant facts, available as to antecedents before arriving at a decision whether to cancel an employee's candidature. These are more or less principles that have been paraphrased from the ones laid down in **Avtar Singh**.

20. Peeping behind all these principles, one cannot miss the fact that in case of suppressed information about the pendency of a criminal case, where a judgment had already been passed, whether of acquittal or conviction, or may be in a case where it is shortly afterwards passed, the first thing to be seen is if the offence, that has been charged against the employee, is of a petty nature or heinous. If it is

heinous, still the employer may consider relevant facts as to antecedents of the employee before arriving at a decision.

21. Before proceeding further, it must be remarked that the heinous or the petty nature of a criminal case cannot always be determined on the basis of the sections of the statute, under which the offence is charged, though some provisions of the statute more or less serve as an indicia to the gravity of the offence. In some cases, it almost always points out to the offence being heinous, say an offence punishable under Section 302 or 376 of the Indian Penal Code. There are other offences, where the sections charged may indicate prima facie the nature of the offence to be not serious or laced with moral turpitude, always. The offences charged against the petitioner are those punishable under Sections 147, 452, 323, 504, 506 IPC and Section 3(1)(x) of the SC/ST Act.

22. In determining, if the offences charged against the petitioner were indeed heinous or petty, it was incumbent on the Superintendent of Police, Hathras, who passed the impugned order, to briefly look into the allegations and the evidence and then form his opinion. The Superintendent of Police has taken note of the fact that the acquittal is not honourable, but one based on benefit of doubt and a notice under Section 344 was issued to the informant of the case, Sajjan Singh for knowingly and willfully giving false evidence in Court. He has overlooked the fact that there was after all no evidence against the petitioner. The Superintendent of Police has also overlooked the fact that the notice for a prosecution on the charge of giving false and fabricated evidence in Court, obviously relates to the inculpatory part of the

testimony given in the examination-in-chief by the informant and not the exculpatory part, that has come out during cross-examination. This matter ought have been probed and considered by the Superintendent of Police before judging the effect the judgment of acquittal on the rights of the petitioner to seek appointment.

23. After all, in the social milieu of the day, a hard earned government employment is often lost on account of frivolous cases, launched against aspirants, who are about to enter government service and this case, as a *prima facie* reading of the judgment would show, is set against the background of a panchayat election rivalry and all that happens in contemporary rural life, where there are assaults on political rivals and false charges galore. At the trial, there was no convincing testimony noticed by the learned Judge against the petitioner, as a reading of the judgment *prima facie* would show. The order passed by the Superintendent of Police, Hathras, declining to accept the petitioner's claim, does not show a careful consideration of the circumstances, leading to the petitioner's prosecution in the crime, alleging assault and abuse with caste suggestive words, all of which were not proven at the trial. What the Superintendent of Police ignored from consideration is the fact that the offence charged against the petitioner, that ended in acquittal, did not involve the commission of an offence by him or his co-accused, that would appear heinous in nature. The charges involved do not show that any serious injuries were inflicted.

24. In fact, at the trial, the injuries, whatever they were, were not proven by the witnesses, who disowned the event. The nature of the charge and evidence, and then

the stance of witnesses during trial, seen in the context of a political rivalry in the petitioner's native village relating to *panchayat* elections, where the petitioner had just been selected for government service, has to be rationally and realistically understood. If one were to see the charge, nothing came out of it, but left the petitioner stripped of his hard earned government employment. Perhaps, that was the purpose of laying the charge against the petitioner and nothing more. The Superintendent of Police did not consider the charge and the evidence from this angle at all, which ought have been done. In order to do this, he was required to further probe the petitioner's background and his antecedents. If the petitioner was otherwise a respectable young man with no criminal antecedents, the complexion of the failed criminal case against him, might have had a different bearing upon his right to seek public employment. The Superintendent of Police did consider one more case against the petitioner, about which he said that it was suppressed too, and, later on, surfaced due to a fresh police character verification report, called on account of lapse of the time period of six months.

25. The other case found against the petitioner was said to be Case Crime No.108 of 2016, under Section 3(1) of the Goondas Act, P.S. Jaswant Nagar, District Etawah. It was reported by the Senior Superintendent of Police, Etawah through his V.R. No.671 of 2021 dated 24.05.2021. This case too was said to have been suppressed by the petitioner at the time of his character verification done through his affidavit. Regarding this crime registered against the petitioner as another case deliberately suppressed, the petitioner's case was considered by the Superintendent of Police as one governed by paragraph

No.38.7 of the guidelines laid down in **Avtar Singh** with regard to multiple pending cases, regarding which false information was given by a candidate. That is a principle, where multiple pending cases against a candidate, if not disclosed, entitles the employer to pass appropriate orders, cancelling his candidature or terminating his appointment. But, is it true for a fact or did the Superintendent of Police consider that indeed a crime under Section 3(1) of the Goondas Act was registered against the petitioner or could have been registered against him. We think not. Section 3(1) of the Goondas Act does not speak of any offence at all, but provides for externment of Goondas, as defined under the Goondas Act in proceedings to be taken before the District Magistrate.

26. Section 3(1) of the Goondas Act neither defines an offence nor prescribes a punishment for it. It provides for preventive proceedings to be taken by the District Magistrate against a person, who is a Goonda as defined under the Goondas Act, by externing him from the local limits of his jurisdiction or the district or districts contiguous, as may be specified in the order, or order such person to notify his movements or report himself to such authority as may be specified, or prohibit or restrict possession for use by the person proceeded with against of any article, as may be specified in the order, all until the expiry of six months. The provisions of Section 3(1) of the Goondas Act never contemplate a criminal offence at all. The only criminal offence provided under the Goondas Act is the one under Section 10, which is regarding contravention of orders passed under Sections 3, 4, 5 or 6. There is no such case against the petitioner of contravening any order of prohibition or externment made under the Goondas Act

under Section 3 and a criminal offence registered against him under Section 10. If there were any doubt in this regard as to what were the kind of proceedings that the Superintendent of Police took into consideration as an 'offence' under Section 3(1) of the Goondas Act, one has to look into a report dated 02.07.2021, submitted by the Inspector In-charge, P.S. Jaswant Nagar, District Etawah, about this so called crime that the petitioner committed under Section 3(1) of the Goondas Act and registered at the said police station as Case Crime No.108 of 2016, to the Circle Officer, Jaswant Nagar, Etawah. The report, that the Inspector In-charge, P.S. Jaswant Nagar, District Etawah submitted to the Circle Officer, Jaswant Nagar, Etawah, was apparently submitted in answer to a demand under the Right to Information Act regarding the aforesaid crime. The report submitted by the Inspector In-charge, P.S. Jaswant Nagar, District Etawah, last mentioned, must be quoted for every word of it:

"रिपोर्ट थाना जसवन्तनगर जनपद इटावा

सेवा मे,
श्रीमान क्षेत्राधिकारी महोदय
जसवन्तनगर इटावा

विषय: पत्रांक— ज0सू0अ0 (261/23) के सन्दर्भ मे
RTI-2005 के तहत आवेदक श्री रामसुंदर पाल पुत्र श्री प्रीतम पाल निवासी ग्राम कैस्त थाना जसवन्तनगर इटावा को सूचना देने विषयका

महोदय,
आवेदक उपरोक्त द्वारा चाही गयी प्रस्तरवार सूचना निम्नवत है-

1- बिन्दु संख्या 1 मे आवेदक उपरोक्त द्वारा मु0अ0सं0 108/2016 अन्तर्गत धारा 3 (1) गुण्डा अधि0 1970 अभियुक्त / प्रार्थी का चालानी रिपोर्ट की संलग्न प्रतिलिपि चाही गयी है उक्त बिन्दु की सूचना के क्रम मे अवगत कराना है कि थाना हाजा अभिलेख जीडी / डाक बही (वर्ष 2016) का अवलोकन करने पर पाया गया कि थाना हाजा पर दिनांक 31.03.2016 को मु0अ0सं0 108/2016 धारा 3(1) गुण्डा अधि0 वादी

तत्कालीन SHO श्री दीपक दुबे द्वारा आवेदक उपरोक्त के विरुद्ध पंजीकृत कराया था जिसकी रिपोर्ट चालानी तत्कालीन डाक मुंशी का0 996 देव प्रकाश PNO- 112034199 मो0नं0- 9125560463 व तत्कालीन डाक रनर / पैरवी का0 404 तुलाराम PNO- 0872240173 मो0नं0- 9412537431 द्वारा दिनांक 03.04.2016 को डाक बही में चढ़ाकर वाचक कार्यालय श्रीमान वरिष्ठ पुलिस अधीक्षक महोदय इटावा (R/SSP) कार्यालय में प्रेषित की गयी है। जो कि डाक बही में रिसीव नहीं हुई है। पुनः मु0अ0सं0 उपरोक्त से सम्बन्धित रिपोर्ट चालानी दिनांक 29.04.2016 को तत्कालीन डाक मुंशी का0 996 देव प्रकाश उपरोक्त व डाक रनर / पैरवी का0 404 तुलाराम उपरोक्त व का0 817 मौजीराम PNO-822390378 मो0नं0- 9450310224 द्वारा डाक बही में चढ़ाकर वाचक के कार्यालय श्रीमान वरिष्ठ पुलिस अधीक्षक महोदय इटावा (R/SSP) कार्यालय में प्रेषित की गयी है। जो कि डाक बही में रिसीव नहीं हुई है। मुकदमा उपरोक्त से सम्बन्धित रिपोर्ट चालानी पुनः एक बार दिनांक 23.06.2016 को तत्कालीन डाक मुंशी का0 299 मुकेश कुमार PNO- 942240032 मो0नं0- 08528639602 व तत्कालीन डाक रनर/पैरवी का0 404 तुलाराम उपरोक्त व का0 817 मौजीराम द्वारा डाक बही में चढ़ाकर वाचक के कार्यालय श्रीमान वरिष्ठ पुलिस अधीक्षक महोदय इटावा (R/SSP) कार्यालय में प्रेषित की गयी है। जो कि डाक बही में रिसीव नहीं हुई है। उपरोक्त सभी दिनांको से सम्बन्धित डाक बही की छायाप्रतियां संलग्न है।

2- बिन्दु संख्या 2 में आवेदक द्वारा मु0अ0सं0 108/2016 अन्तर्गत धारा 3 (1) गुण्डा अधि0 1970 अभियुक्त/प्रार्थी के विरुद्ध न्यायालय अपर जिलाधिकारी महोदय के यहां थाना जसवन्तनगर द्वारा भेजा गया आरो पत्र / अन्तिम रिपोर्ट की सत्य प्रतिलिपि चाही गयी है उक्त बिन्दु के क्रम में अवगत कराना है कि आदान प्रदान डाक बही (वर्ष 2016) का अवलोकन करने पर पाया गया कि मु0अ0सं0 उपरोक्त से सम्बन्धित रिपोर्ट चालानी प्रेषित की गयी है। जिसका बिन्दु संख्या 1 में विस्तृत वर्णन किया गया है। इसके अतिरिक्त उक्त से सम्बन्धित अन्य पारितोष सम्बन्धित कार्यालय न्यायालय अपर जिलाधिकारी महोदय इटावा से प्राप्त कर सकते हैं।

3- बिन्दु संख्या 3 में आवेदक उपरोक्त द्वारा मु0अ0सं0 108/2016 अन्तर्गत धारा 3 (1) गुण्डा अधि0 1970 न्यायालय अपर जिला अधिकारी इटावा के यहां प्रचलित वाद की वास्तविक स्थिति / अन्तिम निर्णय की सत्य प्रतिलिपि चाही गयी है, उक्त बिन्दु का सम्बन्ध मा0 न्यायालय अपर जिलाधिकारी महोदय

इटावा से है अतएव सम्बन्धित उक्त न्यायालय से पारितोष प्राप्त करने की कृपा करें।

श्रीमान जी रिपोर्ट सादर अवलोकनार्थ प्रेषित है।

ह0 अपठित
प्रभारी निरीक्षक
थाना जसवन्तनगर
जनपद इटावा"

27. The report says that a perusal of the **G.D./ Dak Bahi** for the year 2016 reveals that on 31.03.2016, Crime No.108 of 2016, under Section 3(1) of the Goondas Act was got registered by the former Station House Officer, Deepak Dubey against the petitioner, where the report challani was sent by the former **Dak Munshi** Constable 996, Dev Prakash and the former **Dak Runner/ Pairavi** Constable 404, Tularam on 03.04.2016, after entering it in the **Dak Bahi**, to the office of the Senior Superintendent of Police, Etawah. It was not received in the S.S.P.'s **Dak Bahi**. A report challani relating to the said crime was sent again on 29.04.2016 by the former **Dak Munshi**, Dev Prakash and Dak Runner, Tularam, besides Constable, Mauji Ram, after entering it in the **Dak Bahi**, to the S.S.P., Etawah. But, it was not received in the **Dak Bahi**, which refers to the S.S.P.'s **Dak Bahi** obviously. Another abortive attempt was made, according to this report, on 23.06.2016 by the police station to send the report **challani** to the S.S.P. through their **Dak**, which too was not received in the S.S.P.'s office.

28. It is next said in the report that the petitioner, in his application under the R.T.I. Act vide Information No.2, has asked for the details of the charge-sheet/ final report sent to the Court of the Additional District Magistrate in relation to Crime No.108 of 2016, under Section 3(1) of the Goondas Act, but details about the report **challani** and its dispatch have

already been given. In answer to Information No.1 of the RTI Application, it was said that other relevant information can be secured from the office of the Additional District Magistrate, Etawah. It was finally said in the report that in answer to the last information sought under the Right to Information Act, where the petitioner had sought to know the current status of the case or applied for a certified copy of the final judgment in the case arising out of Crime No.108 of 2016, under Section 3(1) of the Goondas Act, all that can be said in answer, is that the matter relates to the Court of the Additional District Magistrate, Etawah and the relevant information can be secured from that Court.

29. There is on record an information in 'question' and 'answer' form, furnished by the Court of the Additional District Magistrate, Etawah dated 22.06.2021, where the question reads:

“प्रश्न

1- क्या मु0अ0सं0 108/16 थाना - जसवन्तनगर अन्तर्गत धारा 3 (1) उ0प्र0 गुण्डा नियंत्रण अधि0 राज्य बनाम रामसुन्दर पाल जिला इटावा विचारणीय है या नहीं"

30. The answer to this question in the right hand column is:

“उत्तर

श्रीमानजी

नहीं।"

31. For one, this case, bearing Case Crime No.108 of 2016, under Section 3(1) of the Goondas Act, P.S. Jaswant Nagar, District Etawah, appears to be a ghost case, of which there is no tangible evidence available with anyone, except elusive answers. Assuming that this case was registered at the Police Station Jaswant

Nagar, one is left to wonder as to how the S.S.P. thought that a crime could be registered under Section 3(1) of the Goondas Act. The very idea of a crime being registered under the aforesaid provision, a criminal case investigated and the petitioner prosecuted under Section 3(1) of the Goondas Act, is something so absurd that no one in the S.S.P.'s shoes could have spared a serious thought to it. We have said earlier that the provisions under Section 3(1) of the Goondas Act do not contemplate any crime or a criminal offence by any stretch of imagination, and, therefore, to think and act, even if there were a police report, on the basis that a crime was registered against the petitioner under Section 3(1) of the Goondas Act, is downright perversity of reasoning, vitiating the impugned order. This would leave the impugned order and the Superintendent of Police, Hathras, who passed it with just Case Crime No.564 of 2015, under Sections 147, 452, 323, 504, 506 IPC and Section 3(1)(x) of the SC/ST Act, Police Station Jaswant Nagar, District Etawah, to consider. We have already spoken how fallaciously the effect of the said criminal case, that was indeed not disclosed by the petitioner, has been considered by the Superintendent of Police, Hathras.

32. At this juncture, dwelling further on how the effect of Case Crime No.564 of 2015 was to be considered on the petitioner's candidature, it must be remarked that Government Order dated 28.04.1958 lays down the mode and procedure for verification of a candidate's character and his suitability for public employment in the service of the Government of U.P. The relevant part of the Government Order dated 28.04.1958 provides:

“3. (a) Every direct recruit to any service under the Uttar Pradesh Government will be required to produce:

(i) A certificate of conduct and character from the head of the educational institution where he last studied (if he went to such an institution).

(ii) Certificates of character from two persons. The appointing authority will lay down requirements as to kind of persons from whom it desires these certificates.

b) In cases of doubt, the appointing authority may either ask for further references, or may refer the case to the District Magistrate concerned. The District Magistrate may then make further enquiries as he considers necessary.

Note(a) A conviction need not of itself involve the refusal of a certificate of good character. The circumstances of the conviction should be taken into account and if they involve on moral turpitude or association with crimes of violence or with a movement which has its object to overthrow by violent means of Government as by law now established in free India the mere conviction need not be regarded as disqualification. (Conviction of a person during his childhood should not necessarily operate as a bar to his entering Government service. The entire circumstances in which his conviction was recorded as well as the circumstances in which he is now placed should be taken into consideration. If he has completely reformed himself on attaining the age of understanding and discretion, mere conviction in childhood should not operate as a bar to his entering Government service).

(b) While no person should be considered unfit for appointment solely because of his political opinions, care should be taken not to employ persons who are likely to be disloyal and to abuse the

confidence placed in them by virtue of their appointment. Ordinarily, persons who are actively engaged in subversive activities including members of any organization the avowed object of which is to change the existing order of society by violent means should be considered unfit for appointment under Government. Participation in such activities at any time after attaining the age of 21 years and within three years of the date of enquiry should be considered as evidence that the person is still actively engaged in such activities unless in the interval there is positive evidence of change of attitude.

(c) Persons dismissed by the Central Government or by a State Government will also be deemed to be unfit for appointment to any service under this Government.

2(d) In the case of direct recruits to the State Services under the Uttar Pradesh Government includes requiring the candidates to submit the certificates mentioned in paragraph 3 (a) above. The appointing authority shall refer all cases simultaneously to Deputy Inspector General of Police, intelligence and the District Magistrate (of the home district and of the district(s) where the candidate has resided for more than a year within five years of the date of the inquiry) giving full particulars about the candidate. The District Magistrate shall get the reports in respect of the candidates from the Superintendent of Police who will consult District Police Records and records of the Local Intelligence Unit. The District Police or the District Intelligence Unit shall not make any enquiries on the spot, but shall report from their records whether there is anything against the candidate, but if in any specific case the District Magistrate at the instance of the appointing authority ask for an enquiry on the spot the Local Police or

the Local Intelligence Units will do so and report the result to him. The District Magistrate shall then reports his own views to the appointing authority. Where the District Police or the Local Intelligence Units report adversely about a candidate the District Magistrate may give the candidate a hearing before sending his report.

(e) In the case of direct recruits (who are lower in rank than that of a State Service Officer) of:

(i) the police (including ministerial staff of Police Officers).

(ii) the Secretariat.

(iii) the staff employed in the government factories,

(iv) power houses and dams.

besides requiring the candidates to submit the certificates mentioned in paragraph 3 (a) above, the appointing authorities shall refer all cases simultaneously to the Deputy Inspector General, C.I.D. and the District Superintendent of Police (of the home district and of the district(s) where the candidate has resided for more than a year within five year of the date of the inquiry) giving full particulars about the candidate. The Superintendents of Police will send his report direct to the appointing authority if there is nothing adverse against the candidate. In cases where the report is unfavourable the Superintendent of Police will forward it to the District Magistrate who will send for the candidate concerned, give him a hearing and then, form his own opinion. All the necessary papers (the Superintendent of Police's report the candidate's statement and the District Magistrate's finding) will there after be sent to the appointing authority.

4. It will be seen that in cases of direct recruit to services other than those mentioned in paragraphs 3 (c) and 3 (d)

above, verification shall not be necessary as a matter of routine except in cases of doubt when the procedure mentioned in paragraph 3 (b) shall be followed.

5. In the case of a candidate for services mentioned in paragraphs 3 (c) and 3 (d) above-

(i) if at the time of enquiry the candidate is residing in a locality situated outside Uttar Pradesh or if he has resided in such a locality at any time within five years of the date of enquiry for a period of one year or more it shall be the duty of the deputy Inspector General, C. I. D. to consult also the C. I. D. D. of the State concerned in which the locality is situated before making his verification report.

(ii) if the candidate was residing before partition in area now comprising Pakistan the Deputy Inspector General, C. I. D. shall also make a reference to the Director of Intelligence Bureau, Ministry of Home Affairs, Government of India, in addition to the usual enquires as indicated above.

6. It has also been observed that where the District Magistrates are required to send the attestation forms they sometimes do not sign the forms themselves, Government consider it very desirable that the attestation forms should invariably be signed by the District Magistrates them selves in all such cases.”

33. I had occasion to consider the effect of the Government Order dated 28.04.1958 on the right of a candidate to appointment in government service, against whom a criminal case had been registered, in **Shivam Yadav v. State of U.P. and others, 2024 (11) ADJ 749**, where I held:

“14. A perusal of the Government Order dated 28.04.1958 would show that the District Magistrate was entrusted with

the process of character verification in order to secure a balanced opinion about the suitability of a candidate for government service based on all relevant facts. It was never the employment policy of the State to exclude from consideration for public employment every person against whom a crime had been registered. Of course, a heinous and serious crime involving moral turpitude and some proceeding showing involvement would always be a criterion to exclude a candidate unless subsequent proceedings demonstrate him/her to be utterly innocent and not involved at all. But a host of other offences, trivial or not so trivial, or cases of utter false accusation, where nothing turned out against a person, would have to be gauged by the District Magistrate for the purpose of verifying a candidate's character and suitability for employment under the State. If this were not the policy of the State, there was no need for an elaborate provision where the Collector, the Superintendent of Police and in certain cases, the CID, have to be involved before a conclusion was reached, if a candidate is suitable for public employment, registration of a crime notwithstanding."

34. It is true that **Shivam Yadav** (supra) was a case, where the petitioner could legitimately say that he was not aware of the crime registered against him when he said in his notarized affidavit that no criminal case was there affecting him. But, the procedure laid down in the Government Order dated 28.04.1958 applies equally to a man, who has suppressed information about the pendency of a criminal case and one who was not aware at all. The difference would come by on parameters, if the offence was heinous, the nature of the petitioner's involvement, the gravity of the crime, and above all, the

over all character and background of the candidate. It is to be holistically seen, except in cases of heinous offences, if the petitioner was truly not involved in the crime, after considering the facts and evidence appearing against him. The impression with the respondents Authorities that for every criminal case registered against a candidate and every criminal case that he does not disclose, he is to be deprived of his hard earned employment, is based on utter misconception. Reference in this regard may be made to the decision of the Supreme Court in **Commissioner of Police and others v. Sandeep Kumar, (2011) 4 SCC 644**. The facts in **Sandeep Kumar (supra)**, as described by their Lordships, read:

"2. The respondent herein, Sandeep Kumar applied for the post of Head Constable (Ministerial) in 1999. In the application form it was printed:

"12(a) Have you ever been arrested, prosecuted, kept under detention or bound down/fined, convicted by a court of law for any offence, debarred/disqualified by any Public Service Commission from appearing at its examination/selection or debarred from any examination, rusticated by any university or any other education authority/institution."

Against that column the respondent wrote: "No".

3. It is alleged that this is a false statement made by the respondent because he and some of his family members were involved in a criminal case being FIR No. 362 under Sections 325/34 IPC. This case was admittedly compromised on 18-1-1998 and the respondent and his family members were acquitted on 18-1-1998.

4. In response to the advertisement issued in January 1999 for filling up of certain posts of Head Constables (Ministerial), the respondent applied on 24-2-1999 but did not mention in his application form that he was involved in the aforesaid criminal case. The respondent qualified in all the tests for selection to the post of temporary Head Constable (Ministerial). On 3-4-2001 he filled the attestation form wherein for the first time he disclosed that he had been involved in a criminal case with his tenant which, later on, had been compromised in 1998 and he had been acquitted.

5. On 2-8-2001 a show-cause notice was issued to him asking the respondent to show cause why his candidature for the post should not be cancelled because he had concealed the fact of his involvement in the aforesaid criminal case and had made a wrong statement in his application form. The respondent submitted his reply on 17-8-2001 and an additional reply but the authorities were not satisfied with the same and on 29-5-2003 cancelled his candidature.”

35. Upon these facts, it was held in **Sandeep Kumar**:

“8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather

than to brand them as criminals for the rest of their lives.

11. As already observed above, youth often commits indiscretions, which are often condoned.

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.”

36. Another relevant authority in point is **Ram Kumar v. State of U.P. and others, (2011) 14 SCC 709**. The facts in **Ram Kumar** (*supra*), as these appear in the report of their Lordships' judgment, read:

“2. The facts very briefly are that pursuant to an advertisement issued by the State Government of U.P. on 19-11-2006, the appellant applied for the post of Constable and he submitted an affidavit dated 12-6-2006 to the recruiting authority in the pro forma of verification roll. In the affidavit dated 12-6-2006, he made various statements required for the purpose of recruitment and in Para 4 of the affidavit he stated that no criminal case was registered against him. He was selected and appointed as a male constable and deputed for training.

3. Thereafter, Jaswant Nagar Police Station, District Etawah, submitted a report dated 15-1-2007 stating that Criminal Case No. 275 of 2001 under Sections 324/323/504 IPC was registered against the appellant and thereafter the criminal case was disposed of by the Additional Chief Judicial Magistrate,

Etawah on 18-7-2002 and the appellant was acquitted by the court. Along with this report, a copy of the order dated 18-7-2002 of the Additional Chief Judicial Magistrate was also enclosed.

4. The report dated 15-1-2007 of Jaswant Nagar Police Station, District Etawah, was sent to the Senior Superintendent of Police, Ghaziabad. By order dated 8-8-2007, the Senior Superintendent of Police, Ghaziabad, cancelled the order of selection of the appellant on the ground that he had submitted an affidavit stating wrong facts and concealing correct facts and his selection was irregular and illegal.

5. Aggrieved, the appellant filed Writ Petition No. 40674 of 2007 under Article 226 of the Constitution before the Allahabad High Court but the learned Single Judge dismissed the writ petition by his order dated 30-8-2007 [WP (C) No. 40674 of 2007, order dated 30-8-2007 (All)] . The learned Single Judge held that since the appellant had furnished false information in his affidavit in the pro forma verification roll, his case is squarely covered by the judgment rendered by this Court in *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav* [(2003) 3 SCC 437 : 2003 SCC (L&S) 306] and that he was rightly terminated from service without any inquiry. The appellant challenged the order of the learned Single Judge in Special Appeal No. 924 of 2009 but the Division Bench of the High Court did not find any merit in the appeal and dismissed the same by the impugned order dated 31-8-2009 [Special Appeal (Defective) No. 924 of 2009, order dated 31-8-2009 (All)].”

37. Upon these facts, it was held in **Ram Kumar:**

“9. We have carefully read the Government Order dated 28-4-1958 on the subject “*Verification of the character and antecedents of government servants before their first appointment*” and it is stated in the government order that the Governor has been pleased to lay down the following instructions in supersession of all the previous orders:

“The rule regarding character of candidate for appointment under the State Government shall continue to be as follows:

The character of a candidate for direct appointment must be such as to render him suitable in all respects for employment in the service or post to which he is to be appointed. It would be the duty of the appointing authority to satisfy itself on this point.”

10. It will be clear from the aforesaid instructions issued by the Governor that the object of the verification of the character and antecedents of government servants before their first appointment is to ensure that the character of a government servant for a direct recruitment is such as to render him suitable in all respects for employment in the service or post to which he is to be appointed and it would be a duty of the appointing authority to satisfy itself on this point.

11. In the facts of the present case, we find that though Criminal Case No. 275 of 2001 under Sections 324/323/504 IPC had been registered against the appellant at Jaswant Nagar Police Station, District Etawah, admittedly the appellant had been acquitted by order dated 18-7-2002 by the Additional Chief Judicial Magistrate, Etawah.

12. On a reading of the order dated 18-7-2002 of the Additional Chief Judicial Magistrate it would show that the

sole witness examined before the court, PW 1, Mr Akhilesh Kumar, had deposed before the court that on 2-12-2000 at 4.00 p.m. children were quarrelling and at that time the appellant, Shailendra and Ajay Kumar amongst other neighbours had reached there and someone from the crowd hurled abuses and in the scuffle Akhilesh Kumar got injured when he fell and his head hit a brick platform and that he was not beaten by the accused persons by any sharp weapon. In the absence of any other witness against the appellant, the Additional Chief Judicial Magistrate acquitted the appellant of the charges under Sections 323/34/504 IPC. On these facts, it was not at all possible for the appointing authority to take a view that the appellant was not suitable for appointment to the post of a police constable.

13. The order dated 18-7-2002 of the Additional Chief Judicial Magistrate had been sent along with the report dated 15-1-2007 of Jaswant Nagar Police Station to the Senior Superintendent of Police, Ghaziabad, but it appears from the order dated 8-8-2007 of the Senior Superintendent of Police, Ghaziabad, that he has not gone into the question as to whether the appellant was suitable for appointment to service or to the post of constable in which he was appointed and he has only held that the selection of the appellant was illegal and irregular because he did not furnish in his affidavit in the pro forma of verification roll that a criminal case has been registered against him.

14. As has been stated in the instructions in the Government Order dated 28-4-1958, it was the duty of the Senior Superintendent of Police, Ghaziabad, as the appointing authority, to satisfy himself on the point as to whether the appellant was suitable for appointment to the post of a constable, with reference to the nature of

suppression and nature of the criminal case. Instead of considering whether the appellant was suitable for appointment to the post of male constable, the appointing authority has mechanically held that his selection was irregular and illegal because the appellant had furnished an affidavit stating the facts incorrectly at the time of recruitment.”

38. A reading of the principles in **Ram Kumar** would show that the Court went into the evidence appearing against the appellant and what was his role in the crime in order to find out, whether he was suitable for appointment to the post of a Constable in the Police. **Ram Kumar** was a case, where too information about the criminal case was suppressed and in paragraph No.14 of the report, it has been emphasized that the instructions carried in the Government Order dated 28.04.1958 made it the duty of the Senior Superintendent of Police to satisfy himself as to the suitability of the appellant in that case for appointment to the post of a Constable, bearing in mind the nature of suppression and the nature of the criminal case. The Court frowned upon a mechanical rejection of the appellant's candidature on account of his involvement in a crime and furnishing false information on affidavit.

39. No doubt, the decisions in Sandeep Kumar and **Ram Kumar** have in the foreground the later decision in *Avtar Singh*, which has assimilated and summarized principles, but there is no departure or dissent from the rules adumbrated in **Sandeep Kumar** and **Ram Kumar**. A careful look at the record of this case would show that in adherence to the procedure of seeking the District Magistrate's opinion for suitability of the

petitioner's appointment, his case too was referred to the District Magistrate. And, the District Magistrate, upon a consideration of the circumstances, appears to have favoured the petitioner for appointment in government service as a Police Constable. This fact is evident upon a perusal of a memo, bearing No. Bha-38/2017 dated April 18th, 2021, addressed to the Senior Superintendent of Police, Etawah by the Superintendent of Police, Hathras. The relevant part of this letter reads:

"उपरोक्त सम्बन्ध मे अवगत कराना है कि अभ्यर्थी अनुक्रमांक 00248372 राम सुन्दर पाल पुत्र श्री प्रीतम सिंह पाल निवासी ग्राम कैस्त, थाना जसवन्तनगर जनपद इटावा के विरुद्ध थाना जसवन्तनगर जनपद इटावा पर म०अ०सं० 564 / 2015 धारा 147/ 452 / 323 /504/506 भादवि व 3 (1) एससी / एसटी पंजीकृत अभियोग मे जिलाधिकारी जनपद इटावा ने अपने पत्र संख्या 864/ ए०जे०ए० - चरित्र सत्यापन / 2018 दिनांक 01-12-2018] कं अभिमत मे अभ्यर्थी के विरुद्ध पंजीकृत मुकदमा उपरोक्त मे मा० न्यायालय विशेष न्यायाध्याश एससीएसटी एक्ट-इटावा के निर्णय दिनांक 17-07-2018 मे अभ्यर्थी रामसुन्दर पाल का आरोप से दोषमुक्त कर दिये जाने के अनुपालन मे अभ्यर्थी को पुलिस आरक्षी के पद पर भर्ती हेतु आपात नहीं है। अभ्यर्थी के सम्बन्ध मे कराया गया चरित्र सत्यापन आख्या 06 माह से अधिक गया है। जो काल बाधित की श्रेणी में आता है। जिसके फलस्वरूप अभ्यर्थी का पुनः चरित्र सत्यापन कराया जाना आवश्यक है। जिससे स्पष्ट हो सके कि अभ्यर्थी के विरुद्ध किसी प्रकार का कोई अभियोग आदि पंजीकृत तो नहीं हुआ है।"

(emphasis by Court)

40. The District Magistrate, upon a consideration of the judgment of acquittal passed by the learned Special Judge on 17.07.2018, examined the petitioner's case in accordance with the Government dated 28.04.1958 and opined that he had no objection to the petitioner's appointment as a Constable in the Police. This decisive opinion of the District Magistrate, Etawah was not at all taken into consideration by the Superintendent of Police, Hathras while

passing the impugned order. This further vitiates the impugned order for non-consideration of relevant material before arriving at his decision not to appoint the petitioner.

41. At the tail-end of his submissions, Mr. Roopesh Tiwari, learned Standing, has referred to Case Crime No.63 of 2021, under Sections 420, 199 IPC, P.S. Civil Lines, District Etawah, which has been registered against the petitioner on 23.02.2023 on orders of the Senior Superintendent of Police, Etawah for his act in misrepresenting in his character verification affidavit that there was no crime registered against him with the Police. Mr. Tiwari submits that this is an additional crime registered against the petitioner, making it a case of multiple criminal cases being there against him, inviting immediate cancellation of his candidature under paragraph No.38.7 of the report in **Avtar Singh**. We do not agree.

42. Case Crime No.63 of 2021 has been registered under orders of the Senior Superintendent of Police, Etawah dated 22.02.2021 on 23.02.2021, acting on some circular of the Police Headquarters for the petitioner's act of alleged deliberate suppression of the criminal case registered against him at the time of furnishing his affidavit relating to character verification in the process of recruitment as a Police Constable. This case does not find mention or consideration for obvious reasons in the order impugned dated 19.03.2023. This was not a case pending against the petitioner when he furnished his affidavit dated 09.06.2018, during the process of character verification for recruitment to the Police. This being not a material that was considered by the Superintendent of Police, Hathras while passing the impugned order,

it cannot be looked into by this Court in support of the order impugned, as it is well settled for a proposition of the law that reasons in the order impugned cannot be supplemented through facts or materials furnished on affidavit during the hearing of a writ petition, challenging the validity of the order.

43. In the opinion of this Court, the impugned order, amongst other things, is clearly vitiated for the following reasons:

(i) *Non-consideration of the District Magistrate's opinion carried in his letter No.864/ AJA-Charitra Satyapan/2018 dated 01.12.2018, furnished in terms of the Government Order dated 28.04.1958, which says that the District Magistrate has no objection to the petitioner's appointment after a review of material;*

(ii) *Consideration of irrelevant material, being Case Crime No.108 of 2016, under Section 3(1) of the Goondas Act, P.S. Jaswant Nagar, District Etawah, which under the law could never have been registered as a case crime and investigated;*

(iii) *There being utter absence of material to show that any proceedings under Section 3(1) of the Goondas Act for externment etc. were taken against the petitioner or orders made by the Collector or the Additional Collector;*

(iv) *The Superintendent of Police, Hathras proceeding to pass the order impugned, on the basis of an error apparent, that there were multiple criminal cases registered against the petitioner in accordance with paragraph No.38.7 of the report in **Avtar Singh**, whereas his case was one of a solitary criminal case;*

(v) *The Superintendent of Police, Hathras committing a manifest illegality in proceeding to cancel the petitioner's*

candidature on the sole ground of suppression of the criminal case registered against him, without adverting to the fact, if in substance the offence was indeed trivial or the role assigned and the evidence appearing against the petitioner marginal and trivial, which did not make him unfit for appointment;

(vi) *The failure of the Superintendent of Police, Hathras to take into consider after the nature of the accusation, the evidence appearing against the petitioner at the trial, the background in which the petitioner came to be implicated where there was some panchayat election rivalry etc. involved between parties, the role assigned to the petitioner in the offence, the gravity of the crime vis-a-vis the petitioner.*

44. All these matters required careful consideration by the Superintendent of Police, together with the District Magistrate's report, to arrive at a conclusion if the petitioner was fit or unfit for public employment, which the Superintendent of Police, Hathras did not do in the present case. He has passed the order impugned mechanically and without application of mind to all these relevant facts and materials.

45. For all these fallacies, the impugned order has to perish and the matter sent back to the Superintendent of Police, Hathras for the making of fresh orders in accordance with law and the guidance in this judgment. We would add that in judging the suitability of the petitioner for appointment, the Superintendent of Police, Hathras will bear in mind and look to telltale circumstances regarding the crime, in which the petitioner was implicated and now acquitted, if it was a typical case of service related implication

by natives of the village, as the petitioner had staked his candidature for Police Service. One of the things that would have to be seen and borne in mind by the Superintendent of Police, is the general reputation of the petitioner in order to find out whether he was a person with criminal propensities or a man belonging to the main stream of life. This we say particularly because except for Case Crime No.564 of 2015, that was registered about the time relating to his recruitment, no criminal history of the petitioner showing him as a wayward man, has surfaced during a keen search of his background.

46. In the result, this writ petition succeeds and is **allowed**. The impugned order dated 19.03.2023 passed by the Superintendent of Police, Hathras is hereby **quashed**. A mandamus is issued to the Superintendent of Police, Hathras to reconsider the petitioner's case for appointment as a Police Constable on the foot of the selections held in furtherance of Advertisement No. PRPB-1 (82)/15, bearing in mind the guidance in this judgment. Since, it is a very old matter, the necessary order shall be passed by the Superintendent of Police, Hathras within a period of four weeks of receipt of a copy of this order and the result communicated to the petitioner.

47. There shall be no order as to costs.

48. Let a copy of this judgment be communicated to the Superintendent of Police, Hathras by the Registrar (Compliance).

(2025) 4 ILRA.128

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 16.04.2025

BEFORE

**THE HON'BLE KARUNESH SINGH PAWAR,
J.**

Writ A No. 10500 of 2024

Dr. Yogendra Bhadauria ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

I.M. Pandey Ist, Ajeet Verma

Counsel for the Respondents:

C.S.C., Raj Kumar Upadhyaya (R.K. Upadhyaya)

Service Law – U.P. Government Servant (Discipline and Appeal) Rules, 1999 - Rule 7(vii) - Disciplinary proceedings – Minor penalty – Procedural irregularity – Mandatory enquiry procedure under Rule 7 of 1999 Rules – Oral evidence not recorded – Reliance on extraneous office report – Promotion and sealed cover procedure – U.P. Government Servant (Discipline and Appeal) Rules, 1999 - Rule 7(vii) – Government Order dated 28.05.1997 – Principle of K.VS Jankiraman case-Failure to record oral evidence and opportunity to cross-examine vitiates enquiry – Use of office report without notice is extraneous consideration – Penalty order unsustainable – Promotion cannot be denied mechanically due to pendency of irregular disciplinary proceedings – Petition allowed. (Paras 6 to 11, 13 to 15)

HELD:

A perusal of Rule 7(vii) shows that the procedure provided in the 1999 Rules is very clear that where the government servant who has been charged denies the charges, the enquiry officer shall call the proposed witnesses mentioned in the charge sheet and record their oral evidence in presence of the charged government servant and then he shall be given

an opportunity to cross examine the said witnesses. This procedure for recording oral evidence of the witnesses proposed in the charge sheet has not been followed by the enquiry officer, at all. The disciplinary authority has provided a copy of the enquiry report dated 24.7.2024 along with the show cause notice, to which the petitioner has given his reply. The enquiry officer has not summoned any of the witnesses as mentioned in the charge sheet during the course of enquiry. Thus, the enquiry on this ground is vitiated. (Para 7)

From the above, it is evident that the disciplinary authority while passing punishment order has taken examination/opinion of the office and for that no opportunity was given to the petitioner. Thus, the impugned order suffers from considering such extraneous material, for which there is no provision in 1999 Rules. (Para 9)

A Division Bench of this Court in Subhash Chandra Gupta versus St. of U.P. 2011 CJ(All) 2938 has held that when the statute provides to do a thing in a particular manner that thing has to be done in that very manner. It is further held that when the punishment is awarded on the basis of an enquiry not conducted in accordance with the enquiry rules, it is unsustainable in the eye of law. (Para 11)

It is further worthy to note that although the St. Government has remanded the matter to the enquiry officer to conduct a fresh enquiry, still the enquiry officer has proceeded with the enquiry as per his whims ignoring the 1999 Rules, for the reasons best known to him and therefore, this court does not deem it appropriate to again give liberty to the St. Government to conduct a fresh enquiry. Further, since admittedly, the persons junior to the petitioner have already been promoted, the case of the petitioner was considered in the Departmental Promotion Committee and kept in the sealed cover. The promotion orders of the incumbent who are similarly situate and junior to the petitioner have been passed on 6.3.2024 which is on record. Therefore, it will be apt if the respondents are directed to open the sealed cover of the petitioner and proceed in accordance with law, as also in the light of judgment of Supreme Court in U.O.I. & ors.

versus K.VS Jankiraman & ors. 1991 AIR 2010. (Para 13)

Petition allowed. (E-14)

List of Cases cited:

1. Subhash Chandra Gupta Vs St. of U.P. 2011 CJ(All) 2938

2. U.O.I. & ors. Vs K.VS Jankiraman & ors. 1991 AIR 2010

(Delivered by Hon'ble Karunesh Singh Pawar, J.)

1. Heard learned counsel for the petitioner Mr.I.M.Pandey, learned Standing Counsel for the State as also Mr. R.K. Upadhyaya, learned counsel appearing on behalf of U.P. Public Service Commission.

2. The petitioner, in the petition, has prayed for issuance of a writ in the nature of certiorari quashing impugned order dated 9.9.2024 whereby the respondent No.1 has imposed punishment of stoppage of two increments for two years along with censure entry against the petitioner.

A further prayer for issuance of a writ of mandamus directing respondents not to take any action against the petitioner on the basis of impugned order dated 9.9.2024 with another direction to the respondents to open sealed cover of petitioner's promotion to the post of Geologist and to implement the recommendation of the promotion committee ignoring the impugned order, Annexure-1 has also been sought. □

3. The petitioner's counsel has assailed the impugned order dated 9.9.2024 on two grounds. Firstly, the enquiry conducted by the enquiry officer is de hors

the provisions of Rule 7 of U.P. Government Servant (Discipline & Appeal) Rules, 1999 (in short, 1999 Rules), and secondly, while passing the punishment order, office report was summoned and on the basis of office report, the impugned order has been passed. It is submitted that there is no provision in the 1999 Rules for summoning office report. The punishment order has to be passed on the basis of the enquiry conducted in pursuant to the charge sheet as well as the reply submitted to the show cause notice by the delinquent government servant and no other extraneous material is permitted. It is further submitted that the oral evidence proposed to be examined during the course of enquiry as mentioned in the charge sheet has not been recorded in this case and as such, the enquiry is vitiated.

4. Learned standing counsel has opposed the contention and submitted that since the minor penalty has been inflicted and therefore, there is no reason for examining the witnesses.

5. The petitioner appears to have been placed under suspension vide order dated 6.1.2022. Charge sheet was issued to the petitioner by the enquiry officer on 8.12.2022, which contains only one charge. The documentary evidence as well as oral evidence which were proposed to be examined during the enquiry were mentioned. The petitioner submitted his reply to the charge sheet where after, the enquiry officer heard the petitioner personally and on that basis, without examining any other witness as proposed in the charge-sheet, the enquiry officer sent enquiry report to the State Government. The State Government, vide order dated 1.12.2023, remanded the matter to the enquiry officer with a direction to conduct

oral enquiry and also examine the evidence and then to submit fresh enquiry report.

After remand by the State Government, the enquiry officer again conducted enquiry and submitted his enquiry report dated 24.7.2024, contained in Annexure No.RA-1 to the rejoinder affidavit.

6. A perusal of the enquiry report shows that during enquiry, the proposed oral evidence was not led before the enquiry officer as provided in Rule 7(vii) of 1999 Rules. None of the witnesses as mentioned in the charge sheet has been summoned and examined during the course of enquiry. Before proceeding further, it would be appropriate to have a reference to Rule 7(vii) of 1999 Rules which is extracted below :

"Where the charged Government servant denies the charges, the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidence, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to be produced in his defence :

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness."

7. A perusal of Rule 7(vii) shows that the procedure provided in the 1999 Rules is very clear that where the government servant who has been charged denies the charges, the enquiry officer shall call the proposed witnesses mentioned in the charge sheet and record their oral

evidence in presence of the charged government servant and then he shall be given an opportunity to cross examine the said witnesses. This procedure for recording oral evidence of the witnesses proposed in the charge sheet has not been followed by the enquiry officer, at all.

The disciplinary authority has provided a copy of the enquiry report dated 24.7.2024 along with the show cause notice, to which the petitioner has given his reply.

The enquiry officer has not summoned any of the witnesses as mentioned in the charge sheet during the course of enquiry. Thus, the enquiry on this ground is vitiated.

8.As regards second ground taken by the petitioner's counsel that the impugned order has been passed for extraneous consideration, this court finds from a perusal of the punishment order that this contention of the learned counsel carries weight. Relevant part of the impugned order where the opinion of the disciplinary authority has been considered is extracted below :

कार्यालय का परीक्षण/अभिमत :

जांच अधिकारी द्वारा प्रश्नगत अनुशासनिक कार्यवाही में पुनरीक्षित जाँच आख्या उपलब्ध करायी गयी है, जिसमें जांच अधिकारी द्वारा विभागीय कार्यवाही के प्रकरण में Do's व Don'ts विषयक कार्मिक विभाग के शासनादेश दिनांक 19.07.2022 का अनुपालन करते हुए आर्डरशीट, परीक्षण सम्बन्धी आख्या प्रपत्र, व्यक्तिगत सुनवाई के उपस्थिति विवरण, अनुशासनिक कार्यवाही से सम्बन्धित प्रशिक्षण प्रमाण-पत्र उपलब्ध कराते हुए कार्यवाही का

विवरण उपलब्ध कराया गया है तथा गवाहों व साक्ष्यों का परीक्षण किया गया है। जांच अधिकारी द्वारा अपने निष्कर्ष में कहा गया है कि अपचारी अधिकारी के ऊपर पट्टाधारकों से मिलीभगत/दुरभिसंधि किया जाना सिद्ध नहीं होता है, किन्तु परिवहन के विरुद्ध प्रवर्तन कार्यों में शिथिलता बरते जाने एवं खनन क्षेत्रों का समुचित निरीक्षण/पर्यवेक्षण कार्य नहीं किया जाना सिद्ध होता है।

9.From the above, it is evident that the disciplinary authority while passing punishment order has taken examination/opinion of the office and for that no opportunity was given to the petitioner. Thus, the impugned order suffers from considering such extraneous material, for which there is no provision in 1999 Rules.

10.A Division Bench of this Court in **Subhash Chandra Gupta versus State of U.P. 2011 CJ(All) 2938** has held that when the statute provides to do a thing in a particular manner that thing has to be done in that very manner. It is further held that when the punishment is awarded on the basis of an enquiry not conducted in accordance with the enquiry rules, it is unsustainable in the eye of law.

11.The objection raised by the learned standing counsel that since minor punishment has been awarded to the petitioner, therefore, the enquiry officer was not required to record oral evidence, coupled with the opportunity to the delinquent employee to cross examine the witnesses has no force.

From perusal of the record, it is evident that the petitioner was placed under

suspension, which can be done only when the charges are so serious which will entail major penalty. After that, charge sheet was issued. However, while passing the punishment order, lesser punishment can always be given keeping in view the facts and circumstances of the case as also the material available on record.□ Thus, submission of learned standing counsel that no oral enquiry was needed in this case is baseless. The enquiry officer should have adhered the mandatory procedure provided under 1999 Rules and ought to have called upon the witnesses proposed in the charge sheet in conducting oral enquiry, that too in the presence of the petitioner and he should have been given an opportunity to cross-examine them, which has not been done in this case. No oral enquiry from the witnesses proposed in the charge sheet has been done. Thus, the punishment order which is based on the said enquiry cannot sustain. Likewise, the punishment order also cannot sustain as it is based on extraneous consideration, as discussed above.

12.This court has taken note of the fact that during pendency of the disciplinary proceedings, selection for the post of Geologist has been conducted and several Assistant Geologists including one Ashish Chaudhary who is junior to the petitioner have been promoted on higher post whereas the petitioner's promotion has been withheld due to pendency of the disciplinary proceedings. Specific pleading in this regard has been made in para 44 of the writ petition, to which no reply has been given by the State while filing counter affidavit.

13.It is further worthy to note that although the State Government has remanded the matter to the enquiry officer

to conduct a fresh enquiry, still the enquiry officer has proceeded with the enquiry as per his whims ignoring the 1999 Rules, for the reasons best known to him and therefore, this court does not deem it appropriate to again give liberty to the State Government to conduct a fresh enquiry. Further, since admittedly, the persons junior to the petitioner have already been promoted, the case of the petitioner was considered in the Departmental Promotion Committee and kept in the sealed cover. The promotion orders of the incumbent who are similarly situate and junior to the petitioner have been passed on 6.3.2024 which is on record. Therefore, it will be apt if the respondents are directed to open the sealed cover of the petitioner and proceed in accordance with law, as also in the light of judgment of Supreme Court in **Union of India and others versus K.V. Jankiraman and others** 1991 AIR 2010.

14.Mr. R.K. Upadhayay, learned counsel for the Commission submits that the case of the petitioner shall be considered for promotion after opening the sealed cover if he is otherwise found fit and also in accordance with the Government Order dated 28.5.1997.

15.In view of the above, the writ petition is allowed and the impugned order dated 9.9.2024 (supra) is set aside. The respondents are directed to open the sealed cover of the petitioner and proceed in accordance with law, and if the petitioner is otherwise found fit to be promoted on the higher post, he shall be so considered for promotion on the higher post. In case any person junior to the petitioner has been promoted, he shall also be considered for being promoted from the date his juniors were so promoted as also the notional benefit of seniority etc. Such an exercise

shall be done within a period of three months from the date of service of a certified copy of this order.

(2025) 4 ILRA 133

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 22.04.2025

BEFORE

THE HON'BLE ASHWANI KUMAR MISHRA, J.
THE HON'BLE DONADI RAMESH, J.

Writ A No. 12020 of 2022

Ramesh Kumar Yadav ...Petitioner
Versus
High Court of Judicature at Allahabad &
Ors. ...Respondents

Counsel for the Petitioner:
Sr. Advocate, Udayan Nandan

Counsel for the Respondents:
Ashish Mishra, C.S.C.

Service Law – Judicial Officer – Compulsory retirement – Validity – Petitioner, a Higher Judicial Service officer, compulsorily retired on recommendation of Screening Committee and approval by Full Court – Challenge raised that adverse materials were either irrelevant, not considered in proper perspective, or pending representation – Held: adverse entries including integrity not certified (2008-09), advisory issued by Administrative Committee (2011), and censure entry imposed in 2012 had attained finality and constituted valid basis for assessing unsuitability – Though remark for 2018-19 was pending representation and later expunged, remaining materials were sufficient – Screening Committee considered entire service record and formed opinion in public interest – No malafide, arbitrariness or perversity shown – Judicial review limited in such cases – Compulsory retirement is not punitive,

and even uncommunicated entries may be relied upon – Judicial officers are held to higher standards of probity and judicial discipline – Writ petition dismissed. (Paras 10, 11, 12, 15, 16, 23 to 26)

HELD:

Upon overall evaluation of the material placed on record, we are of the considered view that the Screening Committee had taken note of adverse material on record against the petitioner so as to recommend his compulsory retirement. Out of three material referred to above as 'A', 'B' & 'C' we find that the adverse remark of Administrative Judge for the year 2008-09 as also the censure entry awarded to the petitioner by the Administrative Committee on 11.10.2012 in itself, were sufficient to come to the conclusion that continuance of petitioner in employment is not warranted and he be compulsorily retired. (Para 15)

After analysing the facts of the case and the judgments referred to above, we have no hesitation in holding that there did exist adverse material in the service record of the petitioner on the strength on which subjective satisfaction could have been formed to come to the conclusion that the petitioner is liable to be compulsorily retired. Law is well settled that sufficiency or otherwise of such material cannot be gone into in writ. Correctness or otherwise of the adverse material also cannot be examined when such entries have attained finality. (Para 25)

Having evaluated the material on record we hold that material adverse against the petitioner did exist on record to form an opinion by the Screening Committee that petitioner is liable to be compulsorily retired. The decision taken by the Full Court and the consequential decision of the St. Government to compulsorily retire the petitioner, therefore, warrants no interference. This is particularly so, as the petitioner is a Judicial Officer, who acts on behalf of the St. in discharge of its sovereign function. The ordinary litigant must have complete faith in the judicial system and no impression can be afforded to be given to a litigant which may even remotely create perception against the justice delivery system. There is otherwise no allegation of any bias or malafide against the members of

Screening Committee nor is it shown that the subjective opinion of the Screening Committee is based upon no evidence. In such circumstances, the order impugned compulsorily retiring the petitioner merits no interference. (Para 26)

Revision Application partly allowed. (E-14)

List of Cases cited:

1. Baikuntha Nath Das Vs Chief District Medical Officer, Baripada, (1992) 2 SCC 299
2. High Court Punjab & Haryana Vs Ishwar Chand, (1999) 4 SCC 579
3. Madan Mohan Chaudhary Vs St. of Bihar, (1993) 3 SCC 396
4. Nand Kumar Verma Vs St. of Jharkhand & ors., (2012) 3 SCC 580
5. St. of Guj. Vs Umedhai M. Patel, 2001 AIR (SC) 1109
6. The Registrar High Court of Madras Vs R. Rajiah, (1988) 3 SCC 211
7. Brij Behari Lal Agrawal Vs Hon'ble High Court of M.P., (1981) 2 SCC 297
8. Yoginath D. Bagde Vs St. of Mah., (1999) 7 SCC 739
9. Vijendra Pal Singh Vs St. of U.P., 2001 (4) AWC 2738
10. Syed T A Nashqbandi & ors. Vs St. of J & K, (2003) 9 SCC 592
11. Rajendra Singh Verma Vs Lt. Governor (NCT Delhi), (2011) 6 SCC 1
12. Arun Kumar Saxena Vs High Court of Judicature at Allahabad, 2018 SCC Online All 5728 (All HC-DB)
13. Anupati Ram Yadav Vs St. of U.P., 218 SCC Online All 4472 (All HC-DB)
14. Ram Murti Yadav Vs St. of U.P., (2020) 1 SCC 801

15. Pyare Mohan Lal Vs St. of Jharkhand, (2010) 10 SCC 693

16. U.O.I. Vs K. K. Dhawan, (1993) 2 SCC 56

17. U.O.I. Vs Duli Chand, (2006) 5 SCC 680

(Delivered by Hon'ble Ashwani Kumar Mishra, J.)

1. Petitioner is a Judicial Officer. He was initially appointed as Munsif/Civil Judge (Junior Division) on 24.03.2001. He was promoted as Civil Judge (Senior Division) on 16.10.2006. He was granted further promotion to the Higher Judicial Service under rule 22(1) of the U.P. Higher Judicial Service Rules, 1975 on 02.07.2015. His date of birth is 05.02.1966 and would have attained the age of superannuation in the month of February, 2026. His tenure, however, has been curtailed on account of order impugned passed by the State Government on 29.11.2021 compulsorily retiring him from service by resorting to powers under the Financial Hand Book (Vol. II, Part II to IV) read with amended fundamental rule 56(C). At the time of passing of such order the petitioner was posted as Special Judge (Scheduled Caste and Scheduled Tribe Prevention of Atrocities Act) at Kaushambi. The order of compulsory retirement dated 29.11.2021 is thus assailed in the present writ petition.

2. The record reveals that a Screening Committee was constituted to examine the service record of Judicial Officers in order to chop the deadwood, which met on 11.06.2020 and 15.06.2020. Apart from other Judicial Officers the service records of the writ petitioner was also placed for consideration by the Screening Committee. The Screening

Committee upon overall evaluation of the service records recommended compulsory retirement of the petitioner. This report of the Screening Committee was placed before the Full Court on 25.11.2021. The Full Court agreed with the recommendation made by the Screening Committee and recommended compulsory retirement of the petitioner. This decision of the Full Court was communicated by the Registry to the State Government on 26.11.2021. It is on the strength of this recommendation of the Court that the petitioner has been compulsorily retired from service vide order impugned. It may also be noticed that the judicial and administrative work was also withdrawn from the petitioner w.e.f. 26.11.2021 on the basis of recommendation made by the Full Court in its meeting dated 25.11.2021.

3. The petitioner has appeared in person and has urged that there existed no adverse material on record on the basis of which the order of compulsory retirement could be passed. The petitioner, during course of argument, has submitted that the Screening Committee has erred in recommending the petitioner's compulsory retirement on account of following reasons:-

(i) Material which was not available to form adverse opinion against the petitioner has been taken into consideration;

(ii) Material in the form of continuous satisfactory working of the petitioner has been omitted from consideration and, therefore, the decision of the Screening Committee, as affirmed by the Full Court and acted upon by the State Government, is wholly erroneous and perverse and consequently, the order impugned compulsorily retiring the

petitioner is liable to be set aside. Petitioner has relied upon following judgments in support of his contention:-

“1. Baikuntha Nath Das vs. Chief District Medical Officer, Baripada, (1992) 2 SCC 299;

2. High Court Punjab and Haryana vs. Ishwar Chand, (1999) 4 SCC 579;

3 Madan Mohan Chaudhary vs. State of Bihar, (1993) 3 SCC 396;

4. Nand Kumar Verma vs. State of Jharkhand and others, (2012) 3 SCC 580;

5. State of Gujrat vs. Umedhai M. Patel, 2001 AIR (SC) 1109;

6. The Registrar High Court of Madras vs. R. Rajiah, (1988) 3 SCC 211; and

7. Brij Behari Lal Agrawal vs. Hon'ble High Court of Madhya Pradesh, (1981) 2 SCC 297.”

4. Petitioner has also placed reliance upon judgment in the case of Yoginath D. Bagde vs. State of Maharashtra, (1999) 7 SCC 739 as well as Division Bench Judgment of this Court in the case of Vijendra Pal Singh vs. State of Uttar Pradesh, 2001 (4) AWC 2738.

5. Shri Ashish Mishra, learned counsel appearing for the respondent nos.1 and 2 has controverted the submissions of the petitioner by stating that sufficient material did exist on record to form the opinion that petitioner is a deadwood and that no extraneous material has been relied upon to compulsorily retire the petitioner. It is submitted that the order of compulsory retirement merits no interference in the present writ petition. Shri Mishra has also relied upon judgment of the Supreme Court in the case of Baikunth Nath Das (supra) on which reliance is also placed by the

petitioner. In addition, the respondents rely upon following judgments of the Supreme Court:-

“1. Syed T A Nashqbandi and others vs. State of J & K, (2003) 9 SCC 592;

2. Rajendra Singh Verma vs. Lt. Governor (NCT Delhi), (2011) 6 SCC 1;

3. Arun Kumar Saxena vs. High Court of Judicature at Allahabad, 2018 SCC Online All 5728 (All HC-DB);

4. Anupati Ram Yadav vs. State of U.P., 218 SCC Online All 4472 (All HC-DB);

5. Ram Murti Yadav vs. State of U.P., (2020) 1 SCC 801; and

6. Pyare Mohan Lal vs. State of Jharkhand, (2010) 10 SCC 693.”

6. We have heard the petitioner in person and Shri Ashish Mishra, learned counsel for respondent nos.1 and 2 and learned Standing Counsel for respondent no.3 and have carefully gone through the materials on record in light of the judgments relied upon by the parties.

7. The short question that arises for consideration in the facts of the present case is as to whether the respondents are justified in compulsorily retiring the petitioner? Implicit in this question is the issue as to whether formation of opinion by the Screening Committee is based on consideration of relevant materials or not?

Adverse Material

8. The minutes of the Screening Committee have been furnished to the petitioner on the strength of which the petitioner is compulsorily retired. For proper adjudication of the controversy we intend to reproduce hereinafter the material

relied upon for such purpose by the Screening Committee:-

“A. In the year 2008-09 the Administrative Judge, Mirzapur gave following adverse remark to the officer/petitioner:

“Integrity not certified/doubtful.

On overall assessment, he is not a good officer.”

The petitioner submitted a representation against such adverse remarks on 08.01.2010 which was rejected by the Representation Committee on 20.04.2010. The Administrative Committee vide its resolution dated 24.05.2010 also rejected such representation. A second representation was then made by the officer on 20.12.2012, which was rejected by the Representation Committee on 17.09.2013 and approved by the Administrative Committee vide its resolution dated 13.11.2013. This adverse remark for the year 2008-09 has attained finality with the rejection of representation made against it by the petitioner. The adverse remark has not been challenged any further.

B. On the basis of complaint made by the Special Secretary, Vidhan Sabha, Sachivalaya on 16.06.2010 an advisory was issued to the petitioner by the Administrative Committee vide minutes dated 14.10.2011, which is reproduced hereinafter:-

“.....Resolved that officer, namely Sri Ramesh Kumar Yadav, the then Civil Judge (Senior Division) Mirzapur presently Civil Judge (Senior Division) Kanpur Dehat be advised to be more careful in future.”

This advisory has also attained finality.

C. A vigilance enquiry bearing V.B. Enquiry No.33/2009 was initiated against the petitioner wherein a report was submitted on 23.07.2012 by the Officer on Special Duty (Enquiry). The comments of the officer were invited and the matter was considered by the Administrative Committee in its meeting held on 11.10.2012. Upon consideration of the explanation submitted by the petitioner the Administrative Committee awarded censure entry in the character roll of the petitioner, which is reproduced hereinafter:-

“Sri Ramesh Kumar Yadav-I, the then A.C.J.M., Mirzapur is inflicted punishment of censure for violation of U.P. Government Servants Conduct Rules, 1956 in the matter of selling a revolver no. C-5856 NPB 32 Bore, to a private person named Sri Mehtab Alam in Rs. 80,000 and also purchasing a new revolver worth Rs.1,14,912 on 30.03.2012 against License No. 220/PS-GS/2001, without seeking permission of the Hon'ble Court and for denying release of vehicle No. U.P. 63 F 9130 in a case under Sections 307, 420, 468, 272, 273 I.P.C., read with Section 60 Excise Act, P.S. Kotwali Dehat, District Mirzapur on 20.1.2009 on the ground of the continuance of confiscation proceeding before District Magistrate, Mirzapur whereas on 2.3.2009 the same vehicle has been released without mentioning any ruling or any special circumstance which did not exist at the earlier stage. Such conduct is against judicial propriety and unbecoming of a responsible judicial officer of the cadre of A.C.J.M. Also has mentioned in the enquiry report dated 23.7.2012, the officer had not yet complied

the order dated 18.04.2008 of the Court passed by Hon'ble Justice Imtiyaz Murtaza requiring him to furnish details of his monthly expenses and its reminder dated 17.07.2008.”

A representation was made by the officer against the censure entry which came to be rejected by the Administrative Committee on 07.04.2014. A review representation was also made which too came to be rejected by the Administrative Committee on 15.10.2014. With the rejection of representation the censure entry awarded to the officer has attained finality.

D. In the year 2018-19 the District Judge, Chandauli has given following adverse remark in the confidential roll of the petitioner, which reproduced hereinafter:-

“The presiding officer of the court of Chief Judicial Magistrate Chandauli i.e. Sri Munna Prasad by referring the record including the reports received from police officers/officials reported me in writing with several enclosures (in order to get further instructions) that this officer Sri. R. K Yadav is first informant/complainant of a criminal case bearing case crime no. 53/2019 State versus Deepak Sharma etc. offence under section 406, 409, 420, 467, 468, 471, 120B I.P.C. Police Station and District Chandauli registered on 13.03.2019. Hon'ble Allahabad High Court vide order dated 30.03.2019 passed in Criminal Misc. Writ Petition No. 7837 of 2019 Deepak Sharma and three others versus State of U.P. and three others, has ordered to take no coercive action against Petitioners (accused of that case) till the next date of listing. Even then in that case, Sri R.K. Yadav has continuously moved

several applications against police officers/officials of district Chandauli i.e. S.P., Addl. S.P., S.H.O. Police Station Chandauli, Investigating Officer and even against him (Sri Munna Prasad) raising serious false and baseless allegations that they in collusion with the accused persons, are committing the conspiracy to commit murder of Sri R.K. Yadav and his son Sri Trivesh Yadav and if in future the murder of Sri R.K. Yadav or Sri Trivesh Yadav is committed or any loss of property is caused to them, these police officers/officials and Chief Judicial Magistrate should be held responsible for that and Sri R.K. Yadav has made several telephonic calls and sent several messages in order to pressurize them so that he may get the investigation conducted and orders passed as choiced by him. Sri R.K. Yadav on being directed by me to submit his comments, submitted five different comments along with several enclosures. In which he accepted that he has moved such applications containing such allegations and has made such telephonic calls and sent the messages and further asserted that in future also he will continue to do the same, if required, but he could not specify the proper justification of doing so. He questioned even my authority to call for his comments and behaved in an arbitrary, indisciplined, objectionable and illegal manner. All these facts in details were reported by me to the Hon'ble High Court vide letter No. 790/I dated 24.08.2019 with a prayer to proceed further in the matter by conducting an enquiry and to transfer him from district Chandauli. A copy of that letter is enclosed herewith. After that Sri R.K. Yadav has been transferred to district Kaushambi in the month of September 2019.”

The aforesaid adverse remark is not shown to have been interfered with by any higher forum.

Explanation in respect of Adverse Material at ‘A’

9. Keeping in view the allegation against the petitioner of passing bail orders for extraneous consideration the petitioner’s integrity was held doubtful. The petitioner submits that a vigilance enquiry was also ordered against him on the complaint made by one Rajesh Kumar, Advocate and Vinay Kumar Baghat, Advocate. The vigilance enquiry report was submitted on 29/30.07.2009 wherein the charge of passing bail orders for extraneous reasons was not found proved. The vigilance enquiry report also stated that though notices were issued to the alleged complainants for submitting evidence against the petitioner but both the notices returned with the endorsement that no such advocates were found practising in the District Court, Mirzapur. Yet, another vigilance enquiry report was submitted on the same charge on 23.07.2012 wherein also the charge of granting bail for extraneous consideration was not found proved. On the strength of the vigilance report dated 29/30.07.2009 (Annexure-11 to the writ petition) as well as the vigilance enquiry report dated 23.07.2012 (Annexure-12 to the writ petition) the petitioner submits that the charge of passing bail orders on extraneous consideration is not made out. It is also submitted that the adverse remark of the Administrative Judge for the year 2008-09 since is not substantiated in the vigilance enquiry and no adverse material otherwise existed on record, therefore, the adverse remark made against the petitioner and withholding of his integrity could not have

been relied upon by the Screening Committee and the contrary view taken by the Screening Committee is unsustainable, and renders the order of compulsory retirement bad in law.

‘B’

So far as the advisory issued by the Administrative Committee on the complaint of the Special Secretary, Vidhan Sabha, Sachivalaya is concerned, the petitioner submits that the advisory cannot be treated as a adverse material against him for passing the order of compulsory retirement. It is moreover pointed out that a transfer application was moved by one Samudra Devi before the District Judge, Mirzapur in Misc. Case No.13/08 (Savitri Devi and others vs. Samudra Devi and others) pending before the Civil Judge (Senior Division), Mirzapur, which came to be rejected by the said court vide order dated 19.02.2010 and a cost of Rs.1,000/- was also imposed. This order of District Judge, Mirzapur is contained in Annexure-13 to the writ petition. Since the order of District Judge was not complied with as such a direction was issued by the competent court to the District Magistrate, Mirzapur to recover such amount as arrears of land revenue from the concerned party. The District Magistrate, Mirzapur without complying with the said order deposited the amount of Rs.1,000/- through A.D.G.C. (Civil). When such fact was brought to the notice of the petitioner, he directed an enquiry to be held against the District Magistrate for not complying with the order of the District Judge, Mirzapur. It is thereafter that the Special Secretary, Government of U.P. made a complaint against the petitioner which formed the basis of the advisory issued to the petitioner. It is contended that the advisory neither constitutes an adverse material to be

taken note of for passing the order of compulsory retirement nor could it have been relied upon in the facts of the case, inasmuch as the petitioner had only acted in due discharge of official duties and since his order was not interfered with by any higher forum it could not have been relied upon as material adverse to the petitioner.

‘C’

So far as the charge of buying and selling of revolver without permission of the Court is concerned, the Court had called for petitioner's explanation in the matter. Subsequently, a communication was issued by the Deputy Registrar, High Court, Allahabad on 15.04.2013 to the District Judge, Ramabai Nagar (Kanpur Dehat) requiring the petitioner to apply afresh for permission. It is thereafter that a fresh permission was applied whereafter nothing was heard in the matter. It is therefore submitted that this circumstance also could not have been treated adverse to the petitioner.

So far as release of vehicle UP63F9130 is concerned, it is submitted that the allegation was got enquired in the vigilance enquiry wherein the Vigilance Officer has clearly held that there was no error in entertaining the second release application and the charge of extraneous consideration was not proved. The petitioner also submits that the charge of not furnishing details of monthly expenses also cannot be a ground for passing order of compulsory retirement. It is, moreover, urged that letters dated 18.04.2008 and 17.07.2008 were never received by the petitioner and the details were subsequently submitted by him pursuant to the communication of Deputy Registrar, High Court, Allahabad, dated 15.05.2008.

‘D’

It is lastly urged that the adverse remark recorded against the petitioner by the District Judge, Chandauli for the year 2018-19 was uncalled for, inasmuch as charge sheet was submitted in Case Crime No.53 of 2019 under Sections 406, 409, 420, 467, 468, 471, 120B IPC. It is also urged that despite such remark the District Judge awarded overall assessment as “Good” to the petitioner and certified his integrity. It is contended that against the entry awarded to him for the year 2018-19 a representation has been made by the petitioner before the Administrative Judge on 17.12.2019, which is still pending and, therefore, by virtue of provisions contained in U.P. Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 1995 such material could not have been treated adverse when representation has not been decided.

ANALYSIS

10. So far as the adverse remark awarded by the Administrative Judge, Mirzapur to the petitioner for the year 2008-09 as well as representation made against it is concerned, such adverse remark has attained finality. Submission of the petitioner that in the vigilance enquiry conducted on the charge of passing bail orders for extraneous consideration no finding was returned against the petitioner would not be conclusive. The Administrative Judge in his adverse remark for the year 2008-09 has clearly noticed that complaints existed against the officer for passing bail orders on extraneous consideration. The Administrative Judge has found the integrity of the officer to be doubtful/not certified and the officer has

been assessed as “not good officer”. It is not clear that the Administrative Judge had made adverse remark on the same material on which the vigilance enquiry was subsequently conducted against the petitioner. It has not been shown by the petitioner that the comments of the Administrative Judge for the year 2008-09 were based only upon the complaints of Vinay Kumar Bhaghat and Rajesh Kumar, Advocates. The mere fact that in the vigilance enquiry the allegations made by Vinay Kumar Bhaghat and Rajesh Kumar were not found proved, would not lead to an inference that there existed no material before the Administrative Judge for making the adverse remark against the petitioner in respect of the year 2008-09. Even otherwise, the adverse remark of the Administrative Judge has attained finality. The correctness or otherwise of the adverse remark of the learned Administrative Judge for the year 2008-09 cannot be commented upon in the present writ petition, particularly when adverse remark itself is not under challenge before us. In such view of the matter, we find that the adverse remark recorded by Administrative Judge against the petitioner for the year 2008-09 exists on record and was a relevant material to be taken note of by the Screening Committee for recommending compulsory retirement of the petitioner.

11. Similarly, correctness or otherwise of the advisory issued to the petitioner cannot be commented upon in the present writ when such advisory is not under challenge. Though the advisory in itself may not constitute material adverse to pass order of compulsory retirement but when the entire service record of the petitioner is being examined, such material can be looked into for the

formation of opinion regarding desirability to compulsorily retire the petitioner.

12. Similarly, the vigilance enquiry report dated 23.07.2012 has been examined by the Administrative Committee and a censure entry has been awarded to the petitioner. This censure entry has attained finality with rejection of representation and review representation submitted against it by the petitioner. The censure entry, moreover, is not under challenge before use. In such circumstances, we would not be justified in embarking upon a factual enquiry, as is sought to be canvassed by the petitioner, so as to adjudicate whether there existed any material on record to award censure entry. This censure entry admittedly is a material which could be relied upon against the petitioner by the Screening Committee.

13. So far as the adverse remark of District Judge, Chandauli is concerned, the petitioner has contended in para 52 of the writ petition that he had submitted representation against it which has not been considered. This paragraph is relied upon in para 44 of the counter affidavit. It is averred in the counter affidavit that the Administrative Judge, Chandauli has expunged the adverse remark of the District Judge for the year 2018-19 vide order dated 25.08.2022. This material, therefore, could not have been relied upon by the Screening Committee for recommending compulsory retirement. On this aspect, we find substance in the petitioner's contention that as the representation against adverse remark was pending when the Screening Committee met as such by virtue of rule 5 of the Rules of 1995 this adverse remark could not have been looked into for recommending compulsory retirement. Analysis of the material on record,

therefore, persuades us to come to the conclusion that out of material relied upon against the petitioner for passing order of compulsory retirement first three circumstance mentioned as 'A', 'B' & 'C' were available for passing the order impugned.

14. The petitioner, moreover, has submitted that his character roll entries for other years have not been taken into consideration while recommending his compulsory retirement. This contention of the petitioner is not correct, inasmuch as respondents in the counter affidavit have clearly stated that entire service record of the petitioner was placed before the Screening Committee. Screening Committee specifically noticed the adverse material existing on the service record of the petitioner and on the strength of it alone it came to the conclusion that the petitioner is not suitable to be retained in employment and is liable to be compulsorily retired. The Screening Committee, moreover, was not required to specifically refer to each of the Annual Confidential Reports in favour of the petitioner. What was required to be noticed was the material adverse in the service record of the petitioner so as to recommend his compulsory retirement.

15. Upon overall evaluation of the material placed on record, we are of the considered view that the Screening Committee had taken note of adverse material on record against the petitioner so as to recommend his compulsory retirement. Out of three material referred to above as 'A', 'B' & 'C' we find that the adverse remark of Administrative Judge for the year 2008-09 as also the censure entry awarded to the petitioner by the Administrative Committee on 11.10.2012 in itself, were sufficient to come to the

conclusion that continuance of petitioner in employment is not warranted and he be compulsorily retired.

16. Learned counsel for the parties have placed reliance upon judgments referred to above in support of their submissions. The judgment of Supreme Court in *Bainkuntha Nath Das* (supra) is an authority for the proposition that even an uncommunicated adverse remark can be considered for compulsory retirement. The Court held that opinion of the authority regarding compulsory retirement is based on the subjective satisfaction formed on the basis of entire records of service of employee. It has also been conclusively held that an order of compulsory retirement does not amount to an order of punishment and principles of natural justice are not required to be observed in passing the order of compulsory retirement. Scope of judicial review is limited to grounds of malafide, arbitrariness and perversity. Observations made by the Supreme Court in paras 31 to 33 of the judgment in *Baikunth Nath Das* (supra) are reproduced hereinafter:-

“31. Another factor to be borne in mind is this: most often, the authority which made the adverse remarks and the authority competent to retire him compulsorily are not the same. There is no reason to presume that the authority competent to retire him will not act bona fide or will not consider the entire record dispassionately. As the decided cases show, very often, a Review Committee consisting of more than one responsible official is constituted to examine the cases and make their recommendation to the government. The Review Committee, or the government, would not naturally be swayed by one or two remarks, favourable or adverse. They would form an opinion on a

totality of consideration of the entire record — including representations, if any, made by the government servant against the above remarks — of course attaching more importance to later period of his service. Another circumstance to be borne in mind is the unlikelihood of succession of officers making unfounded remarks against a government servant.

32. We may not be understood as saying either that adverse remarks need not be communicated or that the representations, if any, submitted by the government servant (against such remarks) need not be considered or disposed of. The adverse remarks ought to be communicated in the normal course, as required by the rules/orders in that behalf. Any representations made against them would and should also be dealt with in the normal course, with reasonable promptitude. All that we are saying is that the action under F.R. 56(j) (or the rule corresponding to it) need not await the disposal or final disposal of such representation or representations, as the case may be. In some cases, it may happen that some adverse remarks of the recent years are not communicated or if communicated, the representation received in that behalf are pending consideration. On this account alone, the action under F.R. 56(j) need not be held back. There is no reason to presume that the Review Committee or the government, if it chooses to take into consideration such uncommunicated remarks, would not be conscious or cognizant of the fact that they are not communicated to the government servant and that he was not given an opportunity to explain or rebut the same. Similarly, if any representation made by the government servant is there, it shall also be taken into consideration. We may reiterate that not only the Review Committee is generally composed of high and

responsible officers, the power is vested in government alone and not in a minor official. It is unlikely that adverse remarks over a number of years remain uncommunicated and yet they are made the primary basis of action. Such an unlikely situation, if indeed present, may be indicative of malice in law. We may mention in this connection that the remedy provided by Article 226 of the Constitution is no less an important safeguard. Even with its well known constraints, the remedy is an effective check against mala fide, perverse or arbitrary action.

33. At this stage, we think it appropriate to append a note of clarification. What is normally required to be communicated is adverse remarks — not every remark, comment or observation made in the confidential rolls. There may be any number of remarks, observations and comments, which do not constitute adverse remarks, but are yet relevant for the purpose of F.R. 56(j) or a rule corresponding to it. The object and purposes for which this power is to be exercised are well stated in J.N. Sinha [(1970) 2 SCC 458 : (1971) 1 SCR 791] and other decisions referred supra.”

17. Petitioner has placed reliance upon judgment of Supreme Court in the case of High Court Punjab and Haryana Vs. Ishwar Chand (supra). In this case the Judicial Officer was a member of the Superior Judicial Service, who was on probation. Though his Inspecting Judge had found his working to be satisfactory, yet, the Full Court downgraded him and found his working to be not satisfactory and dispensed his engagement. This order was set aside by the High Court and SLP before the Supreme Court was also dismissed. The officer was continued in service. Certain complaints were made against the officer

while he was working at Jind. He was placed under suspension and disciplinary enquiry proceeded against him. While such enquiry was pending the officer was compulsorily retired. The Division Bench of the High Court set aside the order of premature retirement primarily on the ground that the decision to retire the officer was based on the allegation of misconduct, which was subject matter of enquiry. This judgment of High Court was affirmed with dismissal of SLP. The principles laid down in this decision are peculiar to the facts of its own case and have no applicability in the facts of the present case. The order of compulsory retirement was founded on misconduct for which an enquiry was already pending. In view of the settled position in law that order of compulsory retirement cannot be passed as a means of punishment, whereas such order was founded on misconduct due to which the Court interfered in the matter. This judgment, therefore, cannot be of any help to the petitioner since the order of compulsory retirement is not founded on any allegation of misconduct.

18. The next judgment relied upon by the petitioner is in the case of Madan Mohan Chaudhary (supra). The Supreme Court had noticed the facts of this case in para 29 of the judgment, according to which, no entries were recorded in the character roll of the officer for the year 1991-92, 1992-93 and 1993-94. The entries were made for these years in one go and were communicated to the officer on 11.09.1996. These entries were considered on 30.11.1996. The Supreme Court observed that these entries were recorded at the stage when Screening Committee had already made up its mind to compulsorily retire the officer from service. The fact that the officer had been promoted and no other

material existed on record against him was noticed. The Court observed that no opinion could be reasonably formed that it was in public interest to retire the officer. The Supreme Court in para 37 observed that the officer was categorized as 'B+' in 1999 and for three years there was no communication of any adverse entry to the officer. It was only when anticipatory bail was granted under Section 307 IPC the officer was categorized as 'not fair' for three years in one go. The decision to compulsorily retire the officer was taken prior to his being assessed 'not fair'. It is in this factual backdrop that the Court found that the decision of compulsory retirement was not fair. We, therefore, find that the facts of the present case are entirely distinct and the observations made in *Madan Mohan Chaudhary* (supra) cannot be of any help to petitioner's cause.

19. Judgment of Supreme Court in *Nand Kumar Verma* (supra) relied upon by the petitioner also has no relevance in the facts of the present case. The controversy in the said case was noticed in para 33 of the judgment, which is reproduced hereinafter:-

“33. This Court in *High Court of Punjab & Haryana v. Ishwar Chand Jain* [(1999) 4 SCC 579 : 1999 SCC (L&S) 881], has discussed the purpose, importance and effect of the remarks made during inspection which ultimately become the part of the ACR of the judicial officer concerned. This Court has observed thus: (SCC pp. 597-98, para 32)

“32. Since late this Court is watching the spectre of either judicial officers or the High Courts coming to this Court when there is an order prematurely retiring a judicial officer. Under Article 235 of the Constitution the High Court

exercises complete control over subordinate courts which include District Courts. Inspection of the subordinate courts is one of the most important functions which the High Court performs for control over the subordinate courts. The object of such inspection is for the purpose of assessment of the work performed by the Subordinate Judge, his capability, integrity and competency. Since Judges are human beings and also prone to all the human failings inspection provides an opportunity for pointing out mistakes so that they are avoided in future and deficiencies, if any, in the working of the subordinate court, remedied. Inspection should act as a catalyst in inspiring Subordinate Judges to give the best results. They should feel a sense of achievement. They need encouragement. They work under great stress and man the courts while working under great discomfort and hardship. A satisfactory judicial system depends largely on the satisfactory functioning of courts at the grass roots level. Remarks recorded by the Inspecting Judge are normally endorsed by the Full Court and become part of the annual confidential reports and are foundations on which the career of a judicial officer is made or marred. Inspection of a subordinate court is thus of vital importance. It has to be both effective and productive. It can be so only if it is well regulated and is workman like. Inspection of subordinate courts is not a one-day or an hour or a few minutes' affair. It has to go on all the year round by monitoring the work of the court by the Inspecting Judge. A casual inspection can hardly be beneficial to a judicial system. It does more harm than good.”

In para 32 the Supreme Court has noticed that the ACR entries referred to and relied upon against the officer were at

variance with the actual entries contained in the annual roll. It was, therefore, observed that material on the strength of which officer was compulsorily retired was not the material existing on record and, therefore, the decision was based upon irrelevant material. The subjective satisfaction of the High Court was, therefore, found vitiated. This is also not the case in hand.

20. Similarly, in the case of State of Gujrat vs. Umedbhai M. Patel (supra) the Supreme Court observed that in the absence of any other material on service record, the unproved allegations on the basis of which departmental proceedings were initiated, cannot be made the basis for passing order of compulsory retirement. In the facts of the present case, there was no disciplinary proceedings initiated against the officer and we have clearly held that adverse material did exist on record against the officer.

21. In the case of Registrar High Court of Madras (supra) the facts of the case have been noticed in para 21 by the Supreme Court. The finding by the High Court that no material had been placed before the Court to show that order of compulsory retirement has been passed in public interest was not put to any challenge. Although the High Court observed that adequacy or sufficiency of material to pass the order of compulsory retirement cannot be questioned, but in the facts of the case no such material existed on record. In such circumstances, passing of the order of compulsory retirement was not approved. This judgment is also distinguishable in facts of present case.

22. In Brij Behari Lal Agrawal (supra) the order of compulsory retirement

was based upon two confidential reports which were contradicting each other. The Supreme Court observed that this aspect of the matter has escaped attention of the Court when it considered the question of compulsory retirement. In such circumstances, the order of compulsory retirement has been set aside. This judgment again is based on facts of its own.

23. On the other hand, respondents have placed reliance upon judgment of the Supreme Court in Pyare Mohan Lal (supra) where the Supreme Court has held that a single adverse remark touching on integrity was sufficient to impose an order of compulsory retirement in case of judicial officer. Observations made by the Supreme Court in para 29 of the report are relevant and are reproduced hereinafter:-

“29. The law requires the authority to consider the “entire service record” of the employee while assessing whether he can be given compulsory retirement irrespective of the fact that the adverse entries had not been communicated to him and the officer had been promoted earlier in spite of those adverse entries. More so, a single adverse entry regarding the integrity of an officer even in remote past is sufficient to award compulsory retirement. The case of a judicial officer is required to be examined, treating him to be different from other wings of the society, as he is serving the State in a different capacity. The case of a judicial officer is considered by a committee of Judges of the High Court duly constituted by the Hon'ble the Chief Justice and then the report of the Committee is placed before

the Full Court. A decision is taken by the Full Court after due deliberation on the matter. Therefore, there is hardly any chance to make the allegations of non-application of mind or mala fides.”

24. In Ram Murti Yadav (supra) the legality of the order of compulsory retirement in case of judicial officer came to be elaborately examined relying upon the judgment of the Supreme Court in Union of India vs. K. K. Dhawan, (1993) 2 SCC 56 and Union of India vs. Duli Chand, (2006) 5 SCC 680. The Supreme Court observed as under in para 13 & 14 of the judgment in Ram Murti Yadav (supra):-

“13. P.C. Joshi [P.C. Joshi v. State of U.P., (2001) 6 SCC 491 : 2001 SCC (L&S) 984] was a case relating to an order of punishment in a departmental proceeding held to be vitiated for want of any legally acceptable or relevant evidence in support of the charges of misconduct. Ramesh Chander Singh [Ramesh Chander Singh v. High Court of Allahabad, (2007) 4 SCC 247 : (2007) 2 SCC (Cri) 266] related to an order of bail dealing with exercise of discretionary powers specially when a co-accused had been granted bail by the High Court. An order of compulsory retirement not been a punishment, much less stigmatic in the facts and circumstances of the present case. Ram Ekbal Sharma [Ram Ekbal Sharma v. State of Bihar, (1990) 3 SCC 504 : 1990 SCC (L&S) 491] was dealing with the issue that the form of the order was not conclusive and the veil could be lifted to determine if it was ordered as punishment more so in view of the stand taken in the counter-affidavit with regard to grave financial irregularities, again has no relevance to the present controversy.

14. A person entering the judicial service no doubt has career aspirations

including promotions. An order of compulsory retirement undoubtedly affects the career aspirations. Having said so, we must also sound a caution that judicial service is not like any other service. A person discharging judicial duties acts on behalf of the State in discharge of its sovereign functions. Dispensation of justice is not only an onerous duty but has been considered as akin to discharge of a pious duty, and therefore, is a very serious matter. The standards of probity, conduct, integrity that may be relevant for discharge of duties by a careerist in another job cannot be the same for a judicial officer. A Judge holds the office of a public trust. Impeccable integrity, unimpeachable independence with moral values embodied to the core are absolute imperatives which brooks no compromise. A Judge is the pillar of the entire justice system and the public has a right to demand virtually irreproachable conduct from anyone performing a judicial function. Judges must strive for the highest standards of integrity in both their professional and personal lives.”

25. After analysing the facts of the case and the judgments referred to above, we have no hesitation in holding that there did exist adverse material in the service record of the petitioner on the strength on which subjective satisfaction could have been formed to come to the conclusion that the petitioner is liable to be compulsorily retired. Law is well settled that sufficiency or otherwise of such material cannot be gone into in writ. Correctness or otherwise of the adverse material also cannot be examined when such entries have attained finality.

26. Having evaluated the material on record we hold that material adverse

against the petitioner did exist on record to form an opinion by the Screening Committee that petitioner is liable to be compulsorily retired. The decision taken by the Full Court and the consequential decision of the State Government to compulsorily retire the petitioner, therefore, warrants no interference. This is particularly so, as the petitioner is a Judicial Officer, who acts on behalf of the State in discharge of its sovereign function. The ordinary litigant must have complete faith in the judicial system and no impression can be afforded to be given to a litigant which may even remotely create perception against the justice delivery system. There is otherwise no allegation of any bias or malafide against the members of Screening Committee nor is it shown that the subjective opinion of the Screening Committee is based upon no evidence. In such circumstances, the order impugned compulsorily retiring the petitioner merits no interference.

27. Writ petition is, accordingly, dismissed. No order is passed as to costs.

(2025) 4 ILRA 147
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.04.2025
BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 12070 of 2024

Nagendra Kumar .Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
 Abhinav Tripathi, Prashant Shukla

Counsel for the Respondents:
 C.S.C., Siddharth Singhal

(A) Service Law – Public Employment – Termination on ground of forged educational certificate – U.P. Government Servants (Discipline and Appeal) Rules, 1999 – Rule 7 – U.P. Government Department Subordinate Accounts Cadre (Non-Gazetted) Service Rules, 2014 – Rule 26 – Holding of regular departmental inquiry not required where appointment secured through fraud is ex facie established – Appointment obtained by fraud is void ab initio, confirmed employee not entitled to inquiry under Article 311(2) – Fraud vitiates appointment at inception and not a case of misconduct during service – Forged 'O' level certificate, facially fabricated, not issued by Calcutta University – Disciplinary proceedings not mandatory where appointment itself is founded on apparent forgery and fraud.(Para - 18 to 21, 28 to 30)

Petitioner appointed as Assistant Accountant in 2020 based on 'O' level computer certificate - later found forged as not issued by University of Calcutta - services terminated in 2023 without departmental inquiry - hence petition. **(Para - 1 to 5)**

HELD: - An appointment secured by utter fraud, even if the employee has proceeded to confirmation in service, would not entitle him to the holding of disciplinary proceedings, where the fraud is apparent and requires no consideration of evidence on both sides to reach a definitive conclusion. But, he would be entitled to show cause and a reasonable opportunity, which has been afforded to the petitioner in this case. **(Para - 29,30)**

Petition dismissed. (E-7)

LIST OF CASES CITED: -

1. Avtar Singh Vs U.O.I. & ors., (2016) 8 SCC 471
2. Abhiram Vs St. of U.P. & ors., 2020 SCC OnLine All 2248

3. Smt. Parmi Maurya Vs St. of U.P. & ors., 2014 (2) ADJ 633 (DB)

4. A.P. P.S.C. Vs Koneti Venkateswarulu & ors., (2005) 7 SCC 177

5. Devendra Kumar Vs St. of Uttaranchal & ors., (2013) 9 SCC 363

6. Manjul Kumar Vs St. of U.P., 2021 SCC OnLine All 2161

7. Reena Devi Vs St. of U.P., 2019 SCC OnLine All 4783

8. U.O.I & ors. Vs Bipad Bhanjan Gayen, (2008)11 SCC 314

9. Jainendra Singh Vs St. of U.P., (2012) 8 SCC 748

10. Narendra Kumar Tripathi Vs St. of U.P. & ors., 2021 (1) ADJ 654

11. Punj. U.P.D.A. Vs Karamjit Singh, (2019) 16 SCC782

12. Raj Kumar Saxena Vs Basic Shiksha Parishad U.P. & ors., 2019 SCC OnLine All 4256

13. Narendra Kumar Gond Vs St. of U.P. through Secy. (Basic Education) & ors., 2018 SCC OnLine All 5716

(Delivered by Hon'ble J.J. Munir, J.)

1. This writ petition is directed against an order of the Director, Internal Account and Audit, Directorate, U.P. dated 22.12.2023, cancelling the petitioner's appointment as an Assistant Accountant. Also under challenge is an order dated 20.10.2023 passed by the Director aforesaid, where pending proceedings, to determine the validity of the petitioner's 'O' level computer certificate secured from the Calcutta University, disbursement of the

petitioner's salary was stayed until further orders.

2. An advertisement, bearing No.12 of 2016, was issued by the Uttar Pradesh Subordinate Services Selection Commission, Lucknow (for short, 'the Commission'), advertising 2874 posts of Assistant Accountants, Auditors and Assistant Treasury Accountants to be filled up by direct recruitment. The selections were to be made by the Commission on the basis of a written test followed by interview. One of the essential qualifications was the possession of an 'O' level diploma certificate from a Government of India recognized institute.

3. It is the petitioner's case that, being eligible and qualified to be selected and appointed against one of these posts, the petitioner applied in response to the advertisement of 2016 issued by the Commission. He was issued an admit-card, permitting him to participate in the written examination. The petitioner appeared in the written examination, which he successfully passed. The petitioner says that he was directed by the Commission to produce his certificates of educational qualifications at the time of interview for document verification. The petitioner was successful in the interview and declared selected for appointment to the post of Assistant Accountant and Auditor on 16.10.2019. The result was declared by the Commission on the last mentioned date. The result dated 16.10.2019 mentioned that a few candidates have been conditionally selected as their 'O' level computer certificate was yet to be verified. The Commission, vide their letter dated 31.10.2019, directed the employers, that is to say, the Director, Internal Account and Audit, Directorate, U.P. to verify the educational qualifications

and certificates of candidates before issue of appointment letters. In response to the aforesaid advice from the Secretary of the Commission, the selected candidates were directed to produce certificates of their educational qualifications in the prescribed proforma, which was done by the petitioner filling up the proforma on 17.12.2019. After verification of the petitioner's qualifications by the office of the Director, Internal Account and Audit, Directorate, U.P., the petitioner was issued a letter of appointment, signed by the Director, dated 16.06.2020. The petitioner was posted as an Assistant Accountant in the office of the Block Development Officer, Suriyawan, Bhadohi. The petitioner's name finds place at serial No.14 of the appointment-cum-posting letter dated 16.06.2020 issued by the Director. The petitioner joined service of the respondents as an Assistant Accountant on 24.06.2020.

4. According to the petitioner's case, he has been working continuously ever since in the office of the Block Development Officer, Suriyawan, Bhadohi to the satisfaction of his superiors and with no complaint against him. The petitioner was all of a sudden served with a show cause notice dated 07.06.2023 issued by the respondents, calling upon him to submit documents, that would verify his 'O' level computer diploma certificate. In reply to the said show cause notice dated 07.06.2023, the petitioner submitted documents, that would establish his case. The petitioner submitted his reply on 26.06.2023 as aforesaid. Once again a show cause notice dated 12.10.2023 was issued to the petitioner by the Director, calling upon the petitioner to submit his explanation with regard to the validity of his 'O' level computer certificate. Along side the said show cause, by an order of the

selfsame date, the petitioner's salary was stopped pending inquiry into the validity of the petitioner's certificate last mentioned. This was followed by the order dated 22.12.2023, cancelling the petitioner's appointment on ground that his 'O' level computer certificate was forged and not issued by the Calcutta University.

5. Aggrieved by the orders dated 22.12.2023 and 12.10.2023, both passed by the Director, Internal Account and Audit, Directorate, U.P., this petition has been instituted under Article 226 of the Constitution.

6. A notice of motion by a reasoned order dated 12.08.2024 was issued and an ad interim stay of operation of both the impugned orders granted with a direction to permit the petitioner to discharge his duties regularly and pay him salary. In answer to the notice of motion, respondent Nos.2 and 3 filed a counter affidavit dated 31.08.2024, to which the petitioner filed a rejoinder dated 02.10.2024. Apart from the notice of motion, upon a complaint by the petitioner that the interim order is being observed in breach, this Court on 25.09.2024 ordered the Director to permit the petitioner to join and comply with the interim orders of this Court dated 12.08.2024 in letter and spirit. The Director was also asked to show cause why other measures be not adopted to enforce this Court's order, if the breach continued. The Director filed her reply to the show cause along with an application, bringing on record certain documents, which too add to the pleadings in this case. In order to enable the petitioner to plead to the facts brought on record through the Director's affidavit filed in reply to the show cause, the petitioner was

given opportunity to file a counter affidavit, which he did on 02.10.2024. This too forms part of the pleadings.

7. On 03.10.2024, when this petition came up, the parties having exchanged affidavits, it was admitted to hearing, which proceeded forthwith. Judgment was reserved.

8. Heard Mr. Prashant Shukla, learned Counsel for the petitioner, Mr. Manish Goyal, learned Additional Advocate General assisted by Ms. Akansha Sharma, learned Standing Counsel appearing on behalf of respondent Nos.1, 2, 3, 5, 6 and 7, and Mr. Siddharth Singhal, learned Counsel appearing on behalf of respondent No.4. Service upon respondent No.8 is confirmed as per office report dated 30.08.2024, but no one has put in appearance.

9. It is argued by Mr. Prashant Shukla, learned Counsel for the petitioner that the respondents had already verified the 'O' level computer certificate relied upon by the petitioner, as evident from the result, that was declared by the Commission on 16.10.2019. It is pointed out that the Commission has specifically advised the respondent Department, vide letter dated 31.10.2019, to verify the educational qualifications and certificates before proceeding to issue appointment letters. Pursuant to the aforesaid advice, candidates were directed to produce their testimonials relating to their educational qualifications, submitting them in the prescribed proforma. The petitioner filled up the prescribed proforma, producing the requisite certificates on 17.12.2019. It was after verification of all documents relating to his educational qualifications that the petitioner was issued with the letter of

appointment-cum-posting dated 16.06.2020 by the Director. The submission, therefore, is that the respondents are now estopped from cancelling the petitioner's appointment by relying upon the report allegedly received from the Calcutta University, saying that the petitioner's certificate has not been issued by them. After all, the respondents had verified the genuineness of the petitioner's certificate relating to the 'O' level computer course.

10. It is next urged that the petitioner's appointment has been cancelled after a period as long as three years, which is arbitrary and impermissible in law. The advertisement was issued in the year 2016 and the petitioner appointed on 16.06.2020, after clearing the written examination and interview. Ever since, he has been diligently working to the satisfaction of his superiors. Lapse, as it is, of a period of almost three years, the petitioner's appointment cannot be cancelled by the impugned order. It is next urged that after expiry of the period of probation and the petitioner becoming a regular employee of the Department, his appointment could not have been cancelled without holding a regular departmental inquiry. An inquiry in this case has to be held in accordance with the procedure prescribed under the Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 (for short, 'the Rules of 1999'), which apply to the petitioner by virtue of Rule 26 of the Uttar Pradesh Government Department Subordinate Accounts Cadre (Non-Gazetted) Service Rules, 2014 (for short, 'the Rules of 2014').

11. The learned Counsel for the petitioner points out that the petitioner earned his 'O' level computer certificate, pursuing his studies with the Indian

Technical Institute, Adarsh Bazar, Ghazipur (for short, 'the Technical Institute'), from 10.07.2012 to 05.08.2013. It is next submitted by the learned Counsel for the petitioner that after issue of the show cause notice dated 07.07.2023, the petitioner *ex abundanti cautela* passed his 'O' level computer certificate course again from the National Institute of Electronics & Information Technology (NIELIT), that was granted to him on 30.05.2024. It is then submitted that if any fraud had been committed by the Technical Institute, the petitioner, who was *a bona fide* student at the said institute, cannot be made to suffer on account of the fraud played upon him by the Technical Institute. The petitioner did not have knowledge about the 'O' level computer certificate, issued by the Technical Institute, being forged and fabricated. So far as he is concerned, he did not conceal any material facts, either before the Commission or the respondents, who have appointed him in their establishment. It is emphasized by Mr. Shukla that in the garb of passing the impugned orders, styled as orders of cancellation of appointment, the petitioner's services have been terminated, who is otherwise a regular and confirmed employee, appointed in accordance with Rules. He was selected after following the prescribed procedure by the Commission and then appointed by the Director vide order dated 16.06.2020. He was appointed to a cadre post. The impugned order dated 22.12.2023 is not an order of discharge of a probationer from service. If at all the petitioner's services had to be terminated, it could be done only after holding a departmental inquiry, as part of regular disciplinary proceedings, envisaged under the Rules of 1999 read with the Rule of 2014.

12. In support of his submissions, Mr. Shukla has relied upon the authority of

the Supreme Court in **Avtar Singh v. Union of India and others, (2016) 8 SCC 471**, a decision of Padia, J. in **Abhiram v. State of U.P. and others, 2020 SCC OnLine All 2248**, and a Bench decision of this Court in **Smt. Parmi Maurya v. State of U.P. and others, 2014 (2) ADJ 633 (DB)**.

13. Mr. Manish Goyal, learned Additional Advocate General assisted by Ms. Akansha Sharma, learned Standing Counsel, has primarily answered the petitioner on behalf of respondent Nos.1, 2, 3, 5, 6 and 7. It is argued by Mr. Goyal that the 'O' level computer certificate, that the petitioner claims to have earned from the University of Kolkatta, is forged to its face and has drawn the attention of the Court to a xerox copy of the certificate, annexed to the affidavit filed by the Director, Internal Account and Audit, Directorate, U.P. in reply to the show cause notice issued by this Court on 25.09.2024. He points out that a perusal of the certificate shows that it has been issued by the 'University of Kolkatta'. He says that there is no such university as the 'University of Kolkatta'. The 'University of Calcutta' does not write or describe itself as 'University of Kolkatta', but as the 'University of Calcutta'. He has further drawn attention of the Court to the same affidavit filed in support of the reply to the show cause last mentioned, where annexed as Annexure No.2 is a memo, bearing reference No. CE/Dip/Veri/11348/2023 dated 26.09.2023, addressed to the Director, Internal Account and Audit, Directorate, U.P., Lucknow by the Deputy Controller of Examinations, University of Calcutta. The memorandum aforesaid says in answer to a query by the Director, Internal Account and Audit, Directorate, U.P. that the document submitted has not been issued by the

Calcutta University. There is, thus, according to Mr. Goyal, a clear denial by the University of Calcutta having ever issued the 'O' level computer certificate, upon which the petitioner relies to support his candidature. He submits that possession of an 'O' level computer certificate is an essential qualification for appointment as an Assistant Accountant. The petitioner was given due opportunity, including a show cause notice and personal hearing, before the order for cancellation of appointment was passed by the Director. The petitioner neither disputed the certificate, upon which he relied to support his candidature, nor the verification report received from the University of Calcutta. He has invited the attention of the Court to what the petitioner said in his reply to the respondents' letter dated 07.06.2023, asking him to verify his 'O' level computer certificate. It figures at page No.76 of the writ petition paper book and reads:

"महोदय मेरे द्वारा 'ओ' लेवल वर्ष 2013 में किया गया है। जो कि आपके कार्यालय में जमा कर दिया गया है। जो सत्य है। निम्न document मैंने जिन तथ्यों से अवगत कराया है। या जो अभिलेख प्रस्तुत किये हैं इसके अतिरिक्त और कुछ नहीं कहना है।"

14. The learned Additional Advocate General submits that adherence to principles of natural justice in this case would not require the holding of regular disciplinary proceedings as the very appointment of the petitioner is based on a forged document, which the petitioner does not deny, is the one he relies upon to support his candidature. Therefore, by not holding a regular departmental inquiry or disciplinary proceedings, in accordance with Rule 7 of the Rules of 1999, no prejudice would be caused to the petitioner. So far as the 'O' level computer certificate dated 31.05.2024, earned by the petitioner

from the NIELIT is concerned, the same would be of no help as it has been earned after the petitioner's appointment. Mr. Goyal emphasizes that in fact the petitioner's endeavour to secure an 'O' level certificate in computers, all over again, constitutes an admission on his part that the certificate, upon which he relied to support his candidature, was forged.

15. Mr. Manish Goyal has relied upon the authority of the Supreme Court in **A.P. Public Service Commission v. Koneti Venkateswarulu and others, (2005) 7 SCC 177; Devendra Kumar v. State of Uttaranchal and others, (2013) 9 SCC 363; Manjul Kumar v. State of U.P., 2021 SCC OnLine All 2161; Reena Devi v. State of U.P., 2019 SCC OnLine All 4783; and, Union of India and others v. Bipad Bhanjan Gayen, (2008) 11 SCC 314.**

16. We have carefully considered the rival submissions advanced by learned Counsel for both parties and perused the record.

17. The moot question is, if as a thumb rule in all cases where an employee, who is appointed to a service in accordance with Rules after selection and confirmed in service, is it imperative to hold a full-fledged disciplinary proceedings before his service can be terminated, if the case is that he secured the appointment by practice of fraud, relying on forged documents of eligibility? The corollary of the question is, if an appointment is secured through practice of utter fraud, based on forged testimonials, can the appointment be cancelled without obliging the employer to hold a regular disciplinary proceedings against the employee, even if he is confirmed in service, by giving him a show

cause notice and hearing him on the validity of the document.

18. To hold in his favour, during the course of submissions, learned Counsel for the petitioner has very forcefully relied upon **Avtar Singh** (*supra*), which is a three Judge Bench decision of the Supreme Court. The principles in **Avtar Singh** and the remarks that are relevant, to which our attention was invited, appear in paragraph Nos.33 to 38.11 of the report. These read:

“33. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in *M. Bhaskaran case [Union of India v. M. Bhaskaran, 1995 Supp (4) SCC 100 : 1996 SCC (L&S) 162 : (1996) 32 ATC 94]*, it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however, we add a rider that in case employee is confirmed, holding a civil post and has protection of Article 311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.

34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to

adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35. Suppression of “material” information presupposes that what is suppressed that “matters” not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

37. The “McCarthyism” is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

38. We have noticed various decisions and tried to explain and reconcile

them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious

nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information

which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

19. No doubt, upon a reading of what has been remarked in paragraph No.33 and sub-para (9) of paragraph No.38 of **Avtar Singh**, it would seem that holding a departmental inquiry is imperative before an order of termination, removal or dismissal is passed against a public servant on the ground of suppression or submitting false information in the verification form, if the employee has been confirmed in service. But, the holding in **Avtar Singh** has to be understood in the context of facts and the issue, in regard to which principles there were laid down. It is a principle too well settled to brook doubt that a judgment is a precedent for what it actually decides. A fortiori, the principles laid down in a judgment have to be understood in the context of facts and the controversy involved, giving rise to the lis.

20. The three Judge Bench of their Lordships in **Avtar Singh** had before them a conflicting opinion of two Judge Division Benches, that were referred for authoritative pronouncement by the Division Bench in **Jainendra Singh v. State of U.P., (2012) 8 SCC 748**. The Division Bench in **Jainendra Singh (supra)** had noted divided opinion amongst

various Division Benches, comprising two Judges of the Supreme Court on the question, if '*suppression of information or submitting false information in the verification form as to the question of having been criminally prosecuted, arrested or as to pendency of a criminal case*', would have on the rights of an employee appointed to government service. It was in the context of the said question and conflicting opinion that the three Judge Bench of their Lordships in **Avtar Singh** laid down the principles noted above. It is, therefore, evident that the principles in **Avtar Singh** have been culled out in the context of suppression or the furnishing of false information at the time of recruitment by a government servant upon his right to continue in service, once facts are discovered. These have no application to a case, that is founded purely on a charge of securing employment fraudulently by a candidate on the basis of forged educational qualifications, governing eligibility, or so to speak, essential qualifications. In our opinion, therefore, reliance placed by the petitioner on the principles in **Avtar Singh** would not be of much help to him.

21. The learned Counsel for the petitioner has reposed faith in the Bench decision of this Court in **Parmi Maurya (supra)**. He has drawn the Court's attention to paragraphs Nos.7, 9 and 10 of the report in **Parmi Maurya**. These read:

“7. On these facts, the learned Single Judge, in our view, was clearly in error in arrogating to the Court the task of determining whether the certificate and mark sheets submitted by the appellant were genuine or otherwise. This, with respect, was no part of the jurisdiction of the writ Court under Article 226 of the

Constitution. When a substantive charge of misconduct is levied against an employee of the State, the misconduct has to be proved in the course of a disciplinary inquiry. This is not one of those cases where a departmental inquiry was dispensed with or that the ground for dispensing with such an inquiry was made out. The U.P. Government Servants (Discipline and Appeal) Rules, 1999 lays down a detailed procedure in Rule 7 for imposing a major penalty. Admittedly, no procedure of that kind was followed since no disciplinary inquiry was convened or held.

9. The facts of the present case are, therefore, clearly distinguishable. The charge of misconduct has to be duly established. Since no disciplinary inquiry was held, the charge was never proved.

10. In this view of the matter, we are of the view that the judgement and order of the learned Single Judge is unsustainable and the special appeal would have to be allowed. We, accordingly, allow the special appeal in terms of the following directions:

(i) The judgement of the learned Single Judge dated 24 September 2013 is quashed and set aside;

(ii) In consequence, the order of termination dated 30 November 2010 shall stand quashed and;

(iii) The respondents shall be at liberty to hold a departmental inquiry in respect of the allegation of misconduct and take necessary action thereafter as may be warranted in accordance with law.”

22. It is no doubt true that upon reading the facts in **Parmi Maurya**, it does seem that the principle there comes close to the point that arises here, but **Parmi Maurya** was a case after which the principle has received attention of the

Supreme Court, that may not at all endorse **Parmi Maurya**. The issue was examined by this Court in **Narendra Kumar Tripathi v. State of U.P. and others, 2021 (1) ADJ 654**, and after an elaborate reference to **Punjab Urban Planning & Development Authority v. Karamjit Singh, (2019) 16 SCC 782**, this Court held:

“13. It is thus manifest that it has been the consistent view of our Courts that where the appointment is alleged to have been secured by fraud or misrepresentation, the normal rules governing the conduct of disciplinary proceedings were not liable to be followed. This since the termination in such a situation is not on account of a misconduct committed during the course of employment. All that is required in such a situation is to place the employee on notice and comply with the fundamental principles of natural justice.

14. **Parmi Maurya** was a case where the charge of fabrication was seriously disputed and challenged by the employee who had also not been provided access to the material on the basis of which that charge was sought to be established. It becomes pertinent to recollect that contrary to the above, the petitioner here does not dispute the charge of fabrication. The decision is thus clearly distinguishable and does not come to the aid of the petitioner. The decision in **Abhiram** merely follows the aforesaid decision without noticing the other decisions of this Court as well as the Supreme Court which have consistently held to the contrary and in unequivocal terms laid down the law to be that a regular departmental enquiry is not liable to be drawn where the initial appointment has been obtained by practise of fraud and is thus void and non-est. This of course subject to the caveat and as held herein above, that the rudimentary principles of

natural justice must necessarily be adhere to and followed.”

23. We must remark that **Parmi Maurya** was a case, where the charge of fabrication was seriously disputed and challenged by the employee, whereas in **Narendra Kumar Tripathi** (*supra*), the charge of fabrication was described by the Court as not disputed. It was one of the parameters on which **Parmi Maurya** was held not to apply in the case of **Narendra Kumar Tripathi**. Of course, it was held also not applicable when followed in **Abhiram** (*supra*) for reason that **Abhiram** had followed **Parmi Maurya** without noticing other decisions of this Court and the Supreme Court, where a contrary view was taken. It must also be remarked here that though the petitioner in this case, unlike **Narendra Kumar Tripathi**, disputes the charge of his 'O' level computer certificate being forged, but the denial is one that is there for a formality.

24. We say so because the petitioner does not dispute the document, which he says is a certificate of an 'O' level in computers, earned from the University of Kolkatta, as he says, and also does not dispute the genuineness of the verification report dated 26.09.2023, secured by the respondents from the University of Calcutta, disowning the petitioner's 'O' level certificate in computers. The petitioner, if he wanted, could have disputed the verification report by producing a report to the contrary from the University of Calcutta, affirming the certificate of 'O' level in computers, on which he relies to support his candidature. If this were the case, the matter might have then been one involving sufficient dispute on facts about the charge as would oblige the respondents in case of a confirmed

employee, like the petitioner, to hold disciplinary proceedings. This is a case where the fraud and forgery are hardly denied and both are apparent to the face.

25. We have perused the photostat copy of the 'O' level computer certificate, on which the petitioner relies and annexed as Annexure No.1 to the affidavit filed by the Director, Internal Account and Audit, Directorate, U.P., Lucknow, in reply to the show cause. The certificate is mentioned in paragraph No.8 of the affidavit aforesaid by the Director. The petitioner has filed a counter affidavit to this affidavit filed by the Director. In paragraph No.7 of the counter affidavit filed by the petitioner, the contents of paragraph Nos.7 to 11 of the Director's affidavit (in reply to the show cause) have been answered. It is said that all these paragraphs are wrong, incorrect and denied, but the averments there do not at all say that the document annexed as Annexure No.1 to the Director's affidavit is not the 'O' level computer certificate, upon which the petitioner relies to found his candidature. All that is said is that the petitioner did his 'O' level computer course from the Technical Institute after studying at the said institute from 10.07.2012 to 05.08.2013. He has annexed, along with his counter affidavit, a true copy of the identity card issued by the Technical Institute and a copy of the certificate also granted by the same Institute. Thus, for a fact, the document annexed as Annexure No.1, being the certificate relating to 'O' level in computers dated 22.08.2013, upon which the petitioner relied before the respondents to support his candidature, is not denied.

26. We have also looked into the certificate issued by the Technical Institute, where the petitioner says, he read for a year to earn the aforesaid certificate from the

University of Kolkatta. It is a photostat copy of the certificate dated 15.03.2022. The letterhead of the Technical Institute on its face does not show it to be affiliated to the University of Calcutta and the contents thereof saying that the petitioner studied at the Institute are written by hand. Not to say that a hand written certificate cannot be issued by an authorized and authentic educational institute, but *ex facie* a look at the certificate does not inspire confidence at all that the Technical Institute has anything to do with the University of Calcutta. The certificate of 'O' level in computers, upon which the petitioner has relied, reads at the top of it "UNIVERSITY of Kolkatta WITH INDIAN TECHNICAL INSTITUTE (An Autonomous Scientific Society of Department of Information Technology Ministry of Communication and Information Technology, Government of India for Accreditation of Computer Courses under the (AICTE-DIT Scheme). On the left side at the top of this certificate is the University's monogram, describing it as 'University of Calcutta' and the monogram by the rest of its content and design is the same as that used by the University of Calcutta. But, at the top, the University is described as the 'University of Kolkatta'. The University of Calcutta in none of its papers or websites describes itself as the University of Kolkatta. These are stark facts, which show *ex facie* the certificate to be the product of forgery. In addition, the way the certificate describes it to have been issued by the University of Kolkatta with the Technical Institute, which does not mention where this Technical Institute is located, makes the inference of forgery inescapable.

27. Then there are other irresponsible things written on the head of the certificate, reproduced hereinabove. It

describes the Technical Institute as an Autonomous Scientific Society of Department of Information Technology, Ministry of Communication and Information Technology, Government of India for Accreditation of Computer Courses under the (AICTE-DIT Scheme). There is nothing to show that this Institute is anyway an Autonomous Scientific Society of the Department of Information Technology etc. of the Government of India. Nothing has been shown to the Court that the Government of India would have anything to do with an Autonomous Scientific Society, like the one, called the Technical Institute. The letterhead, on which the certificate dated 15.03.2022 has been issued to the petitioner, does not show anything about the nature of the organization that the Technical Institute is. It is not said there that it is affiliated to the University of Calcutta or that it is an Autonomous Scientific Society under the Department of Information Technology.

28. Coming back to the 'O' level certificate in computers, relied upon by the petitioner dated 22.08.2013, issued by the University of Kolkatta, it is shown to be signed by the 'Controller of Examination, Kolkatta'. It does not even say that it is signed by the Controller of Examination, University of Calcutta. It is signed together by the Executive Director of the Technical Institute. These are telltale matters, which *ex facie* show the 'O' level certificate in computers, relied upon by the petitioner, a product of forgery. We say that the document is forged, because it is purported to have been issued by the University of Calcutta, signed by the Controller of Examination of the said University, when in fact it is not. This is what precisely makes the document forged. The clincher comes when we look at memo No. CE/Dip/Veri/11348/2023 dated 26.09.2023

issued by the Deputy Controller of Examinations, University of Calcutta. This is a memo that was issued by the University of Calcutta in answer to a query by the Director, Internal Account and Audit, Directorate, U.P., if the petitioner's 'O' level certificate in computers was granted by the University. The unequivocal answer, albeit in a prescribed proforma is that the document submitted was not issued by the University of Calcutta. There is, therefore, hardly any kind of doubt that the petitioner's candidature is based on an utterly forged document, relating to an essential qualification for appointment. The petitioner's appointment is, therefore, beset by fraud.

29. Now, the question, if an employee, who has been confirmed in service, but found to have secured his appointment by practice of fraud, relying on forged eligibility certificates, can suffer a cancellation of appointment without disciplinary proceedings, we think, is sufficiently answered against the petitioner by this Court in **Narendra Kumar Tripathi** and the Supreme Court in **Karamjit Singh** (*supra*). An appointment secured by utter fraud, even if the employee has proceeded to confirmation in service, would not entitle him to the holding of disciplinary proceedings, where the fraud is apparent and requires no consideration of evidence on both sides to reach a definitive conclusion. Of course, the employee would be entitled to opportunity to show cause, which in this case has been given in ample measure. The petitioner was given a show cause notice dated 07.06.2023, to which he submitted his reply on 26.06.2023. A second show cause notice dated 12.10.2023 was issued to the petitioner by the Director, calling upon him to submit his explanation with

regard to the validity of his 'O' level certificate in computers. Therefore, it is not a case where the petitioner was not given any opportunity to have his say about the case of fraud, vitiating his appointment, based on the forged eligibility testimonial. In a case of this kind, where the fraud is apparent, the law would not require regular disciplinary proceedings to be held. After all, in a case like the present one, the fraud goes to the root of the matter, vitiating the petitioner's very appointment and his right to hold the post at the inception of service. It is not a case of misconduct done along the course of his employment. It is nothing to do with service misconduct per se. It is about the validity of his candidature at the threshold.

30. We are of opinion that in a case like this, even a confirmed employee would not be entitled to disciplinary proceedings being held against him under the Rules of 1999 that apply here. But, he would be entitled to show cause and a reasonable opportunity, which has been afforded to the petitioner in this case. Reference in this connection may be made to **Manjul Kumar** (*supra*), which was a case of an Assistant Teacher, securing employment with the Pt. Dindayal Purva Madhyamik Vidyalaya, Bitia, Belhar, District Sant Kabir Nagar on the basis of a forged Intermediate Mark-sheet, a forged B.Sc. Degree and a forged Teachers Eligibility Test certificate. In the context of these facts, Suneet Kumar, J. remarked:

“11. It follows that when a candidate is found to have put forth a false claim on the strength of forged and manufactured documents and obtained appointment, it would be a negation of the rule of law to exercise jurisdiction under Article 226 to protect that individual.

Societal good lies in ensuring probity. That is the only manner in which the sanctity of the system can be preserved. The legal system cannot be seen as an avenue to support those who make untrue claims based on forged educational documents.

12. The nation cannot live on a lie. Courts play a vital institutional role in preserving the rule of law. The judicial process should not be allowed to be utilized to protect the unscrupulous and to preserve the benefits which have accrued to an imposter on the specious plea of equity. (Refer: *Nidhi Kaim v. State of M.P.*).¹ It is not disputed by the petitioner that the documents were duly verified by the competent authorities and the authorities conferring the certificates have certified that the documents relied upon by the petitioner are forged and manufactured documents. Petitioner in the circumstances would have no right to continue on the post and receive salary. The very foundation on which the appointment rests is non-est — void ab initio. Nothing further has to be done by the authorities but to discontinue the appointment. In permitting the petitioner to continue in service and pay salary would perpetuate fraud and misrepresentation that would be negation of rule of law. Petitioner, his father (clerk) and the then Basic Education Officer were throughout aware that petitioner had obtained the appointment by fraud.”

31. The same issue arose in the context of an appointment secured through an illegal and void adoption of the employee in **Raj Kumar Saxena v. Basic Shiksha Parishad U.P. and others, 2019 SCC OnLine All 4256**. In the said case, after a survey of much relevant authority on the point, it was held:

“35. On specific query, as to how, the names of biological parents came to be recorded in the high school and intermediate certificates despite the petitioner having been adopted at the age of 7 years. Learned counsel for the petitioner placed reliance on the decision rendered by the Single Judge of this Court in *Ravindra Kumar v. State of U.P.*, to contend that the Board of High School and Intermediate Examination records the names of the biological parents instead of the adoptive parent in the high school/and intermediate certificates, therefore, the names of the biological parents and not the adoptive mother came to be recorded in the certificates. The facts obtaining in *Ravindra Kumar (supra)* is distinguishable. The deed of adoption was a registered deed and a valid deed; the petitioner, therein, had approached the Board for correction of the certificate which was declined by the Board in absence of rules permitting such correction. This is not the case in the instant case. The deed of adoption is invalid and unenforceable in law.

36. The plea on the face of it is untenable for the reason that the petitioner as per his own case was adopted at the age of 7 years and in view of the Section 12 of the Act, 1956, the adopted child for all purposes shall be deemed to be the child of his adoptive parent. However, the name of the adoptive mother does not find recorded in either of the certificates (class 10 and 12). Nor does such a reference find in the Parivar Register prepared under U.P. Panchayat Raj (Maintenance of Family Register) Rule, 1970. It therefore, follows that until taking the examination of class 12, the alleged adoption deed had not seen the light of day. It was an after thought to get an unregistered adoption deed executed for the purposes of obtaining compassionate appointment. The State

Amendments came to be inserted in Act, 1956 and Act, 1908 to avoid such fraud and misrepresentation on the basis of such document.

37. It follows from the position in law that where an appointment has been obtained on fraud and misrepresentation on the strength of a manufactured document which is the basis of the appointment, such an appointment is void and nonest since inception. The consequence upon recording a finding that the document is nonest is discontinuance of such appointment. It is not a case of commission of misconduct during the course of appointment inviting imposition of major penalty under the Service Rules.

(emphasis by Court)

32. To like effect is the holding of this Court in **Narendra Kumar Gond v. State of U.P. through Secretary (Basic Education) and others, 2018 SCC OnLine All 5716**, where it was held:

“10. The contention of the petitioner that disciplinary proceedings should have been held in the matter and as this has not been done the impugned order is vitiated, is not tenable in law for the reason the factum of employment of petitioner's mother at the time of his father's death and the petitioner's compassionate appointment is undisputed and secondly, in view of the provisions contained in the appointment letter itself and even otherwise in the facts of the case it is the appointment which has been cancelled for the reasons disclosed hereinabove, rightly so, after giving due opportunity of hearing to the petitioner which cannot be faulted and also as it is not a case of misconduct having been committed during the course of service but it is a case of cancellation of his

appointment on the ground that the same was obtained by misrepresentation/concealment and incorrect facts. In the case of R. Vishwanatha Pillai (*supra*) also the Supreme court itself was in agreement that a full-fledged inquiry in view of provisions of Article 311 of the Constitution was not required in such matters by holding as under:—

“Para-15. This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eyes of law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under the Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Caste. In view of the finding recorded by the Scrutiny Committee and upheld upto this Court he has disqualified himself to hold the post. Appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a

civil post within the meaning of Article 311 of the Constitution of India. As appellant had obtained the appointment by playing a fraud he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all.

Para-16. In *Ishwar Dayal Sah v. State of Bihar*, 1987 Lab.I.C. 390, the Division Bench of the Patna High Court examined the point as to whether a person who obtained the appointment on the basis of a false caste certificate was entitled to the protection of Article 311 of the Constitution. In the said case the employee had obtained appointment by producing a caste certificate that he belonged to a Scheduled Caste community which later on was found to be false. His appointment was cancelled. It was contended by the employee that the cancellation of his appointment amounted to removal from service within the meaning of Article 311 of the Constitution and therefore void. It was contended that he could not be terminated from service without holding departmental inquiry as provided under the Rules. Dealing with the above contention, the High Court held that if the very appointment to the civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 of the Constitution can possibly flow. It was held:

“If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily

follow that no constitutional rights under Article 311 can possible flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Art. 311. If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and door is barred against him, the cloak of protection under Art. 311 is not attracted.”

33. In view of all that has been said, no case for interference with the impugned orders is made out.

34. In the result, this writ petition fails and is **dismissed**.

35. The interim order dated 12.08.2024 is hereby **vacated**.

(2025) 4 ILRA 162
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.04.2025
BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 12596 of 2024
 With other connected cases

Sudhir Kumar Agarwal

...Petitioner

Versus

Union of India & Ors.

...Respondents

Counsel for the Petitioner:

Manish Gupta, Sarita Singh, Sr. Advocate

Counsel for the Respondents:

A.S.G.I., Ishan Shishu, Maneesh Mehrotra

**(A) Service Law - Pension -
 Commutation - Recovery Period -**

Central Civil Services (Commutation of Pension) Rules, 1981 and Bank Pension Regulations - Regulation 41(5) - Rule 10A - Punjab National Bank (Employees') Pension Regulations, 1995 - Regulation 41(4) & 41(5) - Whether recovery beyond 12 years violates Article 14 - Supreme Court in *Common Cause v. Union of India*, (1987) 1 SCC 142 upheld 15-year recovery rule - Court held 15-year restoration rule not arbitrary or unconstitutional - unjust enrichment - life expectancy - Fixation of 15-year recovery period not arbitrary or irrational, being a policy matter requiring no judicial interference. (Para - 1, 14, 22 to 27)

Petitioners, retired bank and government employees, challenged continued monthly deductions from their pensions toward commuted pension recovery even after the full lump sum amount had been effectively recovered within 10 to 12 years - Claimed this amounted to unjust enrichment by the employer - Petitioners relied on increased life expectancy - argued for restoration of full pension earlier than the prescribed 15-year period. **(Para - 3,4,10)**

HELD: - Fixation of the 15-year commutation recovery period is a matter of policy upheld by the Supreme Court in *Common Cause*. Judicial interference is unwarranted unless the policy is per se arbitrary or irrational. No mandamus can issue to reduce the period to 10 or 12 years, and petitioners' grievance is not justiciable in writ jurisdiction under Article 226. **(Para - 23 to 27)**

Petitions dismissed. (E-7)

LIST OF CASES CITED: -

1. "Common Cause", a registered Society & ors. Vs U.O.I., (1987) 1 SCC 142

2. R. Gandhi Vs U.O.I. & anr., (1999) 8 SCC 106

3. Forum of Retired IPS Officers (FORIPSO) Vs U.O.I. & anr., 2019 SCC OnLine Del 6610

4. SLP (Civil) No.8852 of 2019, Forum of Retired IPS Officers (FORIPSO) Vs U.O.I. & anr.

5. Shila Devi & ors. Vs St. of Punj. & ors., 2024:PHHC:157352-DB

6. Central Government Pensioners Association Vs U.O.I., 2008 SCC OnLine Ker 291

7. Ram Narayan Gupta Vs St. of U.P. & ors., 1994 (24) ALR 151

8. Ashok Kumar Agarwal & ors. Vs U.O.I. & ors., 2025:AHC:6439-DB

(Delivered by Hon'ble Ashwani Kumar Mishra, J.)

1. The question of law involved in this batch of writ petitions is, if the commutation value of pension for an employee, who retires upon attaining the age of superannuation, invariably 60 years, deducted in monthly installments from his retirement pension, made good in the time period of 10 years and 8 months or 11 years, or at the most 12 years, can be recovered for the agreed or the stipulated period of 15 years provided under the relevant service regulations, leading the respondents to realize from the employee more than the commutation value paid?

2. Writ-A No.12596 of 2024 has been heard as the leading writ petition. The learned Counsel for the petitioners, apart from highlighting facts and figures individual to their cases, have mostly confined their submissions to the aforesaid question of law. As such, facts

would be noticed from the leading petition.

3. The petitioner, Sudhir Kumar Agarwal, was a Senior Manager with the Indian Overseas Bank, Station Road Branch, Moradabad and retired from service upon attaining the age of superannuation on 31.01.2012. The Indian Overseas Bank (for short, 'the Bank') is a nationalized Bank..

4. Eschewing unnecessary detail, all that need be noticed is that the petitioner's pension fell due w.e.f. 01.02.2012. The basic average pay at the time of his retirement was Rs.36,400/-. Accordingly, 50% of the said sum of money, to wit, Rs.18,200/- was fixed as the basic pension + dearness allowance. The petitioner requested commutation of his pension to the extent of 1/3rd, which worked out to a figure Rs.6,066/- per month. The aforesaid commutation was sanctioned and he was paid in lieu thereof a lump sum of Rs.7,14,090/-. It is the petitioner's case that the time period for recovery of the commutation value of pension paid to him was fixed at 15 years, when the petitioner retired. Recovery of the commutation value of Rs.7,14,090/- is made by a monthly deduction from the petitioner's pension in the sum of Rs.6,066/- + dearness allowance applicable. The petitioner is receiving a monthly pension of Rs.12,134/- + dearness allowance, that works to a figure of Rs.52,183/-, the dearness allowance being Rs.40,049/- per month. The case of the petitioner, like all others in this batch of petitions, is that upon deduction of the specified sum from his monthly pension, the commutation value would have been made good in the time period of 10 years and 8 months. Instead of settling the

commutation account and releasing the petitioner's full pension at the end of 10 years and 8 months, the respondents insist that they would recover for the period of 15 years, agreed and settled at the time of commutation. The petitioner has appended a chart to the writ petition, marked Annexure No. 2-A, which shows that from 01.02.2012 to 31.07.2024, the Bank would have recovered from the petitioner at the rate of Rs.6,066/-, a sum of Rs.90,09,900/-. They would have recovered beyond the commutation value as on 31.07.2024, a sum of Rs.1,95,810/-. The submission, therefore, is that the sum of Rs.7,14,060/- paid to the petitioner as commutation value of his 1/3rd pension, was to be recovered at the specified rate in 118 installments; 150 have already been recovered, falling back on the clause that says that recovery would go on for realization of the commutation value for a period of 15 years. The petitioner, therefore, prays that a mandamus be issued to the respondents not to recover or deduct any sum of money after completion of 10 years of his retirement and restore the petitioner's full pension.

5. When this petition came up, considering the submission on its face value that the respondents cannot recover from the petitioner more than what has been paid in commutation value, interim stay of recovery from the petitioner's pension towards the commutation value was granted. A similar order was passed in many of the writ petitions in this batch. It was on 11.12.2024 when Writ-A No.16945 of 2024 came up after the grant of an interim order earlier in the aforesaid writ petition that Mr. Ashok Bhatnagar, learned Counsel for the respondents in that case pointed out that this issue is no longer *res intergra* and stands answered against the

employees by the Supreme Court in **“Common Cause”, a registered Society and others v. Union of India, (1987) 1 SCC 142 and R. Gandhi v. Union of India and another, (1999) 8 SCC 106**. He further drew the Court's attention to the authority of the Delhi High Court in **Forum of Retired IPS Officers (FORIPSO) v. Union of India and another, 2019 SCC OnLine Del 6610**. He also apprised the Court of the fact that **SLP (Civil) No.8852 of 2019, Forum of Retired IPS Officers (FORIPSO) v. Union of India and another**, carried from the judgment of the Delhi High Court in **Forum of Retired IPS Officers (supra)** was summarily dismissed by the Supreme Court on 15.04.2019. He also drew the Court's attention to a Bench decision of the Punjab and Haryana High Court in **Shila Devi and others v. State of Punjab and others, 2024:PHHC:157352-DB**, deciding a batch of matters, involving the same controversy, answering it against the employees. We would presently allude to those decisions. What is not in dispute is that the question here has received judicial attention in the past, in the not-so long-past, in recent years and almost the other day as well.

6. It must be recorded here that in some of the petitions, pleadings have not been exchanged whereas in others, they have been elaborately put in. But, as already remarked, the question being a pure question of law, the individual facts and even regulations, governing the time period, during which full pension would stand redeemed, would not matter much. It would, therefore, be of no profit to examine facts of individual cases and the pleadings there.

7. Heard Mr. Arun Kumar Gupta, learned Senior Advocate assisted by Mr. Manish Gupta, learned Counsel for the petitioner in Writ-A No.12596 of 2024; Mr. Manoj Kumar Tewari, learned Counsel for the petitioners in Writ-A Nos.13420 of 2024, 16537 of 2024, 16846 of 2024, 18065 of 2024, 19138 of 2024; Mr. Harsh Vardhan Gupta with Mr. Sachin Singh, learned Counsel for the petitioners in Writ-A Nos.14979 of 2024, 14984 of 2024, 16273 of 2024, 18469 of 2024, 16374 of 2024, 17614 of 2024, 17707 of 2024, 17741 of 2024, 18817 of 2024; Mr. Pradeep Verma, learned Counsel for the petitioners in Writ-A Nos.16467 of 2024, 17294 of 2024, 18819 of 2024, 19675 of 2024; Mr. Namit Kumar Sharma, learned Counsel for the petitioners in Writ-A Nos.14346 of 2024, 15833 of 2024; Pramod Kumar Agrawal in person in Writ-A No.14826 of 2024; Mr. Vinod Kumar Srivastava, learned Counsel for the petitioners in Writ-A No.14864 of 2024; Mr. Rahul Mishra, learned Counsel for the petitioners in Writ-A Nos.14974 of 2024, 15822 of 2024, 18714 of 2024; Mr. Anshul Kumar Singhal, learned Counsel for the petitioners in Writ-A Nos.15805 of 2024, 17132 of 2024; Mr. Rama Kant Misra, learned Counsel for the petitioners in Writ-A No.16750 of 2024; Mr. Rishi Kant Rai, learned Counsel for the petitioner in Writ-A No.16945 of 2024; Mr. Satish Chaturvedi, learned Counsel for the petitioner in Writ-A No.18634 of 2024; Mr. S.N. Sinha with Mr. Mohd. Mohiuddin Siddiqui, learned Counsel for the petitioners in Writ-A Nos.19104 of 2024, 19172 of 2024; Mr. J.P. Singh, learned Counsel for the petitioner in Writ-A No.15317 of 2024; Mr. Surya Prakash Dubey, learned Counsel for the petitioners in Writ-A No.17776 of 2024; Mr. Navin Kumar Srivastava, learned Counsel for the

petitioners in Writ-A No.18497 of 2024 and Mr. Ajay Tripathi, learned Counsel for the petitioner in Writ-A No.14145 of 2024; Mr. Ashok Shankar Bhatnagar, learned Counsel for the respondent-Punjab National Bank, Mr. Piyush Bhargav, Advocate holding brief of Mr. Vivek Ratan Agrawal, learned Counsel for the respondent-Union Bank of India, Mr. Ajay Shankar, learned Counsel for the respondent-UCO Bank, Mr. Ashok Kumar Lal with Mr. Anadi Krishna Narayana, learned Counsel for the respondent-Bank of Baroda, Mr. Abhishek Ahuja, learned Counsel for the respondent-Indian Bank, Mr. Ashok Kumar Singh, learned Counsel for the respondent-Central Bank of India, Mr. Pashupati Nath Tripathi, learned Counsel for the respondent-Indian Bank, Mr. Mehul Khare, learned Counsel for the respondent-Canara Bank, Ms. Monika Arya, learned Counsel for the State-respondents, Mr. Abhishek Srivastava with Mr. Ujwal Srivastava, learned Counsel for the respondent-U.P. Power Corporation Limited, Mr. Shrawan Kumar Tripathi, learned Counsel for the respondent-Purvanchal Vidyut Vitran Nigam Ltd., Mr. Ishan Mishra, Advocate holding brief of Mr. Manu Ghildyal, learned Counsel for the respondent-Dakshinanchal Vidyut Vitran Nigam Limited, Mr. Bipin Bihari Pandey, learned Counsel for the respondent-Nagar Nigam, Varanasi.

8. Mr. Pradeep Verma, learned Counsel, who appears for the petitioners in a number of writ petitions in this batch, submits that there is no interest chargeable on the commutation value or the commutation amount paid in lump sum under the Regulations applicable to each of the respondents concerned in the various writ petitions. It is argued that the petitioners have paid up the entire

commuted portion or value of their pensions within the span of 9-10 years of their retirement, going by the regular deductions made from their monthly retirement pension. It is argued that the recovery period of 15 years leads to an irrationality, because double the amount of money, that is paid towards commutation, would be recovered in 15 years. He submits that we are a welfare State and the scheme for provision of commuted value, for this reason, does not envisage levy of interest. The commutation amount paid is not taxable under the Income Tax Act. It is emphasized that under the Pension Regulations applicable, there is no mention of recovery of more than the commuted value. The respondents have recovered more than the commutation value up to 31.08.2024. Since the mortality rate between 70-75 years has reduced and life span increased, it would call for restoration of pension immediately after the commutation value paid is recovered.

9. It is emphasized also that the commutation value/ commutation factor in the commutation table appended to the Regulations involved in Writ-A No.16467 of 2024, is based on four parameters i.e. interest rate, life expectancy, mortality rate and the period of recovery. The mortality rate, as published by the Institute of Actualities of India, has been utilized in the LIC (94-96 ultimate tables). An ultimate mortality table lists the percentage of life insurance purchasers expected to be still alive at each given age, beginning with age '0' (zero), which corresponds to or represents 100% of the population of the assured being alive up to the age of 120 years. Typically, the data is based on a population of life insurance policy bearers, either from a particular Insurance Company or a group of them, rather than the country's

population. When the amount of monthly deduction made from an employee's pension in lieu of the lump sum paid to him on account of commutation is multiplied with the restoration period i.e. 180 months (15 years), the sum of money approximates to twice of what is paid towards commutation in lump sum. It is argued that the 15 years for restoration of commuted pension has been fixed by the State when life expectancy in India was comparatively much lower. The life expectancy was 57 years only, whereas the retirement age was higher than that. The learned Counsel submits that as per official data released by the Union Ministry of Health and Family Welfare for the year 2011-15, the average life expectancy in India has increased to 68.5 years. At present, he submits that the average life expectancy in the country is about 70.42 years, which is much more than the age of retirement upon superannuation.

10. It is interestingly argued that the life expectancy of government employees is higher than the average life expectancy of the population in general. As such, this has reduced the risk of non-recovery of the commutation amount due to premature mortality of pensioners to almost a zero. It is, therefore, urged that the period of recovery/ restoration has to be rationalized on these changed data about the life span and other matters. The laws and rules have to accord with these changed things. It is next submitted by Mr. Pradeep Verma that the State has failed to consider these relevant facts and circumstances. The rule, restoring commuted pension after 15 years, has turned arbitrary and unreasonable. It constitutes excess recovery by the respondents at the expense of the senior citizens in violation of Article 14 of the

Constitution. The period of recovery for the commutation value is emphasized again to be ultimately dependent upon three factors, to wit, the interest rate, the life expectancy of the pensioners and the mortality rates. When the commutation tables currently in force in different establishments were drawn up, the interest rate was high, life expectancy low and mortality high. It is emphasized by the learned Counsel for the petitioners at this juncture that this is a case of unjust enrichment of the exchequer at the cost of senior citizens. The excess amount recovered by the respondents constitutes unjust enrichment, which is illegal and unconstitutional too. Restoration of full pension after 15 years, instead of 10, lacks an arithmetical basis and the same is per se and ex facie arbitrary and irrational. The State is a model employer and cannot enrich itself by its whim at the cost of citizens in the twilight years of life.

11. Mr. Mohd. Mohiuddin Siddiqui, learned Counsel for the petitioner in Writ-A Nos. 19104 of 2024 and 19172 of 2024 has submitted along similar lines to assail the long period of deduction as Pramod Kumar Agarwal, appearing in person in Writ-A No.14826 of 2024.

12. Mr. Manoj Kumar Tiwari, learned Counsel for the petitioners has submitted that the decision of the Supreme Court in **Common Cause** (*supra*) was not based upon any records, factors, formulae or data forwarded by the Central Government in support of fixing the period of 15 years, as time during which commuted pension would be released. The Supreme Court proceeded on a principle that it was necessary for the Central Government to fix the period of 15 years in order to recover losses on account of early deaths of pensioners. **Common Cause** was

decided in the year 1986. He submits that there is no basis to insist on the period of 15 years as necessary to recoup losses for the employer or the Government on account of early deaths of many pensioners, who have commuted their pension, 38 years after the Supreme Court decided **Common Cause**. There is no such data or formula or factors forwarded by the Government, including the respondents to show that the period of 15 years is calculated on some scientific or reasonable basis to determine the period of recovery of the commuted pension. Mr. Tiwari has particularly pointed out that with the increase in life expectancy, the Kerala High Court in **Central Government Pensioners Association v. Union of India, 2008 SCC OnLine Ker 291** recommended consideration to the Central Government that the period of recovery of commutation value may now cause unjust enrichment to the employer at the cost of senior citizens, and that the period of time for the commutation value to be squared off may be reduced to 12 years. The Government were directed to decide the petitioners' representation in that case, taking note of the remarks in the judgment. Mr. Tiwari submits that **Central Government Pensioners Association** (*supra*) was decided about 16 years ago, and till date neither the Central Government nor the Corporations of the Government, like the respondent establishments, have thought of bringing down the period of commutation value to be settled, given the average longevity.

13. Mr. Harsh Vardhan Gupta, learned Counsel for the petitioners in nine of the writ petitions, urges that the decision of the Supreme Court in **Common Cause** clearly supports the period of recovery to be 12 years. So far as the case of **R.**

Gandhi (*supra*) is concerned, Mr. Gupta says that the issue decided in the said case is whether the period of restoration is to be counted from the date of retirement or the date of commutation. The issue there is different and the respondents cannot make any capital out of it.

14. Mr. Ashok Bhatnagar, learned Counsel, appearing for the respondents in Writ-A No.16945 of 2024, submits that the period of 15 years is prescribed by Regulations 41(4) and 41(5) of the Punjab National Bank (Employees') Pension Regulations, 1995 (for short, 'the Regulations of 1995') and the petitioners are seeking curtailment of the period of commutation from 15 years to 11. This cannot be done dehors the rules, involved in all causes against the Punjab National Bank. This writ petition, which does not challenge the *vires* of the Regulations of 1995, is not maintainable. It is argued that the benefit of pension, as a retiral benefit in lieu of the Bank's contribution to the provident fund, has been introduced by all nationalized Banks, including the Punjab National Bank, pursuant to the bipartite settlement dated 29.10.1993, so far as it relates to employees, who are workmen, and on the basis of a joint note dated 29.10.1993, so far as officers of the Bank are concerned. The note aforesaid has been signed by the Management of various Banks and Officers' Associations at the Industry level. The benefit of pension is not compulsory, but elective. Those employees, who opt for the benefit of pension in lieu of the respondents' contribution to the provident fund, are governed by the Pension Regulations.

15. The aforesaid bipartite settlement dated 29.10.1993 and the joint note dated 29.10.1993 have culminated in

the Regulations of 1995, with these Regulations being framed by the Board of Directors of the Respondent in exercise of powers conferred under Section 19 of the Banking Companies (A&T Undertakings) Act, 1970 after consultation with the Reserve Bank of India and the previous sanction of the Central Government. He emphasizes that the commutation of 1/3rd pension payable in future to the pensioners is also not compulsory, but absolutely elective. It is for the employee to decide to seek commutation or not, but if he seeks commutation, the entitlement to restoration of the commuted portion comes about under the Regulations after 15 years from the date, it is made. In support of his contention that the period of 15 years cannot be reduced, Mr. Bhatnagar has relied upon four authorities that have already been noticed in the earlier part of this judgment, and to which necessary allusion would be made later on.

16. During the course of his submissions, Mr. Bhatnagar said that in one of the cases in the bunch, the submission raised was that the 15 year period led to unjust enrichment of the respondents at the cost of senior citizens. The submission proceeds on the foot of the reasoning that in the pension fund, the total receipts of deduction of installments from the monthly pension to make good for the commutation value, far exceed what is paid to the petitioners in lump sum. This happens because the recovery continues for a period of 15 years. It was said for the petitioners, according to Mr. Bhatnagar, that the pension fund has swelled at their cost. Mr. Bhatnagar points out that there is also a submission on behalf of the petitioners that the average age since the year 1987 has gone up from 57 years to 69-70 years, and on the other hand, the rate of interest on the

corpus has also gone up since the scheme of commutation of pension was implemented. He submits that no such issue has been raised either in the writ petition or the counter affidavit. He argues that the prevalent rate of interest has gone up from 7-8% per annum in 1987 to 12-13% in the year 1994-95. However, since then the rate of interest has plummeted considerably to hover around 6% per annum. As such, the claim of the petitioners on this score is factually misconceived. So far as the increase in the average age is concerned, though it has gone up to 69-70 years, but a balance sheet of the pension fund for the Punjab National Bank provides a different picture. It shows that the Bank had to infuse funds to keep the balance of payment in viable figures, causing loss to the Bank. Mr. Bhatnagar has attempted to introduce during arguments a chart to show for the financial years 2020-21, 2021-22, 2022-23 and 2023-24, the shortfall in the pension fund despite receipts of contribution from the commuted pension holders, which the Bank had to make good from its own resources. The risk factor on account of early deaths of pensioners is there, and that is what is responsible for the shortfalls, because lump sum payment once made, cannot be recovered after the pensioners' death.

17. Mr. Ajay Shankar, learned Counsel has added to Mr. Ashok Bhatnagar's argument about the risk factor on account of many early deaths of pensioners. The fact is that payment of lump sum, in order to provide the commuted value of pension, leads to depleted fund with the respondents and loss of interest thereon. This can be made good by paying a reduced pension to the petitioners for extended period of time. In addition, it is argued that the petitioners

have opted for commutation of their free will, fully aware that they would get a reduced pension, in case they elect commutation for the time period of 15 years. Mr. Ajay Shankar says that an estoppel clearly applies to the petitioners, who have accepted the benefit of commutation, which comes as a complete package, including reduced pension for a period of 15 years. He points out that the petitioners seek to reopen the point, which this Court has already decided in **Ram Narayan Gupta v. State of U.P. and others, 1994 (24) ALR 151**. Mr. Ajay Shankar speaks about Rule 10A of the Central Civil Services (Commutation of Pension) Rules, 1981 (for short, 'the Rules of 1981') and says that these are *pari materia* to Regulation 41(5) of the UCO (Employees) Pension Regulations, 1995. Mr. Ajay Shankar represents the respondents in a case, where they are the UCO Bank. He emphasizes that the pension funds are used for payment of pensionary benefits alone and not utilized for any other purpose. It is maintained to pay monthly pensions and also to plan for contingencies, like the Covid-19 pandemic. These are not a source of unjust enrichment to the respondents, as they cannot be utilized elsewhere.

18. Mr. Vivek Ratan Agarwal, learned Counsel has argued on behalf of the respondents, adopting the same line of arguments as those advanced by Mr. Ashok Bhatnagar.

19. Upon hearing learned Counsel for the parties, what we find is that the point involved here, indeed, engaged the attention of the Supreme Court squarely in **Common Cause**. The facts in **Common Cause** can best be recapitulated in the words of their Lordships, which read:

“1. By these applications under Article 32 of the Constitution **Common Cause**, a registered society and three retired government servants have asked for striking down certain provisions of the Commutation of Pension Rules applicable to civilian and defence pensioners as they permit the Union of India to recover more than what is paid to the pensioners upon commutation and for a direction that an appropriate scheme rationalising the provisions relating to commutation be brought into force. The respondent has filed a counter-affidavit challenging the maintainability of the petition as also the claim of the petitioners and the matter has been heard at considerable length from time to time. Parties have filed written submissions supplementing their oral arguments.

2. The Central Civil Services (Commutation of Pension) Rules, 1981 are the appropriate rules in force so far as civilian employees under the Government of India are concerned. A set of regulations is in force in regard to defence personnel.

3. It is not disputed that in the case of civilians the total amount of pension which can be commuted is up to one-third while in the case of defence personnel, commutation is admissible up to 43 per cent in the case of officers and up to 45 per cent in respect of other ranks. The argument advanced on behalf of the petitioners that there has been a substantial improvement in the life expectancy of the people in India has not been refuted on behalf of the respondent. This Court suggested to the respondent in course of the hearing that in the changed situation now prevailing in the country, a new look should be given to the matter. In deference to the suggestion made by this Court, the respondent took time to consider the various aspects raised in the writ petitions

and the oral submissions advanced at the hearing as also the written notes submitted in court. It also took into account the fact that several State Governments have changed the Rule applicable to commutation and have restored full pension to the pensioners who commuted a part of their pension after lapse of fifteen years. Union of India has now agreed to restore the commuted portion of the pension in regard to all civilian employees at the age of seventy years or after fifteen years, whichever is later, and has agreed to make this effective from April 1, 1986.....

4. As the position now stands, when a pensioner commutes any part of his pension up to the authorised limit, his pension is reduced for the remaining part of his life by deducting the commuted portion from the monthly pension.”

(emphasis by Court)

20. In deciding the issue involved, the Supreme Court held in **Common Cause**:

“5. The petitioners have contended that the commuted portion out of the pension is ordinarily recovered within about 12 years and, therefore, there is no justification for fixing the period at 15 years. Commutation brings about certain advantages. The commuting pensioner gets a lump-sum amount which ordinarily he would have received in course of a spread over period subject to his continuing to live. Thus, two advantages are certainly forthcoming out of commutation — (1) availability of a lump sum amount, and (2) the risk factor. Again many of the State Governments have already formulated schemes accepting the 15 year rule. In this background, we do not think we would be justified in disturbing the 15-year formula so far as civilian pensioners are concerned.

6. The age of superannuation used to be 55 until it was raised to 58. It is not necessary to refer to the age of the commuting pensioner when the benefit would be restored. It is sufficient to indicate that on the expiry of fifteen years from the period of retirement such restoration would take place.

9. In dealing with a matter of this nature, it is not appropriate to be guided by the example of life insurance; equally unjust it would be to adopt the interest basis. On the other hand, the conclusion should be evolved by relating it to the “years-of-purchase” basis. An addition of two years to the period necessary for the recovery on the basis of years of purchase justifies the adoption of the 15-year rule. That is more or less the basis which appears to be equitable. It may be that this would give rise to an additional burden on the exchequer but it would not be heavy and after all it would bring some relief to those who have served the cause of the nation at great sacrifice. We are, therefore, of the view that no separate period need be fixed for the armed forces personnel and they should also be entitled to restoration of the commuted portion of the pension on the expiry of 15 years as is conceded in the case of civil pensioners. And for them too, the effective date should be from April 1, 1985.”

(emphasis by Court)

21. A perusal of the law laid down by the Supreme Court in **Common Cause** is of seminal importance. The Rule in **Common Cause** brought about a drastic change to the rights of pensioners, who had elected to commute their pension. Prior to **Common Cause**, as it appears, except in the cases of some State Governments, who had adopted the rule of restoring full pensions after expiry of a period of 15

years from the date of commutation, the Central Government, both in relation to the civil services and defence services, was adhering to the letter of the law carried in the Rules of 1981, which made commutation of pension by a retiring government servant, whether a civil servant or a service man, burdened with a permanent monthly deduction from his pension. This would have obviously far exceeded the gains from the commutation received in lump sum by the pensioners. The petitioners, at that time too, had contended in **Common Cause** that recovery of the commuted value of pension is complete in 12 years and there is no justification to bring in a rule of restoring the pension upon the expiry of 15 years. This came about as a result of the Union Government agreeing to alter the rule, prescribing a permanent reduction of pension for the pensioners, by a rule which said that recovery of the commuted value would stop on completion of 15 years from the date of retirement on superannuation or the pensioner attaining the age of 70 years, whichever is later. Their Lordships did not go with the 70 years ceiling, but also did not accept the position that the entire recovery of commutation value being over in 12 years, there was no justification to fix the period of time for restoration of pension at 15 years. It was remarked that commutation brings about certain advantages for the employee. The pensioner gets a lump sum, which he would have received spread over a period of time, subject to his continued survival. It was, therefore, remarked that two advantages, that came to the pensioner with commutation, was firstly, the immediate availability of a lump sum amount of money, and, secondly, exclusion of the risk factor, arising from the event of death. The Court also took note that many State

Governments had already formulated schemes, accepting the 15 year rule. It was in this background that for civilian pensioners, the Court accepted the 15 year rule. The Court specifically rejected the criteria of the pensioners' age as one for restoring the pension. The other remarks in paragraph No.9 of the report may not be very relevant to this case, as this cause essentially relates to pension in civilian service, albeit of a Bank or Corporation.

22. What really matters is that the Court in **Common Cause** introduced a 15 year rule, consciously adding a 3 year period beyond the 12 year recovery of the commutation value, bearing in mind the advantage to the employee of receiving a lump sum, which he might or might not have received, depending upon his fate in the matter of life expectancy. The other more important fact was that given the uncertainties of human life, described as a risk factor, the employer too would have to be compensated in the matter of maintenance of the pension fund as the employer would have to absorb in the budgeting of the fund, cases of those employees, who took the lump sum and did not survive long enough, to ensure replenishment.

23. For the present, the submission, that has been advanced on behalf of the petitioners, is that life expectancy has increased generally, and, therefore, there would be a larger number of pensioners, contributing to the replenishment of the pension fund, compared to the time when **Common Cause** was decided. Therefore, given the fact that the average life expectancy has risen to 70 years or so, which was 57 years at the time, when **Common Cause** was decided, the Rule of adding 3 years beyond the 12 year recovery

period of the commutation value and fixing a 15 year period of time, after which pension would get restored, is now absolutely arbitrary and unfair. It would lead to unjust enrichment of the respondents or the exchequer at the cost of the senior citizens. This is said to be antithetical to the values of a welfare State. The argument, though attractive, does not hold much force; at least to be suited in a writ petition, or for that matter, a Court of law, as matters stand. There could be some sense to the fact that increase in average longevity may have made pension funds with an employer more viable, but that is a matter of working out economies on a larger scale. There are neither sufficient pleadings nor could there be in a few writ petitions filed before the Court, that may enable the Court to take an informed decision, affecting the budgeting and economy of the respondents' pension fund. It is not something, that is so palpably wrong or absurd that the Court may hold it to be arbitrary. The factor of increase in average longevity may require a policy decision on the respondents' part to be taken, but that would not entitle the petitioners to a writ of ours, limiting the recovery period of the commuted pension value to 10 years or 11, as the petitioners seek, or even 12. Working out of economies and money matters, like this, are reputed in law to be best left to the primary decision maker, who has to bear the burden, manage great funds and frame budgets. It is not a matter, which can be decided within the confines of a lis, founded on pleading and some documents.

24. Mr. Harsh Vardhan Gupta is right in saying that the decision of their Lordships of the Supreme Court in *R. Gandhi* is not in point and decides something entirely different, to wit, the

reckoning of the period of 15 years: *whether it is to commence from the date of retirement or the commutation of pension.* To consider the point involved, reference must be made to a Bench decision of the Delhi High Court in **Forum of Retired IPS Officers (FORIPSO)** (*supra*), where it was held:

“21. Pension, commutation of pension, etc. are policy matters, which are examined and decided on the basis of recommendations of the Pay Commissions by the authorities. No doubt, an executive order or policy decision is not beyond the scope of judicial review but the Courts do not go into the nitty gritty of the policy to substitute the table by making various computations and calculations, which are possible by different formulas or by applying a particular formula. Broadly, policy decisions can be subjected to judicial review when they are unconstitutional being *de hors* the provisions of the Act and the Regulations, if the delegatee has acted beyond its power of delegation and if the executive policy is contrary to the statutory or larger policy in matters of price fixation, pay fixation, etc. Courts would not interfere unless formula or method adopted is *per se* and *ex facie* irrational, arbitrary or can be struck down on the four grounds mentioned above.

22. These aspects were kept in mind and highlighted by the Supreme in **Common Cause** (*supra*) when they rejected the contention that the commuted portion of pension would be ordinarily recovered within 12 years, and therefore, there was no justification for fixing period at 15 years. The Supreme Court observed that commutation brings about its advantages as a lump sum amount is received, which amount would have otherwise been paid over a period of time

during a person's life-time. The Supreme Court had listed out two clear advantages, namely, availability of the lump sum as pension and the risk factor. We may add another advantage as the commutation of pension is presently untaxed under the Income Tax Act, 1961. This considerably adds to the monetary benefit accruing to the pensioners. Further, the rate of return on the funds invested by the pensioners could vary and depends upon market driven rate of interest. There are schemes for senior citizens in which the rate of returns is high. Computations made by the petitioner do not refer to the return by way of interest that the pensioner would earn. In the aforesaid background the Supreme Court had specifically rejected similar argument observing that while fixing the commutation period, the Court should not be guided or go by the example of life insurance. The Supreme Court had made the following observations on the said aspects in **Common Cause** (supra):—

“9. In dealing with a matter of this nature, it is not appropriate to be guided by the example of life insurance; equally unjust it would be to adopt the interest basis. On the other hand, the conclusion should be evolved by relating it to the “years-of-purchase” basis. An addition of two years to the period necessary for the recovery on the basis of years of purchase justifies the adoption of the 15-year rule. That is more or less the basis which appears to be equitable. It may be that this would give rise to an additional burden on the exchequer but it would not be heavy and after all it would bring some relief to those who have served the cause of the nation at great sacrifice. We are, therefore, of the view that no separate period need be fixed for the armed forces personnel and they should also be entitled to restoration of the commuted portion of

the pension on the expiry of 15 years as is conceded in the case of civil pensioners. And for them too, the effective date should be from April 1, 1985.”

23. We would want most favourable terms for the pensioners, but there are restraints and the field experts and not the Court is the best judge to evaluate on different and somewhat conflicting factors that have to be taken into consideration. This is not to say that courts do not have jurisdiction and aggrieved pensioners/employees if they are unjustly treated cannot be granted relief, but for such interference the Court should come to a firm conclusion that a grave error had crept in which makes the court's interference absolute to do justice. Interference in such matter can result in creating all kinds of problems and cascading effects as these are highly complexed and difficult matters requiring balancing of various competing interests, which would to some extent include financial resources available.”

(Emphasis by Court)

25. An identical issue was raised before a Division Bench of the Punjab and Haryana High Court in **Shila Devi** (supra), where the questions involved and the facts in brief can be recapitulated in the words of their Lordships thus:

“3. Writ-petitioners in all the petitions are retired employees of the State of Punjab having served its various departments. All of them opted for commutation of their pension in terms of applicable provisions of Chapter 11 of the Punjab Civil Services Rules, Volume-II (for short 'PCS, Rules), Volume-II). Question raised for consideration and adjudication is as to whether portion of pension commuted by the pensioner should

be restored after completion of 15 years from actual date of commutation as provided in Rule 11.1 (2) of PCS Rules, Volume-II or it should be restored after a lesser period i.e., about 12 years.

4. It is a matter of record that all the petitioners had opted for commutation of their pension in accordance with the applicable rules. They broadly fall in two categories i.e., petitioners whose pensions stand restored after completion of the period of 15 years from the date of commutation and those for whom the period of 15 years is yet to be completed. Petitioners have challenged Sub Rule (2) of Rule 11.1 of PCS Rules to be ultra vires the Constitution of India primarily on the premise that commuted pension stands recovered much earlier than the stipulated period and is thus unconstitutional.”

26. In repelling the petitioners' contention, it was held by Lisa Gill, J.:

“25. Learned counsel for petitioners were at pains to indicate that the 6th Central Pay Commission had recommended periodical revision and review of commutation tables keeping in view the interest rates and mortality rate. While referring to Sample Registration System (SRS), Based Abridged Lifetables 2013-2017 issued by Registrar General and Census Commissioner, Ministry of Home Affairs, it was contended that palpable change is indicated in mortality rate which calls for a relook by the authorities on the issue in question. In respect to this argument, we take note of the response of State of Punjab by way of additional affidavit dated 04.11.2024 of Saroj, Under Secretary to Government of Punjab, Department of Finance, in CWP No. 9426 of 2023 stating therein that as per data supplied by Department of Health State of

Punjab, based on the Sample Registration System (SRS) statistical data issued by Registrar General and Census Commissioner, Ministry of Home Affairs, Government of India, death rate in the State of Punjab is higher since the year 2019 than that of the Country as a whole.

26. It is pertinent to note at this stage that the 7th Central Pay Commission did not recommend any change in respect to commutation of pension including the period of restoration. The Punjab Pay Commission on considering the report of the 7th Central Pay Commission as well as the representations of the Employees Association did not find any reason to differ and did not recommend any change. The observations and recommendations as reproduced in affidavit dated 04.11.2024 read as under:-

"Observations and recommendations"

8.11.3 Employee Associations have represented that the commuted pension needs to be restored after 12 years and the commutation be allowed @ 40% of the pension as was previously the case. Moreover, the existing rate of commutation is 40% for Central Government pensioners.

8.11.4 The 7th CPC has not recommended any change either in maximum percentage of commutation or in the period of restoration. It has in this context referred to the Supreme Court judgment of 09.12.1986 wherein the hon'ble court specifically observed that though the amount is recovered in 12 years yet since there is a risk factor and some of the States are restoring pension after 15 years, the existing period of restoration should be retained.

8.11.5 The Commission has no reason to differ and recommends that the rate of commutation be raised to 40% with

no change in the period of restoration of the commuted amount."

27. It is a matter of record that all the petitioners before us are retired employees who have admittedly availed of the benefit of commutation of pension. Admittedly, pension of some of the employees also stands restored. All the petitioners were in service at the time of issuance of notification dated 21.07.1998. They never raised any objection to the stipulated period of 15 years for restoration of pension. Having availed of a benefit which is clearly voluntary in nature, it is not open to the petitioners to raise the grievances as noted above, at this stage, to seek a variation in the terms and conditions accepted by them with open eyes. They are not entitled to seek recovery of the amount so deposited by them in accordance with the accepted terms and conditions.

28. In this factual matrix, the argument that it is a continuing cause of action as it pertains to pension, is clearly unacceptable. There is no question of any direction to the State to restore pension on expiry of 11.5 years or 12 years as prayed for or to refund the amount so recovered. It is necessarily for the State to take a considered decision thereon after delving into the complex questions and underlying parameters which would be involved for assessment of the issues. Admittedly, matters related to commutation of pension are complex affairs involving vexed issues traversing diverse field which calls for application of specialized expertise. It is a settled position that in such matters the Court would venture only in case of manifest and apparent arbitrariness. Learned counsel for petitioners were unable to point out any material on record to indicate that the formula adopted is per se and ex facie irrational or arbitrary which calls for interference by this Court.

29. At this stage, we take note of the specific stand of the State as projected before us that it would be ready to examine the scheme/period of commutation while taking into consideration changes, if any, in underlying parameters and that an Expert Committee would be constituted in this respect which would be assisted by Recognized Expert Agency or Institution(s) which possess requisite knowledge and competence in assessing such matters. In this process the Committee would also invite and consider submission and representations in the matter from Associations of pensioners in the State.

30. Keeping in view the fair stand on the part of the State, we do not find any ground for issuance of any particular direction in this regard except to observe that in terms of the stand as projected before us, it is expected that necessary steps in this regard would be taken expeditiously by the State."

27. No doubt, in **Central Government Pensioners Association**, a learned Judge of the Kerala High Court was swayed into thinking that there was some force in the contention that 12 years was sufficient to recover the pension fund from the depleting effect of commutation and that continuing the recovery beyond 12 years seemed unjust enrichment for the employer at the senior citizens' expense, but this view of the Court was tentatively held and did not lead the learned Judge to enter judgment. This was obviously, though not said there, for the reason that working out of economies and budget is a large scale and complicated exercise best done by the primary decision maker, who manages the funds and the budget. Moreover, the learned Judge seems to have been inspired into thinking that recovery was indeed complete at the end of 12 years

on the basis of some recommendations of the 5th Pay Commission, that were relevant at the time, which said that the recovery was complete in 12 years. That part of the recommendation of the Central 5th Pay Commission was not accepted by the Government. The learned Judge, therefore, ordered the Government to consider and decide the petitioners' claim, after hearing him on the foot of the representation, bearing in mind the Court's remarks. But, the Court did not issue a *mandamus* to reduce the period of recovery from 15 to 12 years. The relevant remarks of the Court in **Central Government Pensioners Association** read:

“11. Going by the lumpsum amount payable on commutation and the recovery effected by applying the years of purchase as given by the table of commutation of pension rules there seems to have been a reason for the recommendation made by the pay commission. The reasons are expressed in para 136.9 and 136.10 of the pay commission report. As to what persuaded the Government to take a decision not to accept the recommendation of the pay commission in the matter of restoration of pension after a period of 12 years, the counter-affidavit is significantly silent on this aspect. The counter-affidavit only mentions of that the recommendation made by any pay commission are not mandatory. They are in the nature of suggestions which the Government may accept or not. In other words, the stand taken in the counter-affidavit suggests either absence of application of mind on the part of the Government in taking a decision not to accept the recommendation of the pay commission or

more seriously a refusal to reveal such reasons as such.

12. The recommendation of the pay commission for reducing the number of years from 15 to 12, would normally suggest that recovery effected over a period of 12 years is sufficient. If that be so, is it not reasonable to assume that further recovery effected for a period of three years, after the expiry of 12 years, would constitute an unjust enrichment on the part of the respondent. If so, is it not necessary for the Government to restrict the recovery of 12 years from the date of commutation and order restoration of full pension. Obviously no Government would countenance a situation where it unjustly enriches itself at the expense of its senior citizens. In my view, these are matters which merit serious attention by the Government. For all these reasons, I am of the view that the first respondent should take a fresh decision in the matter of the recommendation made by the 5th Central Pay Commission as regards restoration of the commuted pension drawn by the central pensioners, after 12 years. A reasoned order may be passed in this regard by the first respondent after hearing a representative of the petitioner. The Government shall take note of the observations made in this judgment. The petitioners are at liberty to supplement Exts. P1 and P2 with additional representations and also produce materials in support of their contention.”

28. There is another angle to the matter and that is that the petitioners here have accepted the terms of commutation freely and of their own accord. Having accepted the benefit of the terms of commutation, it is no longer open to them to repudiate the burden that the scheme of commutation brings. The commutation is

one whole scheme, which has to be accepted by a pensioner for all that it offers. It would be grossly inequitable for a pensioner, who has accepted the terms, to avail the benefit and repudiate the burden, as already said. The term of restoration of full pension is 15 years, which the petitioners in each of these cases, accepted, when they opted for commutation. They cannot now be permitted to turn around. In a matter, where a petitioner, similarly circumstanced as the writ petitioners here, chose to question the *vires* of the rules, under which time period of recovery of the commutation value was fixed, went before the Division Bench in **Ashok Kumar Agarwal and others v. Union of India and others**, 2025:AHC:6439-DB. In **Ashok Kumar Agarwal** (*Supra*), it was held:

“The provisions contained in the Regulations would clearly indicate that the retiring employee shall indicate a fraction of pension, which he desires to commute, and may indicate its maximum limit, which shall not be more than 1/3rd of the pension. In case, the fraction amount is in part of the rupee, such fraction of a rupee is to be ignored for the purposes of commutation. Note (2) is categorical and provides in specific terms that employees who have commuted the admissible portion of pension, is entitled to have the commuted portion of the pension restored after the expiry of 15 years from the date of commutation. The statutory scheme is, therefore, abundantly clear that an option is extended to the retiring employee concern to avail of the benefit of computation and such computation is on specific terms that on expiry of 15 years of such commutation, the original pension is to be restored.

The petitioners' contention that period for resumption of full pension be

reduced from 15 years to 10 years only because the bank actually recovers the lumpsum amount paid on expiry of 10 years, is a misconceived argument. The Policy contained in the Regulations of 1995 extends an offer to the retiring employee to avail the benefit of commutation on specific terms. These terms clearly provide for restoration of pension only on expiry of 15 years. The petitioners otherwise do not say that the terms of the policy is unconstitutional or unconscionable.

Having accepted such offer, a binding contract comes into existence between the employee and the employer as per which the original pension is to be restored after 15 years. Having acquiesced to the commutation policy with open eyes, it is not open for the retiring employee to contend later that the period of restoration of full pension be reduced from 15 years to 10 years. Whether or not the lumpsum amount gets equalised on expiry of 10 years or 11 year is not decisive or material. What is material is the nature of obligation which enures upon the parties when the retiring employee accepts the provision of commutation of pension. The employee with his open eyes having availed the policy, cannot subsequently turn around or seek modification in its terms. The argument that the table or the figures were not adequately disclosed, is also not acceptable, inasmuch as the chart specifies the manner in which the commutation is to be fixed and the period after which the original pension is to be restored. In case, the employees had any misgivings about it, they could have sought appropriate clarification before accepting the offer. Once, the petitioners have acquiesced to the policy and accepted the offer, their subsequent

attempt to resile or seek change in its computation would clearly be impermissible.”

29. In view of whatever has been said above, there is no force in these petitions. All the petitions fail and are **dismissed**.

30. The interim orders, in whichever petitions passed, shall stand vacated.

31. There shall be no order as to costs.

(2025) 4 ILRA 179
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.04.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ A No. 15450 of 2024

Shailendra Kumar ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Devesh Kumar Giri, Som Veer

Counsel for the Respondents:
C.S.C., Gaurav Bishan

Compassionate Ground Appointment-claim for appointment as Assistant Teacher on compassionate grounds on the footing of the Government Orders -Compassionate appointments to be achieved by merit and not acquired by inheritance-conversion of such appointments into a source of recruitment is unconstitutional-compassionate ground appointments is not promotion of employee welfare- Government Orders dated 04.09.2000 and 15.02.2013 insofar as they relate to appointment on the posts of teachers on

compassionate grounds -held to be ultra vires
Articles 14, 16 and 21-A of the Constitution of
India.

W.P. disposed. (E-9)

Cases Cited:

1. Umesh Kumar Nagpal Vs St. of Har., (1994) 4 SCC 138
2. Director of Education (Secondary) Vs Pushpendra Kumar, (1998) 5 SCC 192
3. Shiv Kumar Dubey & ors. Vs St. of U.P. & ors. 2014 SCC OnLine All 16214
4. Ashish Yadav Vs Managing Director, U.P. St. Road Transport Corporation and 2 others, 2025 SCC OnLine All 1266
5. Ipsita Chakrabarti Vs St. of W.B., (2018) 2 CAL LT 177 (HC)
6. N.C. Santhosh Vs St. of Karn. & ors., (2020) 7 SCC 617
7. Director of Treasuries in Karn. & anr. Vs Somyashree, (2021) 12 SCC 20
8. St. of Har. & anr. Vs Ankur Gupta (2003) 7 SCC 704
9. Tinku Vs St. of Har. & ors., 2024 SCC OnLine SC 3292
10. Canara Bank Vs Ajitkumar G.K., 2025 SCC OnLine SC 290
11. Special Appeal Defective No.620 of 2018
12. St. of Uttar Pradesh & ors. Vs Premlata, (2022) 1 SCC 30
13. Deepanshu Vs St. of U.P. & ors., (Writ-A No.10832 of 2022)
14. Rajiv Kumar Vs St. of U.P., 2019 (4) ADJ 316
15. Society for Unaided Private Schools of Rajasthan Vs U.O.I. & anr., (2012) 6 SCC 1

16. Ashoka Kumar Thakur Vs U.O.I. & ors., (2008) 6 SCC 1

17. Smt. Rekha Vs St. of U.P., Criminal Misc. Bail Application No.25993 of 2024

18. Avinash Nagra Vs Navodaya Vidyalaya Samiti & ors.(1997) 2 SCC 534

19. Susmita Basu & ors. Vs Ballygunge Siksha Samity & ors., (2006) 7 SCC 680

20. St. of Maharashtra Vs Vikas Sahebrao Roundale & ors., (1992) 4 SCC 435

21. Ram Sharan Maurya & ors. Vs St. of U.P. & ors., (2021) 15 SCC 401

22. Devesh Sharma Vs U.O.I. & ors., (2023) 18 SCC 339

23. Shri Morvi Sarvajanik Kelavni Mandal Sanchalit MSKM B.Ed. College Vs National Council for Teachers' Education & ors., (2012) 2 SCC 16

24. Modern Dental College & Research Centre & ors. Vs St. of M.P. & ors., (2016) 7 SCC 353

25. St. of Gujarat Vs Mirzapur Moti Kureshi Kassab Jamat & ors., (2005) 8 SCC 534

26. Vijay Singh & ors. Vs St. of U.P. & ors., 2004 SCC OnLine All 1656

27. Government of Andhra Pradesh, General Administration, Department, Hyderabad, & ors. Vs D. Gopaiah & ors., 2002 (2) L.L.N. 484

28. National Institute of Technology & ors. Vs Niraj Kumar Singh, (2007) 2 SCC 481

29. Bihar Rajya Dafadar Chaukidar Panchayat (Magadh Division) Vs St. of Bihar & ors., Special Leave Petition (C) No.18983 of 2023

30. Sanjeev Kumar Dubey Vs District Inspector of Schools, Etawah & ors., 1998 SCC OnLine All 292 **(Distinguished)**

31. Motor General Traders & anr.Vs St. of Andhra Pradesh & ors., (1984) 1 SCC 222

32. Malpe Vishwanath Acharya & ors. Vs St. of Mah. & anr., (1998) 2 SCC 1

33. Joseph Shine Vs U.O.I., (2019) 3 SCC 39

(Delivered by Hon'ble Ajay Bhanot, J.)

1. The judgment is being structured in the following conceptual framework to facilitate the discussion:

I	Introduction	I(A)	Relief Sought
		I(B)	Issues arising for consideration
II	Submissions from the Bar		
III	Constitution and Appointments to Government Post/Services		
IV	Appointments on compassionate grounds		
		IV(A)	General Principles
		IV(B)	Case Laws
V	Statutory/Legal Framework	V(A)	Rule 5 of the Dying in Harness Rules, 1999 : Scope
		V(B)	Government Orders dated 04.09.2000 & 15.02.2013
VI	Constitutional and Statutory Setting		
		VI(A)	Children: Constitutional Rights, Duty of State and Role of Courts
		VI(B)	Article 21A of the Constitution of India & the Right of Children to Free and Compulsory Education Act, 2009
		VI(C)	Role of Teachers
		VI(D)	Teachers and realization of Article 21A of the Constitution of India
VII	Interplay of Constitutional Law, Statutory Provisions and Government Orders		
		VII(A)	Article 21A of

			the Constitution of India, the Right of Children to Free and Compulsory Education Act, 2009 and the Government Orders dated 04.09.2000 and 15.02.2013
		VII(B)	Competing claims for appointment as teachers on compassionate grounds and rights of children to education
		VII(C)	Rule 5 of the Dying in Harness Rules, 1999, Government Orders dated 04.09.2000 and 15.02.2013 and Articles 14 and 16 of the Constitution of India
VIII			
		VIII(A)	Abuse of Compassionate Appointments
		VIII(B)	Sanjeev Kumar Dubey v. District Inspector of Schools, Etawah: Relevance
		VIII(C)	Suo moto consideration of vires by Courts
IX	Conclusions and Directions		
X	Appendix		

I. Introduction :

(A). Relief Sought:

2. The prayer made in the instant writ petition is to mandamus the

respondents to appoint the petitioner as Assistant Teacher on compassionate grounds. The claim for appointment as Assistant Teacher on compassionate grounds has been made by the petitioner on the footing of the Government Orders dated 04.09.2000 and 15.02.2013.

3. The same prayer has been made in the companion writ petitions. All the writ petitions are being decided together since common questions of law arise for consideration therein.

I(B). The issues arising for consideration:

4. The following questions arise for consideration:

A) Whether the prayer of mandamus for appointing the petitioner as a teacher on the footing of the Government Orders dated 04.09.2000 and 15.02.2013 will enforce the Constitution and law or will be in the teeth of the same?

B) Whether the aforesaid Government Orders dated 04.09.2000 and 15.02.2013 are in consonance with Articles 14, 16 of the Constitution of India and the fundamental right to education vested in children by virtue of Article 21A of the Constitution of India and the rights conferred upon children by the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as 'Right to Education Act, 2009')?

C) Whether the Government Orders dated 04.09.2000 and 15.02.2013 are consistent with the Rule 5 of the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness (Fifth Amendment) Rules, 1999 (hereinafter referred to as 'Dying in Harness Rules, 1999')?

II. Submissions from the Bar:

5. Shri Indra Raj Singh, learned counsel, Shri Som Veer, learned counsel, Shri Siddharth Khare, learned counsel, and Shri Aditya Yadav, learned counsel for the respective petitioners have made the following submissions:

(I) The petitioner is entitled for appointment as Assistant Teacher in a Primary School on compassionate grounds in light of the Government Orders dated 04.09.2000 and 15.02.2013.

(II) The aforesaid Government Orders relate to compassionate appointments which are an exception to the general mode of appointments to public posts. Hence the Government Orders dated 04.09.2000 and 15.02.2013 are not liable to examination on the touchstone of Articles 14, 16 and 21-A of the Constitution of India.

(III) In the alternative, the said Government Orders are not violative of Articles 14, 16 and 21-A of the Constitution of India, and do not transgress the provisions of Rule 5 of the Dying in Harness Rules, 1999.

(IV) The petitioner possesses minimum eligibility qualifications for appointment as Assistant Teacher on compassionate grounds under the said Government Orders. A mandamus is liable to be issued to implement the rights of petitioner under the said Government Orders dated 04.09.2000 and 15.02.2013.

6. Shri Kunal Ravi Singh, learned Chief Standing Counsel assisted by Shri Subhranshu Shekhar, learned Additional Chief Standing Counsel for the respondent-State have made the following submissions:

(i) The rules of appointment on compassionate grounds are made only for the welfare of employees and are an exception to the general mode of appointment to public post. The Government Orders dated 04.09.2000 and 15.02.2013 are not amenable for testing on the anvil of Article 21-A of the Constitution.

(ii) In the alternative, it is submitted that the said Government Orders do not contravene the provisions of Articles 14, 16 and Article 21-A of the Constitution.

(iii) The said Government Orders only supplement the scheme of Rule 5 of the Dying in Harness Rules, 1999 and the two provisions can be harmoniously implemented.

(iv). Competitive merit of candidates is not examined in the process of making appointments on compassionate grounds. However, all candidates have to possess the minimum eligibility qualifications. Satisfaction of eligibility criteria itself is an index of merit. No further exercise to determine the merit is required in cases of appointment on compassionate grounds.

(v) The case of the petitioner for appointment on compassionate grounds is liable to be determined in the first instance in particular facts of each case by the competent authority as per the Government Orders dated 04.09.2000 and 15.02.2013.

7. The above arguments have been adopted by Shri Ajeet Singh, learned counsel, Shri Bipin Bihari Pandey, learned counsel, Shri Gaurav Bishan, learned counsel, Shri Krishna Kumar Chand, learned counsel, Shri Devesh Vikram, learned counsel, for the respective respondent-Basic Shiksha Adhikaris.

8. Shri Kunal Shah, learned amicus curiae and Shri Abhinav Mehrotra, learned amicus curiae have made the following submissions:

(a) The Government Orders dated 04.09.2000 and 15.02.2013 are liable to stand the test of Articles 14, 16 and 21-A of the Constitution against the same for their validity.

(b) The Government Orders dated 04.09.2000 and 15.02.2013 violate Articles 14, 16 and the fundamental right to education vested in children under Article 21-A of the Constitution of India, and the statutory rights conferred upon children under the Right to Education Act, 2009.

(c). The procedure adopted for appointment of teachers on compassionate grounds under the Government Orders dated 04.09.2000 and 15.02.2013 does not test merits of the candidate.

(d). The right of children to quality education can only be realized if most meritorious candidates from open market are appointed as teachers.

(e). The Government Orders dated 04.09.2000 and 15.02.2013 are incompatible with Rule 5 of the Dying in Harness Rules, 1999.

(f). The Government Orders dated 04.09.2000 and 15.02.2013 are ultra vires Articles 14, 16 and 21-A of the Constitution.

III. Constitution and Appointments to Government Post/Services:

9. The Constitution of India contains copious provisions for appointment to government posts/services. Some of the provisions which can be referenced are: Article 14 of the Constitution is the equality clause in the Constitution, Article 15 of the Constitution

proscribes discrimination and enables special provisions for socially and economically backward classes and scheduled castes. Article 16 of the Constitution provides for the recruitment to posts in government services and enables reservations for certain classes including SCs, STs and OBCs. Article 309 of the Constitution vests the State with powers to frame service Rules.

10. Constitutional law renderings of the aforesaid provisions hold that the recruitment to government services and posts should be made through a transparent and open process. Recruitment processes under the Constitution for appointment to government posts prise out the best talent to serve the country by enabling widest possible participation of eligible citizens, and selection based on competitive merit. The Constitutional scheme ensures equality in opportunity to participate in the selection process, provides for representation of various categories of backward classes and scheduled castes and scheduled tribes in government services, and maintains the ascendancy of merit in appointments.

11. Appointments made in pursuance of said recruitment processes ensure an efficient administration which is leavened with social justice and solely geared to service of the citizenry. The recruitment processes undertaken in adherence to Constitutional norms aid the transition of a nation riven with disparities to a republic defined by an egalitarian order.

IV. Appointments on compassionate grounds:

(A). General Principles:

12. The process of appointments on compassionate grounds is a departure and an exception to the public process of appointments as stipulated in the Constitution. Compassionate appointments reflect the commitment of the State as a model employer to the welfare of its employees.

13. The sole purpose of compassionate ground appointments is to provide immediate financial succour to a family of the deceased government employee which faces sudden financial destitution after the death of the earning member. The compassionate ground appointments are not intended to confer lasting social status. The appointments on compassionate grounds have passed the test of constitutionality by a slender margin and on the above grounds alone.

14. Appointments on compassionate grounds give a sheltered entry to the dependants of a deceased employee into government service without the rigors of an open selection procedure. The competitive merit of candidates is of no relevance since the appointments are made without adopting the public selection procedure. Norms of recruitment are completely relaxed for appointment on compassionate grounds. However the law requires the applicants to possess minimum qualifications for the posts.

15. Considering the aforesaid limitations of compassionate ground appointments, it has been held by good authority that there is no vested right to an appointment on compassionate grounds. Further, the right to compassionate ground appointment is derived only from specific provisions in this regard and the same have to be strictly adhered to. An unduly liberal

view while interpreting the aforesaid rules may make the appointments vulnerable to reproach by the equality clause of the Constitution.

16. Unlimited appointments on compassionate grounds made without examination of relevant factors as per law or in the teeth of holdings of Constitutional Courts in point will “shear the cloak of legality” from these appointments and will reduce the said appointments to a class of hereditary appointments. Under the constitutional scheme of Articles 14 and 16 of the Constitution appointments to government posts have to be achieved by merit and not acquired by inheritance. Constitutional law holdings have disapproved conversion of compassionate appointments into a source of recruitment.

IV(B). Case Laws:

17. The narrative has the benefit of cases in point. The purpose of appointment on compassionate grounds was explained by the Supreme Court in **Umesh Kumar Nagpal v. State of Haryana**³. Jurisprudential rationale laid down in **Umesh Kumar Nagpal (supra)** is the locus classicus which provides the sole rationale for compassionate appointments:

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other

procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased

employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

18. The same propositions were expounded by the Supreme Court in **Director of Education (Secondary) v. Pushpendra Kumar**⁴:

"8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is

an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee.....”

19. A Full Bench of this Court in **Shiv Kumar Dubey and others v. State of U.P. and others**⁵ set forth the law as under:

“31. We now proceed to formulate the principles which must govern compassionate appointment in pursuance of Dying in Harness Rules:

(i) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basic object and purpose which is sought to be achieved;

(ii) There is no general or vested right to compassionate appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;

(iii) The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread-earner;

(iv) In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family; its liabilities, the terminal benefits received by the family; the age, dependency and marital status of its members, together with the income from any other sources of employment;

(v) Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out;

(vi) Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner;

(vii) The burden lies on the applicant, where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State Government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is conditioned by the existence of objective considerations to the satisfaction of the government;

(viii) Provisions for the grant of compassionate appointment do not constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a period of time within which an application has to be made, the operation of the rule is not suspended during the minority of a member of the family.”

20. This Court in **Ashish Yadav v. Managing Director, U.P. State Road Transport Corporation and 2 others**⁶ discussing the purpose of compassionate appointment held as under:

“10. The sole justification to make compassionate ground appointments is that the dependants of the deceased employee face unforeseen financial destitution after the death of the latter and need urgent succour. Compassionate appointments are provided to the family to immediately tide over the sudden financial crisis so caused by the death of the employee. This feature alone constituted the kin of a deceased employee into one class and on this sole footing the rationale of compassionate ground appointments was justified by Constitutional Courts.

15. The purpose of grant of compassionate ground appointments can be subserved and their constitutionality can be saved only by strict compliance of the rules governing the grant of compassionate ground appointments.”

21. There is consensus among Constitutional Courts in the country on the issue of compassionate appointments. The

Calcutta High Court in **Ipsita Chakrabarti v. State of West Bengal**⁷ summarized the aforesaid key principles which guide appointments on compassionate grounds by holding :

“10. After going through the judgments passed by the Supreme Court on the issue of compassionate appointment, the following principles emerge:-

(a) Appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process.

(b) The right of a dependent of an employee who died in harness for compassionate appointment is based on the scheme, executive instructions, rules etc. framed by the employer and there is no right to claim compassionate appointment on any other ground apart from the above scheme conferred by the employer.

(c) Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground it should be kept confined only to the purpose it seems to achieve, the idea being not to provide for endless compassion.

(d) Compassionate appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family.”

22. The paramount importance for granting equal opportunity to all aspirants under the constitutional scheme for

government appointments and the exception created by the concept of appointments on compassionate grounds was reiterated by the Supreme Court in **N.C. Santhosh v. State of Karnataka and others**⁸. **N.C. Santhosh (supra)** while citing the cases in point reaffirmed that such appointments did not create any vested right and also held that adherence to the criteria for such appointments is a mandatory requirement in law:

“13. It is well settled that for all the government vacancies equal opportunity should be provided to all aspirants as is mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said norms. In *SAIL v. Madhusudan Das* [*SAIL v. Madhusudan Das*, (2008) 15 SCC 560 : (2009) 2 SCC (L&S) 378] it was remarked accordingly that compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirants.

14. This Court in *SBI v Raj Kumar* [*SBI v. Raj Kumar*, (2010) 11 SCC 661 : (2011) 1 SCC (L&S) 150] while reiterating that no aspirant has a vested right to claim compassionate appointment, declared that the norms that are in force, when the application is actually considered, will be applicable. The employer's right to modify the scheme depending on its policies was recognised in this judgment. Similarly, in *MGB Gramin Bank v. Chakrawarti Singh* [*MGB Gramin Bank v. Chakrawarti Singh*, (2014) 13 SCC 583 : (2015) 1 SCC (L&S) 442] this Court reiterated that compassionate appointment has to be considered in accordance with the prevalent scheme and no aspirant can claim that his case should be considered as per

the scheme existing on the date of death of the government employee.

17. The above discussion suggest that the view taken in *Canara Bank v. M. Mahesh Kumar* [*Canara Bank v. M. Mahesh Kumar*, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] is to be reconciled with the contrary view of the coordinate Bench, in the two earlier judgments. Therefore, notwithstanding the strong reliance placed by the appellant's counsel on *Canara Bank v. M. Mahesh Kumar* [*Canara Bank v. M. Mahesh Kumar*, (2015) 7 SCC 412 : (2015) 2 SCC (L&S) 539] as also the opinion of the learned Single Judge of the Karnataka High Court in *Uday Krishna Naik v. State of Karnataka* [*Uday Krishna Naik v. State of Karnataka*, 1999 SCC OnLine Kar 209 : ILR 1999 Kar 2648], it can not be said that the appellant's claim should be considered under the unamended provisions of the Rules prevailing on the date of death of the government employee.

18. In the most recent judgment in *State of H.P. v. Shashi Kumar* [*State of H.P. v. Shashi Kumar*, (2019) 3 SCC 653 : (2019) 1 SCC (L&S) 542] the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the Bench, Dr D.Y. Chandrachud, J. reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The dependants of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfil the norms laid down by the State's policy.”

23. Absence of a vested right, mandate of the constitutional scheme of

recruitment and the need to strictly adhere to the rules governing the grant of appointment on compassionate grounds was also emphasized by the Supreme Court in the **Director of Treasuries in Karnataka and another v. Somyashree**⁹ :

“7. While considering the submissions made on behalf of the rival parties a recent decision of this Court in the case of N.C. Santhosh (Supra) on the appointment on compassionate ground is required to be referred to. After considering catena of decisions of this Court on appointment on compassionate grounds it is observed and held that appointment to any public post in the service of the State has to be made on the basis of principles in accordance with Articles 14 and 16 of the Constitution of India and the compassionate appointment is an exception to the general rule. It is further observed that the dependent of the deceased Government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State’s policy. It is further observed and held that the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim of compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. It is further observed he/she is, however, entitled to seek consideration in accordance with the norms as applicable on the day of death of the Government employee. The law laid down by this Court in the aforesaid decision on grant of appointment on compassionate ground can be summarized as under:

(i) that the compassionate appointment is an exception to the general rule;

(ii) that no aspirant has a right to compassionate appointment;

(iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

(iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State’s policy and/or satisfaction of the eligibility criteria as per the policy;

(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.”

24. The purpose and limitations of appointments on compassionate grounds including the need to avoid conferring benefits merely on sympathetic considerations alone were reiterated by the Supreme Court in **State of Haryana and another v. Ankur Gupta**¹⁰. In **Ankur Gupta (supra)** it was clearly observed that the appointments on compassionate grounds are not source of recruitment and do not unduly interfere in the rights of other persons who are eligible for appointment against that post:

“6. As was observed in *State of Haryana and Ors. v. Rani Devi & Anr.* (JT 1996 (6) SCC 646), it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution of

India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in harness scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In *Rani Devi's case* (supra) it was held that scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In *Life Insurance Corporation of India v. Asha Ramchandra Ambekar (Mrs.)* and Anr. (1994 (2) SCC 718) it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in *Umesh Kumar Nagpal v. State of Haryana and Ors.* (1994 (4) SCC 138) that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground

have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

7. In *Director of Education (Secondary) and Anr. v. Pushpendra Kumar and Ors.* (1998 (5) SCC 192) it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.”

25. More recently the Supreme Court in ***Tinku v. State of Haryana and others***¹¹ summed up the position of law settled over the years:

“12. As regards the compassionate appointment being sought to be claimed as a vested right for appointment, suffice it to say that the said

right is not a condition of service of an employee who dies in harness, which must be given to the dependent without any kind of scrutiny or undertaking a process of selection. It is an appointment which is given on proper and strict scrutiny of the various parameters as laid down with an intention to help a family out of a sudden pecuniary financial destitution to help it get out of the emerging urgent situation where the sole bread earner has expired, leaving them helpless and maybe penniless. Compassionate appointment is, therefore, provided to bail out a family of the deceased employee facing extreme financial difficulty and but for the employment, the family will not be able to meet the crisis. This shall in any case be subject to the claimant fulfilling the requirements as laid down in the policy, instructions, or rules for such a compassionate appointment.

14. The very basis and the rationale, wherever such policies are framed for compassionate appointment is with an object to grant relief to a family in distress and facing destitution, and thus an exception is culled out to the general rule in favour of the family of the deceased employee. This is resorted to by taking into consideration the services rendered by such employee and the consequent legitimate legal expectations apart from the sudden change in status and affairs of the family because of the unexpected turn of events, i.e. the loss of the sole bread earner.

15. The purpose, therefore, of such policies is to give immediate succour to the family. When seen in this conspectus, three years as has been laid down from the date of death of the employee for putting forth a claim by a dependant, which, includes attainment of majority as per the 1999 policy instructions issued by the Government of Haryana

cannot be said to be in any case unjustified or illogical, especially when compassionate appointment is not a vested right.”

26. Lately in **Canara Bank v. Ajitkumar G.K.**¹² the Supreme Court elaborated the need for assessing the suitability on certain posts, the requirement of determining financial hardship and the caution of not merely giving one post for another post while making compassionate appointments:

“33. The next sub-issue, which cannot be overlooked, is this. The scheme of 1993 envisages assessment of the suitability of the claimant for compassionate appointment. As has been laid down in several decisions of this Court, noted above, the clauses forming part of the policy/scheme 30 for compassionate appointment have to be followed to the letter. Without the respondent having been subjected to a suitability test, the Division Bench plainly fell in error in directing the respondent’s appointment in the category of clerk relying on the decision in *Canara Bank* (supra). It is of some significance that even *Canara Bank* (supra) did not order appointment but required reconsideration of the claim.

44. As pertinently held in *B. Kishore* (supra), indigence of the dependants of the deceased employee is the fundamental condition to be satisfied under any scheme for appointment on compassionate ground and that if such indigence is not proved, grant of relief in furtherance of protective discrimination would result in a sort of reservation for the dependents of the employee dying-in-harness, thereby directly conflicting with the ideal of equality guaranteed under Article 14 and 16 of the Constitution. Also,

judicial decisions abound that in deciding a claim for appointment on compassionate grounds, the financial situation of the deceased employee's family must be assessed. In a situation otherwise, the purpose of the scheme may be undermined; without this evaluation, any dependent of an employee who dies while in service might claim a right to employment as if it is heritable.

45. The ratio decidendi of all these decisions have to be read in harmony to achieve the noble goal of giving succour to the dependants of the employee dying-in-harness, who are genuinely in need, and not with the aim of giving them a post for another post. One has to remember in this connection the caution sounded in Umesh Kumar Nagpal (supra) that as against the destitute family of the deceased there are millions of other families which are equally, if not more, destitute.”

27. The rationale for grant of compassionate ground appointments and various safeguards to prevent abuse of the process of compassionate ground appointments have been incorporated in the constitutional law jurisprudence. The said holdings of the Constitutional Courts shall be read into the provisions for grant of appointment on compassionate grounds.

V.Statutory/Legal Framework:

V(A). Rules 5 of the Dying in Harness Rules, 1999 : Scope

28. The relevant Rules and government orders which govern the appointment on posts of Assistant Teachers on compassionate grounds are the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness (Fifth Amendment) Rules, 1999 (hereinafter referred to as ‘Dying in

Harness Rules, 1999’13) and the Government Orders dated 04.09.2000 and 15.02.2013.

29. Rule 5 of the Dying In Harness Rules, 1999 is extracted hereunder:

“Rule 5. Recruitment of a member of the family of the deceased. –

(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in a relaxation of the normal recruitment rules, if such person-

(i) fulfils the educational qualifications prescribed for the post,

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years from the date of the death of the Government servant:

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.

(3) Every appointment made under sub-rule (1) shall be subject to the condition that the person appointed under sub-rule (1) shall maintain other members of the family of deceased Government servant, who were dependent on the deceased Government servant immediately before his death and are unable to maintain themselves.

(4) When the person appointed under sub-rule (1) neglects or refuses to maintain a person to whom he is liable to maintain under sub-rule (3), his service may be terminated in accordance with the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, as amended from time to time."

(emphasis added)

30. Rule 5 of the Dying in Harness Rules, 1999 which contemplates grant of appointment on compassionate grounds was enacted in exercise of power vested under Article 309 of the Constitution of India. Rule 5 of the Dying in Harness Rules, 1999 contemplates grant of suitable employment on a post by the Government, provided the applicant /candidate fulfills the educational qualifications required for the post and is otherwise qualified for government service.

31. The statute has provided "suitable employment on a post" in Rule 5 of the Dying in Harness Rules, 1999 as the legal standard/yardstick to guide the process of appointments on compassionate grounds.

32. It is noteworthy that the Dying in Harness Rules, 1999 employs the phrase "be given a suitable employment on a post", and not the words "given an appointment on a post on the basis of eligibility". "Suitable employment" is distinct from mere eligibility for appointment. Eligibility simply prescribes minimum qualifications for appointment to a post. The phrase "suitable employment" is of a much wider ambit. Eligibility in itself may not ensure suitability, though suitability presupposes eligibility among other things.

33. The phrase "suitable employment" in Rule 5 of the Dying in Harness Rules, 1999 is an aggregate of several factors. The meaning of "suitable" in the Black's Law Dictionary is "fit and appropriate for their intended purpose".

34. Rule 5 of the Dying in Harness Rules, 1999 mandates that an enquiry by the competent authority into the nature of "suitable employment on a post" should precede the grant of compassionate appointment. The said process requires consideration of the various elements which are comprised in "suitable employment on a post".

35. Judicial authorities in past have examined few aspects of "suitable employment on a post". One set of authorities rendered by this Court posited that the possession of eligibility qualifications by the dependant is the sole criteria which will determine the suitable post. [Reference: **Special Appeal Defective No.620 of 2018 (Smt. Premlata v. State of U.P. and 3 others)**]

36. While turning down the aforesaid view the Supreme Court in **State**

of Uttar Pradesh and others v. Premlata¹⁴ opined that the qualifications will not be the singular criteria for appointment on compassionate ground and the post held by the deceased is a relevant consideration:

“10. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependants of a deceased dying-in-harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased.

10.2 The Division Bench of the High Court in the present case has interpreted Rule 5 of the 1974 Rules and has held that “suitable post” under Rule 5 of the 1974 Rules would mean any post suitable to the qualification of the candidate irrespective of the post held by the deceased employee. The aforesaid interpretation by the Division Bench of the High Court is just opposite to the object and purpose of granting the appointment on compassionate ground. “Suitable post” has to be considered, considering status/post held by the deceased employee and the educational qualification/eligibility criteria is required to be considered, considering

the post held by the deceased employee and the suitability of the post is required to be considered vis-à-vis the post held by the deceased employee, otherwise there shall be no difference/distinction between the appointment on compassionate ground and the regular appointment. In a given case, it may happen that the dependant of the deceased employee who has applied for appointment on compassionate ground is having the educational qualification of Class II or Class I post and the deceased employee was working on the post of Class/Grade IV and/or lower than the post applied, in that case the dependant/applicant cannot seek the appointment on compassionate ground on the higher post than what was held by the deceased employee as a matter of right, on the ground that he/she is eligible fulfilling the eligibility criteria of such higher post. The aforesaid shall be contrary to the object and purpose of grant of appointment on compassionate ground which as observed hereinabove is to enable the family to tide over the sudden crisis on the death of the breadearner. As observed above, appointment on compassionate ground is provided out of pure humanitarian consideration taking into consideration the fact that some source of livelihood is provided and family would be able to make both ends meet.”

37. A learned Single Judge of this Court in **Deepanshu v. State of U.P. and 2 others**¹⁵ has referred the following substantial questions of law to the Larger Bench:

“(i) Whether “suitable appointment” in terms of qualifications as given under Rule 5 of the 1974 Rules would mean that if a dependent of a deceased Government employee is

qualified to hold a class III post, a supernumerary Class-III post should be created for him and he be given appointed, more so when it has been held by Hon'ble Supreme Court that a dependent of a deceased employee when he claims compassionate appointment is asking for an exception to be carved out for him against the normal rules governed by Article 14 and 16 of the Constitution for equality of opportunity in matters of public employment?

(ii) Whether the Coordinate Bench decision in Writ-A No. 10149 of 2021, 'Sameer Pandey vs. State of U.P. has correctly appreciated the observations of the Full Bench in Shiv Kumar Dubey (Supra)?

(iii) Whether the direction in Sameer Pandey (Supra) could have been given for ignoring the Government Order dated 18.05.2017, when it is settled law that compassionate appointment can be offered only in accordance with the Scheme including Government Order, if any, issued by the Government. The Government Order dated 18.05.2017 was not challenged in Writ-A No. 10149 of 2021 and the Authorities could not be issued any Mandamus to act against the provisions of the Scheme/Government Orders?"

38. The controversy at hand revolves around a yet completely different facet of "suitable employment on a post" in Rule 5 of the Dying in Harness Rules, 1999.

39. What needs to be determined in the facts and circumstances of this case is the manner in which institutional needs and purposes relatable to the post are liable to be factored in while determining the nature of "suitable employment on a post" under

Rule 5 of the Dying in Harness Rules, 1999.

40. The line of enquiry into "suitable employment on a post" under the Rule 5 of the Dying in Harness Rules, 1999 will thus commence with the consideration of public purpose and institutional needs served by the post in question. This will include analysis of obligations cast by the Constitution and the laws upon the State to realize the rights of the citizens which are discharged through the said post. The nature of duties attached to the post and their impact on fundamental rights of citizens will then be examined. The degree of expertise or knowledge base and skill sets required to execute the said post will also be part of this process.

41. In the course of this exercise it will also have to be seen whether the institutional needs and public purpose will be fulfilled by waiving the constitutionally sanctioned process of open recruitment and appointment by competitive merit for the said post. As a corollary the consequences of making an appointment on the said post through a restricted process without the criteria of merit will also be assessed.

42. The said process of determining "suitable employment on a post" gives precedence to institutional needs over individual claims for appointment on the said post.

43. The said enquiry under Rule 5 of the Dying in Harness Rules, 1999 will determine whether the said post is tenable by compassionate ground appointments or not. However, in case a post is not found suitable for compassionate ground appointment, the process of enquiry under Rule 5 of the Dying in Harness Rules, 1999 will not come to a stand still. Alternative

avenues of employment will be explored, and appropriate posts for “suitable employment” will be identified through the said process.

44. At this stage it would be apposite to examine the contention of the State that welfare of dependants of the deceased employee is the sole basis of making compassionate ground appointments to the exclusion of all other aspects.

45. By adopting this approach the respondents have strayed far away from their constitutional obligations and duties, and the same is reflecting in disorganized priorities of the respondents.

46. The Constitutional order of priorities of the State are these. Upholding of the Constitution and realization of fundamental rights of citizens is the avowed goal of government. Strengthening the capacity of the government to achieve these goals by recruiting the most meritorious talent by the constitutionally sanctioned manner of recruitment comes next in the scale of importance. Welfare of employees inheres in a model employer and a welfare State. However, the welfare measures like grant of compassionate appointments cannot be made at the cost of the first two objectives.

V(B). Government Orders dated 04.09.2000 and 15.02.2013:

47. The Government Orders dated 04.09.2000 and 15.02.2013 adopt the Dying in Harness Rules, 1999 for making compassionate ground appointments in the Education Department. Further, the Government Orders dated 04.09.2000 and 15.02.2013 specifically provide for

appointment on the post of teachers on compassionate grounds.

48. The Government Order dated 04.09.2000, relaxed qualifications for appointment as teachers on compassionate grounds. Opportunity was given to fulfill training qualifications even after grant of appointments. However, the Government Order dated 15.02.2013 while providing for appointment as teachers on compassionate ground has recalled the aforesaid relaxations in the Government Order dated 04.09.2000ⁱ. The Government Order dated 15.02.2013ⁱⁱ contemplates strict compliance of the criteria for educational qualification while making such appointments. The Government Orders dated 04.09.2000 and 15.02.2013 are appended as Appendix I and II.

49. Briefly put the Government Orders dated 04.09.2000 and 15.02.2013 provide for possession of minimum qualification for the post of teachers as the only requirement for grant of appointment as teachers on compassionate grounds. The provisions do not prescribe any procedure or criteria for determination of merit of the applicants for appointment as teachers on compassionate grounds.

50. The tenor of the Government Orders dated 04.09.2000 and 15.02.2013 is that a virtual entitlement for appointment as a teacher on compassionate grounds is created once the dependant-claimant of the deceased-employee possesses the minimum eligibility qualifications for the said post.

VI. Constitutional and Statutory Setting:

VI(A). Children: Constitutional Rights, Duty of State and Role of Courts:

51. Children are the most precious assets of a nation, but also a most vulnerable class of the human species. Children are incapacitated from challenging their circumstances.

Constitutional Provisions:

52. The special provisions under the Constitution of India for holistic development, welfare and protection of children under the Constitution were noticed by this Court in **Rajiv Kumar v. State of U.P.16:**

“20. The constitution makers understood the special needs of children and envisaged a distinct place for children in the Constitution. The children are constituted into a separate class of citizens under the Constitution. Various provisions devoted to the child in the text of the Constitution attest the paramount importance accorded to the welfare of the child in our Constitutional scheme.

21. The relevant provisions of the Constitution of the India in this regard are extracted hereunder:

22. Article 15(3) of the Constitution of India enables the State Government to make special provisions for children. The provision states thus:

"15(3) Nothing in this article shall prevent the State from making any special provision for women and children.

23. Article 21(a) of the Constitution of India elevates the rights of education of children between 6-14 of age to a fundamental right.

24. It is noteworthy that free and compulsory education for children is also mentioned as a directive principle for formation of State Policy. Article 45 of the Constitution of India states thus:

"45. Provision for free and compulsory education for children: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

25. Article 21(a) and Article 47 of the Constitution of India state thus:

"21(A) The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health: The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

26. Article 39(e) and Article 39(f) of the Constitution of India acknowledge the vulnerability of the child against the exploitation and moral and material abandonment. The provision also affirms the realization of the incapacity of children to defend themselves against such adverse situations and contemplate a role of the State to create opportunities and facilities to enable the children to develop in a worthy manner.

"39(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

39 (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

Duty of State:

53. The Constitution has also cast an iron clad obligation on the State to fulfil the right to education of children. Besides this the State under the Constitution and various statutes is also a guarantor of rights and de facto a guardian of children.

54. A clear and direct responsibility cast on the State to provide quality education to children is borne out from the words of Article 21A of the Constitution of India.

55. The State alongwith teachers were identified as key actors who influence the right of children to education by the Supreme Court in **Society for Unaided Private Schools of Rajasthan v. Union of India and another**¹⁷:

"5. Education is a process which engages many different actors: the one who provides education (the teacher, the owner of an educational institution, the parents), the one who receives education (the child, the pupil) and the one who is legally responsible for the one who receives education (the parents, the legal guardians, society and the State). These actors influence the right to education."

Role of Courts:

56. The procedure for compassionate appointments invariably shields the said appointments from public

sight and even knowledge. There is little possibility of the children understanding the consequences of dilution of merit in appointment of teachers on their right to education much less challenge the same. The Courts cannot idly watch the violation of fundamental rights of the children to education. Constitutional law contemplates a proactive role of Courts in these circumstances. Cases in point can be profitably referenced.

57. The Supreme Court in **Ashoka Kumar Thakur v. Union of India and others**¹⁸ also emphasized the special duties of the Courts while upholding the Right to Education Act, 2009:

"482.....It has become necessary that the Government set a realistic target within which it must fully implement Article 21A regarding free and compulsory education for the entire country. The Government should suitably revise budget allocations for education. The priorities have to be set correctly. The most important fundamental right may be Article 21A, which, in the larger interest of the nation, must be fully implemented. Without Article 21A, the other fundamental rights are effectively rendered meaningless. Education stands above other rights, as one's ability to enforce one's fundamental rights flows from one's education. This is ultimately why the judiciary must oversee Government spending on free and compulsory education."

58. Uninterrupted vigilance by Constitutional Courts over the rights of children was reinforced by this Court in **Smt. Rekha v. State of U.P.**¹⁹ by holding as under:

“81. Constitutional oversight on the rights of children is perpetual, and the courts are permanent guardians of children. A old writer made the following observations as regards the role of law and duties of instruments of law towards children:

“The law protects their persons, preserves their rights and estates, excuseth their laches and assists them in their pleadings, the judges are their counsellors, the jury are their servants and law is their guardian.”

VI.(B). Article 21-A of the Constitution of India & the Right of Children to Free and Compulsory Education (RTE) Act, 2009:

“If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be”

~Thomas Jefferson

59. Education is the bulwark of a nation’s freedom and the engine of economic prosperity. Education has assured the survival of human civilization and holds the promise of success of human kind.

60. Since the first recordings of Indian thought the significance of learning has been a constant part of our civilizational consciousness. Article 21A of the Constitution has made education an irrevocable feature of the constitutional conscience. Article 21A vests the fundamental right to education in all children. The Right to Education Act, 2009 provides a detailed mechanism for implementation of the aforesaid right.

61. The paramount importance of “quality education” for children in our constitutional scheme is manifested in the Parliament’s Statement of Objects and

Reasons for Article 21-A of the Constitution:

“....The Constitution of India in a directive principle contained in Article 45, has made a provision for free and compulsory education for all children up to the age of fourteen years within ten years of promulgation of the Constitution. We could not achieve this goal even after 50 years of adoption of this provision. The task of providing education to all children in this age group gained momentum after the National Policy of Education (NPE) was announced in 1986. The Government of India, in partnership with the State Governments, has made strenuous efforts to fulfil this mandate and, though significant improvements were seen in various educational indicators, the ultimate goal of providing universal and quality education still remains unfulfilled. In order to fulfil this goal, it is felt that an explicit provision should be made in the part relating to fundamental rights of the Constitution.

2. With a view to making right to free and compulsory education a fundamental right, the Constitution (Eighty-third Amendment) Bill, 1997 was introduced in the Parliament to insert a new article, namely, Article 21-A conferring on all children in the age group of 6 to 14 years the right to free and compulsory education. The said Bill was scrutinised by the Parliament Standing Committee on Human Resource Development and the subject was also dealt with in its 165th Report by the Law Commission of India.

3. After taking into consideration the report of the Law Commission of India and the recommendations of the Standing Committee of the Parliament, the

proposed amendments in Part III, Part IV and Part IV-A of the Constitution are being made which are as follows:

4. The Bill seeks to achieve the above objects.”

62. The Supreme Court while interpreting the scope of Article 21A of the Constitution in **Ashoka Kumar Thakur (supra)** embedded the goal of quality education in constitutional law:

“490. The article seeks to usher in “the ultimate goal of providing universal and quality education”. (emphasis supplied) Implied within “education” is the idea that it will be quality in nature. Current performance indicates that much improvement needs to be made before we qualify “education” with “quality”. Of course, for children who are out of school, even the best education would be irrelevant. It goes without saying that all children aged six to fourteen must attend school and education must be quality in nature. Only upon accomplishing both of these goals, can we say that we have achieved total compliance with Article 21-A.

491. Though progress has been made, Parliament's observation upon passing Article 21-A still applies : the goal of providing universal and quality education “... still remains unfulfilled”.

634. An inversion in priorities between higher and primary/secondary education would make compliance with Article 21-A extremely difficult. It is not suggested that higher education needs no encouragement or that higher education should not receive more funds, but there has to be much greater emphasis on primary education. Our priorities have to be changed. Nothing is really more important

than to ensure total compliance with Article 21-A. Total compliance means good quality education is imparted and all children aged six to fourteen regularly attend schools.”

63. Similarly Section 3 of the Right to Education Act, 2009 has to be read in accord with Article 21A of the Constitution and the holdings of Constitutional Courts in regard to right of children to quality education. When examined in that light, it is safe to hold that the right of children to education under the Right to Education Act, 2009 envisages quality education and no less.

VI(C). Role of Teachers:

64. Teachers are revered in Indian traditions and venerated in Indian constitutional law. Teachers have a decisive role in imparting education and play an indispensable part in inculcating values among the children.

65. Knowledge imparted by teachers creates avenues for further advancement, while values imbibed from teachers anchor young minds in sterling character traits. Best teachers always strive to ignite the passion for learning, and aspiration for service among their students. Teachers are role models for their students and for the society at large. Students of impressionable age are greatly influenced by their teachers who are regarded as torchbearers of virtue and paragons of learning. Teachers prepare the students to become dutiful citizens and to assume the mantle of leadership of the nation.

66. The Supreme Court in **Avinash Nagra v. Navodaya Vidyalaya Samiti and others**²⁰ recalled both scriptures and

thought of our country which accord pride of place to teachers and made the elevated role of teachers part of the constitutional discourse by holding :

“9. On the functions of a teacher, at p. 133, according to Dr Radhakrishnan, the success of the educational process depends considerably on the teacher, for it is the teacher who has to implant aims, and to build the character of the students. According to Laski, at bottom of the education, the quality of a university is always in direct proportion to the quality of its teacher. A good teacher is one who knows his subject, is enthusiastic about it and one who never ceases to learn. Communication with the students and sense of commitment to his work are necessary. A good teacher, therefore, according to Dr Radhakrishnan, is one who is objective, just, humble and is open to correction. According to Whitehead the teacher must be a self-confident learned man. The teacher, therefore, is the primary functionary to transmit the intellectual and ethical values to the young. He should encourage the attitude of free enquiry and rational reflections. The teacher should try to remove the leaden weights of pride and prejudice, passion and desire which are likely to cloud a student's vision. The devoted teacher is not only concerned with the child's intellectual development but also has the obligation to attend to his moral, emotional and social growth as well.

10. Mahatma Gandhi, the Father of the Nation has stated that “a teacher cannot be without character. If he lacks it, he will be like salt without its savour. A teacher must touch the hearts of his students. Boys imbibe more from the teacher's own life than they do from books. If teachers impart all the knowledge in the world to their students but do not inculcate

truth and purity amongst them, they will have betrayed them”. Shri Aurobindo has stated that “it is the teacher's province to hold aloft the torch, to insist at all times and at all places that this nation of ours was founded on idealism and that whatever may be the prevailing tendencies of the times, our children shall learn to live among the sunlit peaks”. Dr S. Radhakrishnan has stated that “we in our country look upon teacher as gurus or, as acharyas. An Acharya is one whose aachar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must inspire the pupils who are entrusted to his care with love of virtue and goodness. The ideal of a true teacher is andhakaraniridhata gurur itya bhidhiyate. Andhakar is not merely intellectual ignorance, but is also spiritual blindness. He who is able to remove that kind of spiritual blindness is called a guru. Are we deserving the noble appellation of an acharya or a guru?” Swami Vivekananda had stated that “the student should live from his very boyhood with one whose character is a blazing fire and should have before him a living example of the highest teaching. In our country, the imparting of knowledge has always been through men of renunciation. The charge of imparting knowledge should again fall upon the shoulder of Tyagis”.

11.....Therefore, when the society has given such a pedestal, the conduct, character, ability and disposition of a teacher should be to transform the student into a disciplined citizen, inquisitive to learn, intellectual to pursue in any walk of life with dedication, discipline and devotion with an enquiring mind but not with blind customary beliefs....”

VI(D). Teachers and realization of Article 21A of the Constitution of India:

67. In the course of securing the fundamental right of children to quality education the constitutional courts found that appointment of meritorious teachers is integral to the ecology of Article 21-A of the Constitution of India. In fact the constitutional goal of quality education of children cannot be achieved without appointing the best qualified and most meritorious teachers. The appointment of meritorious teachers and quality education to children are enmeshed so completely that the two cannot be disentangled. The discussion will be fortified by high authorities in point.

68. The significance of competence of teachers to discharge their duties to give quality education to children was underscored in **Avinash Nagra (supra)** thus:

“11..... The education that is imparted by the teacher determines the level of the student for the development, prosperity and welfare of the society. The quality, competence and character of the teacher are, therefore, most significant to mould the calibre, character and capacity of the students for successful working of democratic institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities. Without a dedicated and disciplined teacher, even the best education system is bound to fail. It is, therefore, the duty of the teacher to take such care of the pupils as a careful parent would take of its children and the ordinary principle of vicarious liability would apply where negligence is that of a teacher. The age of the pupil and the nature of the activity in which he takes part are material factors determining the degree and supervision demanded by a teacher.”

(emphasis supplied)

69. The Supreme Court in **Susmita Basu and others v. Ballygunge Siksha Samity and others**²¹ underlined that the noble profession of teaching is not merely an employment avenue by holding :

“5. We must remember that the profession of teaching is a noble profession. It is not an employment in the sense of it being merely an earner of bread and butter. A teacher fulfils a great role in the life of the nation. He is the 'guru'. It is the teacher, who moulds its future citizens by imparting to his students not only knowledge, but also a sense of duty, righteousness and dedication to the welfare of the nation, in addition to other qualities of head and heart. If teachers clamour for more salaries and perquisites, the normal consequence in the case of private educational institutions, if the demand is conceded, would be to pass on the burden to the students by increasing the fees payable by the students. Teachers must ask themselves whether they should be the cause for putting education beyond the ken of children of parents of average families with average incomes. A teacher's profession calls for a little sacrifice in the interests of the nation. The main asset of a teacher is his students former and present. Teachers who have lived up to ideals are held in great esteem by their disciples. The position of the Guru, the teacher, in our ethos is equal to that of God (Matha Pitha Guru Daivam). The teachers of today must ensure that this great Indian concept and the reverential position they hold, is not sacrificed at the altar of avarice.”

(emphasis supplied)

70. In State of **Maharashtra v. Vikas Sahebrao Roundale and others**²² the Supreme Court declined to lower standards of teachers' training in view of

the importance of intellectual capabilities and skills of a teacher to bring about excellence in education:

“12..... The teacher plays pivotal role in moulding the career, character and moral fibres and aptitude for educational excellence in impressive young children. Formal education needs proper equipping of the teachers to meet the challenges of the day to impart lessons with latest techniques to the students on secular, scientific and rational outlook. A well-equipped teacher could bring the needed skills and intellectual capabilities to the students in their pursuits. The teacher is adorned as Gurudevobhava, next after parents, as he is a principal instrument to awakening the child to the cultural ethos, intellectual excellence and discipline. The teachers, therefore, must keep abreast of ever-changing techniques, the needs of the society and to cope up with the psychological approach to the aptitudes of the children to perform that pivotal role. In short teachers need to be endowed and energised with needed potential to serve the needs of the society. The qualitative training in the training colleges or schools would inspire and motivate them into action to the benefit of the students. For equipping such trainee students in a school or a college, all facilities and equipments are absolutely necessary and institutions bereft thereof have no place to exist nor entitled to recognition. In that behalf compliance of the statutory requirements is insisted upon. Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. The directions to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for

indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Article 226 of the Constitution, directing the appellants to permit the students to appear for the examination etc.”

71. The endeavours of the State to secure the best teachers by prescribing high examination levels was linked to the right to quality education under Article 21A by the Supreme Court in **Ram Sharan Maurya and others v. State of U.P. and others**²³ by setting forth the following proposition of law :

“68. While answering the first question, we therefore conclude that the fixation of cut-off at 65-60% in ATRE 2019 was perfectly valid and justified. Considering the large number of candidates who appeared at ATRE 2019 as well as the nature and difficulty level of the examination, the cut-off was designed to draw the best available talent. The endeavour on part of the State in attempting to secure the best of the teachers was therefore fully justified. It needs no emphasis that the right to education guaranteed in terms of Article 21-A of the Constitution would envisage quality education being imparted to the children which in turn, would signify that the teachers must be meritorious and the best of the lot. Any process which applied equally to all the candidates and was designed to garner the best talent, cannot be called arbitrary or irrational.”

(emphasis supplied)

72. The recruitment of best qualified teachers for providing quality education was emphasized by the Supreme Court in **Devesh Sharma v. Union of India and others**²⁴:

“22. Free and compulsory education for children becomes meaningless if we make compromise on its “quality”. We must recruit the best qualified teachers. A good teacher is the first assurance of “quality” education in a school. Any compromise on the qualification of teachers would necessarily mean a compromise on the “quality” of education. Jacques Barzun, the American educationalist and historian, in his seminal work *Teacher in America*, says “teaching is not a lost art, but the regard for it is a lost tradition” [Barzun, Jacques. “Profession : Teacher”. *Teacher in America*, published by Little Brown 7 Co. in association with Atlantic Monthly Press, 1945, pp. 3-13.] . Though this comment was for the state of higher education in America, it is equally relevant here on the treatment of Primary education in our country, as it emerges from the facts before us.

60. A child has come to face a “teacher”, so to speak, for the first time in a classroom. It is the beginning of a journey for the child student and therefore world over great care is taken in laying down proper foundations in these formative years. Well-qualified and trained teacher in elementary school is an extremely vital aspect.....”

(emphasis supplied)

73. Most importantly the Supreme Court in **Devesh Sharma (supra)** cautioned against the tendency to treat appointments of teachers as sources of mere employment as against providers of quality education:

“49. The pedagogical skills of a teacher must be given a very high priority. But our priority seems to be different. It is not to impart “quality” education, but to provide more job avenues to BEd trained

candidates, as this seems to be the only reason for their inclusion, in presence of overwhelming evidence that BEd course is not a suitable course for primary classes.”

(emphasis supplied)

74. The preceding discussion clearly establishes the live nexus between the merit of teachers appointed and the quality of education imparted, and that appointment of the most meritorious teachers is the imperative prerequisite of realization of fundamental rights of children guaranteed under Article 21A of the Constitution, and to effectuate their rights under the Right to Education Act, 2009.

VII. Interplay of Constitutional Law, Statutory Provisions and Government Orders:

75. The appointment of teachers on compassionate grounds creates an inevitable interplay of the Government Orders dated 04.09.2000 and 15.02.2013 with Rule 5 of the Dying in Harness Rules, 1999, Articles 14, 16 and 21A of the Constitution of India, Right to Education Act, 2009, and constitutional law holdings. The said Government Orders cannot escape the scrutiny of Articles 14, 16 and 21A of the Constitution, or evade the regime of the said statutes and constitutional law holdings.

VII(A). Article 21A of the Constitution of India, the Right to Education to Free and Compulsory Education Act, 2009 and the Government Orders dated 04.09.2000 and 15.02.2013 :

76. The question that arises is whether the regime created by the

Government Orders dated 04.09.2000 and 15.02.2013 for appointment of teachers on compassionate grounds is conducive to the realization of the fundamental right vested in children under Article 21A of the Constitution of India or is destructive of the fundamental right of children to education?

77. The scope of the fundamental right of education vested by virtue of Article 21A of the Constitution of India and also conferred by the Right to Education Act, 2009 has been discussed at length in the preceding part of the narrative.

78. Briefly put the fundamental right to education envisages quality education for all children. Quality education is possible only if appointment of most meritorious teachers is ensured.

79. The best talent for appointment as teachers can be extracted only through an open and transparent process of public recruitment as per the constitutional mandate of Articles 14 and 16 of the Constitution of India. The aforesaid selection based on competitive merit ensures that the most meritorious candidates are appointed as teachers, and the rights of children to quality education are fruitfully realized.

80. To the contrary the procedure for appointment of teachers on compassionate grounds is a closed one and provides for sheltered entry to a select few. The said process does not allow participation from the public at large. Consequently best talent from the open market is precluded from applying for appointment.

81. Eligibility or possession of minimum qualifications for being

appointed as teachers is in effect the sole criteria for appointment on compassionate grounds under the aforesaid Government Orders dated 04.09.2000 and 15.02.2013.

82. Eligibility for appointment as teachers merely prescribes the minimum threshold qualification for holding the post or participation in an open selection. Eligibility in itself does not determine merit. In fact eligibility is the start point of the process to determine merit. Constitutional processes of recruitment (as discussed earlier) are the most reliable methods to select the most meritorious from all eligible candidates for appointment as teachers. The argument of the State to the effect that eligibility is in itself the determinant of merit is accordingly rejected.

83. There is another fact which needs a look in. The large scale mushrooming of colleges ill-equipped, understaffed and unrecognised educational institutions has been noticed by the Supreme Court. **[Ref: Shri Morvi Sarvajanik Kelavni Mandal Sanchalit MSKM B.Ed. College v. National Council for Teachers' Education and others²⁵]**

84. There are vast gaps in competence and huge variations in the merit of the degree holders from such institutions. Appointing degree holders from deficient colleges as teachers without filters which test competence or systemic checks which determine merit is fraught with serious consequences.

85. Merit of candidates tested by constitutional processes of recruitment is not a factor for consideration while making appointments on compassionate grounds

under the said Government Orders dated 04.09.2000 and 15.02.2013. The said process under the Government Orders dated 04.09.2000 and 15.02.2013 invariably compromises the quality of teachers, inevitably degrades the standard of teaching, and finally negates the fundamental rights of children to quality education.

86. Degradation in the quality of teachers by faulty appointment processes and consequent decline in standard of teaching cannot be brooked if the fundamental right of children under Article 21A of the Constitution is to be realized, and the obligations of the State to bring the rights of children under the Right to Education Act, 2009 are to be faithfully discharged.

VII.(B). Competing claims for appointment as teachers on compassionate grounds and Fundamental Rights of children of Right to Education under Article 21A of the Constitution of India and the Right of Children to Free and Compulsory Education Act, 2009:

87. The claims made under the Government Orders dated 04.09.2000 and 15.02.2013 for appointment as teachers on compassionate grounds have to reckon with the fundamental right to education guaranteed to children by virtue of Article 21-A of the Constitution and the statutory right vested in children under the Right to Education Act, 2009.

88. The right to education has been irretrievably vested in children by virtue of Article 21A of the Constitution of India, and permanently embedded in the constitutional law holdings of the Supreme

Court. Furthermore, the right of children to education is also a statutory right created by the Right to Education Act, 2009. The importance of education and the position of children in our constitutional scheme has been highlighted in the preceding part of the narrative.

89. In comparison appointment of teachers on compassionate grounds is not a vested right and is subservient to the fundamental right of children to quality education. The fundamental right of children to quality education in the constitutional scheme shall prevail over the claim of the applicants for appointment on compassionate grounds.

90. Similarly the institutional needs for most proficient teachers selected from a public recruitment process will have primacy over the personal claims for appointment as teacher on compassionate grounds.

91. The issue of competing rights and claims has also engaged attention of Constitutional Courts. The cases in point will fortify the discussion. In **Modern Dental College & Research Centre and others v. State of M.P. and others**²⁶ the Supreme Court held as under:

“173. Right to be treated fairly and to get admission through a non-arbitrary, non-discriminatory, fair and transparent procedure is a fundamental right of the students under Article 14. Any law which creates an artificial classification between private unaided institutions and other institutions and creates a disparity in the matter of admission whereby a meritorious student could be denied admission to pursue higher education in a private unaided institution solely because

such institution has an unfettered right to choose its own students without following a uniform and transparent admission procedure would be violative of the rights of the aspiring students guaranteed under Article 14. Right of the students to admission in private unaided medical colleges is a right of equality in opportunity. On many occasions, this has led to a conflict between fundamental rights of private educational institutions on the one hand and the rights of students and public at large on the other. However, the law is now settled. In such cases where there is a conflict between fundamental rights of two parties, this Court in para 59 in *Sharda v. Dharmpal* [*Sharda v. Dharmpal*, (2003) 4 SCC 493] held that only that right which would advance public morality or public interest would prevail. In para 39 in *Kureshi Kassab case* [*State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*, (2005) 8 SCC 534], this Court held that when a fundamental right clashes with the larger interest of society, it must yield to the latter. The interest of citizens or section of community, howsoever important, is secondary to the interest of the nation and public at large and of the right of the students to avail opportunity of merit-based admission in professional unaided educational institutions would advance the public interest and as such the rights of the students would prevail over the rights of the private unaided professional educational institutions.”

92. The Supreme Court in **State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and others**²⁷, held as under:

“39....“(1) The courts interpret the constitutional provisions against the social setting of the country so as to show a

complete consciousness and deep awareness of the growing requirements of society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people, which the legislature, in its wisdom, through beneficial legislation, seeks to solve. The judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid. This Court while acting as a sentinel on the *qui vive* to protect fundamental rights guaranteed to the citizens of the country *must try to strike a just balance between the fundamental rights and the larger and broader* interests of society so that when such a right clashes with a larger interest of the country it must yield to the latter.

(para 5)

VII(C). Rule 5 of the Dying in Harness Rules, 1999, Government Orders dated 04.09.2000 and 15.02.2013 and Article 14 and 16 of the Constitution of India:

93. There is another and no less important angle to the controversy. As discussed earlier the enquiry under Rule 5 of the Dying in Harness Rules, 1999 requires identification of posts for appointment on compassionate grounds.

94. In the facts and circumstances of the instant case, the following relevant parameters under Rule 5 of the Dying in Harness Rules, 1999 for determining “suitable employment on the post of teacher” have already been examined in the judgement:

(i) The role and duties discharged by teachers towards students and nation.

(ii) The nature and scope of the fundamental rights to education vested in

children by virtue of Article 21-A of the Constitution and the rights under the Right to Education Act, 2009.

(iii) The role of teachers bringing the aforesaid rights to fruition.

(iv) The consequences of relaxed recruitment norms and waiving of the regular recruitment process on the quality of teachers.

(v) The impact of appointing teachers merely on basis of eligibility and without consideration of merit on the fundamental right of children to quality education and the society at large.

95. The preceding narrative establishes that Rule 5 of the Dying in Harness Rules, 1999 does not countenance compassionate ground appointments on the posts of teachers on compassionate grounds.

96. The Government Orders dated 04.09.2000 and 15.02.2013 prevent the said enquiry by preemptively providing for appointment of teachers on compassionate grounds without consideration of relevant factors contemplated in Rule 5 of the Dying in Harness Rules, 1999. The Government Orders dated 04.09.2000 and 15.02.2013 directly obstruct the implementation of the mandate of Rule 5 of the Dying in Harness Rules, 1999.

97. The Government Orders dated 04.09.2000 and 15.02.2013 are in direct and irreconcilable conflict with the mandate of Rule 5 of the Dying in Harness Rules, 1999. Statutory powers vested by Rule 5 of the Dying in Harness Rules, 1999, cannot be curbed by Governments Orders dated 04.09.2000 and 15.02.2013. The government orders will have to yield to the statutory provision.

98. The narrative has the benefit of authorities in point. The Full Bench of this Court after relying on various authorities of the Supreme Court in **Vijay Singh and others v. State of U.P. and others**²⁸ held as under:

“4. It is settled legal proposition that executive instructions cannot override the statutory provisions. (Vide B.N. Nargajan Vs. State of Mysore, AIR 1966 SC 1942; Sant Ram Sharma Vs. State of Rajasthan & ors., AIR 1967 SC 1910; Union of India & ors. Vs. Majji Jangammya & ors., AIR 1977 SC 757; B.N. Nagarajan & ors. Vs. State of Karnataka & ors., AIR 1979 SC 1676; P.D. Agrawal & ors. Vs. State of U.P. & ors., (1987) 3 SCC 622; M/s. Beopar Sahayak (P) Ltd. & ors. Vs. Vishwa Nath & ors., AIR 1987 SC 2111; State of Maharastra Vs. Jagannath Achyut Karandikar, AIR 1989 SC 1133; Paluru Ramkrishnananiah & ors. Vs. Union of India & ors., AIR 1990 SC 166; Comptroller & Auditor General of India & ors. Vs. Mohan Lal Mehrotra & ors., AIR 1991 SC 2288; State of Madhya Pradesh Vs. G.S. Dall & Flour Mills, AIR 1991 SC 772; Naga People's Movement of Human Rights Vs. Union of India & ors., AIR 1998 SC 431; C. Rangaswamaiah & ors. Vs. Karnataka Lokayukta & ors., AIR 1998 SC 96.).

5. Executive instructions cannot amend or supersede the statutory Rules or add something therein, nor the orders be issued in contravention of the statutory rules for the reason that an administrative instruction is not a statutory rule nor does it have any force of law; while statutory Rules have full force of law provided the same are not in conflict with the provisions of the Act. (Vide State of U.P. & ors. Vs. Babu Ram Upadhyaya, AIR 1961 SC 751;

and State of Tamil Nadu Vs. M/s. Hind Stone etc., AIR 1981 SC 711).

8. In Ram Ganesh Tripathi Vs. State of U.P., AIR 1997 SC 1446, the Hon'ble Supreme Court considered a similar controversy and held that any executive instruction/ order which runs counter to or is inconsistent with the statutory rules cannot be enforced, rather deserves to be quashed as having no force of law. The Hon'ble Supreme Court observed as under:-

"They (respondents) relied upon the order passed by the State. This order also deserves to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents and similarly situated ad hoc appointees."

9. Thus, in view of the above, it is evident that executive instructions cannot be issued in contravention of the Rules framed under the proviso to Article 309 of the Constitution and statutory Rules cannot be set at naught by the executive fiat."

99. The posts which are not tenable by compassionate appointments under Rule 5 of the Dying in Harness Rules, 1999 can only be filled by the public recruitment processes as contemplated under Articles 14 and 16 of the Constitution of India.

VIII(A). Abuse of Compassionate Appointment:

100. The wide expansion of the scope of compassionate grounds appointments in the teeth of the holdings of constitutional law has not gone unnoticed by the constitutional Courts.

101. This Court in **Ashish Yadav (supra)** held as under:

"14. The concept of compassionate ground appointments is a welfare measure taken by a model employer. However, there is a caution. An overliberal interpretation of the right to the appointments on compassionate ground will open a floodgate of such appointments and turn them into a veritable source of recruitment. An unjustified generous approach in compassionate ground which is not consistent with the applicable service rules will confer benefit to underserving and ineligible candidates, and simultaneously deny the rights and lawful claims of eligible and meritorious candidates from getting appointment to government posts. Treating compassionate ground appointments as an unconditional and vested right and making it a source of recruitment will shear the thin veil of legality which protects such appointments from the vice of unconstitutionality. The very concept of compassionate ground will then be exposed to the wrath of Articles 14, 15, 16 of the Constitution of India."

102. A Full Bench judgement of the Andhra Pradesh High Court in **Government of Andhra Pradesh, General Administration, Department, Hyderabad, and others v. D. Gopaiah and others**²⁹ had drawn the red lines after noticing the abuse of the process of making compassionate grounds appointments in an indiscriminate manner. Familiar and ingenuous devices like Government Orders were created to grant government appointments as largesse, and to avoid appointments by the constitutional mode of recruitment to government posts. The overreach of the law laid down by the Supreme Court was looked askance in **D. Gopaiah (supra)**.

103. The observations of Andhra Pradesh High Court in **D. Gopaiah (supra)** were also affirmed by the Supreme Court in **National Institute of Technology and others v. Niraj Kumar Singh**³⁰ by holding as under:

“19. In *Govt. of A.P. v. D. Gopaiah* [(2001) 6 An LT 553 : (2002) 93 FLR 12 (AP) (FB)] , a Full Bench of the Andhra Pradesh High Court noticing the aforementioned judgment, opined : (An LT p. 555, para 8)

“8. By reason of Articles 14 and 16 of the Constitution of India, great hopes and aspirations were generated in the minds of the people of India that employment shall not be given on descent. Public employment is considered to be public wealth. The economy of the State has taken a tilt from agriculture to public employment and the growth rate of employment has increased to 34%. On a plain reading, Article 16 of the Constitution of India carries no exception.”

It was further stated : (An LT p. 556, paras 11-14)

“11. The matter relating to grant of compassionate appointment only in limited situation took its root in public employment. The State and the Central Governments issued several circulars, took various policy decisions and also changed their policy decisions from time to time resulting in spurt in litigation. A close study of the circulars issued by the State as also the pattern of litigations generating therefrom leads us to take judicial notice about gross abuse of the schemes and inherent lack of safeguards.

12. Before further advertng to the aforementioned question, we may notice that the petitioners themselves stated that in the State of Andhra Pradesh, no appointment had been made as a ban had

been in vogue since 1987. The appointments are being made only on contract basis by way of schemes, which stricto sensu violate the recruitment rules and Articles 14 and 16 of the Constitution of India. A lot of employment is generated through the populist scheme of regularisation of services. There are schemes for employment for displaced persons, schemes for taking over the services of the taken over projects, landless persons and so on and so forth. A person can obtain appointment in terms of aforementioned schemes or on contract basis, on political pressures, on demand of trade unions, as also on the pressures of the non-governmental organisations. The long and short of the matter is that unless there is somebody to push his case, an employment cannot ordinarily be obtained by a citizen in terms of Articles 14 and 16 of the Constitution of India. The majority of the population faces the paradox of articulated programmes for obtaining employment.

13. The schemes for grant of compassionate appointment on medical invalidation, as noticed hereinbefore, had been made wider and wider. The State has for one reason or the other compromised with the basic principles underlying grant of public employment and has deviated from the constitutional norms; sometimes it widened the scope and ambit of grant of appointment on compassionate ground to such an extent that it had to backtrack its steps. The State's policy decision in this regard had never been on firm root. They took different steps at different times depending on the whims and caprice of the officer concerned or acted on pressure of the employees' unions.

14. The law interpreting Articles 14 and 16 of the Constitution of India in this regard has also undergone ups and downs.”

104. The law has set its face against creation of such contrivances to make back door entries in public employment for the benefit of serving employees and creating a monopoly in their favour by treating government jobs as a largesse.

105. The Supreme Court in **Bihar Rajya Dafadar Chaukidar Panchayat (Magadh Division) v. State of Bihar and others**³¹ relied on a Division Bench Judgement of the Punjab and Haryana High Court wherein the learned Division Bench saw through the devices evolved by the Railways “to make backdoor entries in public employment” which brazenly “militated against equality in public employment” and held thus:

“22. The Union Ministry of Railways introduced a scheme called the “Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff”²⁰. It allowed drivers and gangmen aged between 50 and 57 years to voluntarily retire after completing 33 years of service (later reduced to 20 years). After retirement, a “suitable ward” of the retired employee would be considered for employment.

23. The Division Bench in Kala Singh (supra) was seized of a writ petition concerning an employment dispute related to the LARSGESS but where the LARSGESS was not under challenge. Speaking for the Division Bench, Hon’ble Surya Kant, J. (as His Lordship then was) observed that the scheme, prima facie, does not stand to the test of Articles 14 and 16 of the Constitution and is a device evolved by the Railways to make backdoor entries in public employment and brazenly militates against equality in public employment. While dismissing the writ petition and directing the Railways to stop making any

appointment, the Division Bench also directed that the Railways should revisit the same keeping in view the principles of equal opportunity and elimination of monopoly in holding public employment. An application seeking recall of the order of the Division Bench was dismissed. The order of the Division Bench having been challenged before this Court, a coordinate Bench declined to interfere. In view of the observations made by the High Court, the Railway Board terminated the scheme.”

106. Insistence for appointment as a teacher on compassionate grounds reflects more a quest for permanent social status, and less a claim for relief from immediate financial destitution.

107. At the institutional level compassionate ground appointments on posts of teachers is not promotion of employee welfare, but appeasement of vested interests. The Government Orders dated 04.09.2000 and 15.02.2013 manifest a culture of entitlement, and not an ethos of service among employees of the education department. The Government Orders dated 04.09.2000 and 15.02.2013 are a deliberate construct to place the appointments of teachers beyond the reach of Articles 14, 16 and 21-A of the Constitution of India.

VIII(B).Sanjeev Kumar Dubey v. District Inspector of Schools, Etawah: Relevance

108. The Government Order dated 04.09.2000 references the judgements rendered by this Court in **Sanjeev Kumar Dubey v. District Inspector of Schools, Etawah and others**³² The said reference to the judgement rendered in **Sanjeev Kumar Dubey (supra)** in the Government

Order dated 04.09.2000 is misconceived, misleading and redundant.

109. A learned Single Judge of this Court declared that Section 16(2) of the Uttar Pradesh Secondary Education Service Commission Act, 1982 which provided for grant of compassionate appointment on teaching posts were ultra vires and unconstitutional in **Sanjeev Kumar Dubey (supra)**.

110. The learned Division Bench of this Court in **Sanjeev Kumar Dubey v. District Inspector of Schools, Etawah and others** rendered in **Special Appeal No.426 of 1998**³³, reversed the judgement of the learned Single Judge and upheld the constitutionality of the aforesaid provisions.

111. The holding of the learned Division Bench of this Court in **Sanjeev Kumar Dubey (supra)** is not relevant to the instant controversy for various reasons. Firstly the provisions pertaining to grant of compassionate ground appointment in the instant case are entirely different. Secondly Rule 5 of the Dying-in-Harness Rules, 1999 was not in issue in **Sanjeev Kumar Dubey (supra)** with the long passage of time since the Division Bench rendered the judgement of **Sanjeev Kumar Dubey (supra)**, substantial changes have occurred in the Constitution and the laws. Incorporation of Article 21A of the Constitution and the Right to Education Act, 2009 happened after the Division Bench judgement in **Sanjeev Kumar Dubey (supra)** is the third fact which distinguishes the said judgement from the facts of this case. Fourthly constitutional law propositions in point have also materially changed after the **Sanjeev Kumar Dubey (supra)**.

112. The law is well settled on the point that a perfectly valid legislation may in course of time, become unconstitutional and discriminatory and open to challenge.

113. In **Motor General Traders and another v. State of Andhra Pradesh and others**³⁴ the Supreme Court held that what was once a non-discriminatory piece of legislation may in course of time become discriminatory and can be exposed to a successful challenge on the ground that it violated Article 14 of the Constitution.

“22. In all these cases while it is true that no provision was actually struck down, there is a firm foundation laid in support of the proposition that what was once a non-discriminatory piece of legislation may in course of time become discriminatory and be exposed to a successful challenge on the ground that it violated Article 14 of the Constitution. This is a sufficient answer to the contention that if at the time when the Act was enacted Section 32(b) of the Act was not unconstitutional, it cannot at any time thereafter be challenged on the ground of unconstitutionality.”

114. Similarly while considering the varies of the Rent Control Act the Supreme Court in **Malpe Vishwanath Acharya and others v. State of Maharashtra and another**³⁵ acknowledged that while the statute may have been justified at the time of the enactment, with passage of time it may become arbitrary and illegal:

“15. The aforesaid decisions clearly recognise and establish that a statute which when enacted was justified may, with the passage of time, become arbitrary and unreasonable. It is, therefore, to be

seen whether the aforesaid principle is applicable in the instant case. Can it be said that even though the provisions relating to the fixation of standard rent were valid when the Bombay Rent Act was passed in 1947 the said provision, as amended, can still be regarded as valid now?

“29. Insofar as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, may, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants. It is not as if the Government does not take remedial measures to try and offset the effects of inflation. In order to provide fair wage to the salaried employees the Government provides for payment of dearness and other allowances from time to time. Surprisingly this principle is lost sight of while providing for increase in the standard rent — the increases made even in 1987 are not adequate, fair or just and the provisions continue to be arbitrary in today's context.

30. When enacting socially progressive legislation the need is greater to approach the problem from a holistic perspective and not to have a narrow or short-sighted parochial approach. Giving a greater than due emphasis to a vocal section of society results not merely in the miscarriage of justice but in the abdication of responsibility of the legislative authority. Social legislation is treated with deference by the courts not merely because the

legislature represents the people but also because in representing them the entire spectrum of views is expected to be taken into account. The legislature is not shackled by the same constraints as the courts of law. But its power is coupled with a responsibility. It is also the responsibility of the courts to look at legislation from the altar of Article 14 of the Constitution. This article is intended, as is obvious from its words, to check this tendency; giving undue preference to some over others.”

115. More recently the concept of transformative constitutionalism was asserted by the Supreme Court in **Joseph Shine v. Union of India**³⁶ while examining the changes in the judicial approach to adultery:

“4. When we say so, we may not be understood that precedents are not to be treated as such and that in the excuse of perceptual shift, the binding nature of precedent should not be allowed to retain its status or allowed to be diluted. When a constitutional court faces such a challenge, namely, to be detained by a precedent or to grow out of the same because of the normative changes that have occurred in the other arenas of law and the obtaining precedent does not cohesively fit into the same, the concept of cohesive adjustment has to be in accord with the growing legal interpretation and the analysis has to be different, more so, where the emerging concept recognises a particular right to be planted in the compartment of a fundamental right, such as Articles 14 and 21 of the Constitution. In such a backdrop, when the constitutionality of a provision is assailed, the Court is compelled to have a keen scrutiny of the provision in the context of developed and progressive interpretation. A constitutional court cannot

remain entrenched in a precedent, for the controversy relates to the lives of human beings who transcendently grow. It can be announced with certitude that transformative constitutionalism asserts itself every moment and asserts itself to have its space. It is abhorrent to any kind of regressive approach. The whole thing can be viewed from another perspective. What might be acceptable at one point of time may melt into total insignificance at another point of time. However, it is worthy to note that the change perceived should not be in a sphere of fancy or individual fascination, but should be founded on the solid bedrock of change that the society has perceived, the spheres in which the legislature has responded and the rights that have been accentuated by the constitutional courts. To explicate, despite conferring many a right on women within the parameters of progressive jurisprudence and expansive constitutional vision, the Court cannot conceive of women still being treated as a property of men, and secondly, where the delicate relationship between a husband and wife does not remain so, it is seemingly implausible to allow a criminal offence to enter and make a third party culpable.”

VIII(C).Suo moto consideration of vires by Courts:

116. Before concluding it needs to be mentioned that admittedly no challenge has been laid to the Government Orders dated 04.09.2000 and 15.02.2013 which provide for appointment of teachers on compassionate grounds. However, the petitioner has rested his case entirely on the aforesaid offending Government Orders. The absence of specific challenge to the vires of the aforesaid Government Orders will not prevent this Court from suo moto

examining the constitutionality of the provisions, and the consequences of granting the prayer of mandamus upon the respondents on the basis of the same.

117. As a matter of procedural propriety the State Government was put to adequate notice regarding the constitutionality of the aforesaid Government Orders. The State was also given an ample opportunity to present their defence of the same. The counter affidavit has also been filed on behalf of the State in the connected writ petition. The submissions on behalf of the State have been duly considered.

118. The Supreme Court in **Bihar Rajya Dafadar Chaukidar Panchayat (Magadh Division) (supra)** reaffirmed the powers of the superior Courts to suo moto take up the issue of vires for consideration by holding:

“39. The contention, though attractive at first blush, makes no impression. The ratio of the decision in *Prakash Chand (supra)* will have no application in a case of the present nature. The Division Bench, which passed the impugned order, did have the authority to hear the intracourt appeal. The subject matter out of which the challenge emerged was covered by the roster set by the Chief Justice. It was not a case where the Division Bench heard a petition where the vires of a law was under challenge at the instance of a suitor. Instead, the Division Bench exercised its inherent powers upon suo motu taking up the point of vires for consideration and decision. As has been held in *Indian Bank v. Satyam Fibres (India) (P) Ltd.*, which has been affirmed by a Bench of three Judges in *State (NCT of Delhi) v. K.L. Rathi Steels Ltd.*,

inherent powers are powers which are resident in all courts, especially of superior jurisdiction and though these powers do not spring from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour, such power is necessary for the orderly administration of the justice delivery system by the courts. In addition, we hold that inherent power can also be exercised to do what is just keeping in mind what the justice of the case before the court demands.

40. Judged on the anvil of the said decisions, exercise of the inherent powers of a court in a given case over which it has jurisdiction cannot, therefore, be seen as limited by the roster set by the Chief Justice of the High Court.”

IX. Conclusions and Directions:

119. In the wake of preceding discussion, the following conclusions are being recorded and corresponding directions are being issued to the State Authorities:

(A). The Government Orders dated 04.09.2000 and 15.02.2013 insofar as they relate to appointment on the posts of teachers on compassionate grounds are held to be ultra vires Articles 14, 16 and 21-A of the Constitution of India.

(B). The Government Orders dated 04.09.2000 and 15.02.2013 insofar as they relate to appointment on the posts of teachers on compassionate grounds are violative of Section 3 of the Right to Education Act, 2009 which vests the right

of free and compulsory education in children.

(C). The Government Orders dated 04.09.2000 and 15.02.2013 insofar as they relate to appointment on the posts of teachers on compassionate grounds are in conflict with the mandate of Rule 5 of the Dying in Harness Rules, 1999.

(D). The Government Orders dated 04.09.2000 and 15.02.2013 insofar as they provide for appointment on the posts of teachers on compassionate grounds are struck down. The State Government is accordingly directed to forthwith cease the implementation of the Government Orders dated 04.09.2000 and 15.02.2013.

(E). The matter is remitted to respondents-authorities. The claim of the petitioner shall be considered by the respondents-authorities for appointment on compassionate grounds to any other post as per law and in line with the observations made in this judgement. The decision shall be taken by the respondents-authorities within a period of three months from the date of receipt of a certified copy of this order.

120. The writ petition is finally disposed of.

121. Registry is directed to send a copy of this order to the Principal Secretary, Department of Basic Education, Government of Uttar Pradesh, Lucknow.

(2025) 4 ILRA 215
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.04.2025
BEFORE
THE HON'BLE J.J. MUNIR, J.

Writ A No. 15480 of 2015

Mohd. Fahim Jamal	...Petitioner
Versus	
State of U.P. & Ors.	...Respondents

Counsel for the Petitioner:

Mansoor Ahmad

Counsel for the Respondents:

Anand Prakash Pandey, Ashish Tripathi,
C.S.C., Ch. N.A. Khan

HELD:

We have noticed above that the President was not attending the meetings, even before the agenda item relating to the selection and appointment of the teacher in the Tahtania Section was discussed. Even if he had started absents from the day when the matter of filling up the vacant post was discussed by the Committee of Management, the fact remains that the President admits that he was voluntarily abstaining sitting on meetings of the Committee of Management, of which he had notice. A committee of management of the society or the institution has important business to undertake and if the head of the committee of management voluntarily abstains, in our considered opinion, it would be a case where bylaw 10(b) of the bylaws of the Society/ Institution would come into play, authorizing the Vice President to take over and discharge the duties of the President. The word 'absence' mentioned in the bylaws does not always mean 'absence from station' or one 'due to illness', or like matters. It would include a case of deliberate abstention by the President. (Para 23)

If a deliberate abstention is not regarded as 'absence' contemplated under bylaw 10(b) of the bylaws of the Institution, a recalcitrant President, who refuses to sit on the meeting, could hold the Institution to ransom. In the scheme of things, for the discharge of institutional functions of corporate bodies, like societies, that have some affairs to manage – an educational institution in this case – a provision in the scheme or bylaws, governing the society, is made for an absents office bearer to be filled in, in his role by another. Clauses, such as these in the bylaws, are contemplated to keep the wheels of whatever work the Society undertakes moving. It is a device to overcome individual recalcitrance, waywardness or the disruptive behaviour of a particular office-bearer or office-bearers. In paragraph No.9 of the counter affidavit, the justification offered by the

President to abstain from meetings of the Committee of Management is the illegal selection etc. to the post of Tahtania, pursuant to which the petitioner was appointed. If the sixth respondent thought that the process was illegal, he was the Chairman of the Committee of Management and had control over its affairs. He had at least one vote, which he could have exercised to dissent. He could not have dissented by abstention as he did. Once the sixth respondent admittedly abstained from participating in the scheduled meetings of the Committee of Management, there is nothing illegal about the Vice President moving in to discharge his role and duties. Apparently, the Inspector has not at all looked into the matter from this vantage or examined the record in passing the order impugned and recalling the earlier approval to the petitioner's appointment granted vide order dated 27.06.2013. (Para 24)

We would have thought of remanding the matter to the Inspector, who is admittedly the competent Authority to consider the matter of approval of appointment for the petitioner, but that does not seem to be a valid course in this case. The reason is that the respondents do not take a stand that the petitioner was appointed against a post that was not sanctioned or that the proceedings of selection and interview, including advertisement were in any way vitiated. The petitioner's appointment was approved by the Inspector by a well considered order regarding the existence of the post and how the vacancy arose. The conditions, subject to which the approval was granted, said that the District Minority Welfare Officer will ensure that the appointment made should be one that is against a sanctioned post and not beyond the approved strength for the Institution. There is no such case that the respondents have come up with, as already noticed. The other condition is about verification of the petitioner's eligibility educational qualifications. No fault has been found on that count too. Also, there is a provision that the District Minority Welfare Officer would verify, if the post against which salary is to be paid, is free from dispute and no case is pending in Court. There is also a provision that the District Minority Welfare Officer would ensure that the appointee is not related to anyone on the Management as prescribed under the Regulations, as amended

in the year 1998, 2000 and 2004. None of the conditions mentioned in notes 1 to 4 mentioned in the approval order are indicated to be violated in case of the petitioner's appointment. There is a residual condition in note 5 of the approval order passed by the Inspector on 27.06.2013, saying that if any fact has been found to be suppressed or information wrong, this approval would stand automatically revoked. It is by virtue of this residual clause that the impugned order has been passed, but specifically based on the sole ground that the President did not preside over the meetings of the Committee of Management, where the resolutions to advertise the post and appoint the petitioner were adopted. The action of the Committee in acting under the Vice-President has been found to be perfectly justified by us for reasons that we have elaborately indicated hereinabove. (Para 25)

In these circumstances, there was absolutely no reason for the Inspector to have revoked his order dated 27.06.2013, granting approval to the petitioner's appointment, which, in our opinion, must be restored. (Para 26)

Petition allowed. (E-14)

(Delivered by Hon'ble J.J. Munir, J.)

1. This writ petition is directed against the order of the Registrar, Arbi and Farsi Education Board, U.P., Lucknow dated 02.12.2014, revoking the approval granted to the petitioner's appointment as an Assistant Teacher (*Tahtania*).

2. The facts briefly said are that the Al-Jamaiatul Islamia Mambaul Maarif, Village Sumbhi, Post Gambheerban, District Azamgarh is a Society registered under the Societies Registration Act, 1860, bearing Registration No.929/1992-93. It was registered with the Registrar of Societies on 12.12.1993. Hereinafter, it shall be referred to as 'the Society'. The Society has its bylaws, also registered. In keeping with the objects of the Society, to

promote learning of Arabic and Persian language and also Islamic religious ethics, it established an institution, known as Madarsa Al-Jamaiatul Islamia Mambaul Maarif, Village Sumbhi, Post Gambheerban, District Azamgarh (for short, 'the Institution'). The Institution was recognized by the competent Authority way back in the year 1996. A maintenance grant was extended to it in the year 2005 by the Government. The affairs of the Institution are managed by a Committee of Management of the Society/ Institution. According to the bylaws of the Society, this Committee of Management comprises a President, called a Sadar, a Vice President (*Naib Sadar*), one Manager, one Deputy Manager, a Cashier and an Auditor. These are all office bearers of the Society as well as its maintained Institution.

3. The time to which this matter relates, the recognition of Madarsa as well as appointment of its teachers were governed by the Manyata Evam Sewa Niyamavali, Arbi Tatha Farsi Madarse, U.P. (for short, 'the Regulations'). These Regulations were approved and circulated by the State Government vide Government Order dated 22.08.1987. These were amended from time to time. Regulation 20 of the Regulations provides that the Management would constitute a selection committee, a month before commencement of the academic session, in order that suitable candidates are selected and appointed against vacancies of teachers. In cases where a mid-session vacancy occurred, the Management of the Institution would be entitled to appoint on ad hoc basis for two months, a suitable teacher. In the matter of selection of assistant teachers, the Principal/ Headmaster would also be a member of the selection committee.

4. Regulation 22 of the Regulations provides that in order to fill up a vacancy in the Madarsa, whether newly created, temporary or permanent, it would be necessary to advertise it in at least two daily newspapers, one of which should have regional circulation and the other a State level newspaper. The advertisement would indicate the qualifications, age limit, the pay-scale etc. The Regulations mandate that no appointment shall be made against a post, which is not approved by the Department of Minority Welfare of the State Government.

5. There were five sanctioned posts of Assistant Teachers (*Tahtania*) with the Institution. The *Tahtania* Section is equivalent to Primary Section of an institution, imparting conventional education. One post of an Assistant Teacher (*Tahtania*) fell vacant on account of the death of one Mohd. Raees, an Assistant Teacher, on 23.08.2009. The Committee of Management of the Institution, after securing permission from the competent Authority, advertised the post in two daily newspapers, to wit, *Awaze Mulk*, issue dated 17.04.2012 and *Devbrat*, issue dated 20.04.2012. The petitioner applied in response to the advertisement and was called for an interview by the Selection Committee constituted for the purpose. The Selection Committee found the petitioner most suitable for appointment out of a total of six candidates, who appeared. The recommendations of the Selection Committee were placed before the Committee of Management of the Institution in a meeting held on 28.10.2012.

6. The President of the Society and the President of the Committee of Management, *a fortiori*, did not seem to

take interest in the societal affairs. He was abstaining from participating in the meetings of the Committee of Management. In his absence, the meeting was presided over by the Vice President of the Society and by means of a unanimous resolution, the Manager was authorized to issue an appointment letter to the petitioner and take steps for securing financial approval. The petitioner was issued with an appointment letter dated 28.10.2012 by the Manager of the Institution. He joined service submitting his report to the Principal on 03.11.2012. According to the petitioner, he is discharging his duties ever since to the entire satisfaction of his superiors. The petitioner says that he was appointed strictly in accordance with Rules as prescribed under the Regulations. The Manager of the Institution forwarded the papers relating to his appointment to the Registrar/ Inspector, Arbi, Farsi Madarsa Education Board, U.P., Lucknow, seeking approval for the petitioner's appointment.

7. The Registrar/ Inspector, Arbi, Farsi Madarsa Education Board, U.P., Lucknow (for short, 'the Inspector') granted approval to the petitioner's appointment vide his letter dated 27.06.2013. Notwithstanding grant of approval to the petitioner's appointment by the Inspector and the petitioner continuously rendering services, he was not paid his salary. He submitted a detailed representation dated 26.10.2013 to the Manager of the Institution. The petitioner, through a letter of the Manager dated 15.02.2014, came to know that an *ex parte* order dated 19.11.2013 had been passed by this Court in Writ-A No.60862 of 2013 filed by respondent No.6, the President of the Committee of Management, purporting to act for the Committee, challenging the petitioner's appointment. In consequence of

the orders of this Court dated 19.11.2013, whatever these were, which the petitioner says he was given to understand by the Management, were interim orders, the petitioner's salary was withheld.

8. The Manager further informed the petitioner that the Director, Minority Welfare, U.P. had passed an order dated 26.12.2013, forbidding payment of the petitioner's salary. The Manager also informed the petitioner that against the order dated 19.11.2013, the Committee of Management had filed Special Appeal Defective No.84 of 2014, which was disposed of vide order dated 29.01.2014, leaving it open to the aggrieved person, to wit, the petitioner, to challenge the order dated 26.12.2013 passed by the Director, Minority Welfare, U.P. The petitioner also says that according to Bylaw No.14 of the registered bylaws of the Society, it is the Manager of the Society, who alone is competent to institute or defend proceedings in Court with regard to the affairs of the Society. It is the petitioner's case that Writ-A No.60862 of 2013 filed by the President of the Society, without a resolution by the Committee of Management, was not maintainable. He also says that by a resolution of the Committee of Management dated 25.12.2012, the President was removed from office. He had absolutely no *locus standi* to challenge the order dated 27.06.2013 passed by the Inspector, granting approval to the petitioner's appointment. Nevertheless, since the petitioner was not afforded any opportunity, to place his version, the correct facts could not be brought to the notice of the learned Judge, who heard the writ petition and passed the order dated 19.11.2013.

9. It is also the petitioner's case that under the provisions of the Regulations, it is the Inspector alone, who is vested with the power to take a decision in regard to approval of a teacher or employee's appointment in an institution. Therefore, the order passed by the Director, Minority Welfare dated 26.12.2013, holding the petitioner's appointment to be illegal and stopping payment of his salary, was itself without jurisdiction and illegal. It is also pointed out that the Director, notwithstanding the lack of jurisdiction, ought have heard the petitioner before passing the order dated 26.12.2013, which he did not do. This order again was passed without opportunity to the petitioner and in violation of the principles of natural justice. The petitioner challenged the order dated 26.12.2013 before this Court by instituting Writ-A No.20572 of 2014, which this Court decided in terms of the following order:

“Accordingly, the observation and finding recorded by the Director, Minority Welfare in the impugned order which are adverse to the petitioner are expunged and the Registrar / Inspector, U.P. Madarsa Education Board is directed to take an appropriate decision strictly in accordance to law totally uninfluenced by any observation or finding made by the Director in the order dated 26.12.2013.

Writ petition stands disposed of as above.”

10. In compliance with the aforesaid judgment and order dated 15.04.2014, the petitioner submitted a representation dated 06.05.2014 before the Inspector with a certified copy of this Court's order. A reminder had to be sent on 27.05.2014, when no action was taken. The petitioner was asked to appear before the

Inspector by a letter dated 11.06.2014 on 25.06.2014 along with all original documents, for orders to be made in compliance with the judgment and order dated 15.04.2014 passed by this Court in Writ-A No.20572 of 2014. The petitioner appeared before the Inspector on 25.06.2014 along with all relevant documents.

11. The petitioner says that he was shocked to find that an antedated order had been passed on 03.01.2014, again behind his back, showing him to be absent on that day. The order passed by the Inspector recalled the order dated 27.06.2013, granting approval to his appointment. The case of the petitioner is that the order dated 03.01.2014 was neither communicated to the Director, Minority Welfare or the Manager of the Institution. It was an antedated order. If it was an order made in the exercise of jurisdiction validly, there was nothing to be done by the Inspector. However, when a copy of the order dated 15.04.2014 passed in Writ-A No.20572 of 2014 was lodged before the Inspector, he commenced proceedings to examine the validity of approval granted to the petitioner's appointment on 27.06.2013. It was during the hearing, that was done again, that the antedated order passed behind his back on 03.01.2014 came to the petitioner's notice. The petitioner also says that the said order was ignored and proceedings re-commenced, that culminated in the impugned order dated 02.12.2014. Therefore, there is not much to the order dated 03.01.2014, which is no longer in issue.

12. Aggrieved by the order dated 02.12.2014 passed by the Inspector, the petitioner has instituted the present writ petition.

13. Notice of motion was issued on 24.03.2015 and in course of time, parties exchanged affidavits. By an order dated 10.01.2013, the entire record relating to the petitioner's appointment was summoned by this Court from the custody of respondent Nos.3 and 4. This order was not complied with and when the matter came up on 07.10.2023, this Court ordered the District Minority Welfare, Azamgarh, respondent No.4, to pay costs in the sum of Rs.5000/-, which were deposited. The costs being deposited, was a fact noticed by this Court in the order dated 15.10.2023. When the petition came up on 02.11.2023, it was admitted to hearing, heard forthwith and judgment reserved. Later on, while dictating judgment, it was noticed that records were still missing, though costs had been deposited. The matter was, therefore, posted for further hearing and orders passed on 24.04.2024 to produce records. Some records were produced before the Court on 30.04.2024 and directed to be placed in a sealed cover in the safe custody of the Registrar General. The minute-book of the meeting of the Committee of Management written in Urdu was, therefore, directed to be transliterated to Hindi vide order dated 02.05.2024.

14. Heard Mr. Mansoor Ahmad, learned Counsel for the petitioner, Mr. Roopesh Tiwari, learned Standing Counsel appearing on behalf of respondent Nos. 1 to 4, Mr. Ashish Tripathi, learned Counsel for respondent No. 5 and Mr. Anand Prakash Pandey, learned Counsel appearing for respondent No. 6.

15. Upon hearing learned Counsel for the parties and perusing the record, including the impugned order, what this Court finds is that there is no quarrel about the fact that there are five posts of Assistant

Teachers in the *Tahtania* Section of the Institution, duly sanctioned by the Government and the petitioner was appointed against a vacancy in relation to a sanctioned post. There is no cavil either that this vacancy arose on account of the demise of the incumbent teacher. The Inspector in the order impugned has also not criticized the procedure of advertisement for holding the selection, but has gone by the fact that the authority to make an appointment vested with the President under bylaw No.10 (a) (3) of the bylaws of the Society/ Institution and that the Vice President gets authority to act as the President and exercise his powers under bylaw No.10(b) in the absence of the President. The Inspector has recorded a finding that the Manager of the Institution has not produced any document or evidence to show that the meeting of the managing committee was called or the selection committee constituted after presentation of a proposal to the President and after his approval.

16. It is then remarked that this fact affirms the position that the President of the Society/ Institution was not unavailable to chair the meetings of the managing committee. It is again remarked by the Inspector that the Vice President gets powers to discharge the functions of the President or exercise his authority, if the former is absent. The conclusion drawn is that the meeting of the Committee of Management and the selection committee are both *prima facie* suspect. The expression employed is '*karyavahi pratham drishtaya sandigdha hai*'. The further remark, that is there, is to the effect that the Manager, Zafar Ahmad Siddiqui, in order to fulfill his objects, trenching upon the lawful authority of the President, held selections according to his wish, which is

contrary to law. There is then a repetition of the fact that in the presence of the President, the Vice President could not have held a meeting of the Committee of Management, which is contrary to the bylaws.

17. The finding of the Inspector is apparently based upon an affidavit dated 17.10.2013 submitted by the President, Sayyad Abdulla, before the District Minority Welfare Officer, Azamgarh. In this affidavit, as would appear from a perusal of the order impugned, the President had said that the appointment made on the post of the Assistant Teacher (*Tahtania*) was done in a meeting that was not held with him presiding. He also said that if the resolution, accepting the appointment, bore the President's signatures, the same are absolutely false and forged. According to the bylaws of the Institution, it was said in the affidavit, the power to dismiss or appoint, vests in the President and, therefore, the appointment made in his absence is flawed and illegal. As already remarked, the appointment is against a sanctioned post and the Inspector has not recalled the approval on the ground that the post was not validly advertised or that the petitioner did not hold the essential qualifications, entitling him to be appointed; or, that the selection committee was not competent etc. The process has been held vitiated because the Committee of Management, which resolved, apparently to initiate the selection process and then appoint, did not do so under the stewardship of the President. The Inspector has inferred that it was not the case that the President was not available and, therefore, under the bylaws, the Vice President could act in his stead.

18. In the counter affidavit filed on behalf of respondent Nos.1, 2, 3 and 4, the order is preponderantly defended on the ground indicated in the order to the effect that the petitioner's appointment was made in proceedings conducted that were not presided over by the President of the Society/ Institution. There is another plea urged in paragraph No.2(a) to the effect that after the petitioner was appointed by the Committee of Management on 28.10.2012, the Committee of Management sent the papers directly to the Inspector and without the recommendation of the District Minority Welfare Officer. The first ground has to be tested for its worth, but the ground that the recommendations by the Committee of Management to appoint the petitioner were not routed through the District Minority Welfare Officer, is no longer open to the respondents to urge, inasmuch as, that is not at all a ground, on the foot of which the impugned order has been passed.

19. It is a well recognized principle of the law that an order under challenge or the order impugned cannot be supported on a ground extraneous to what has been said in the order. In other words, the impugned order cannot be supplemented by additional grounds to buttress it through an affidavit. So far as the question of absence of the President from the meetings of the Committee of Management, entitling the Vice President to act in his stead under bylaw No.10(b) is concerned, the counter affidavit filed by respondent No.6, Abdulla, the President, is most relevant. In paragraph No.9 of the aforesaid counter affidavit, it is averred:

“9. That the contents of paragraph no.16 of the writ petition are not admitted, hence denied. The correct act are that the

deponent had refused to participate in the proceedings of Committee of Management of the institution and in this regard he had also sent a letter dated 21.04.2011 and the meeting of the Committee of Management was presided over by the Vice President of the Committee of Management of the Institution, but the deponent refused to sign on the notice/ agenda circulated by the Committee of Management of the institution and in all the meetings he had voluntarily refused to participate in the proceeding of Committee of Management of the Institution on the ground that the selection process was illegal hence advertisement, interview and entire selection process conducted in the absence of the deponent is illegal and unjustified in the eye of law.”

(emphasis by Court)

20. A perusal of the transliterated copy of a book, called the *Suchana Register*, shows that the President of the Society/ Institution last signed it taking notice of a meeting, scheduled to be held on 21.04.2011, but not thereafter. He did not sign it for the meeting held on 18.05.2011. His signatures do not occur after page 3 on the Notice Register. These are absent on pages 5, 6, 9 and 11. The next document in the records, which has been transliterated is the other book, called the Register of Proceedings or the *Karyavahi Register*. The proceedings held on 21.04.2011 show that these were presided over by the Vice President, Vajiuddin, and not the President, Abdulla, respondent No.6.

21. The next resolution at page No.7 of the Register of Proceedings dated 18.05.2011 shows that the meeting was once again presided over by the Vice President and not respondent No.6. The

next Register of Proceedings is dated 25.12.2011. This too shows that the meeting of the Committee of Management was presided over by the Vice President and not respondent No.6. In all these meetings, apparently there was no agenda item regarding appointment of the Assistant Teacher in the *Tahtania* Section. A meeting of the Committee of Management was then held on 01.05.2012, where the item relating to appointment of Assistant Teacher (*Tahtania*) in the Institution was discussed and the post resolved to be advertised. This meeting too, like the earlier ones, was presided over by the Vice President. The next meeting, where the choice of the selection committee was discussed and resolved was held on 12.04.2012, again not presided over by the President, but the Vice President. The next resolution, that was passed, related to accepting the recommendations of the selection committee that selected the petitioner for the post after an interview. This meeting of the Committee of Management was held on 28.10.2012. This meeting too was not presided over by the President, but the Vice President.

22. In this scheme of things, if the stand taken by respondent No.6 is seen, it is apparent that the President had refused to participate in the proceedings of the Committee of Management, and admittedly, sent a letter too in this regard dated 21.04.2011. It is not indicated in paragraph No.9 of the counter affidavit by the sixth respondent, to whom the letter was addressed, but what is clear is that respondent No.6 refused to sign on the notice/ agenda circulated for meetings of the Committee of Management and he has specifically averred that in all meetings, he had voluntarily refused to participate on ground that the selection process was

illegal, including the advertisement and the interview, apparently bearing reference to the petitioner's selection, interview, advertisement and appointment.

23. We have noticed above that the President was not attending the meetings, even before the agenda item relating to the selection and appointment of the teacher in the *Tahtania* Section was discussed. Even if he had started absenting from the day when the matter of filling up the vacant post was discussed by the Committee of Management, the fact remains that the President admits that he was voluntarily abstaining sitting on meetings of the Committee of Management, of which he had notice. A committee of management of the society or the institution has important business to undertake and if the head of the committee of management voluntarily abstains, in our considered opinion, it would be a case where bylaw 10(b) of the bylaws of the Society/ Institution would come into play, authorizing the Vice President to take over and discharge the duties of the President. The word 'absence' mentioned in the bylaws does not always mean 'absence from station' or one 'due to illness', or like matters. It would include a case of deliberate abstention by the President.

24. If a deliberate abstention is not regarded as 'absence' contemplated under bylaw 10(b) of the bylaws of the Institution, a recalcitrant President, who refuses to sit on the meeting, could hold the Institution to ransom. In the scheme of things, for the discharge of institutional functions of corporate bodies, like societies, that have some affairs to manage – an educational institution in this case – a provision in the scheme or bylaws, governing the society, is made for an

absenting office bearer to be filled in, in his role by another. Clauses, such as these in the bylaws, are contemplated to keep the wheels of whatever work the Society undertakes moving. It is a device to overcome individual recalcitrance, waywardness or the disruptive behaviour of a particular office-bearer or office-bearers. In paragraph No.9 of the counter affidavit, the justification offered by the President to abstain from meetings of the Committee of Management is the illegal selection etc. to the post of *Tahtania*, pursuant to which the petitioner was appointed. If the sixth respondent thought that the process was illegal, he was the Chairman of the Committee of Management and had control over its affairs. He had at least one vote, which he could have exercised to dissent. He could not have dissented by abstention as he did. Once the sixth respondent admittedly abstained from participating in the scheduled meetings of the Committee of Management, there is nothing illegal about the Vice President moving in to discharge his role and duties. Apparently, the Inspector has not at all looked into the matter from this vantage or examined the record in passing the order impugned and recalling the earlier approval to the petitioner's appointment granted *vide* order dated 27.06.2013.

25. We would have thought of remanding the matter to the Inspector, who is admittedly the competent Authority to consider the matter of approval of appointment for the petitioner, but that does not seem to be a valid course in this case. The reason is that the respondents do not take a stand that the petitioner was appointed against a post that was not sanctioned or that the proceedings of selection and interview, including advertisement were in any way vitiated.

The petitioner's appointment was approved by the Inspector by a well considered order regarding the existence of the post and how the vacancy arose. The conditions, subject to which the approval was granted, said that the District Minority Welfare Officer will ensure that the appointment made should be one that is against a sanctioned post and not beyond the approved strength for the Institution. There is no such case that the respondents have come up with, as already noticed. The other condition is about verification of the petitioner's eligibility educational qualifications. No fault has been found on that count too. Also, there is a provision that the District Minority Welfare Officer would verify, if the post against which salary is to be paid, is free from dispute and no case is pending in Court. There is also a provision that the District Minority Welfare Officer would ensure that the appointee is not related to anyone on the Management as prescribed under the Regulations, as amended in the year 1998, 2000 and 2004. None of the conditions mentioned in notes 1 to 4 mentioned in the approval order are indicated to be violated in case of the petitioner's appointment. There is a residual condition in note 5 of the approval order passed by the Inspector on 27.06.2013, saying that if any fact has been found to be suppressed or information wrong, this approval would stand automatically revoked. It is by virtue of this residual clause that the impugned order has been passed, but specifically based on the sole ground that the President did not preside over the meetings of the Committee of Management, where the resolutions to advertise the post and appoint the petitioner were adopted. The action of the Committee in acting under the Vice-

affirmative action under the Constitution for representation and empowerment of backward classes, SCs/STs and other sections of the society identified as per law have to be duly adhered to. The recruitment and appointment to government services and government undertakings were examined by constitutional Courts in the context of Articles 14, 15 and 16 of the Constitution of India. Holdings of the constitutional Courts have irretrievably entrenched the aforesaid modes and procedures for appointments to posts in the government and Article 12 instrumentalities in the body of the constitutional law. (Para 4)

The compassionate ground appointments to the contrary are not made through a transparent and public process of recruitment after inviting the applications from the open market. The appointments on compassionate ground entail deviation from regular processes of recruitment and other relaxations as well. Compassionate appointments are an exception to the aforesaid constitutionally mandated scheme for appointments to posts in the government and in government undertakings. Compassionate appointments emanate from specific service rules holding the field and rationalized by service law jurisprudence evolved by Constitutional Courts. (Para 5)

The concept of compassionate ground appointments is a welfare measure taken by a model employer. However, there is a caution. An overliberal interpretation of the right to the appointments on compassionate ground will open a floodgate of such appointments and turn them into a veritable source of recruitment. An unjustified generous approach in compassionate ground which is not consistent with the applicable service rules will confer benefit to undeserving and ineligible candidates, and simultaneously deny the rights and lawful claims of eligible and meritorious candidates from getting appointment to government posts. The merit is not to be assumed from parentage but has to be achieved through open competition. Treating compassionate ground appointments as an unconditional and vested right and making it a source of recruitment will shear the thin veil of legality which protects such appointments from the vice of unconstitutionality. The very concept of compassionate ground will then be exposed

to the wrath of Articles 14, 15, 16 of the Constitution of India. (Para 15)

The purpose of grant of compassionate ground appointments can be subverted and their constitutionality can be saved only by strict compliance of the rules governing the grant of compassionate ground appointments. (Para 16)

Financial penury has not been defined in the holdings of various constitutional courts. The same has to be examined in light of applicable provisions of law and in the facts and circumstances of each case. The compassionate ground appointments are not intended to create a windfall for the kin of the deceased. The employer is only required to assess the financial condition which keeps the kitchen fire burning. (Para 18)

The impugned order clearly discloses the income of the family of the deceased from various sources as contemplated in Clause 8 of the compassionate ground scheme cited earlier. The income of the family of the deceased so calculated is more than 60% of the last salary drawn by the deceased. The income of the family so determined establishes that the family does not face financial destitution as a result of the death of the employee. The respondents in the impugned order have been thus correctly found that the petitioner does not fulfil the criteria for grant of compassionate ground appointment as per the provisions of the compassionate ground appointment scheme applicable to the bank. (Para 23)

Petition dismissed. (E-14)

List of Cases cited:

1. Umesh Kumar Nagpal Vs St. of Har., 1994 (4) SCC 138
2. Director of Education (Secondary) Vs Pushpendra Kumar, 1998 (5) SCC 192
3. Roopam Mishra Vs St. of U.P. & ors., Writ A No. 15512 of 2019
4. Director of Treasuries in Karnataka & anr. Vs Somyashree, Civil Appeal No. 5122 of 2021

5. Ipsita Chakrabarti Vs St. of W.B., 2018 (2) Cal LT 177 (HC)

6. Sri Bijon Mukherjee Vs The St. of W.B. & ors., 2018 (3) Cal LT 136 (HC)

7. Ankita Saha & anr. Vs The St. of W.B. & ors., WPA No. 12287 of 2019 (Calcutta High Court)

(Delivered by Hon'ble Ajay Bhanot, J.)

1. By the impugned order dated 21.12.2022, the competent authority has rejected the claim of the petitioner for grant of appointment on compassionate ground.

2. By the impugned order dated 21.12.2022 the claim of the petitioner for grant of appointment on compassionate grounds has been invalidated on the following footing:

"We are in receipt of letter dated 20.12.2022 from Head Office vide which it has been informed that the proposal was placed before the Competent Authority who has not acceded to the same as the total monthly income of the family from all sources is more than 60% of the notional gross salary of the employee (net of notional tax) as per relevant policy guidelines. Hence, the proposal for compassionate appointment to Shri Sarvesh has been declined."

3. Heard Ashok Kumar Nigam, learned counsel for the petitioner and Shri Sanjai Singh, learned counsel for the respondent.

4. Appointments to public posts, government services and to various instrumentalities of the State within the meaning of Article 12 of the Constitution of India are governed and regulated by comprehensive provisions contained in the

Constitution. The constitutional scheme envisages an open recruitment and a transparent procedure which enables maximum participation from all the eligible segments of the citizenry at large. The final appointments are made after a fair selection based on competitive merit. While making the said appointments the reservation policy or affirmative action under the Constitution for representation and empowerment of backward classes, SCs/STs and other sections of the society identified as per law have to be duly adhered to. The recruitment and appointment to government services and government undertakings were examined by constitutional Courts in the context of Articles 14, 15 and 16 of the Constitution of India. Holdings of the constitutional Courts have irretrievably entrenched the aforesaid modes and procedures for appointments to posts in the government and Article 12 instrumentalities in the body of the constitutional law.

5. The compassionate ground appointments to the contrary are not made through a transparent and public process of recruitment after inviting the applications from the open market. The appointments on compassionate ground entail deviation from regular processes of recruitment and other relaxations as well. Compassionate appointments are an exception to the aforesaid constitutionally mandated scheme for appointments to posts in the government and in government undertakings. Compassionate appointments emanate from specific service rules holding the field and rationalized by service law jurisprudence evolved by Constitutional Courts.

6. The appointments on compassionate ground passed the test of

constitutional validity by a slender margin. The sole purpose of grant of appointment on compassionate ground is to enable the family to tide over the immediate financial crises caused by the sudden death of the employee. This feature alone constituted the kin of a deceased employee into one class and on this sole footing the rationale of compassionate ground appointments was justified by Constitutional Courts.

7. The discussion has the benefit of authorities in point.

8. Supreme Court in **Umesh Kumar Nagpal Vs. State of Haryana** explained the purpose of compassionate in following terms:

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to

make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the

family engendered by the erstwhile employment which are suddenly upturned."

9. A similar sentiment was echoed by the Supreme Court in **Director of Education (Secondary) v. Pushpendra Kumar²** :

"8.The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee....."

10. This Court in **Roopam Mishra v. State of U.P. and 4 others³** held as under:

"16. The purpose of compassionate appointments provides their justification. The death of a bread winner forces the family of the deceased into penury. The immediacy of the financial crisis creates the requirement for urgent redressal. The concept of compassionate appointments is created only to enable the bereaved family to tide over the immediate financial crisis".

11. The need to make appointments on compassionate grounds in conformity with the Rules governing the grant of such appointments was emphasized by the Supreme Court in **the Director of Treasuries in Karnataka & Anr. v. Somyashree⁴** by summarizing the law as follows:

"7.....(i) that the compassionate appointment is an exception to the general rule;

(ii) that no aspirant has a right to compassionate appointment;

(iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

(iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;

(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment."

12. Similarly, the necessity to strictly adhere to rules relating to compassionate grounds was succinctly summarized by the Calcutta High Court in **Ipsita Chakrabarti v. State of West Bengal**⁵. **Ipsita Chakrabarti (supra)** upon consideration of holdings of various Constitutional Courts held:

“(a) Appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process.

(b) The right of a dependent of an employee who died in harness for compassionate appointment is based on the scheme, executive instructions, rules etc. framed by the employer and there is no right to claim compassionate appointment on any other ground apart from the above scheme conferred by the employer.

(c) Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground it should be kept confined only to the purpose it seems to achieve, the idea being not to provide for endless compassion.

(d) Compassionate appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family.”

13. Furthermore, the Calcutta High Court in **Sri Bijon Mukherjee v. The State of West Bengal and others**⁶ again stated what is by now the settled position of

law that the appointments on compassionate ground must be made only in conformity with the specific rules applicable to the employee :

“26. After observing the ratio and the legal positions contended by the Counsels appearing on behalf of the parties as well as the precedents examined above, I am persuaded to opine that appointment on compassionate grounds seeks to relieve the immediate financial hardship faced by the dependants of the deceased. It acts as an exception to Articles 14 and 16 of the Constitution as the defendant are given preferential appointment ahead of other equally meritorious candidates similarly placed and hence it cannot be claimed as a right. With the object of appointment on compassionate grounds in mind, it is palpably clear to me that this appointment must be done in accordance with the rules for such appointment. The dependant seeking such appointment must be eligible for such consideration and facing financial hardship to the extent delineated by the rules.”

14. **Ipsita Chakrabarti (supra)** and **Sri Bijon Mukherjee (supra)** were followed by the Calcutta High Court in **Ankita Saha and Anr. v. The State of West Bengal and Ors**⁷

15. The concept of compassionate ground appointments is a welfare measure taken by a model employer. However, there is a caution. An overliberal interpretation of the right to the appointments on compassionate ground will open a floodgate of such appointments and turn them into a veritable source of recruitment. An unjustified generous approach in compassionate ground which is not consistent with the applicable service rules

will confer benefit to undeserving and ineligible candidates, and simultaneously deny the rights and lawful claims of eligible and meritorious candidates from getting appointment to government posts. The merit is not to be assumed from parentage but has to be achieved through open competition. Treating compassionate ground appointments as an unconditional and vested right and making it a source of recruitment will shear the thin veil of legality which protects such appointments from the vice of unconstitutionality. The very concept of compassionate ground will then be exposed to the wrath of Articles 14, 15, 16 of the Constitution of India.

16. The purpose of grant of compassionate ground appointments can be subserved and their constitutionality can be saved only by strict compliance of the rules governing the grant of compassionate ground appointments.

17. The preceding discussion discloses that determination of the financial condition or the nature of financial crises being faced by the family after the death of employee is a mandatory prerequisite for appointment on compassionate grounds.

18. Financial penury has not been defined in the holdings of various constitutional courts. The same has to be examined in light of applicable provisions of law and in the facts and circumstances of each case. The compassionate ground appointments are not intended to create a windfall for the kin of the deceased. The employer is only required to assess the financial condition which keeps the kitchen fire burning.

19. The appointment on compassionate grounds in the respondent

Bank is governed by the "Scheme for Compassionate Appointment to a dependent family member of a deceased employee/employee retired on medical grounds." The financial destitution/financial penury faced by the deceased employee's family is liable to be determined in accordance with the criteria laid down/relevant provisions of the said scheme for compassionate ground appointment. The said provision is extracted hereunder:

"8. ELIGIBILITY"

8.1 The family is indigent and deserves immediate assistance for relief from financial destitution.

To ensure this the compassionate appointment is to be granted only if the monthly income of the family from all sources is less than 60% of the last drawn monthly salary (net of taxes) of the employee."

(emphasis supplied)

20. Clause 8 of the said scheme provides for a sound and a rationale criteria for determining the financial condition of the family of the deceased and to make a finding whether the family faces financial destitution after the death of the employee in harness, and eligibility for grant of compassionate appointment.

21. This exercise has been undertaken by the Bank. Total income of the family as calculated by the bank in accordance with Rule 8 is as under:

Dues Paid	Amount in Rs	O/S Loans with intt.	Amount in Rs.
Provident Fund/NPS	7,29,584	O/s in clean OD	15,000
Gratuity	7,18,107	Vehicle Loan	2,16,500
Leave Encashment	3,42,472		

Financial Aid	50,000		
Total (A)	18,40,163	Total(B)	2,31,500
Net Terminal Dues Received From Bank (A-B) = 16,08,663			

(c) Family pension: Rs. 15,087/-

(d) Amount received/likely to be received from other sources/investments: nil

(e) At the time of his death Late Shri Prabhu Dayal, the monthly gross salary received by the employee was Rs. 42808.92/-

Sl No.	Details	Amounts in Rs
1	Total Amount of Terminal dues	18,40,163
2	Total Amount of Bank Loans	2,31,500
3.	Net Amount of Terminal Dues (1-2)	16,08,663
4.	Total Amount of other investments	4,33,000
5.	Loans against other investments, if any	NIL
6.	Net amount of other investments	4,33,000
7.	Monthly interest on Net Terminal dues (as at S. No. 3) @ 6.30% (Maximum GD Intt. Of Bank applicable for staff as on date of death of employee)	8,445.48
8.	Monthly income from other investments (as at S.No. 6) @ 6.30%	2,273.25
9.	Amount of monthly Family Pension	15,087.00
10.	Any other income (Monthly income of Pratipal, Son)	5,000
11.	Total Monthly income (7 to 10)	30,805.73
12.	Notional Gross Monthly Salary of Deceased for the month of Aug 2020	42,808.92
13.	Amount of notional Income Tax deducted	NIL
14.	Salary (Net of notional tax)	42,808.92
15.	Eligible Amount (60% of 14)	25,685.35
16.	Whether eligible for compassionate appointment ?	No

22. The aforesaid chart as disclosed in the counter affidavit has not been disputed by the petitioner.

23. The impugned order clearly discloses the income of the family of the deceased from various sources as contemplated in Clause 8 of the compassionate ground scheme cited earlier. The income of the family of the deceased so calculated is more than 60% of the last salary drawn by the deceased. The income of the family so determined establishes that the family does not face financial destitution as a result of the death of the employee. The respondents in the impugned order have been thus correctly found that the petitioner does not fulfil the criteria for grant of compassionate ground appointment as per the provisions of the compassionate ground appointment scheme applicable to the bank.

26. In wake of the preceding discussion, there is no infirmity in the impugned order. The writ petition is liable to be dismissed and is dismissed.

(2025) 4 ILRA 232
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.04.2025
BEFORE
THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.

Writ A No. 18309 of 2006

Dr. Indra Pratap Singh ...Petitioner
Versus
B.H.U., Varanasi & Ors. ...Respondents

Counsel for the Petitioner:
 Sri Vivek Kumar Singh, Sri Raunak Tiwari,
 Sri B.P. Singh (Sr. Advocate)

Counsel for the Respondents:

Sri A.K. Nigam A.S.G.I., Sri H.P. Singh, Sri K.S. Chauhan, Sri Kuldeep Singh Chauhan, Sri Ritvik Upadhya, S.C., Sri V.K. Upadhyay (Sr. Advocate)

**Service Law-Constitution of India, 1950-
Article 226 - The Central Civil Service
Pension Rules, 1972-Rule 26,27 & 28 -
The Central Universities Retirement
Benefit Rules, 1967- Note 2 of Rule 2.9---**

Writ petition with prayer to re-fix pension of petitioner by including his 11 years of prior service--- In the present case interruption in service when petitioner joined at Nagpur University cannot be considered an interruption caused by reason beyond the control of petitioner as he has participated in selection process on his own will. It is undisputed that Executive Council of University has not condoned the break. Therefore, the case of petitioner would also not fall within the other circumstances of interruption mentioned in said Note 2 of Rule 2.9 of Central Universities Retirement Benefit Rules, 1967---Petitioner after his three years tenure was over at Banaras Hindu University, has participated in a fresh selection process conducted by Nagpur University where he was selected, therefore, it would not be a case of transfer--- Subsequently on a fresh appointment he had joined Banaras Hindu University, therefore, it would also not be a case of transfer---No negative parity and benefit, if any granted to other employees contrary to law, would not entitle petitioner to get same benefit.

Writ petition dismissed. (Para 37, 41 & 46) (E-15)

List of Cases referred-:

1. Writ Petition No. 3396 of 1985 , judgment dated 22.12.1987
2. Civil Appeal No. 1626 of 1989 1992 Suppl(2) SCC 2
3. Director General, CSIR Vs K. Narayanaswami (Dr), (1995) 3 SCC 124

4. Dr. Rajesh Kumar Sharma Vs U.O.I.& ors.(Writ-A No. 2315 of 2019), decided on 14.02.2019

5. St. of Raj. & ors.Vs O.P. Gupta (2022)18 SCC 382

(Delivered by Hon'ble Saurabh Shyam Shamsbery, J.)

1. The petitioner was appointed by Executive Council of Banaras Hindu University as 'Demonstrator' in the Department of Basic Principles, Institute of Medical Sciences, Banaras Hindu University, Varanasi by an order dated 19.11.1968 for a time period of 3 years, which got over on 18.11.1971.

2. Petitioner thereafter was appointed as a temporary Lecturer on 26.08.1974 in the Department of Basic Principles, Institute of Medical Sciences, Banaras Hindu University and his service was extended upto 31.03.1980 by an order dated 06/07.08.1980. It appears that no further extension was granted to petitioner, however, he had worked till 18.07.1980 but paid salary only upto 31.03.1980.

3. Thereafter petitioner participated in a selection process conducted by another University i.e. Nagpur University (without proper channel) and he was duly selected by its selection committee for the post of Reader in Sanskrit Sanhit Siddhanta (Basic Principles) at Sri Ayurvedic Mahavidyalaya, Nagpur an affiliated College and he joined on 21.07.1980 and served till 20.09.1982.

4. Thereafter petitioner appeared before a Selection Committee of Banaras Hindu University and was selected on the post of 'Lecturer' at Department of Basic Principles, Institute of Medical Sciences,

Banaras Hindu University, against the substantive post on 22.09.1982.

5. While working as 'Lecturer' petitioner was granted financial benefit such as by giving fourteen increments, his last drawn salary was protected.

6. A dispute arose when, petitioner claim consideration for promotion on the post of Reader under 'Merit Promotion Scheme' and since it was denied that he had not completed 8 years of continuous service since his appointment as 'Lecturer' in Banaras Hindu University was on 22.09.1982, therefore, he has filed a Writ Petition No. 3396 of 1985.

7. A Single Bench of this Court considered the sole issue for determination in said writ petition that whether the petitioner has completed 8 years of continuous service in the cadre as required under the scheme and in this regard Clause (a) of Para 2 of "Merit Promotion Scheme" was considered and for reference said part of the scheme is mentioned hereinafter.

"2(a). Teacher in the University departments engaged in advance teaching and research and whose contribution and achievements are such as to merit recognition must be considered for merit promotion in the first instance after completing eight years of continuous service in their respective cadre of which atleast four years should be in the institution where he/she is being considered for such assessment and merit promotion."

8. A Co-ordinate Bench allowed Writ Petition No. 3396 of 1985 by a judgment dated 22.12.1987 and directed that petitioner be considered for promotion under "Merit Promotion Scheme" on the

post of Reader. Relevant part of the judgement is reproduced hereinafter:-

"9. The petitioner who had worked in the University from 26-8-1974 till 31-3-1980 and has again joined on the same post on 22-9-1982 cannot be legally deprived of his chances of promotion to the post of Reader' for the only reason at he was fortunate to have worked on the post of Reader during the period from 21-7-1980 to 20-9-1982 in Shri Ayurved College. He cannot be punished for having worked on the post to which he wants to be promoted long before he could have otherwise become eligible for promotion had he not left the University it will be really unfortunate to think of the situation in which a person is deprived of his chances or the promotion to the post on which he had already worked for some time in the past for that very reason.

10. The petitioner had appeared before the Selection Committee under the interim order of this Court. However, recommendation of the Selection Committee has not so far been considered by the Executive Council for want of suitable directions by this Court. In view of our conclusion that the petitioner was eligible for being considered for promotion on the relevant date the recommendation of the Selection Committee had to be placed for consideration before the Executive Council. In case the petitioner has been selected for promotion by the Selection Committee and its recommendation is approved by the Executive Council he will be entitled for promotion to the post of Reader with effect from the same date from which other teachers of the University interviewed for first round of promotion were appointed.

11. In the result, the writ petition succeeds and is allowed. The orders of the

University rejecting applications of the petitioner for condoning break in service and for being considered for merit promotion are quashed. The University is directed to place the recommendation of the Selection Committee before the Executive Council in its next meeting. It is further directed to appoint the petitioner on the post of Reader in the Department of Basic Principles in the institute of Medical Sciences of the University, if he has been selected for promotion by the Selection Committee and its recommendation is approved by the Executive Council with effect from the same date from which other teachers of the University interviewed for first round of promotion were appointed. We direct the parties to bear their own costs."

9. The aforesaid judgement was challenged by Banaras Hindu University before Supreme Court by way of filing Civil Appeal No. 1626 of 1989, which was dismissed vide judgement dated 24.01.1992, reported in **1992 Suppl(2) SCC 2** and relevant part thereof is mentioned hereinafter:-

"9. We agree with the learned counsel for the respondent that the expression "eight years of continuous service" para 2 (a) of the scheme should be understood in a reasonable manner having regard to the underlying aim and object. Para 2 (a) itself expressly recognizes that the eight years' service may be in more than one institution, the only requirement being a minimum of four years service in the institution where he is being considered for promotion under the scheme. In case of shift from one university to other or from one institution to the other it can reasonably be presumed that there is bound to be some interval. The interval may be of

a day, a week or a month. What is relevant is not the length of the interval or break, as it may be called, but its nature. We do not mean to say that length of such interval is totally irrelevant, what we mean however, is that one must take into consideration the reason for which break of the circumstances in which such break has occurred. Another factor to be taken into consideration in understanding and construing the said expression is the object underlying the said requirement. According to us, the object is to ensure eight years' teaching experience. It is true that there is a break of three months 20 days in the respondent's service and teaching experience. We also take note of the fact that it was not the vacation time for academic institutions. But this circumstance must be weighed against a counter-veiling circumstance in favour of the respondent viz., his re-appointment on a permanent basis in the very same department in the University in the year 1982. As stated above, he served as a temporary lecturer from 26.8.1974 till 31.3.1980. From 1.4.1980 to 20.7.1980 he remained without a job. On 21.7.1980 he was appointed as a Reader in the Nagpur University in the very same subject where he served till 20.9.1982. On 22.9.1982 he was appointed as a permanent lecturer in this very University and in the same category and subject. On this occasion, he was granted a good number of increments. The University says that these increments were granted with a view to protect his late pay drawn by him in the Nagpur University while the respondent says that it was granted not only for the said purpose but also in the light of his past service in this University. It is true that he was not given seniority since 26.8.1974. Even as the question is whether the gap of three months 20 days is such a long gap as not to merit

condonation or for that matter to be termed as a break in service for purposes of para 2 (a) of the scheme."

"16. The respondent has brought to our notice several instances where the University has condoned breaks of two however, think it necessary to examine these cases except two One Dr. L.K. Pandey was a teacher in the Department of Ob. and Gyn in the institute of Medical Sciences of this University. He was appointed temporarily on 26.5.1973 and resigned on 5.2.1975. He was said to be out of job between 5.2.1975 and 27.04.1975 (for a period of two months 22 days). He was reappointed as a lecturer in this University on temporary basis on 28.4.1975. and on a permanent basis on 16.10.1979. The respondent's case is that the University has condoned the said gap of two months 22 days in his case and if so there is no reason why the gap of three months 20 days in the case of respondent should not be condoned. The University has, however, explained in its counter affidavit that no such condonation was made in his case and that his service was counted only from 28.4.1975. But if his service is counted from 28.4. 1975 only, it is significant to notice, he does not complete eight years service by 15.1.1983 which was the last day of applying vide University proceeding dated 11/21 December, 1982. The other case is for Dr. A.M. Tripathi who was a teacher in the department of paediatrics in the Institute of Medical Sciences of this University He was appointed temporarily on 11.5.1974. According to the respondent, he resigned on 12.8.1975 and was out of job till 24.8.1975 when he went to Kabul. According to him he served at Kabul in a non-teaching capacity from 25.8.1975 to 8.4.1976 and he was reappointed as a lecturer in this University on temporary

basis on 9.4.1976 and made permanent on 9.2.1979 The respondent says that the entire gap between 12.8.1975 to 8.4 1976 was condoned by the University for considering his case under the scheme. The appellant's case, however, is different. According to the appellant-University, he was sent to Kabul on deputation and that the break in his service occurring prior to his going to Kabul has never been condoned. We find that in the rejoinder affidavit of the University filed in this court, there is a certain mix-up of the relevant dates in the case of these two teachers. Be that as it may, its case appears to be that services of these two teachers were counted only from the date of their re employment. Then the following significant statement occurs in the rejoinder-affidavit filed in this court: It is true that by 15.1.1983 he had not completed 8 years of continuous service in the same cadre. However, in the meanwhile the vice chancellor as also the Executive Council decided that eligibility period of candidature for appointment to teaching posts under Merit Promotion Scheme be counted as on the date of interview, as per existing practice for regular appointments in view of the fact that the Executive Council treats posts in both categories on a part with each other. Accordingly since Dr. Tripathi had completed 8 years of continuous service in the same cadre by the date of interview on 23.6.1983. he was eligible and was selected by the statutory Selection Committee. Applying the very same principle which was approved by the Executive Council, Dr. L.K. Pandey became eligible and was selected"

17. In our opinion, the above statement in the rejoinder affidavit filed by the University is very revealing. It shows that even though the said two teachers had not completed eight years service by the

prescribed date i.e. 15.1.1983. the Vice Chancellor and the Executive Council decided to extend the eligibility period till the date of interview so as to make them eligible for consideration We are not suggesting any malafides or any unreasonable conduct to the University. All that we are saying is that the University has been passing appropriate orders wherever the justice of a case demands. In our opinion, the same treatment ought to have been extended to the respondent, in all the circumstances of the case.

For the above reasons, the appeal fails, and is accordingly dismissed.”

10. In pursuance of above judgements, the petitioner was granted promotion by University under “Merit Promotion Scheme” with retrospective effect i.e. from 1983.

11. The petitioner reached to the age of superannuation on 31.08.2004 and was granted session benefit as Reader upto 30.06.2004.

12. After retirement pension was fixed, however, University had excluded the period when petitioner had worked as “Demonstrator and Lecturer” in University between 19.11.1968 to 31.03.1980 (about 9 years) and also the period when he had worked as ‘Reader’ in other University from 21.07.1980 to 20.09.1982 (about 2 years) as such 11 years of service was not included for calculating his pensionary benefits.

13. The representation to include said period of 11 years for calculating pension remain undecided, therefore, present writ petition was filed in the year 2016 seeking following reliefs:-

“(i) issue a writ, order or direction in the nature of MANDAMUS directing the respondent nos. 1 and 2 the Banaras Hindu University to refix the pension of the petitioner after including the service-rendered by him in the University for about 9 years ie. during the period between 19.11.1968 and 31.3.1980 and the period (about two years) he worked in Shri Ayurved College, Nagpur, an affiliated college of Nagpur University i.e. from 21.7.1980 to 20.9.1982.

(ii) issue a writ, order, or direction in the nature of mandamus commanding the respondent University to pay the arrear of pension along with interest from 31.8.2003 after refixation of the pension of the petitioner taking into account of past services rendered by the petitioner from 19.11.1968 and further direct the respondent University to permit the petitioner to sell 40 % of the pension after refixation from 3.8.2003.

(iii) issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper

(iv) award cost of the petition to the petitioner”

14. Shri B.P. Singh, learned Senior Advocate assisted by Shri Raunak Tiwari, learned counsel for petitioner has mainly rest his arguments on the reasons and findings given in a judgement passed in earlier round of litigation (1992 Suppl(2) SCC 2) so far as interpretation of “continuous service” and consideration of the petitioner’s earlier service in Nagpur University and Banaras Hindu University for 8 years as regular, for consideration for promotion under “Merit Promotion Scheme”. Learned Senior Advocate has strenuously argued that on same

interpretation his entire earlier service of 11 years be calculated for fixation of pension and other retiral benefits.

15. Learned Senior Advocate also refer conduct of Respondent-University that petitioner was single out, whereas similar benefit was granted to other employees. Learned Senior Advocate referred example cited in the above referred judgement passed by the Supreme Court (1992 Suppl(2) SCC 2).

16. Learned Senior Advocate submitted that in the present case Central Civil Service Pension Rules, 1972 will not be applicable and instead Central Universities Retirement Benefit Rules, 1967 will be applicable and he also referred certain provisions of it. Learned Senior Advocate has also referred instances of discrimination mentioned in a supplementary affidavit filed by petitioner as well as rejoinder to supplementary counter affidavit. Paras 8, 9 and 10 of writ petition as well as relevant paras 3 and 4 of supplementary affidavit and para 6 of rejoinder to supplementary counter affidavit, are reproduced hereinafter:

Paras 8, 9 and 10 of Writ Petition

“8. That since the aforesaid period of service was on probation and the petitioner was not confirmed, hence according to page 87 (2.3) of B.H.U. Calender, the lien on the post of temporary Lecturer in B.H.U. would continue. The said para 2.3 of page 87 provides as follows:-

“During his probation on higher grade he shall hold a lien on his post in the lower grade. Appointment in the higher grade on probation or after confirmation shall not affect his privileges as regards

leave nor it will affect the continuity of his service.”

9. That it is further stated that there is an administrative order dated 29.05.1981 of the Rector of the Banaras Hindu University who was exercising the powers of the Vice Chancellor to the following effect:-

“That the period of break be condoned in those cases where they have been substantively appointed on permanent basis on the recommendation of the statutory selection committee, by treating the period of break as leave on loss of pay. Break in service of University teachers of I.M.S. have been condoned on the above basis”

The said order was approved by the Executive Council of the University. For the sake of convenience true copy of the order dated of the Rector dated 29.05.1981 is enclosed herewith and marked as Annexure – V to this writ petition.

10. That the petitioner was again selected by the Statutory Selection Committee of the Banaras Hindu University and on its recommendation, as approved by the Executive Council, he was appointed as Lecturer in the Banaras Hindu University, Varanasi on 22.09.1982 in permanent basis. Since then he has been working as such in the Department of Principles of Institute of Medical Sciences of the University.”

Paras 3 and 4 of Supplementary Affidavit

“3- That the petitioner’s experience as a Demonstrator has not been counted while calculating his pension. However, in the similar facts and circumstances of the case, the University has counted the service of Dr.L.D. Dwivedi, who retired as Reader from the University. Dr. L.D. Dwivedi had worked

as a Demonstrator in the Department of Basic Principles w.e.f. 19.11.1968 to 7.10.1971. This period was counted for the pensionary benefits. Photostat copy of the order dated 09.05.1998, which has been issued by the Assistant Registrar under the RTI Act to one Mr. Asheesh Kumar Mishra is being annexed herewith and is marked to this Affidavit as Annexure -SA-1.

4- That one Dr. A.M. Tripathi, who was a Professor in the Department of Paediatrics, had resigned from the University and he got the employment in Afganistan. He was re-appointed in the University and for pensionary benefits, his entire service prior to the resignation has also been taken into consideration and the break in his service was condoned. Photostat copy of the resignation of Dr. A.M. Tripathi dated 09.08.1975 and the letter/information dated 31.05.2008 furnished by the University under the RTI Act are being annexed herewith and are marked to this Affidavit as Annexure SA 2 and 3.”

Para 6 of Supplementary Rejoinder Affidavit

“6. That the contents of paragraph No. 8 of the supplementary counter affidavit are again misleading. Dr. A.M. Tripathi has been promoted from Lecturer to Reader with effect from January 1983. For this promotion, as per the UGC guidelines, he was required to complete 8 years continuous service on 15.01.1983. He resigned from Banaras Hindu University for serving outside the B.H.U i.e. at Afganistan. He again joined as temporary lecturer in Banaras Hindu University. This proves that the breaks-in-service caused through resignation and service outside the Banaras Hindu University at Afganistan have been condoned without asking for capitalized value for the rendered outside B.H.U This has been done applying the

order of the Rector dated 29.05.1981 i.e. much before the introduction of merit promotion scheme. The breaks have been condoned only for the pensionary benefits.

Similarly, in number of cases the respondent university has condoned the break-in-service of different nature and duration applying the Rector's order dated 29.05.1981 but only for the petitioner's case, they are relying Government of India Rules. This contention of the petitioner is evident from the stand of the university in writ petition No. 3396 of 1985. For the sake of convenience paras 7 & 9 of the counter affidavit of respondent University in writ petition No. 3396 of 1985 are quoted hereunder:-

"7. That in reply to the contents of paragraph 6 of the supplementary affidavit, it is stated that Dr A.M. Tripathi joined as Lecturer on 11.5.1974 on temporary basis in the Department of Paediatric, I.M.S. He resigned w.e.f 24.8.1975 to take up an assignment under the government of Afganistan on deputation from Government of India. He worked there from 25.8.1975 to 8.4.1976 as a lecturer in the grade of Rs.700-1600. Dr. A.M. Tripathi joined again in the Department of Paediatrics with effect from 9.4.1976 and continued as a temporary lecturer in the University since then.

(i) As Dr. A.M. Tripathi was continuing in the cadre of lecturer in the grade of Rs.700-1600 right from 11.5.1974 when he joined as temporary lecturer in Banaras Hindu University and was also in the same cadre while on deputation and he continued after his joining on 9.4.1976 as temporary lecturer in the University and his application for condonation of break in service of the University on account of temporary tenure was duly considered and condoned. The period of breaks considered by the University and condoned comprised

of seven days break in between two temporary appointments, which is reproduced below"-

1 From 9.3.1977 to 15.3.1977

2 From 16.2.1978 to 22.2.1978

3. From 23.1.1979 to 29.01.1979

ii) It would thus appear that Dr Tripathi continues in service of the respondent University in the lecturers' grade since 11.5.1974.

(iii) The break in his service was condoned vide order dated 29.5.1981 by the then Rector discharging the duties and functions of the Vice Chancellor and was much before the introduction of the Merit Promotion Scheme in November 1982. The candidature of Dr Tripathi for promotion under the Merit Promotion Scheme was considered on the basis of 8 years continuous service in the cadre of Lecturer in the past. Dr. Tripathi was appointed on regular basis on probation under Executive Council Resolution dated 14.2.79 and joined on 9.2.1979. Thus, in the case of Dr A.M. Tripathi he continuously worked in the cadre of Lecturer carrying out a scale of Rs.700-00 all though since 11.5.1974. Dr. A.M. Tripathi consequently fulfilled the requisite eligibility criteria as provided under the guidelines of the Merit Promotion Scheme and was rightly considered by the respondent University for promotion on the post of Reader under the Scheme.

The power to condone the delay vested the Vice Chancellor and as such it was for the petitioner to have approached the University for the same."

17. Learned Senior Advocate has placed reliance on the judgments passed by Supreme Court in **Indian Ex-Services League and others vs. Union of India, (1991)2 SCC 104; Prem Singh vs. State of Uttar Pradesh and others, (2019)10**

SCC 516; and, State of Rajasthan and others vs. O.P. Gupta, (2022)18 SCC 382 as well as this Court's judgment in **Dr. Indra Pratap Singh vs. B.H.U. Varanasi through Registrar and others, 2023:AHC:175175.**

18. Per Contra, Sri V.K. Upadhyay, learned Senior Advocate assisted by Sri Ritvik Upadhyay, learned counsel for Respondent-University has referred following paragraphs of counter affidavit:

"11-That the contents of paragraph no 9 of the writ petition are denied as incorrect In reply it is submitted that in the year of 1984 petitioner applied for continuity of service by condoning all the break in various spell of service as mentioned in the preceding paragraphs for the period of 1974 1982 and same was rejected by the University in view of the relevant Rules of the Government of India. The Relevant Rules of Government of India regarding condonation of interruption of service are quoted below :-

(a) In absence of contrary a specific indication to the in the service book, an interruption between two spells of Civil service rendered and paid out of Defense service Estimates or Railway Estimates shall be treated as automatically condoned and the pre interruption service treated as qualifying service.

(b) Nothing in clause (a) shall apply interruption caused by resignation, dismissal to or removal from service or for participation in a strike.

(c) The period of interruption referred to in clause (a) shall not count as qualifying service.

It is further submitted that as per Government of India Rules mentioned above petitioner worked on the post of temporary Reader at Ayurveda College

Nagpur during break of service i.e. 21.07.1980 to 20.09.1982 and case of the petitioner is not covered under the order passed by Rector dated 29.05.1981 of the University (already filed as Annexure no. - V to the writ petition) and rightly period of break of service was not condoned by the University."

"15- That in reply to the contents of paragraph no. 13, 14 & 15 of the writ petition it is submitted that writ petition no. 3396 of 1985 was filed by the petitioner by promotion on the post of Reader under the merit promotion scheme. As per judgment of this Hon'ble Court and Supreme Court of India period of temporary service rendered by the petitioner were counted for proposes of promotion under merit promotion scheme and not for the purposes of pensionery benefit."

"18- That in reply to the contents of paragraph no. 18 & 19 of the writ petition it is submitted that the vide letters dated 3/4.09.2004, 25.01.2005 (already filed as Annexure no. -X and XI to the writ petition) petitioner request for condonation of break in service and counting the period 21.07.1980-20.09.1982 for pensionery benefit was rightly turned down by the University in view of the fact petitioner worked on the post of demonstrator was a tenure post for three years which may not be counted for pensionery benefit as per Rules in this behalf.

It is pertinent to mention here that so far question of condonation of break in service is concerned it is submitted that as per Resolution of Executive Council ECR no 17 dated 20/21.03.1999 which read as under:

"Resolved that the case of pay fixation and break in service etc. be disposed of as per Government of India Rules"

It is further stated that period of break in service was not condoned by the University as per Government Rules. Only one break (i.e. last break) in service can be considered for condonation. In view of the fact that during last break in service of the University i.e. from 01.04.1980 to, 21.09.1982 petitioner worked as Reader at Sri Ayurvedic College Nagpur."

"20. That in reply to the contents of paragraph no. 21 of the writ petition it is submitted that in term of the Order passed by this Hon'ble Court as well as Hon'ble Supreme Court the temporary services rendered by the petitioner were counted only for the purposes of promotion on the post of Reader under the Merit Promotion Scheme and not for the pensionery benefit. It is pertinent to mention here that petitioner applied in the University on the post of Lecturer not through proper channel without seeking prior permission from Sri Ayurvedic Mahavidyalaya, Nagpur were he lastly worked."

19. Learned Senior Advocate referred Rules 13, 26, 27 and 28 of the Central Civil Service Pension Rules, 1972, which are reproduced hereinafter:-

"13. Commencement of qualifying service.- Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:

Provided further that-

(a) in the case of a Government servant in a Group 'D' service or post who

held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and

(b) in the case of a Government servant not covered by Clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity."

"26. Forfeiture of service or resignation.- (1) *Resignation from a service or a post, unless it is allowed to the withdrawn in the public interest by the appointing authority, entails forfeiture of past service.*

(2) A registration shall entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) Interruption in service in a case falling under sub-rule (2), due to the appointments being at different stations not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:-

(i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection in his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;

(ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper:

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days:

(iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.

(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.

(7) A resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government.

27. Effect of interruption in service- (1) *An interruption in the service of a Government servant entails forfeiture of his past service, except in the following cases:-*

(a) authorised leave of absence,

(b) *unauthorised absence in continuation of authorised leave of absence so long as the post of absence is not filled substantively*

(c) *suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the Government servant dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension,*

(d) *transfer to non-qualifying service in an establishment under the control of the*

Government if such transfer has been ordered by competent authority in the public interest; (e) *joining time while on transfer from one post to another.*

(2) *Notwithstanding anything contained in sub-rule (1), the appointing authority may, by order, commute retrospectively the periods of absence without leave as extraordinary leave.*

28. Condonation of interruption in service.— (a) *In the absence of a specific indication to the contrary in the service book, an interruption between (a) In two spells of civil service rendered by a Government servant under Government including civil service rendered and paid out of Defence Services Estimates or Railway Estimates shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.*

(b) *Nothing in Clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.*

(c) *The period of interruption referred to in Clause (d) shall not count at qualifying service.”*

20. Learned Senior Advocate referred a judgment passed by Supreme

Court in **Director General, CSIR v. K. Narayanaswami (Dr), (1995) 3 SCC 124** and relevant paragraphs thereof are reproduced hereinafter:-

“7. There are two reasons for our disagreement. The first is that Rule 28 as quoted above was substituted by notification of even number dated 19-5-1980. Prior to that, Rule 28 was in the following language:

“28. Condonation of interruption in service.— (1) The appointing authority may, by order, condone interruptions in the service of a government servant:

Provided that—

(i) *the interruptions have been caused by reasons beyond the control of the government servant;*

(ii) *the total service excluding one or more interruptions, if any, is not less than five years' duration; and*

(iii) *the interruption, including two or more interruptions, if any, does not exceed one year.*

(2) *The period of interruption condoned under sub-rule (1) shall not count as qualifying service.*

8. If the aforesaid rule were to determine the question of condonation, specific order of the appointing authority was a prerequisite. Admittedly, there is no such order. Secondly, even if the substituted rule were to apply because of the superannuation of the respondent in 1992, by which date substituted rule had come into force, we are of the view that rule cannot override what has been mentioned in the aforesaid proviso to Rule 13. This is for the reason that any contrary view would make the proviso altogether otiose. It is a settled rule of interpretation that where two provisions operate in one field, both have to be allowed to have their

play, unless such operation would result in patent inconsistency or absurdity. If Rule 28 were to be confined to the interruption between two substantive appointments, as is the contention on behalf of the appellant, we are of the view that both the aforesaid provisions can co-exist, and harmoniously. Rule 13 being on the subject of 'commencement' of qualifying service, the same has first to commence, which, in case the incumbent be in temporary service first would not if there be interruption between temporary service and substantive appointment, because of what has been mentioned in the first proviso. Where the qualifying service has commenced, Rule 28 would take care of interruption; and the period of interruption would then stand condoned in the absence of a specific indication to the contrary in the service-book. This is the field of operation of these two rules, according to us, as the same would permit, in such a case, both the provisions to co-exist."

21. Learned Senior Advocate also refers Clause 43 of Statute of Banaras Hindu University and for reference the same is reproduced hereinafter:

"43. Every employee of the University appointed permanently or on probation to a substantive post on or before 31-3-1964, unless he opts for the "Central Universities-Retirement Benefit Rules 1967 as may be approved by the Central Government, shall as a condition of his service subscribe to the provident fund eight and one-third percent of his salary, such subscription shall be deducted from his salary every month, fraction of a rupee of the salary being omitted. An employee joining University on or after 1-4-64 shall be governed by the Central Universities Retirement Benefit Rules 1967 as approved

by the Central Government provided that any amendments to the Central Government Rules relating to General Provident Fund, Contributory Provident Fund, Pension, Gratuity, etc. shall be deemed to be the amendments of the relevant provisions of the Central Universities Retirement Benefit Rules 1967 with effect from the date such amendments are brought into force by the Central Government."

22. Referring to above provision he submits that procedure to determine pension would be only in terms of Central Civil Service Pension Rules, 1972 and that Rule 26 of it would squarely apply in the facts and circumstances of present case. He also referred some part of supplementary counter affidavit that allegation of petitioner that he was singled out is unsustainable. Relevant paragraphs no. 4, 5, 6, 7, 8 and 9 thereof are mentioned hereinafter:

"4- That the contents of paragraph no. 3 of the Supplementary affidavit filed by the petitioner, in the aforesaid writ petition are denied as incorrect. In reply it is submitted that the case of the petitioner and that of Dr. L.D. Dwivedi under reference in the paragraph, are not similar in nature. The petitioner has already requested for condonation of break in service. It has already stated in the Counter affidavit filed by the answering respondent University before this Hon'ble Court that as per Government of India Rules only one break (last break in service can be considered for condonation) In view of the fact that during last break in service of the University i.e. from 01.04.1980 to 21.09.1982, petitioner worked as Reader at Sri Ayurvedic College Nagpur. As such this Period of service may not be treated as

break in service as he was under employment as Sri Ayurvedic College, Nagpur.

5- That in the case of Dr.L.D. Dwivedi there is no break in service. The service details of Dr. L.D. Dwivedi are given as under:-

(i) Demonstrator, Department of Basic Principles I.M.S., BHU	19.11.1968 07.10.1971	to
(ii) Assistant Research Officer/ Research Officer (Ayurveda) at Central Council for Research in Ayurvedic & Sidha, New Delhi	08.10.1971 31.03.1980	to
(iii) Lecturer & Reader, Department of Basic Principles, I.M.S, B.H.U	01.04.1980 24.10.1986 (Lecturer) 25.10.1986 28.02.1994 (Reader)	to to

6- That Dr. L.D. Dwivedi vide his letter dated 19.03.1993 had requested for counting of past service rendered by him as Assistant Research Officer / Research Officer, from 08.10.1971 to 31.03.1980 as Assistant Research Officer at Central Council for Research in Ayurveda & Sidha, New Delhi for pensionary benefits. The Director, CCRAS, vide office letter No. AB/14-P-256/25188-91, dated 21.12.1993 was requested to transfer the lump sump amount of pro-rata retirement benefits along with service record during the service period of service of Dr. L. D. Dwivedi rendered by him at there and it was informed to the University that Dr Dwivedi had served as Assistant Research Officer / Research Officer (Ayurveda) w. e. f 08.10.1971 to 31.03.1980 and the pension scheme was Introduced w. e. f. 01.04.1982. As such the Council had paid the final payment of Contributory Provident Fund to Dr. L. D. Dwivedi. Later on the request of Dr. Dwivedi for counting of past services rendered by him at CCRAS for pensionary benefits had been accepted and vide letter No. AB/14-P-256/1995-97, dated

09.09.1994, he was requested to deposit the amount of CCRAS contribution to Contributory Provident Fund, plus interest thereon from 20.04.1993 (the date of its payment to him by CCRAS) to 19.04.1994 (the date of deposit by him in the BHU) Accordingly Dr. Dwivedi deposited the aforesaid amount of Rs. 3939/- vide Challan no. 4023 dated 19.09.1994. A true photo Copy of the latter dated 09.09.1994 and challan no. 4023 dated 19.09.1994 are being filed here with and marked as Annexure No. C A- No.-1 & 2, to this supplementary Counter affidavit.

7-That the request of Dr. L. D. Dwivedi for counting of past services rendered by him as Demonstrator in the IMS, BHU, from 19.11.1968 to 07.10.1971 was also accepted by the university for pensionary benefits.

8- That in reply to the contents of paragraph No. 4 of the supplementary affidavit filed by the Petitioner in the aforesaid writ petition, it is submitted that Dr. A. M. Tripathi was engaged from 11.05.1974 in the University on temporary basis and time to time he was engaged on the same capacity as a Lecturer. He joined as Lecturer in the University w. e. f. 09.04.1976 on temporary basis. In the following period his service was break:

(1) 09.03.1977 to 15.03.1977

(ii) 16.02.1978 to 22.02.1978

(iii) 23.01.1979 to 29.01.1979

On his representation dated 20.05.1981, requesting for condonation of mandatory breaks in service the above period had been treated as leave on loss of pay as a special case.

9-That the contents of paragraph no. 5 of the supplementary affidavit filed by the petitioner are not admitted hence denied. In reply it is submitted that, as already stated in the preceding paragraphs of this supplementary Counter affidavit as

well as Counter affidavit filed by the University before this Hon'ble Court, that the case of the petitioner is not similar to Dr. L. D. Dwivedi and Dr. A. M. Tripathi. That in the case of the petitioner there was break in University service rendered by the petitioner for the period of 01.04.1980 to 21.09.1982, and during break in service petitioner worked on the post of temporary Reader from 21.07.1980 to 20.09.1982 at Sri Ayurveda Mahavidyalaya, Nagpur affiliated to Nagpur Vidyapith. In the Year of 1984 petitioner applied for continuity of service by condoning the breaks in various spell of service for the period of 1974 to 1982 and same was rejected by the University in view of the relevant Rules of the Government of India."

23. Learned Senior Advocate also referred following part of Ordinance with regard to application of Government of India Rules:

"(G) Application of Government of India Rules:

Wherever the University ordinances regarding terms and conditions of Service are silent or incomplete, University employees will be governed by rules applicable to comparable Central Government Employees, e.g. Classification and appeal Rules, conduct Rules and Fundamental Rules etc."

24. Learned Senior Advocate also referred an Office Memorandum dated 22.01.1993 of Government of India on subject "Condonation of resignation for purpose of pay fixation", i.e., when a resignation could be treated as "technical

resignation" and relevant part of it is mentioned hereinafter:

"i) The Govt. servant at the time of joining should intimate the details of such application immediately on their joining.

ii) The Govt. servant at the time of resignation should specifically make a request, indicating the dates that he is resigning to take up another appointment under the Govt./Govt. Organization for which he applied before joining the Govt. service and that his resignation may be treated a 'technical resignation'.

iii) The authority accepting the resignation should satisfy itself that had the employee been in service on the date of application for the post mentioned by the employee, his application would have been forwarded proper channel."

25. In rejoinder, learned Senior Advocate appearing for petitioner has reiterated that Central Universities Retirement Benefit Rules, 1967 would only be applicable and he also referred relevant paragraphs of writ petition, rejoinder affidavit and supplementary affidavit as well as that in present facts and circumstances, break could be condoned.

26. Heard learned counsel for parties and perused the material available on record.

27. The first issue for consideration is that whether the judgment passed in earlier round of litigation by this Court and as upheld by Supreme Court in 1992 Suppl(2) SCC 2 would be applicable in the facts of present case, i.e., for the purpose of counting the earlier service of about 11 years or whether the said judgment was limited to consideration of Clause (a) of

Para 2 of “Merit Promotion Scheme”. It is the case of petitioner that the reasoning given in aforesaid judgment would be applicable in the present facts and circumstances of case, however, per contra, the stand of Banaras Hindu University is contrary.

28. In earlier round of litigation it is not under much dispute that the only issue before this Court as well as Supreme Court was to consider 8 years of continuous service for the purpose of consideration under “Merit Promotion Scheme” and specifically in a situation where an employee has worked in two institutions as it was specifically contemplated in aforesaid paragraphs.

29. In above background, this Court as well as Supreme Court has given benefit of four years of service in other institution as well as four years of service in same institution and, therefore, interpreted the words “continuous service” in that regard as well as a short break between said two services was condoned. For the purpose of said clause, the specific issue was that even a person who has served in more than one institution could still be considered for promotion under “Merit Promotion Scheme”, i.e., a beneficial scheme.

30. So far as the issue, whether the said interpretation of “continuous service” would also be applicable for the purpose of calculating service for re-fixation of pension is concerned, it was neither the issue under consideration in that case nor any reference directly or indirectly was made. Therefore, it is very difficult to accept the submission of learned Senior Advocate appearing for petitioner that the findings returned therein would completely

applicable in the facts and circumstances of present case, i.e., for calculating entire earlier service of 11 years for the purpose of re-fixation of pension, as it would require interpretation of other provisions governing the field for fixation of pension.

31. It is not under much dispute that petitioner was appointed after serving for about two years in Nagpur University, in a fresh selection process on 22.09.1982 at Banaras Hindu University and on retirement his pension was determined taking his service from said date.

32. Banaras Hindu University has its own Statutes as well as there are two rules applicable in present case, i.e., Central Civil Service Pension Rules, 1972 and Central Universities Retirement Benefit Rules, 1967. Now Court has to consider, how they interplay for the purpose of calculation of qualifying service for pension, condonation of break and effect of working in other institution etc.

33. The Central Universities Retirement Benefit Rules, 1967 are applicable to an University established or incorporated by or under a Central Act and there is no dispute that Banaras Hindu University is a Central University in terms of said definition, therefore, the provisions of these Rules are applicable to employees (teaching and non-teaching) of said University. At this stage, it would also be relevant to mention that Central Civil Service Pension Rules, 1972 are also applicable and only dispute, if any, would come, when they are contrary to each other.

34. Learned Senior Advocate appearing for petitioner has placed reliance on following rules of Central Universities Retirement Benefit Rules, 1967 which are

similar to Central Civil Service Pension Rules, 1972:

“2.9 ‘Qualifying Service’ means service rendered as a member of the staff of the University in a substantive capacity including periods spent on probation. All service rendered to the University on a fulltime basis in a temporary or officiating capacity followed without interruption by confirmation in the same or another post shall count as qualifying service except in respect of periods of service paid from “Contingencies”.

Note:1 An employee may add to his service qualifying for superannuation pension but not for any other class of pension:

The actual period not exceeding one fourth of the full length of his service or the actual period by which his age at the time of recruitment exceeds twenty five years or a period of five years whichever is least, if the post is one:-

(a) for which postgraduate research or specialist qualifications, or experience in scientific, technological or professional field is essential, and

(b) to which candidates of more than twenty five years of age are normally recruited.

Provided that this concession shall not be admissible to any such employee unless his qualifying service at the time he quits University service is not less than ten years.

The decision to grant this concession shall be taken by the Executive Council at the time of recruitment of the employee.

NOTE:2 The powers of condonation of break in service will ordinarily rest with the Executive Council of the University. The condonation of break

in service can be done under the following circumstances:-

(1) The interruptions should have been caused by reasons beyond the control of the employee concerned.

(2) Service preceding the interruption should not be less than of five years duration and in cases where there are two or more interruptions, the total service, pensionary benefits in respect of which will be lost if the interruptions are not condoned should not be less than five years;

(3) The interruption should not be of more than one year's duration. In cases where there are two or more interruptions the total of the period of all the interruptions that are condoned should not exceed one year.

Provided that, in exceptional cases the Executive Council shall recommend to the Visitor for condonation of the break in service for a period exceeding one year; in case of an employee who has put in ten years qualifying service preceding the interruption or the first of the interruptions of the service, when there are more than one; if such condonation is considered necessary in the interest of the University. The period of break even though condoned by the Executive Council, shall not count as qualifying service.”

“2.19 “Employee” means member of the staff (both academic and non-academic) of the University.”

“5. (i) Transfer of Employees of one Central University to the other.

As a general policy, when an employee of one Central University gets transferred to any other Central University and the latter decides to absorb him permanently, the absorption should be made with the consent of the parent University provided the transfer is judge to

decide whether the transfer is in public interest or not.

“Employees joining a University after leaving the service of another Central University shall, in the event of their permanent absorption in the new University, be allowed retirement benefits in respect of their previous service rendered under the old University provided that there is no break in the service, excepting for the admissible transit time to join the new post, and the service rendered is qualifying. They will however, not be allowed to change over from scheme in Appendix ‘A’ to that in Appendix ‘B’ or vice-versa.”

“NOTE:- For the purpose of these rules resignation of an appointment in a University to take up with proper permission another appointment in another University is not a resignation of service.”

35. As referred above, “qualifying service” means, service rendered as a member of the staff of University in a substantive capacity including periods spent on probation. In the present case, petitioner’s service after he was duly appointed in Banaras Hindu University on 22.09.1982 till his retirement, was calculated.

36. The Court also takes note that Note 2 of Rule 2.9 that power of condonation of break in service is with Executive Council of University and said Note also provides circumstances under which a break can be condoned. The most relevant being the interruption should have been caused by reason beyond the control of employee concerned.

37. In the present case interruption in service when petitioner joined at Nagpur University cannot be considered an

interruption caused by reason beyond the control of petitioner as he has participated in selection process on his own will. It is undisputed that Executive Council of University has not condoned the break. Therefore, the case of petitioner would also not fall within the other circumstances of interruption mentioned in said Note 2 of Rule 2.9 of Central Universities Retirement Benefit Rules, 1967.

38. Now the Court takes note of relevant provisions of Central Civil Service Pension Rules, 1972 on which heavy reliance was placed by learned Senior Advocate appearing for University.

39. Rule 13 provides commencement of qualifying service, i.e., qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. Therefore, the definition of “qualifying service” in both Rules appears to be similar.

40. Court also takes note of proviso to said Rule 13 that officiating of temporary service is followed without interruption by substantive appointment in the same or another service or post will also included in “qualifying service”. However, the case of petitioner would not fall within the said proviso also since it does not have any connection of prior service of another University.

41. So far as interruption in service is concerned, the relevant rule would be Rules 27 and 28 of Central Civil Service Pension Rules, 1972. Rule 27 provides effect of interruption in service that except the cases prescribed therein, interruption in

service of a Government servant would entail forfeiture and undisputedly case of petitioner would not fall within any of the exception since it is not a case of transfer, rather petitioner, after his three years tenure was over at Banaras Hindu University, has participated in a fresh selection process conducted by Nagpur University where he was selected, therefore, it would not be a case of transfer. Similarly as subsequently on a fresh appointment he had joined Banaras Hindu University, therefore, it would also not be a case of transfer.

42. Rule 28 of Central Civil Service Pension Rules, 1972 provides condonation of interruption in service. It provides that an interruption between two spells of civil service rendered by a Government servant under Government including civil service rendered and paid out of Defence Services Estimates or Railway Estimates shall be treated as automatically condoned. However, the case of petitioner would also not fall within the ambit of said condonation since petitioner has worked in another University.

43. At this stage, Court also takes note of Rule 26 of Central Civil Service Pension Rules, 1972 which provides forfeiture of service or resignation that it would entail forfeiture of past service and petitioner has not shown that he applied through proper channel in Nagpur University and since the earlier service as temporary was only extended upto 31.03.1980, therefore, it would not be a case that petitioner after resignation has participated in a fresh selection process at Nagpur University.

44. In aforesaid circumstances, the judgments relied by learned Senior Advocate for University in **Director**

General, CSIR v. K. Narayanaswami (supra) and Dr. Rajesh Kumar Sharma vs. Union of India and others (Writ-A No. 2315 of 2019), decided on 14.02.2019 would be relevant and following paragraphs of it are referred hereinafter:

Director General, CSIR v. K. Narayanaswami (supra):

“8. If the aforesaid Rule were to determine the question of condonation, specific order of the appointing authority was a pre-requisite. Admittedly, there is no such order. Secondly, even if the substituted Rule were to apply because of the superannuation of the respondent in 1992, by which date substituted Rule had come into force, we are of the view that Rule cannot override what has been mentioned in the aforesaid proviso to Rule 13. This is for the reason that any contrary view would make the proviso altogether otiose. It is a settled rule of interpretation that where two provisions operate on one field, both have to be allowed to have their play, unless such operation would result in patent inconsistency or absurdity. If Rule 28 were to be confined to the interruption between two substantive appointments, as is the contention on behalf of the appellant, we are of the view that both the aforesaid provisions can co-exist, and harmoniously. Rule 13 being on the subject of 'commencement' of qualifying service, the same has first to commence, which, in case the incumbent be in temporary service first would not if there be interruption between temporary service and substantive appointment, because of what has been mentioned in the first proviso. Where the qualifying service has commenced, Rule 28 would take care of interruption; and the period of interruption would then stand condoned in the absence of a specific

indication to the contrary in the service book. This is the field of operation of these two Rules, according to us, as the same would permit, in such a case, both the provisions to co-exist.”

Dr. Rajesh Kumar Sharma (supra):

“However, against the subsequent advertisement no.7/2014-15 pursuant to which petitioner has been selected neither the application was made through proper channel, nor any No Objection Certificate was issued to him by Govind Ballabh Pant Institute of Himalayan Environment and Development. This letter is not in issue. The recital of facts therein, as per which petitioner had not applied against post code 3889 through proper channel, is also not disputed. In view of the office memorandum dated 8.4.2016 the resignation of petitioner from the previous employer would not be covered within the definition of 'technical resignation', and therefore, benefit of pay protection would not be available to the petitioner.”

45. In aforesaid circumstances, the only argument of learned Senior Advocate for petitioner left for consideration is, whether petitioner was subject to arbitrariness and reliance placed on **State of Rajasthan and others vs. O.P. Gupta (supra)** is applicable or not.

46. The allegation of arbitrariness would not have any bearing on present case since, as referred above, all other arguments on merit have been rejected and it is well settled that there is no negative parity and benefit, if any granted to other employees contrary to law, would not entitle petitioner to get same benefit. Otherwise, also explanation given by Banaras Hindu University

makes their case different. Accordingly, argument of arbitrariness is also rejected.

47. Now the Court takes note of a judgment relied on by learned Senior Advocate for petitioner passed in **State of Rajasthan and others vs. O.P. Gupta (supra)** wherein question of prior permission was presumed since in the given circumstances it could not be ascertained or objected after more than two and half decades, whereas in the present case petitioner has not asserted that he has participated in selection process at Nagpur University with prior permission. Therefore, the facts of present case, being distinguishable, therefore, the judgment in **State of Rajasthan and others vs. O.P. Gupta (supra)** will also not helpful for the petitioner.

48. In aforesaid circumstances, the Court is of the view that all arguments raised by learned Senior Advocate for petitioner has no legal basis, whereas arguments raised by learned Senior Advocate for Banaras Hindu University has substance. Therefore, the prayer made in this writ petition to re-fix pension of petitioner by including his 11 years of prior service, being without any legal basis, is hereby rejected.

49. The writ petition is accordingly dismissed.

50. No order as to costs.

(2025) 4 ILRA 251
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.04.2025
BEFORE
THE HON'BLE AJIT KUMAR, J.

Writ A No. 20607 of 2024

Devendra Kumar Verma ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Santosh Kumar Verma

Counsel for the Respondents:

C.S.C., Siddharth Singhal

Normalization rule-Advertisement was issued – normalization not mentioned in the advertisement-contended that the entire result published liable to be quashed-normalization rules have been made applicable on account of different set of question asked in different set of papers -to do justice - as the questions may be tough in some ways and easier in other ways - so a balance is to be struck for the purposes of creating merit list- Nothing has been argued as to why the normalization rule is bad -the written test has been held subsequently to the notification -applying normalization to the test in question justified.

W.P. dismissed. (E-9)

(Delivered by Hon'ble Ajit Kumar, J.)

(C.M.A No. 2 of 2025: Application for impleadment)

The impleadment application is allowed.

Petitioner is directed to carry out necessary impleadment forthwith.

(Writ Petition)

1. Heard Shri Santosh Kumar Verma, learned counsel for petitioner and Shri Siddharth Singhal, learned counsel appearing for respondent No. 2, namely, the Secretary U.P. Suobrdinate Service Selection Commission, Lucknow.

2. By means of this petition filed under Article 226 of the Constitution petitioner has prayed for a writ of certiorari to quash the selection result dated 22.09.2024 declared/published by the

respondent No. 2 raising a plea that the normalization rules that have been made application to the written test held in the matter was not a justified action in view of the notification issued on 22.05.2019□ which specifically quoted certain advertisement pursuant to which selection was underway at that point of time.

3. It is submitted that the advertisement was issued for the post of Gram Panchayat Adhikari, Gram Vikas Adhikar and Samaj Kalyan Parivakshek being numbered 2-examination 2018 and had the Government this intention in mind to apply normalization rules it would have mentioned this in the advertisement dated 22.05.2019. Thus, it is contended that the entire result that has been published on the basis of normalization rules is liable to be quashed.

4. Meeting the submissions so advanced by learned counsel for petitioner Shri Singhal, argued that this advertisement though was issued in the year 2018 but the selection process initially had already concluded□ prior to the issuance of the notification dated 22.05.2019. However, since the selection process was annulled subsequently by the State Government immediately after some time, so fresh written test was liable to be held and so written test was held on 26.06.2023 and it is for this very reason that the said advertisement could not find mention in the notification dated 22.05.2019. It is contended that, had the Government not annulled the selection process then the selection would have been completed in the year 2018 itself and there would have been no question to hold fresh written examination and to apply normalization rules. It is submitted that since the selection process was annulled

and the fresh written examination was held after the year 2019, then in view of the last paragraph of the notification dated 22.05.2019 and since the written examination was conducted in more than one shift, the normalization rule was adopted and applied and, hence, there was not flaw in the procedure followed.

5. Having heard learned counsel for respective parties and having perused the records while I find that there is no mention of the advertisement bearing No. 2-examination 2018 in the notification dated 22.05.2019 but the counsel for petitioner could not dispute that the selection process that was undertaken pursuant to the said advertisement had already been annulled prior to the date of notification dated 22.05.2019. In such circumstances, therefore, the Commission was at liability to issue fresh notification for holding written test and accordingly those candidates who had applied earlier pursuant to the advertisement were permitted to participate in the written examination that was held on 26.06.2023. The last paragraph of the notification dated 22.05.2019 which has become relevant here is reproduced below:

"उल्लेखनीय है कि आयोग के आगामी विज्ञापनों के सापेक्ष प्राप्त आवेदन पत्रों की संख्या के अनुसार जहां एक से अधिक शिफ्टों में परीक्षा आयोजित की जायेगी उन परीक्षाओं पर उक्त नार्मलाइजेशन प्रक्रिया लागू की जा सकेगी। आयोग द्वारा लागू की गयी नार्मलाइजेशन प्रक्रिया का सूत्र (formul) सुलभ संदर्भ हेतु संलग्न।"

6. From a bare reading of the aforesaid paragraph it transpires that the Commission intended to apply

normalization rules in all such written examinations that are either notified under the notification dated 22.05.2019 or otherwise to be held in future where tests are to be held in two shifts. In my considered view, unless and until the normalization rules itself are questioned to be flawed one, the commission cannot be said to have faulted in applying normalization rules to all future examination pursuant to the notification dated 22.05.2019.

7. Even otherwise and looking to the object I find that normalization rules have been made applicable on account of different set of question asked in different set of papers and to do justice to the candidates as the questions may be tough in some ways and easier in other ways and so a balance is to be struck for the purposes of creating merit list. Nothing has been argued before me as to why the normalization rule is bad and hence should not have been applied. In my considered view since the written test has been held subsequently to the notification dated 22.05.2019, the Commission was fully justified in applying normalization to the test in question.

8. Petition lacks merits and is accordingly dismissed.

(2025) 4 ILRA 253
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.04.2025
BEFORE
THE HON'BLE NEERAJ TIWARI, J.

Writ A No. 21727 of 2023

Binay Kumar Singh & Anr. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:

Saroj Kumar Yadav, Sr. Advocate

Counsel for the Respondents:
C.S.C.

1. Service Law-Constitution of India, 1950- Article 226-The Uttar Pradesh Transport (Subordinate) Technical Service Rules, 1980 - The Uttar Pradesh Government Servants Seniority Rules, 1991 - The Uttar Pradesh Public Services (Reservation of Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994-Section 3(7) - The Uttar Pradesh Government Servants Seniority (First Amendment) Rules, 2002- Rule 8A- It is undisputed that petitioners were senior at the time of recruitment before enforcement of Section 3(7) of Act, 1994 alongwith Rule 8A of Rules, 1991 i.e., reservation in promotion, they are entitled for promotion against the selection year 2007-08 & 2008-09 for which junior to them i.e. Scheduled Caste Category candidates have been promoted vide order dated 31.12.2008. In that eventuality, they were also entitled for their names in seniority list, at serial Nos. 196 & 197, which was earlier given to S.C. category candidates--- There is no denial of the fact that prior to amendment in Uttar Pradesh Government Servants Seniority (First Amendment) Rules, 2002 (inserting Rule 8A), petitioners are entitled for promotion against the selection year 2007-08 & 2008-09 alongwith seniority at serial No. 196 & 197 prior to Scheduled Caste category candidates.

2. In light of facts of the case specially, recommendation of three members committee dated 2.2.2023 and clarification of Transport Commissioner dated 21.7.2023 it is apparently clear that in granting notional seniority to petitioners, there is no legal impediment except the Government Order dated 21.8.2015, which provides that candidate of unreserved category shall not claim any additional emoluments or personal pay on the ground of their seniority, otherwise petitioners are fully entitled for notional seniority for selection year 2007-08 & 2008-09 at serial No. 196 & 197 in seniority list--There is undertaking of the petitioners before this Court that they will not claim any additional emoluments or special pay in terms of

Government Order dated 21.8.2015--- Respondents are directed to grant notional seniority to petitioners placing them at Serial Nos. 196 & 197 in seniority list alongwith all consequential benefits.

Petition allowed. (Para 16, 23, 24 & 26) (E-15)

List of Cases referred:-

1. Uttar Pradesh Power Corp. Ltd. Vs Rajesh Kumar & ors.(2012) 7 SCC 1

(Delivered by Hon'ble Neeraj Tiwari, J.)

1. Heard Sri H.N. Singh, learned Senior Advocate assisted by Sri Saroj Kumar Yadav, learned counsel for the petitioners and learned Additional Chief Standing Counsel for the State-respondents.

2. Present petition has been filed with the following prayers:-

"(i) Issue a suitable writ, order or direction in the nature of certiorari quashing the impugned order dated 21.11.2023 passed by the Principal Secretary, Transport Department, U.P. Government, Lucknow.

(ii) Issue a suitable writ, order or direction in the nature of mandamus commanding the respondents to promote the petitioners to the posts of Regional Transport Officer treating their names placed at serial Nos. 196 and 197 of the seniority list of Assistant Regional Transport Officer with effect from the date the other Assistant Regional Transport Officer below in the seniority after 196 & 197 have been promoted.

(iii) Issue a suitable writ, order or direction in the nature of mandamus commanding the respondents to place the petitioners at serial Nos. 196 & 197 of the seniority list of Assistant Regional

Transport Officer and to provide all consequential benefit of the same."

3. Brief facts of the case are that U.P. Public Service Commission has issued advertisement for the appointment on the post of Regional Inspector (Technical)/ Technical Inspector. Pursuant to the advertisement, petitioners have been recommended for selection on the said post alongwith 12 other candidates including 5 Scheduled Caste category candidates, namely, Satish Kumar, Anand Nirmal, Ashok Kumar, Munshi Lal and Rajesh Kardam. After submission of joining on the post of Regional Inspector (Technical)/ Technical Inspector, petitioner no.1 was placed in the seniority list at serial no. 61 and petitioner no. 2 was at serial no. 62 whereas Scheduled Caste category candidates namely, Satish Kumar, Anand Nirmal, Ashok Kumar, Munshi Lal and Rajesh Kardam were placed at serial nos. 65, 67, 71, 72, 73.

4. The service condition of petitioners are governed by the provision of Uttar Pradesh Transport (Subordinate) Technical Service Rules, 1980 (hereinafter referred to as Rules, 1980). The seniority of petitioners are governed by the provision of Uttar Pradesh Government Servants Seniority Rules, 1991 (hereinafter referred to as Rules, 1991). Reserved category candidates are also entitled for benefit of promotion in terms of Uttar Pradesh Public Services (Reservation of Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (hereinafter referred to as Act 1994).

5. The State of Uttar Pradesh in terms of Act, 1994, amended the Rules, 1991 by Uttar Pradesh Government Servants Seniority (First Amendment)

Rules, 2002 (inserting Rule 8A), which provides consequential seniority to Scheduled Caste or Scheduled Tribes category candidates after promotion. Providing the benefit of reservation in promotion, junior to petitioners, namely, Satish Kumar, Anand Nirmal, Ashok Kumar, Munshi Lal and Rajesh Kardam were given promotion on the post of ARTO alongwith seniority vide order dated 31.12.2008 for selection year 2007-08 & 2008-09 and they have been placed in the seniority list at Serial Nos. 196 to 200. Later on, petitioner nos. 1 & 2 were also promoted on the post of Assistant Regional Transport Officer (in short ARTO) vide orders dated 21.11.2012 & 8.4.2013 and they have been placed in the seniority list at Serial Nos. 227 & 229.

6. Section 3(7) of Act, 1994 and Rule 8A of Rules, 1991 were challenged before this High Court and ultimately matter went up before Apex Court in the matter of ***Uttar Pradesh Power Corporation Limited vs. Rajesh Kumar and others*** reported as (2012) 7 SCC 1 in which Apex Court vide judgment and order dated 27.4.2012 declared the Section 3(7) of Act, 1994 and Rule 8A of Rules, 1991 ultra vires.

7. For compliance of order of Apex Court, State Government has issued Government Orders dated 08.05.2012 and 21.8.2015. By the aforesaid Government Orders, benefit of seniority extended to category of Scheduled Caste category candidates has been withdrawn and they have been reverted in the seniority list below the unreserved category candidates who were senior and promoted later on. Government Order dated 21.8.2015 provides that candidate of unreserved category shall not claim any additional

emoluments or personal pay on the ground of their seniority.

8. The Principal Secretary Transport, Anubhag-3, Lucknow vide order dated 9.9.2015 passed an order reverting the candidate who had been earlier given the benefit of reservation in promotion namely, Satish Kumar, Anand Nirmal, Ashok Kumar, Munshi Lal and Rajesh Kardam. Later on vide order dated 27.1.2016 their new seniority have been fixed and placed at serial No. 231A, 232A, 235A, 235B & 235C.

9. Learned Senior Advocate on behalf of petitioners submitted that in light of aforesaid facts, now in the seniority list, serial No. 196 to 200 become vacant and same is still vacant. Undisputedly, petitioners are senior to similar Scheduled Caste category candidates, namely, Satish Kumar, Anand Nirmal, Ashok Kumar, Munshi Lal and Rajesh Kardam, therefore, after judgment of Apex Court, they are entitled for promotion from the date on which junior to them were promoted i.e. 31.12.2008 against the vacancy of selection year 2007-08 & 2008-09. After compliance of judgment of Apex Court, junior to them were kept below in seniority list, petitioners have not been given notional seniority from the date they were entitled i.e. 31.12.2008. He also pointed out that petitioners are not claiming any additional emoluments or personal pay in light of Government order dated 21.08.2015 and they are only claiming notional seniority.

10. He next submitted that for the appointment on the post of ARTO, there are three feeding cadres, 50% by direct recruitment and 50% by promotion. Further, out of 50% of promotion, 25% from Regional Inspector (Technical) and 25

% from Passenger/Goods Tax Officer. He also pointed out that between 31.12.2008 to 21.11.2012 from other feeding cadre appointment/promotion was made on the post of ARTO and they became senior to petitioners. Without notional seniority, they are deprived from promotion on the next higher post i.e. Regional Transport Officer (hereinafter referred to as R.T.O.). Therefore, petitioner has approached this Court by filing Writ-A No. 5956 of 2022 before the Lucknow Bench, which was dismissed as withdrawn vide order dated 14.9.2022 with liberty to file fresh petition. Thereafter, petitioners have filed another Writ-A No. 16767 of 2023 before this Court, which was disposed of vide order dated 12.10.2023 with direction to State Government to decide the representation of petitioner. Petitioners had submitted the representation along with certified copy of order dated 12.10.2023

11. After receiving the representation, State Government vide order dated 13.5.2023 has called report from Transport Commissioner. Upon that three members committee was constituted and Additional Divisional Transport Commissioner (Administration/Enforcement) alongwith letter dated 9.2.2023 submitted the report dated 2.2.2023 of three members committee before the Principal Secretary, U.P. Govt. recommending to grant the notional seniority to petitioners alongwith three other employees against the vacant posts for selection year 2007-08 & 2008-09. After receiving the said report, Joint Secretary, Transport Section-3, Lucknow vide order dated 3.5.2023 has raised six queries with regard to implementation of recommendation of three members committee. The said letter was replied by Transport Commissioner vide letter dated

21.7.2023 justifying the recommendation of three members committee for giving the notional seniority at Serial Nos. 196, 197 against the selection year 2007-08 & 2008-09, but surprising claim of petitioner for notional seniority at serial No. 196 & 197 has been rejected vide impugned order dated 21.11.2023. In the impugned order dated 21.11.2023, recommendation of three members committee as well as clarification of Transport Commissioner in favour of petitioners has not been disputed, but only ground taken is that they cannot be given any extra emoluments or special pay in terms of government order dated 21.8.2015 and cannot be granted notional seniority for selection year 2007-08 & 2008-09.

12. He firmly submitted that petitioners undertake before the Court that they would not claim any extra emoluments or special pay in terms Government Order dated 21.8.2015 in case of grant of notional seniority. He further pointed that due to non re-fixation of seniority of petitioners at serial No. 196 & 197 as recommended by three members committee, petitioners are suffering irreparable loss as they became junior to those candidates who were appointed/promoted on the post of ARTO from other feeding cadre between 31.12.2008 to 21.11.2022 and deprived from promotion on the next higher post i.e. R.T.O.

13. He also submitted that recently for notional promotion on the post of ARTO, Principal Secretary, Govt. of U.P. has written letter dated 21.1.2025 to Secretary, Uttar Pradesh Public Service Commission to grant notional promotion to the officers in the same department working on the post of Passenger/Goods

Tax Officer. He has produced the letter no. iz0e0 142@rhl&3&2024 dated 21.1.2025, which is taken on record.

14. Learned Additional Chief Standing Counsel has opposed the submission and submitted that in terms of Government Order dated 21.8.2015, petitioners are not entitled for emoluments or special pay, therefore, notional promotion may not be granted.

15. Being confronted by the Court, he could not dispute the fact that seniority list from Serial Nos. 196 to 200 is still vacant and in case notional seniority is given to petitioners, seniority of none other personnel would be disturbed, there are three feeding cadres for the post of ARTO and further there is positive recommendation of three members Committee as well as clarification of Transport Commissioner in favour of petitioners for grant of notional promotion. He also could not dispute about the letter dated 21.1.2025 written by Principal Secretary, Govt. of U.P. to Secretary, Uttar Pradesh Public Service Commission for granting notional promotion on the post of ARTO to all the officers working on the post of Passenger/Goods Tax Officer.

16. I have considered the rival submissions advanced by the learned counsel for the parties and perused the record. It is undisputed that petitioners were senior at the time of recruitment before enforcement of Section 3(7) of Act, 1994 alongwith Rule 8A of Rules, 1991 i.e., reservation in promotion, they are entitled for promotion against the selection year 2007-08 & 2008-09 for which junior to them i.e. Scheduled Caste Category candidates have been promoted vide order dated 31.12.2008. In that eventuality, they

were also entitled for their names in seniority list, at serial Nos. 196 & 197, which was earlier given to S.C. category candidates. In the counter affidavit, there is no denial of the fact that prior to amendment in Uttar Pradesh Government Servants Seniority (First Amendment) Rules, 2002 (inserting Rule 8A), petitioners are entitled for promotion against the selection year 2007-08 & 2008-09 alongwith seniority at serial No. 196 & 197 prior to Scheduled Caste category candidates.

17. I have perused the recommendation of three members committee report dated 2.2.2023 submitted alongwith letter dated 9.2.2023. Relevant part of the same is being quoted hereinbelow:-

"अतः समिति का यह सुविचारित मत है कि मा० सर्वोच्च न्यायालय द्वारा पारित आदेश दिनांक 27.04.2012 के समादर में पदोन्नति में आरक्षण एवं परिणामी ज्येष्ठता का लाभ प्राप्त कर दिनांक 15.11.1997 से 28.04.2012 तक प्रोन्नत कर्मियों (श्री सतीश कुमार, श्री आनन्द निर्मल, श्री अशोक कुमार, श्री मुंशीलाल एवं श्री राजेश कदम) के पदावनत हो जाने से उक्त चयन वर्ष 2007-08 एवं 2008-09 में रिक्त 05 पदों के सापेक्ष श्री विनय कुमार सिंह व श्री सत्येन्द्र प्रकाश सिंह एवं अन्य 03 कर्मियों का चयन सहायक सम्भागीय परिवहन अधिकारी के पद पर करते हुए नियमानुसार ज्येष्ठता का निर्धारण शासन स्तर पर विचार कर किया जा सकता है।"

18. From perusal of the aforesaid report, it is apparently clear that there is clear recommendation in favour of petitioners and three other persons to grant seniority as prayed.

19. After receiving the report, State Government has sought six queries from the Transport Commissioner and thereafter, Transport Commissioner has given specific reply to the six queries on 21.7.2023.

Relevant reply of the query is being quoted below:-

प्रस्तावित ज्येष्ठता निर्धारित किये जाने फलस्वरूप किसी अन्य कार्मिक की ज्येष्ठता प्रभावित तो नहीं होगी।	शासन के कार्यालय आदेश सं०- 1482/30-3-14-73 जीडब्लू/1990, दि० 05.06.2014 द्वारा सीधी भर्ती / पदोन्नति से नियुक्त सहायक सम्भागीय परिवहन अधिकारी की ज्येष्ठता सूची निर्धारित की गयी। उक्त ज्येष्ठता सूची में चयन वर्ष 2007-08 एवं 2008-09 में संभागीय निरीक्षक (प्राविधिक) कोटे से चयनित कार्मिकों की ज्येष्ठता क्रमशः श्री सतीश कुमार (अनु०जा०) (ज्येष्ठता क्रमांक-196), श्री आनन्द निर्मल (अनु०जा०) (ज्येष्ठता क्रमांक- 197), श्री अशोक कुमार (अनु०जा०) (ज्येष्ठता क्रमांक- 198), श्री मुंशी लाल (अनु०जा०) (ज्येष्ठता क्रमांक- 199) एवं श्री राजेश कुमार (अनु०जा०) (ज्येष्ठता क्रमांक- 200) निर्धारित की गयी तथा श्री विनय कुमार सिंह की ज्येष्ठता-227 एवं श्री सत्येन्द्र प्रकाश सिंह की ज्येष्ठता-229 निर्धारित की गयी। पुनः पदावनति कार्मिकों में से सम्भागीय निरीक्षक संवर्ग के श्री सतीश कुमार, श्री आनन्द निर्मल, श्री अशोक कुमार, श्री मुंशीलाल एवं श्री राजेश कदम, जोकि संभागीय निरीक्षक (प्राविधिक) के पद से सहायक सम्भागीय परिवहन अधिकारी के पद पर पदोन्नति हुए थे। उ० प्र० शासन, परिवहन अनुभाग-3 के कार्यालय-आदेश सं०-1482/ 30-3-2014-73जीडब्लू / 90, दि० 05.06.2014 द्वारा जारी सहायक सम्भागीय परिवहन अधिकारी संवर्ग की ज्येष्ठता सूची को श्री सतीश कुमार, श्री आनन्द निर्मल, श्री अशोक कुमार, श्री मुंशीलाल एवं श्री राजेश कदम के पदावनति के उपरान्त उ० प्र० शासन, परिवहन अनुभाग-3 के कार्यालय-जाप सं०-178/ 30-3-16-73 जीडब्लू/90, दि० 27.01.2016 द्वारा संशोधन करते हुए उक्त कार्मिकों की ज्येष्ठता क्रमशः श्री सतीश कुमार (अनु०जा०) (ज्येष्ठता: क्रमांक-231ए), श्री आनन्द निर्मल

	(अनु०जा०) (ज्येष्ठता क्रमांक- 232ए), श्री अशोक कुमार (अनु०जा०) (ज्येष्ठता क्रमांक- 235ए) श्री मुंशी लाल (अनु०जा०) (ज्येष्ठता 255 एवं श्री राजेश कुमार (अनु०जा०) (वरिष्ठता क्रमांक 235सी) निर्धारित की गयी। उक्त कार्मिकों की ज्येष्ठता नवीन निर्धारित हो जाने से ज्येष्ठता क्रमांक 106 से 200 तक वर्तमान में किन्त्री कार्मिक की ज्येष्ठता निर्धारित नहीं है। दिनांक 11.01.2023 की समिति द्वारा बैठक कर उपलब्ध कराई गयी कार्यवृत्त के अनुसार भयम वर्ष 2007-00 पूर्व 2008-09 में रिक्त 05 पदों के सापेक्ष श्री विनय कुमार सिंह ये श्री सत्येन्द्र प्रकारा सिंह एवं अन्य ०३ कार्मिकों का चयन सहायक सम्भागीय परिवहन अधिकारी क पद पर नियमानुसार पदोन्नति कप ज्येष्ठता 196 से 200 तक निर्धारण की जाने हेतु अपना अभिमत दिया गया है। अतः किसी अन्य कार्मिक की ज्येष्ठता प्रभावित नहीं होगी।

20. From perusal of the aforesaid reply, clarification of Transport Commissioner is also in favour of petitioners and three other persons with specific averment that in seniority list at serial no. 196 to 200 is still vacant and further after granting notional seniority, seniority of none other personnel shall be affected.

21. I have perused the counter affidavit as well as impugned order. There is no denial or dispute about the facts so mentioned in three members committee report as well as clarification of Transport Commissioner. The only reason is given that in terms of Government Order dated 21.8.2015, petitioners are not entitled for any additional emoluments or special pay,

therefore, notional seniority for selection year 2007-08 & 2008-09 cannot be granted.

22. Further, this is not the first time claim of notional seniority has been raised by the officer of the department. Vide letter dated 21.1.2025, Principal Secretary, Govt. of U.P. has written letter to Secretary, U.P. Public Service Commission for granting notional promotion on the post of ARTO to the certain officers of the department, who was working on the post of Passenger/Goods Tax Officer, therefore, in light of such facts mentioned hereinabove, there is no legal impediment in granting the notional seniority and consequential benefit of promotion to petitioners also.

23. In light of facts of the case specially, recommendation of three members committee dated 2.2.2023 and clarification of Transport Commissioner dated 21.7.2023 it is apparently clear that in granting notional seniority to petitioners, there is no legal impediment except the Government Order dated 21.8.2015, which provides that candidate of unreserved category shall not claim any additional emoluments or personal pay on the ground of their seniority, otherwise petitioners are fully entitled for notional seniority for selection year 2007-08 & 2008-09 at serial No. 196 & 197 in seniority list.

24. Now coming to the present case, there is undertaking of the petitioners before this Court that they will not claim any additional emoluments or special pay in terms of Government Order dated 21.8.2015 and further in light of facts that serial No. 196 to 200 are sill vacant in seniority list and in granting the aforesaid seniority, seniority of none other personnel would be affected, therefore, petitioners are fully entitled for notional seniority and

2. However, no one has appeared on behalf of the opposite party Nos.8 & 9.

3. By means of this writ petition, the petitioner has prayed for the following reliefs:

“(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 10.08.2018 passed by the opposite party No.3, as contained in Annexure No.1 to the writ petition.

(ii) to issue a writ, order or direction in the nature of certiorari quashing the decision dated 08.06.2018 and 17.07.2018 taken by the interim Committee Management of Uttar Pradesh Rajya Nirman Sahkari Sangh Limited, Lucknow to dismiss the petitioner from service and recovery of Rs.7.55 lakhs from the service benefits/ assets of the petitioner, after summoning it in original from the opposite parties.

(iii) to issue a writ, order or direction in the nature of certiorari quashing the enquiry report dated 14.05.2018, as contained in Annexure No.2 to the writ petition.

(iv) to issue a writ, order or direction in the nature of certiorari quashing the order of approval No.863/Mandal/Anu-1-92, dated 09.08.2018 passed by the opposite party No.6, as referred in the impugned order dated 10.08.2018, after summoning in its original from the opposite parties.

(v) to issue a writ, order or direction in the nature of mandamus commanding the opposite parties to allow the petitioner to work on his post of Executive Engineer, Uttar Pradesh Rajya Nirman Sahkair Sangh Limited, Lucknow till the age of superannuation i.e. 31.08.2018 and pay him salary with all

consequential service benefits including the ritiral benefits.”

4. The brief facts of the case are that the petitioner was initially appointed on the post of Manager, in General Cadre of U.P. Cooperative Processing Unit and Cold Storage Centralized Services with the approval of the Chairman of the Administrative Committee on ad-hoc basis on 18.05.1989.

5. The date of superannuation of the petitioner was 31.08.2018 but before the date of superannuation the opposite party No.3 i.e. the Managing Director, Uttar Pradesh Rajya Nirman Sahkari Sangh Limited, Lucknow passed the impugned dismissal order on 10.08.2018 with the further direction that a sum of Rs.7,55,000/- would be recovered from the petitioner from his post retiral dues.

6. Since learned counsel for the petitioner has vehemently submitted that the impugned punishment order has been passed on the basis of enquiry report wherein no date, time and place was fixed by the Enquiry Officer to conduct the oral enquiry to prove the charges against the petitioner, therefore, I am not considering the other facts of the issue in question. Further, instead of conducting the departmental enquiry strictly in accordance with law the Enquiry Officer telephonically instructed the Project Engineer of Azamgarh Division to send the material and the Project Engineer vide his letter dated 05.10.2017 sent some material/ false report and on the basis of such report the Enquiry Officer held that the charge Nos. 1 and 2 are proved.

7. Attention has been drawn towards paras-54 & 55 of the writ petition,

wherein the specific recital has been given to the effect that no date, time and place to conduct the oral enquiry has been fixed by the Enquiry Officer. For convenience, paras-54 & 55 of the writ petition read as under:-

“54. That it is further submitted that the Enquiry Officer had become party in the disciplinary proceedings as he instructed on telephone to the Project Engineer, Azamgarh Division to send the material and on the telephonic instructions, the Project Engineer vide his letter dated 05.10.2017 sent the material/ false report on the basis of which the Enquiry Officer has held the charges No.1 and 2 proved. This action of the Enquiry Officer is unknown to settled principle of disciplinary proceedings.

55. That it is further submitted that although the Enquiry Officer has not mentioned in the enquiry report that any date, time and place was fixed by him for conducting the oral enquiry but surprisingly, in the impugned order, the opposite party No.3 has mentioned that the Enquiry Officer had fixed 17.08.2017 for personal/ oral hearing but the petitioner did not avail the same, whereas the correct fact is that at no point of time any notice, letter or order was communicated to the petitioner fixing the date by the Enquiry Officer on 17.08.2017 or any other date to appear before him for personal hearing/ oral enquiry.”

8. Replying the aforesaid contents of the petition, the opposite parties in para-25 of the counter affidavit could not dispute the aforesaid categoric submission regarding fixing the date, time and place for oral enquiry but has vaguely submitted that the enquiry against the petitioner was conducted and concluded in terms of the

Regulation 85 of the Regulations, 1975. It has no where been indicated in the aforesaid para as to how and when the date, time and place for oral enquiry has been fixed.

9. Learned counsel for the respondent-Bank was asked to show any other para of the counter affidavit wherein the aforesaid contention of the petitioner has been replied, but nothing has been shown to the effect that the Enquiry Officer had fixed the date, time and place to conduct an oral enquiry to prove the charges. Sri Alok Sharma has shown para-16 of the counter affidavit wherein it has been categorically indicated that the Enquiry Officer has conducted and concluded enquiry proceeding after considering reply of the petitioner and other relevant papers available in this regard and submitted enquiry report vide letter dated 14.05.2018. Sri Sharma has been confronted on the point that the enquiry could have not been concluded only considering the reply of the delinquent employee but the charges must have been proved by the department itself on the basis of oral enquiry fixing the date, time and place, but Sri Sharma could not defend that contention of the petitioner, however, he has submitted that before passing the impugned order the petitioner has given an opportunity of hearing seeking explanation from him issuing show cause notice. For convenience, para-25 of the counter affidavit reads as under:-

“25. That the contents of paragraphs-54 & 55 of the writ petition are not admitted as stated and in reply thereto the submissions made in preceding paragraphs of this counter affidavit are being reiterated here as correct. As detailed reply have already been given,

therefore, no need to repeat the same again to avoid unnecessary lengthiness. The deponent respectfully submits that after institution of the enquiry, the Enquiry Officer directed to the Project Engineer, Construction Division, Azamgarh to make him available the necessary information and in pursuance thereto the Project Engineer, Construction Division, Azamgarh vide letter dated 05.10.2017 provided the information based of documents. The deponent reiterates that the Enquiry Officer conducted the enquiry as per Regulation 85 of the U.P. Cooperative Societies Employees Service Regulations, 1975 and as per this regulation ample opportunity of defence was allowed to the petitioner."

10. Notably, in para-4 of the rejoinder affidavit, the petitioner had again taken the same ground of defective enquiry and in para-22 of the rejoinder affidavit the contents of para-25 of the counter affidavit have been denied indicating therein that the departmental enquiry against the petitioner could have not been conducted in terms of Regulation 85 of U.P. Cooperative Societies Employees Service Regulations, 1975 (here-in-after referred to as the "Regulations, 1975"). However, in para-5 of the supplementary counter affidavit dated 24.03.2025, it has been indicated that the petitioner was afforded an opportunity of personal hearing fixing date for 17.08.2017 by means of letter dated 31.07.2017 but the petitioner did not avail such opportunity.

11. On being further confronted to Sri Sharma on the point that since the departmental enquiry has not been conducted and concluded strictly in accordance with law, therefore, the impugned punishment order, which is

dependent upon the enquiry report, may likely to be set aside, Sri Sharma has stated that in any case if the impugned punishment order goes on account of faulty and illegal enquiry report, the department may be given liberty to conduct the denovo departmental enquiry from the stage of the defect in the departmental enquiry even if the petitioner had already retired. In support of his aforesaid submission, Sri Sharma has placed reliance upon the dictum of the Apex Court rendered in the case in re:- ***U.P. Cooperative Federation Ltd. and others vs. L.P. Rai reported in (2007) 7 SCC 81*** whereby the Apex Court has held that in case of defective enquiry, fresh departmental enquiry ought to have been conducted if the charges are serious.

12. Having heard learned counsel for the parties and having perused the material available on record, one fact is very clear that the Enquiry Officer did not conduct the departmental enquiry strictly in accordance with law by fixing the date, time and place for oral enquiry to prove the charges which have been levelled against the petitioner, therefore, the findings of the Enquiry Officer are illegal inasmuch as such findings are based on the defective enquiry.

13. The Apex Court in the case in re: ***Roop Singh Negi vs. Punjab National Bank and others reported in (2009) 2 SCC 570*** has held that mere production of documents is not enough but the contents of the documentary evidence has to be proved by examining the witnesses fixing the date, time and place for oral enquiry. The Apex Court in the case of ***Roop Singh Negi (supra)*** went to the extent that even if the delinquent employee confessed his guilt before the police relating to the same charge, so called confession itself would

not be sufficient and some evidence ought to have been brought on record that the delinquent employee was involved in the offence in question. Since the department has levelled the charges against the delinquent employee, therefore, it is responsibility and duty of the department to prove those charges through oral enquiry.

14. The Apex Court in the case in re: *State of U.P. and others vs. Saroj Kumar Sinha reported in AIR 2010 SC 3131* has reiterated the aforesaid proposition of law and held that if the Enquiry Officer has not fixed the date, time and place to conduct oral enquiry to examine the witnesses to prove the charges against the delinquent employee, the entire enquiry proceedings would be vitiated being violative of principles of natural justice and in total disregard of the fair play. Therefore, in that case, such enquiry report would be liable to be set aside/quashed and the impugned punishment order, which is based upon the enquiry report, would also be liable to be set aside/quashed.

15. Even if any opportunity of personal hearing was given to the petitioner, though the same has been denied by the learned counsel for the petitioner, but that opportunity of personal hearing would not suffice the purpose inasmuch as even if the delinquent employee did not avail such opportunity of personal hearing, the Enquiry Officer will have to prove the charges against the employee examining the witnesses and the documents by fixing the date, time and place for oral enquiry. Notably, in the present case, no date time and place has been fixed by the Enquiry Officer to conduct oral enquiry to prove the charges against the petitioner.

16. Since I am of the considered view that the impugned punishment dated 10.08.2018, which has been issued on the basis of faulty enquiry report dated 14.05.2018, is non est in the eyes of law being violative of principles of natural justice, therefore, I also hold that the impugned punishment order and the enquiry report are non est in the eyes of law and no punishment order can be passed against the petitioner on the basis of the aforesaid faulty enquiry report in view of legal maxim '**SUBLATO FUNDAMENTO CADIT OPUS**'.

17. The Hon'ble Apex Court in re: *State of Punjab Vs. Davinder Pal Singh Bhullar and others* connected with *Sumedh Singh Saini Vs. Davinder Pal Singh Bhullar and others, reported in (2011) 14 SCC 770* has considered the aforesaid maxim in paras-107 to 111, which are being reproduced here-in-below:-

"107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact-situation, the legal maxim "**sublato fundamento cadit opus**" meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.

108. In *Badrinath v. State of Tamil Nadu & others*, AIR 2000 SC 3243; and *State of Kerala v. Puthenkavu N.S.S. Karayogam & Anr.*, (2001) 10 SCC 191, this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is

applicable to judicial, quasi-judicial and administrative proceedings equally.

109. Similarly in *Mangal Prasad Tamoli (dead) by Lrs. v. Narvadeshwar Mishra (dead) by Lrs. & Ors.*, (2005) 3 SCC 422, this Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.

110. In *C. Albert Morris v. K. Chandrasekaran & Ors.*, (2006) 1 SCC 228, this Court held that **a right in law exists only and only when it has a lawful origin.** (See also: *Upen Chandra Gogoi vs. State of Assam & Ors.*, (1998) 3 SCC 381; *Satchidananda Misra v. State of Orissa & Ors.*, (2004) 8 SCC 599; *Regional Manager, SBI v. Rakesh Kumar Tewari.*, (2006) 1 SCC 530; and *Ritesh Tewari & Anr. v. State of U.P. & Ors.*, AIR 2010 SC 3823).

111. Thus, in view of the above, we are of the considered opinion that the orders impugned being a nullity, cannot be sustained. As a consequence, subsequent proceedings/ orders/ FIR/ investigation stand automatically vitiated and are liable to be declared non est."

18. In view of the aforesaid dictums of the Hon'ble Apex Court considered in re; ***Davinder Pal Singh Bhullar (supra)***, I am of the considered opinion that the impugned punishment order dated 10.08.2018, passed by the opposite party No.3, contained as Annexure No.1 to the writ petition, as well as the enquiry report dated 14.05.2018 are hereby set aside/ quashed in view of the legal maxim '**SUBLATO FUNDAMENTO CADIT OPUS**'.

19. In view of what has been considered above and also in view of the

settled proposition of law by the Apex Court, I am of the view that the findings of the Inquiry Officer/ inquiry report is liable to be set aside/ quashed inasmuch as the departmental inquiry has been conducted and concluded without fixing date, time and place for oral inquiry and without affording ample opportunity of hearing to the petitioner. Since the very foundation of the impugned punishment order is based on the defective inquiry report which is not liable to be sustained in the eyes of law, therefore, the impugned punishment order is liable to be set aside/ quashed. Consequently, the impugned punishment order dated 10.08.2018 and the enquiry report dated 14.05.2018 are hereby set aside/ quashed on the basis of maxim "sublato fundamento cadit opus", which means that if the very foundation of any structure goes, the superstructure erected thereon would also fall.

20. Since the impugned punishment order and the enquiry report have been set aside/ quashed for the reason that the departmental enquiry could not be conducted strictly in accordance with law and the same is against the settled proposition of law by the Apex Court in catena of cases, therefore, the Competent Authority may take appropriate decision as to whether any denovo departmental enquiry may be conducted and concluded against the petitioner after his retirement as more than six years and eight months period have passed since the date of superannuation of the petitioner. Such decision may be taken within a period of three weeks from the date of production of a certified copy of this order and if no denovo departmental enquiry is permissible against the petitioner, who is a retired employee of the Cooperative Society, he shall be paid his all consequential service

benefits within a further period of two months.

21. In view of the aforesaid discussions, the instant writ petition is **allowed**.

22. Consequences to follow.

23. No order as to the cost.

(2025) 4 ILRA 266

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 11.04.2025

BEFORE

THE HON'BLE KARUNESH SINGH PAWAR, J.

Writ A No. 30776 of 2016

Shubham Kumar ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Alok Mishra, in Person

Counsel for the Respondents:

C.S.C., Jitendra Singh

Service Law-Constitution of India, 1950- Article 226- Petitioner sought mandamus seeking direction to the St. Government to include two year diploma course of Veterinary Pharmacy as an essential qualification for appointment on the post of Veterinary Pharmacist and also to consider the case of the petitioner for appointment on the post of Veterinary Pharmacist considering his two year diploma course--- The petitioner does not have any vested right for being appointed on the post of Veterinary Pharmacist which is a post of direct recruitment and as per prevailing procedure, the vacancies of Pharmacists shall be filled up according to the need of the St. Government. However, this court being a

Constitutional Court cannot issue a writ in the nature of mandamus directing the St. Government to legislate and frame rules as also to include two year diploma course as an essential qualification for appointment on the post of Veterinary Pharmacist in view of the law laid down by the Supreme Court. **(Para 8)** (E-15)

List of Cases referred :-

1. Supreme Court Employees' Welfare Association Vs U.O.I.& anr.(1989)4 SCC 187
2. St. of J.& K. Vs A.R. Zakki & ors.(1992) Supp(1) SCC 548
3. U.O.I.& ors.Vs K. Pushpavanam & ors.2023 LiveLaw (SC) 630
4. St. of U.P. & ors.Vs Association of Retired Supreme Court and High Court Judges at Allahabad & ors.[2024]1 S.C.R. 211

(Delivered by Hon'ble Karunesh Singh Pawar, J.)

1.Heard Mr. Shubham Kumar, petitioner in person and Sandeep Sharma, learned Additional Chief Standing Counsel for the State.

2.By means of present petition, the petitioner has prayed for following prayer(s) :

"(i) to issue a writ, order or direction in the nature of Certiorari to quash the impugned order dated 14.12.2016 passed by the Respondent No. 1 as contained in Annexure No. 1 to this writ petition.

(ii) to issue a writ, order or direction in the nature of Mandamus commanding the respondents not to give effect to the impugned order dated 14.12.2016 passed by the Respondent No. 1

as contained in Annexure No. 1 to this writ petition.

(iii) to issue a writ, order or direction in the nature of Mandamus commanding the respondents to include the 2 years Diploma course of Veterinary Pharmacy as an essential qualification for appointment on the post of Veterinary Pharmacist keeping in view the letter dated 30.6.2010 issued by the State Government, which is annexed as Annexure No. 2 to this writ petition.

(iv) to issue a writ, order or direction in the nature of Mandamus commanding the respondents to consider the case of the petitioner for appointment on the post of Veterinary Pharmacist keeping in view his completion of 2 years Diploma course of Veterinary Pharmacy in the year 2015 itself by the Uttar Pradesh Pt. Deen Dayal Upadhyay Pashu Chikitsa Vigyan Vishwavidyalaya Evam Go-Anusandhan Sansthan, Mathura.

(v) to pass such other order or direction, which this Hon'ble Court may deem fit and proper under the circumstances of the case.

(vi) to award cost to the humble petitioner throughout of the present writ petition.

3. Brief facts of the case are as under :

It appears that vide Government Order dated 30.6.2010 (Annexure-2), a direction was issued by the State Government to the Vice Chancellor, Pt. Deen Dayal Upadhyay Pashu Chikitsa Vishwavidyalaya, U.P., Mathura (in short, university) to prepare a syllabus/course for running two year diploma course in Veterinary Pharmacy and provide it to the

State Government. Consequently, two year diploma course in Veterinary Pharmacy was started in the university.

It further appears that after taking admission, the petitioner has successfully completed his two year diploma course in Veterinary Pharmacy with first division from the university. Copies of the mark sheet and diploma certificate are on record.

It is pleaded that several posts of Veterinary Pharmacist are lying vacant and the petitioner as well as other co-applicants are not being considered against those vacant posts of Veterinary Pharmacist. It also appears from the record that for appointment on the post of Veterinary Pharmacist, there are no service rules as such. However, executive instructions /government order dated 14.12.2004 has been issued by the State Government providing procedure for appointment on the post of Veterinary Pharmacist till the concerned service rules are promulgated. In the aforesaid office memorandum, the appointing authority for the post of Veterinary Pharmacist is Deputy Director, Animal Husbandry and the essential qualification for the post is Intermediate with Biology or Agriculture with additional provision of six months training after selection on the post of Veterinary Pharmacist.

Earlier, the petitioner had filed a writ petition No.22087 (S/S) of 2016 which was disposed of vide judgment and order dated 15.9.2016 directing the Principal Secretary to take a decision on the representation of the petitioner. The operative part of the order is extracted below :

"Be that as it may, the aforesaid aspects lie in the realm of the policy of the State Government. However, taking into account the over all aspect of the matter and the averments made in the writ

petition, especially the Government Order dated 30.06.2010 and the efforts made by the State Government to start two years diploma course in Veterinary Pharmacy in Pt. Deen Dayal Upadhyay University of Veterinary Sciences, U.P. Mathura, this petition is disposed of finally with the direction to the Principal Secretary, Animal Husbandry, U.P., Lucknow to take a decision relating to grievance of the petitioner.

To facilitate the decision to be taken by the Principal Secretary under this order, the petitioner shall make a fresh representation to the Principal Secretary taking all the pleas which may be available to him and annexing all the documents on which he intends to rely within a fortnight from today. On receipt of the said representation along with certified copy of this order, case of the petitioner shall be considered and decided by the Principal Secretary in accordance with law by passing a reasoned and speaking order within next three weeks. The decision so taken by the Principal Secretary shall be communicated to the petitioner."

The State Government vide a reasoned and speaking order has rejected the representation of the petitioner stating that there are no prevalent rules of filling up the post of Veterinary Pharmacist. The posts are being filled up in accordance with the procedure provided in executive order dated 14.12.2004. The essential qualification for the post of Veterinary Pharmacist is Intermediate in Agriculture or Biology. Apart from this, a candidate is required to undergo six months of training after selection which has been extended to one year vide government order dated 21.3.2005.

While deciding the representation, it has further been stated that now, the Pharmacists of Veterinary

department are getting equal pay-scale as compared to Pharmacists of Medical Department, i.e. Rs.4500-7000. A further decision was taken vide government order dated 8.9.2010 to provide facility of training and registration to the Pharmacists at par with Pharmacists of the Health Department. Later on, while reconsidering the earlier recommendation of the Pay Commission, 2008, vide government order dated 18.3.2011, the pay-scale of Rs.5000-8000 has been approved and this post has been directed to be filled up by direct recruitment with educational qualification of Intermediate Math or Biology Group and the Diploma provided by State Medical Faculty, U.P. Thus, at present, the procedure for appointment on the post of Pharmacist is in accordance with government order dated 18.3.2011.

While deciding representation of the petitioner, it has been further observed that so far as appointment of the petitioner on the post of Veterinary Pharmacist on the vacant post in view of the government order dated 30.6.2010 is concerned, only directions were issued to the university in question to formulate a professional course and provide it to the State Government. The said government order dated 30.6.2010 did not provide to run any course for the post of Veterinary Pharmacist/Pashudhan Prasar Adhikari. It has been observed that exercise to frame the rules for the cadre of Pharmacist of Veterinary Department is under active consideration. This is a post of direct recruitment and appropriate appointments shall be made from the selected candidates as per prescribed procedure. It further appears that in compliance of order dated 14.12.2016, the representation of the petitioner has been considered and rejected vide order which is impugned in this petition.

4. It is submitted by the petitioner appearing in person that vide government order dated 30.6.2010, the university was directed to prepare a course for Veterinary Pharmacist/Pashudhan Prasas Adhikari so that appointments of the persons having diploma in Pharmacy may be made.

The petitioner vide relief No.(iii) has sought a mandamus directing respondents to include two year diploma course of Veterinary Pharmacy as an essential qualification for appointment on the post of Veterinary Pharmacist keeping in view the government order dated 30.6.2010. A further writ of mandamus is also sought to consider the case of the petitioner for appointment on the post of Veterinary Pharmacist keeping in view his two year diploma course from Pt. Deen Dayal Upadhyay Pashu Chikitsa Vigyan Vishwavidyalaya Evam Go-Anusandhan Sansthan, Mathura.

5. Learned Standing Counsel, on the other hand, has opposed the contention and submitted that from perusal of the government order dated 30.6.2010, it is evident that there is no promise made by the State Government to appoint a person who has completed two year diploma course in Veterinary Pharmacy. It is submitted that presently, there are no service rules governing the service conditions of the Pharmacists in the Veterinary department. The appointments are being made under executive instructions. One such instruction has been issued on 14.12.2004. The selections are made under the provisions of U.P. Procedure for Direct Recruitment for Group D Posts (Outside the Purview of the Uttar Pradesh Service Commission) Rules, 2002.

Earlier, the training period was for six months which has been extended vide government order dated 21.3.2005 as one year. The government order dated 30.6.2010 was issued only in order to strengthen the services of the Veterinary Pharmacists by enhancing their educational qualification. It is further submitted that the service rules governing the services of the Pharmacists are under active consideration. It is a lengthy procedure and after completing the formalities, it will be notified soon. The petitioner having diploma in Veterinary Pharmacy does not have any vested right to be appointed on the post of Veterinary Pharmacist and unless the rules governing the services of Veterinary Pharmacist are framed and notified, it is not possible to appoint the petitioner on the said post.

In the supplementary counter affidavit filed on behalf of respondent No.1 in the year 2019, it has been brought to the notice of the court that draft of U.P. Veterinary Pharmacist Evam Pashudhan Prasad Adhikari Council Act, 2019 has been prepared and the file has been sent to the Law Department for approval and after getting approval from the Law Department, it shall be sent to various other departments, including Cabinet and after approval of the Cabinet and Assembly, the rules will be notified. Vide para 5 of the supplementary counter affidavit, two years additional time for finalizing necessary proceedings for enforcement of the 2019 Rules has been sought.

6. I have considered the submissions and perused the record as well as the impugned order.

7.A perusal of the record shows that the petitioner after the course in Veterinary Pharmacy was started in the university has taken admission in Veterinary Pharmacy course and passed the same. The petitioner appears to have interpreted the government order dated 30.6.2010 as if the State Government has made any promise that on the completion of diploma course by the petitioner, he will be given appointment on the post of Veterinary Pharmacist.

A perusal of the government order dated 30.6.2010 shows that no such promise has been made by the State Government. Only a request was made to the university by the State Government to prepare a syllabus in accordance with the nature of the work being performed by the Veterinary Pharmacist/Pashudhan Prasar Adhikari and provide it to the State Government. The relevant part of said government order dated 30.6.2010 is extracted below :

" उपर्युक्त विषय पर मुझे यह कहने का निदेश हुआ है कि प्रदेश के पशुपालन विभाग के अन्तर्गत पशुचिकित्सा चिकित्सा के क्षेत्र में पशुचिकित्सा अधिकारी, वेटनरी फार्मासिस्ट एवं पशुधन प्रसार अधिकारी की महत्वपूर्ण भूमिका है। पशुचिकित्सा अधिकारी के पद पर पशुचिकित्सा में स्नातक डिग्री रखने वाले अभ्यर्थियों को लोक सेवा आयोग के माध्यम से चयन कर नियुक्त किया जाता । पशुचिकित्सा में स्नातक की शिक्षा पशुचिकित्सा विश्वविद्यालय, मथुरा में उपलब्ध है। वेटनरी फार्मासिस्ट / पशुधन प्रसार अधिकारी के पद के कार्यों एवं दायित्वों के अनुरूप. शिक्षा की व्यवस्था प्रदेश के

विश्वविद्यालय में उपलब्ध नहीं है, जिसके कारण वेटनरी / पशुधन प्रसार अधिकारी के पद पर अभ्यर्थियों को चयनित कर उन्हें, प्रशिक्षण प्रदान कर नियुक्त दी जाती है। यह अनुभव किया जा रहा है कि यदि प्रदेश के विद्यालय एवं विश्वविद्यालयों में वेटनरी फार्मासिस्ट / पशुधन प्रसार अधिकारी के पद के कार्यों एवं दायित्वों के अनुरूप कोई कोर्स हो तो उस योग्यता वाले अभ्यर्थी इन पदों पर नियुक्त होकर विभाग के अधिक उपयोगी सिद्ध होंगे।

अतः अनुरोध है कि वेटनरी फार्मासिस्ट / पशुधन प्रसार अधिकारी के पद के कार्यों एवं दायित्वों के अनुरूप शिक्षा हेतु एक व्यवसायिक पाठ्यक्रम तैयार कर शासन को उपलब्ध कराने का कष्ट करें।"

8.It appears that while mis-interpreting the government order dated 30.6.2010 (supra), the petitioner has sought a mandamus seeking direction to the State Government to include two year diploma course of Veterinary Pharmacy as an essential qualification for appointment on the post of Veterinary Pharmacist and also to consider the case of the petitioner for appointment on the post of Veterinary Pharmacist considering his two year diploma course. In other words, the petitioner is seeking a writ against the State Government to legislate /enact a law on a particular subject and in a particular manner as is suited to the petitioner.

Law in this regard is quite clear. No constitutional court can issue a writ of mandamus to the Legislator to enact a law on a particular subject in a particular manner as held by the Supreme Court in **Supreme Court Employees' Welfare Association versus Union of India and**

another (1989)4 SCC 187, **State of Jammu and Kashmir versus A.R. Zakki and others** (1992) Supp(1) SCC 548, **Union of India and others versus K. Pushpavanam and others** 2023 LiveLaw (SC) 630 and **State of U.P. and others versus Association of Retired Supreme Court and High Court Judges at Allahabad and others** [2024]1 S.C.R. 211. Thus, in view of the settled law, it cannot be said that there is any arbitrariness or illegality in the impugned order dated 14.12.2016.

In the impugned order and the short counter affidavit filed by the State Government in the year 2019, already an undertaking has been given to frame Rules. The petitioner does not have any vested right for being appointed on the post of Veterinary Pharmacist which is a post of direct recruitment and as per prevailing procedure, the vacancies of Pharmacists shall be filled up according to the need of the State Government. However, this court being a Constitutional Court cannot issue a writ in the nature of mandamus directing the State Government to legislate and frame rules as also to include two year diploma course as an essential qualification for appointment on the post of Veterinary Pharmacist in view of the law laid down by the Supreme Court in the aforesaid cases.

9. Needless to say that the supplementary counter affidavit was filed by respondent No.1 in the year 2019. Two years time has already passed in 2021 and still the rules have not been notified. It is expected that the State Government shall abide by the undertaking given by it while filing the supplementary counter affidavit and as given in the impugned order dated 14.12.2016 (supra).

10. The writ petition, subject to above observation, is dismissed.

(2025) 4 ILRA 271
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.04.2025
BEFORE
THE HON'BLE PRAKASH PADIA, J.

Writ A No. 32542 of 1993

Suleman**Petitioner**
Versus
Principal S.T. High School & Ors.
...Respondents

Counsel for the Petitioner:

Anand Tiwari, Kavish Suhail

Counsel for the Respondents:

Dilip Gupta, Shashank Shekhar Singh

Service Law-Constitution of India, 1950-Article 226 - The University Non-Teaching Employees (Terms and Conditions of Services) Rules, 1972-Rule 11 & 14)- That ad hoc/ temporary/ daily wage employees rendering long years of service and were permitted to superannuate without regularization/confirmation in service are entitled to post retiral benefits---Since the petitioner had rendered continuous service for decades, it creates a legitimate expectation for proper service benefits---Petitioner worked continuously for 27 years until superannuation. The University treated him as a regular employee for all practical purposes, providing him with all service benefits during his tenure. To deny him post-retirement benefits merely because he was not formally confirmed would be unjust and contrary to the principles established by the Hon'ble Supreme Court and this Court---Petitioner entitled to get the all post retiral benefits---Respondent directed to calculate and release all post-retirement benefits to the petitioner within a period of three months.

Writ Petition allowed. (Para 30, 31 & 32)
(E-15)

List of Cases referred:-

1. Hridaya Shanker Mishra Vs St. of U.P. & ors. reported in 2005 SCC OnLine All 1627 : 2005 All LJ 2654

2. OM PRAKASH GOEL Vs HIMACHAL PRADESH TOURISM DEVELOPMENT CORPORATION LTD. SHIMLA reported in (1991) 2 UPLBEC 967: ((1991) 3 SCC 291: AIR 1991 SC 1490

3. CIVIL APPEAL NO(S). 6118 OF 2024, ANAND PRAKASH MANI TRIPATHI Vs ST. OF UTTAR PRADESH & ORS

4. St. of Gujarat & ors. Vs Talsibhai Dhanjibhai Patel reported in 2022 LiveLaw (SC) 187

5. Yashwant Hari Katakhar Vs U.O.I.& ors. reported in 1996 (7) SCC 113

6. A.P. Srivastava Vs U.O.I.& ors. reported in (1995) 3 UPLBEC 1842 (Supplement)

(Delivered by Hon'ble Prakash Padia, J.)

1. Heard Sri Anand Tiwari, learned counsel for the petitioner and Sri Shashank Shekhar Singh, learned counsel for the respondent no. 2/The Registrar, Aligarh Muslim University, Aligarh.

2. The writ petition was filed in the year 1993 challenging the order dated 27.07.1993 passed by the Section Officer on behalf of the Principal, S.T. High School, A.M.U. Aligarh. By the aforesaid order, the petitioner was informed that his services may not be required after 31.07.1993. The writ petition was duly entertained and the following interim order was granted by this Court on 14.09.1993 which is quoted below:-

"Sri Dilip Gupta has accepted notice on behalf of respondent nos. 1, 2 and 3. He prays for and is granted one month's time to file counter affidavit. Petitioners' will have three weeks' thereafter to file rejoinder."

List this petition immediately after expiry of the aforesaid period.

Meanwhile operation of the order dated 27th July, 1993, Annexure No. 3 to the writ petition shall remain stayed. Petitioners shall be allowed to work on the post of Mali and shall be paid salary."

3. The writ petition was dismissed in default vide order dated 07.12.2011. Restoration/Recall Application No. 2 of 2019 alongwith Delay Condonation Application No. 1 of 2019 was filed by the petitioner on 26.03.2019. The same were allowed by this Court vide order dated 05.01.2023. By the aforesaid order, the order dated 07.12.2011 was recalled and the writ petition was restored to its original number.

4. Though the writ petition was dismissed in default on 07.12.2011, since the parties did not have any knowledge of the aforesaid order, the petitioner was continued to work and also paid his salary regularly and subsequent to the same he was also superannuated from his services after attaining the age of superannuation on 31st March, 2018. Before his retirement, a letter dated 29.05.2017 was written by the petitioner to the Vice Chancellor of the University. In the aforesaid letter a request has been made for confirmation of the service of the petitioner so he could get post retiral benefits. On the said application an order dated 04.02.2019 was passed by the Assistant Registrar (Administration-NT) addressed to the Principal, S.T. High School, Aligarh Muslim University, Aligarh. By the said letter, the request made by the petitioner was turned down on the ground that the writ petition was dismissed in default vide order 07.12.2011 and thereafter a legal opinion was sought for and pursuant to the same the application

filed by the petitioner for his confirmation and other retiral benefits was turned down.

5. Aggrieved against the aforesaid an amendment application was filed by the petitioner in this writ petition which was numbered as Amendment Application No. 11 of 2023. The same was allowed by this Court vide order dated 06.11.2024. Subsequent to the same the amendments were duly incorporated in the writ petition and an amended copy of the writ petition was also filed. Counter affidavit and rejoinder affidavit have been exchanged on the amended writ petition and with the consent of the parties the same was disposed of finally at the admission stage itself.

6. Facts in brief as contained in the writ petition are that the Principal of the Institution in question, i.e., S.T. High School, Aligarh Muslim University, Aligarh is the appointing authority to the post of Mali. The Principal vide its order dated 27.02.1991 appointed the petitioner on the post of Mali for three months. The aforesaid appointment was extended from time to time by the Principal without any break. The Principal in continuation of the services, placed the petitioner on probation for one year i.e. from 4.02.1992 till 03.02.1993, the petitioner was continuing his services even after completion of his probation period and there was no interference in his work, no complaint was there in the work and conduct of the petitioner. It is argued that wholly illegally and in arbitrary manner an order dated 27.07.1993 was passed by the Section Officer on behalf of the Principal, S.T. High School. It is argued that services of the Class IV employees i.e. non teaching employees are governed by "University Non-Teaching Employees (Terms and

Conditions of Services) Rules, 1972. The relevant rules in this regard namely Rule 11 and Rule 14 of the Rules, 1972 are quoted hereinbelow:-

11- Probation and Confirmation:-

1. Every employee of the University when appointed to a permanent post shall be placed on probation for one year unless. It is provided otherwise in the contract, after the expiry of which he may be confirmed in his post. If he is not so confirmed, the Executive Council, appointing authority may, if it deems fit, dispense with his services or extend the period of probation, but in no case shall the period of probation be extended beyond two years, unless otherwise decided by the Executive Council/ appointing authority in the interest of university.

If for any reason the orders for confirmation are not issued after the stipulated period of probation, the period of probation will be deemed to have been automatically extended upto the date when an order is issued in this behalf.

2. Where a person appointed to a post under the University on probation is, during his period of probation, found, on a subjective consideration unsuitable for holding that post or has not completed his period of probation satisfactorily the appointing authority may:-

(i) In case of a person appointed by promotion, revert him to the post held by him immediately before such appointment and

(ii) In the case of a person appointed by direct recruitment, terminate his services under the University after giving him one month's salary in lieu thereof.

3. Every person appointed to a permanent post under the University by

promotion or by direct recruitment shall, on satisfactorily completing his period or probation, be eligible for confirmation in that post.

4. No employee shall be confirmed in any post unless:-

(i) Such post is permanent and no one else holds a lien on the post.

(ii) The service of the employee under the University is approved by the appointing authority.

7. Rule 14 relates to termination of service which is quoted below:-

14- termination of services:-

(1) The service of a temporary employee/ an employee on probation may be terminated by the Executive Council/ appointing authority as indicated below:-

a. The services of an employee appointed on probation can be terminated any time during the probationary period by giving one month's notice without assigning any cause. The employee is also entitled to relinquish his appointment after giving one month's notice; and

b. The service of temporary employee may be terminated at any time without any notice or assigning any reason.

C. The services of an employee appointed who holds a permanent post will automatically come to an end when he reaches the age of superannuation and not notice from the University Authorities will be required informing him of the termination of his service due to superannuation.

8. It is argued that the order dated 27.07.1993 is absolutely illegal and without jurisdiction since the same has not been passed by the competent authority. It is further argued that impugned order has

been passed without any notice and opportunity to the petitioner.

9. After the writ petition was entertained an interim order was passed in favour of the petitioner as stated above, the Vice-Chancellor of the Aligarh Muslim University has approved the list to the effect that the employees who are fulfilling the requirement of training in their skill job and satisfactory service record be transferred from category D to category C with common designation as "Multi Tasking Staff" and the aforesaid persons were placed in pay band-1 with Grade Pay of Rs. 1800 w.e.f. 01.01.2006 or from the date of their appointment. In the said list, the name of the petitioner was placed at serial no. 34.

10. It is further stated that pursuant of the office memo dated 03.02.2012, the salary of the petitioner has been fixed by the respondents vide order dated 28.07.2012. It is further stated that the respondent-University has accepted the recommendation of 7th Pay Commission and in this regard the respondents duly issued the statement of fixation of pay in respect of the petitioner. The increment was also paid to the petitioner in July, 2016. After completion of successful service on the post of Mali, the petitioner was retired on 31.03.2018. It is further argued that from the date of initial appointment till 31st March, 2018, the petitioner was worked regularly and got his salary. It is further argued that all the benefits of services were duly provided by the respondents to the petitioner from time to time.

11. It is further stated that the effect and operation of the termination order dated 27.07.1993 had been stayed by this Court vide its order dated 14.09.1993 and

on the basis of the same, the petitioner continued to work on the post of Mali and getting his salary. In this view of the matter, the writ petition is liable to be allowed and the order dated 27.07.1993 is liable to be quashed. In so far as the order dated 04.02.2019 passed by the Assistant Registrar (Administration-NT) is concerned, the same was passed due to dismissal of the writ petition in default on 07.12.2011. It is argued that since the aforesaid order i.e. 07.12.2011 has already been recalled, therefore the order dated 04.02.2019 passed by the Assistant Registrar is liable to be set aside and the respondents be directed to pay all the post retiral benefits to the petitioner, for which the petitioner is legally entitled.

12. In the counter affidavit filed on behalf of respondent-University, the following objections has been raised:-

1. Union of India has not arrayed as respondent and in absence of the same, the writ petition is not maintainable.

2. University Grants Commission has not arrayed as one of the respondent and since the University Grants Commission is a Central Body having supervisory jurisdiction and over the University and other Higher Educational Institutions in India.

3. Statutory alternative remedy is available to the petitioner as provided under section 36-B of Aligarh Muslim University, Aligarh Act 1920.

13. Apart from the same it is further stated in the counter affidavit that one Mr. Kallan was working as 'Mali' in the school. The petitioner had been appointed on temporary basis as a 'Mali' in the vacancy caused due to retirement of Mr. Kallan with effect from 04.02.1991 for a

period of three months. The aforesaid appointment was extended from time to time.

14. It is further stated in the counter affidavit that the Executive Council in its meeting held on 16.11.1991 had clearly resolved that the first claim of Group 'D' posts should be that of the claimant for appointment on compassionate ground. In spite of the aforesaid the Principal of the Institution in question placed the petitioner on probation for a period of one year with effect from 04.02.1992 till 03.02.1993 (wrongly stated as 04.02.1991 to 03.02.1993).

15. It is further stated in the counter affidavit that it is obligatory on the part of the Principal of the school to appoint a dependent of deceased employee of the University/School on compassionate ground against the vacancy falling in Grade 'D'. However the petitioner was appointed in place of Mr. Kallan who retired as 'Mali' on 31.01.1991 and thereafter the salary of the petitioner was released. It is further stated in the counter affidavit that the Principal of School was obliged to take immediate steps to appoint a person on compassionate ground.

16. It is further stated in paragraph 20 of the counter affidavit that the petitioner started working and getting his salary on the strength of an interim order dated 14.09.1993 and he was continued in service till 07.12.2011. Although the interim order was not in operation after 07.12.2011, the date on which the writ petition was dismissed by this Court but the services of the petitioner could not be dispensed with for the reason that the order of the dismissal has not been brought into knowledge of the University authorities by

the petitioner and he continued in service till he attained the age of superannuation. It is further stated that the services of the petitioner had not been confirmed till he attained the age of superannuation i.e. 31.03.2018 and he retired from the services as temporary employee.

17. It is further stated in the counter affidavit that a letter dated 29.05.2017 was written by the petitioner to the Vice Chancellor to confirm his services in order to enable him to get all the retiral benefits after his retirement but the information with regard to the dismissal of the case has not been disclosed by him in the said letter. It is further stated that after lapse of 11 years from the dismissal of the writ petition and after a lapse of almost 05 years from the date of superannuation the restoration and amendment applications were filed by the petitioner which is sufficient to indicate that the petitioner had slept over his rights and it is settled principle of service jurisprudence that one who slept over his rights is not entitled for any relief. On the basis of aforesaid it is argued that writ petition was filed by the petitioner is liable to be dismissed.

18. In response to the same it is argued by Sri Anand Tiwari, learned counsel for the petitioner that after completion of probation period on 03.02.1993, no orders has been passed with regard to the further extension of probation period hence the services of the petitioner is deemed to be confirmed. It is further argued that the petitioner has continuously worked about 27 years and all the service benefits have been given to him during his service period hence after this retirement he is entitled for all the post retiral benefits.

19. Insofar as preliminary objections raised by the counsel for the respondent-University are concerned, it is argued that these objections were not raised by the counsel for the respondents neither at the initial stage when the interim order was granted in favour of the petitioner nor in the counter affidavit initially filed by the University in response to the main writ petition. It is further argued that after the writ petition was duly amended, wholly illegally preliminary objections has been raised by the counsel for the University for the first time vide its counter affidavit which was filed on 13.11.2024 i.e. after more than 21 years of filing on the writ petition. It is further argued that once the petitioner had worked in the strength of an interim order granted by this Court and thereafter all the service benefits was provided to him and thereafter while working he was superannuated on 31.03.2018 hence the order dated 27th July, 1993 passed by the Section Officer on the instructions of Officers on Special Duty, S.T. High School is liable to be set aside. It is further argued that insofar as the order dated 04.02.2019 is concerned the same is also liable to be set aside only on the ground that the order of dismissal of writ petition dated 07.12.2011 has already been recalled by this Court vide its order dated 05.01.2023 hence the sole basis of the order dated 04.02.2019 is not in existence as on date.

20. Heard counsel for the parties and perused the record.

21. From perusal of record it is clear that the petitioner was initially appointed on the post of 'Mali' in the year 1991 on the said post he was continued to work and thereafter he was appointed on probation period for one year i.e.

04.02.1992 till 03.02.1993. Even after completion of his probation period the petitioner was permitted to continue but thereafter an order was passed on 27.07.1993 in which it is stated that the services of the petitioner is no more required after 31.07.1993.

22. The aforesaid order has been stayed by this Court vide its order dated 14.09.1993 on the basis of which the petitioner continued to work in the institution and all the service benefits provided to the similarly situated employee were provided to him. While working in the institution, the petitioner was superannuated after attaining the age of superannuation on 31st March, 2018. In this view of the matter and especially in view of the fact that the petitioner worked with the respondents since the date of initial appointment i.e. 27.02.1991 till the date of his superannuation i.e. 31st March, 2018 and since all the service benefits were provided to him, after more than 26 years, the Court is of the opinion that at this stage, the writ petition would not be dismissed.

23. Insofar as the preliminarily objections raised by counsel for the respondents are concerned it is clear from the perusal of counter affidavit filed in response to the writ petition (main writ petition) that no such objections were raised either at the initial stage when the interim order was granted in favour of the petitioner or in the counter affidavit initially filed by the University in response to the main writ petition. The aforesaid objections were raised by counsel for University for the first time while filing the counter affidavit to the amended writ petition on 13.11.2024 i.e. after more than 21 years of the filing of the writ petition. It is settled law that in case the person has

worked for more than 25 years though on the strength of interim order granted by this Court and at no point of time during those 21 years no preliminary objection has been raised by the University, these objections are not sustainable in the eyes of law especially after retirement of the petitioner.

24. This Court in the case of ***Hridaya Shanker Mishra Vs. State of U.P. and others reported in 2005 SCC OnLine All 1627*** : 2005 All LJ 2654 taking into consideration the law laid down by the Hon'ble Apex Court in case of *Agra District Cooperative Bank Ltd. v. Prescribed Authority Labour Court, U.P. and Ors.* has held that there may be irregularity in the recruitment but the reasons that a person being in employment for more than 21 years the same stood cured by their long service and he is deemed to have been regularly appointed. Paragraph No. 8 and 9 of the aforesaid judgment reads as follows:-

"8. The further reliance has been placed by the petitioner in the case of Division Bench of this Court reported in (2001) 1 UPLBEC 622 State of U.P. v. Dr. R.P. Goel and Ors. The Division Bench of this Court while considering the termination of the employee after completing 19 years of service treating that employee as a temporary employee, has held that the services after 10 to 20 years can be treated to be arbitrary. The Division Bench has observed as under:-

"In the present case the petitioner had worked from 1956 to 1975 i.e. for 19 years in U.P. Government service. In our opinion, even if he was a temporary employee, a person who has worked for such a long period cannot be suddenly asked to go for no rhyme or reasons. The position may have been different if the

service of a temporary employee is terminated only after two or three years of appointment, and in that case the termination order may not be arbitrary. However, where a person has worked in a temporary capacity for say, 10 to 20 years, in our opinion, the termination of his service without opportunity of hearing would certainly be arbitrary because such an employee would ordinarily have got married and have had children, and is overage for other employment, and has settled down in life with reasonable expectation, that ordinarily he will be continued in service till the age of retirement."

9. Further reliance has been placed by the petitioner in a judgment reported in Judgment Today 2001 (4) Supreme Court, 382, *Agra District Cooperative Bank Ltd. v. Prescribed Authority Labour Court, U.P. and Ors.* and the Apex Court has observed as follows-

"Though the services were terminated the parties concerned invoked the jurisdiction of the Labour Court and the Labour court directed their reinstatement and they were reinstated from the date of the termination itself. In these circumstances they must be deemed to be in service for more than 20 years now and to disturb their services at this stage would be harsh and inhuman.

Even though there may be irregularity in the recruitment but the reasons of respondents being in employment for more than 20 years the same stood cured by their long service and they are deemed to have been regularly appointed."

25. In case of **OM PRAKASH GOEL Vs. HIMACHAL PRADESH TOURISM DEVELOPMENT CORPORATION LTD. SHIMLA** reported

in (1991) 2 UPLBEC 967: ((1991) 3 SCC 291: AIR 1991 SC 1490, it has been held by the Hon'ble Apex Court the temporary employee has got the protection of Art. 311 of the Constitution. In N.S.K. Nair's case the Apex Court has taken into consideration the fact that if a person has completed 15 years of service in spite of the fact that no order of confirmation has been passed but it will be deemed to be confirmed employee and the services of the person concerned cannot be terminated treating the petitioner as temporary employee.

26. The petitioner worked continuously from 27.02.1991 until his superannuation on 31.03.2018, a period of approximately 27 years. During this period, he received all service benefits that would be accorded to a regular employee, including salary increments, pay fixation as per Pay Commission recommendations, and even upgradation from Category D to Category C.

27. Insofar as the objection related to enable the petitioner to get retiral dues after his retirement, the Hon'ble Supreme Court recently in **CIVIL APPEAL NO(S). 6118 OF 2024, ANAND PRAKASH MANI TRIPATHI v. STATE OF UTTAR PRADESH & ORS.**, it was held that it is unfair to deny them post retiral benefits or terminal dues as may be admissible to the regular government employees who have worked for such a long period, Relevant portion of the judgment paragraph 5 reads as follows:-

"Having considered the fact that the appellant(s) have worked for such a long period, it would be unreasonable and unfair to deny them post retiral benefits or

terminal dues as may be admissible to the regular government employees,"

28. In case of ***State of Gujarat & Ors. versus Talsibhai Dhanjibhai Patel reported in 2022 LiveLaw (SC) 187***. It has been held that once State has continued to take service from an employee even on an ad hoc basis for 30 years, State cannot be permitted to take benefit of its own wrong and no error. was found in judgment of High Court directing payment of pensionary benefit to the employee who retired after rendering more than 30 years of service as ad hoc without regularization.

29. Similarly, in another case of ***Yashwant Hari Katakhar v. Union of India and ors. reported in 1996 (7) SCC 113***, it was held that an employee who has served more than 20 years is entitled to pension and denial of retiring pension to the petitioner on the ground of not being permanent on any post clearly is violative of Clause (e) of Fundamental Rules, 56. The department cannot keep a person temporary or on daily wages indefinitely. Similarly, in another case of ***A.P. Srivastava v. Union of India and Ors. reported in (1995) 3 UPLBEC 1842 (Supplement)***, the Supreme Court has clearly taken a view that in case of a temporary employee who has rendered 20 years of service is entitled to pension.

30. In view of aforesaid judgments, it is clear that ad hoc/ temporary/ daily wage employees rendering long years of service and were permitted to superannuate without regularization/confirmation in service are entitled to post retiral benefits. In this view of the matter, the Court is of the opinion that since the petitioner had rendered continuous service for decades, it creates a legitimate expectation for proper service benefits.

31. In the present case, the petitioner worked continuously for 27 years until

superannuation. The University treated him as a regular employee for all practical purposes, providing him with all service benefits during his tenure. To deny him post-retirement benefits merely because he was not formally confirmed would be unjust and contrary to the principles established by the Hon'ble Supreme Court and this Court.

32. In view of the aforesaid, the Court is of the opinion that the order dated 27.07.1993 passed by the Section Officer on behalf of the Principal, S.T. High School, A.M.U. Aligarh, and the order dated 04.02.2019 passed by the Assistant Registrar (Administration-NT) are liable to be set aside and hereby set aside. The petitioner is entitled to get the all post retiral benefits, hence the respondents are directed to treat the entire service period of the petitioner from 27.02.1991 to 31.03.2018 as qualifying service for the purpose of determining all post-retirement benefits and also directed to calculate and release all post-retirement benefits to the petitioner within a period of three months from the date of communication of this order.

33. With the aforesaid observations, the present writ petition is **allowed**. No order as to costs.

(2025) 4 ILRA 279
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.04.2025
BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE DR. YOGENDRA KUMAR
SRIVASTAVA, J.

Writ C No. 263 of 2025

M/S K.C. International Situate & Ors.
...Petitioners
Versus
Indian Bank Kanpur Main Branch
...Respondent

Counsel for the Petitioners:

Perna Surolia, Ravi Kant Surolia,
Shashi Kant Shukla

Counsel for the Respondent:

A.S.G.I., Anuj Srivastava

Civil Law -Constitution of India,1950-Article 226-SARFAESI Act,2002-Sections 13(3A), 13(4) and 13(8)-The petitioners challenged the action of the respondent-bank u/s13(4) of the Act,2002-their objection dated 05.10.2024 u/s 13(3A) was not decided or served before the bank proceeded u/s 13(4)-Held, The bank had passed a reasoned order on the petitioners' representation and attempted service through post, which failed due to reasons beyond the bank control ("door always locked;, incorrect pincode)-Notice u/s 13(4) was received by the petitioners and they had already filed proceedings before DRT-Reliance was placed on United bank of India Vs. Satyawati Tondon to hold that the writ jurisdiction under Article 226 should not be invoked where effective alternative remedy exists-no case of mala fide or patent illegality was made out.(Para 1 to 17)

The writ petition is dismissed. (E-6)

List of Cases cited:

1. Malhotra Tractors Vs S.B.I. (2010) 1 BC 176
2. Krishna Chandra Sahoo Vs B.O.I.I (2009)2 BC 635
3. Mardia Chemicals Vs U.O.I. (2004) 3 SCC 311
4. United Bank of India VS Satyawati Tondon & ors.(2010) 8 SCC 110

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Counter affidavit and rejoinder affidavit to counter affidavit have been filed, which are taken on record.

2. Heard Ms. Perna Surolia, learned counsel appearing on behalf of petitioners, Sri Vivek Kumar Singh, learned counsel appearing on behalf of respondent No.2 and Sri Kush Saxena, learned counsel assisted by Sri Anuj Srivastava, learned counsel appearing on behalf of Bank of India and perused the record.

3. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner has made the following prayer:-

i)- to issue writ, order or direction in the nature of mandamus commanding the respondent bank to decide the representation/objection dt. 05.10.2024 of the petitioner (Annexure 1 to the writ petition) by a reasoned order, in terms of Section 13(3A) of the Act, in view of the settled judicial precedent by the Hon'ble Apex court in the case of **Madia Chemicals (supra)**;

ii)- to set aside proceedings initiated by the respondent bank under Section 13(4) of the Act in contravention to the non-compliance o the provisions of Section 13(3A) of the Act as well as in defiance of settled judicial precedent of the Hon'ble Apex Court in the case of **Madia Chemicals (supra)**;

iii)- to issue writ, order or direction in the nature of prohibition restraining the respondent bank from initiating further proceedings in terms of provisions of Section 13(4) of the Act in view of the settled judicial precedent of the Hon'ble Apex Court in the case of **Madia Chemicals (supra)**;

4. The main contention of the petitioners, as argued by Ms. Prerna Surolia, counsel appearing on behalf of petitioners is that the representation/objection dated October 5, 2024 made by the petitioners under Section 13(3A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to 'the SARFAESI Act') was not decided by the bank before proceeding under Sections 13(4) and 13(8) of the SARFAESI Act. The ancillary prayer is also with regard to setting aside the proceedings initiated by the respondent-bank under Section 13(4) of the SARFAESI Act.

5. The facts that emerged from the perusal of the documents and after hearing learned counsel appearing on behalf of parties are as follows:-

a)- The representation/objection dated October 5, 2024 of the petitioners was decided by the bank authorities by an order dated October 17, 2024 and the said order was dispatched for delivery to the petitioner No.1 and to the other petitioners.

b)- Petitioners have submitted that this order was never received by any of the petitioners. Documents have been placed by both the parties to indicate that though service was attempted by the postal authorities, however, the attempt upon the petitioner nos. 2 and 3 was unsuccessful as the door of the residence of the petitioner nos. 2 and 3 were shut, and therefore, the said letter came back without service. With regard to the petitioner no.1, it appears that proper service may not have been made.

c)- Notice under Section 13(4) of the Act dated November 27, 2024 was issued upon the petitioners which was received by them.

d)- The petitioners approached the Debts Recovery Tribunal on December 13, 2024 and filed S.A. No.- 1087 of 2024.

e)- Subsequently, on January 02, 2025 the present writ petition was filed, and on January 08, 2025 the matter was taken up by this Court wherein a supplementary affidavit was filed by the petitioners in which for the first time the petitioners submitted that a S.A. application has been filed before the Debts Recovery Tribunal challenging the Section 13(4) notice. It is further noted that on that date a copy of the order dated October 17, 2024 passed under Section 13(3A) was handed over to counsel appearing on behalf of petitioners. Subsequent to January 08, 2025, the matter has been listed on several occasions wherein affidavits, in the nature of counter affidavit, short-counter affidavit and rejoinder affidavit have been filed by the parties.

6. The arguments of the petitioners are simple that without the petitioners having received the order dated October 17, 2024, the bank could not have proceeded under Section 13(4) of the SARFAESI Act. Counsel appearing on behalf of petitioners relied on the judgements in the cases of *Malhotra Tractors Vs. State Bank of India reported in (2010) 1 BC 176*, *Krishna Chandra Sahoo Vs. Bank of India reported in 2009 (2) BC 635* and *Mardia Chemicals Vs. Union of India reported in (2004) 3 SCC 311* passed by Allahabad High Court, Orissa High Court and Hon'ble Supreme Court, respectively, to buttress her argument that the provisions of Section 13(3A) are mandatory in nature and the bank is required to decide the objections/representations of the petitioners before proceeding further under Section 13(4) of the SARFAESI Act. From the judgements cited by the counsel appearing

on behalf of petitioners, the following principles are culled out :-

(a)- Unless and until the exercise under Section 13(3A) is completed, the bank is not authorized to proceed further and take any measures under Section 13(4) of the Act.

(b)- It is obligatory on the part of the authority first to consider and dispose of the objection by speaking and reasoned order and thereafter communicate the order to the concerned. This is a condition precedent for issuance of notice under Section 13(4) of the Act.

(c)- The authority cannot ignore the statutory provisions treating them merely to be decoration pieces in the statutes rather they are required to adhere to the same strictly.

7. Counsel appearing on behalf of the petitioner further submits that since it is clear that the service of the order dated October 17, 2024 was not completed upon the petitioners, the actions taken under the 13(4) of the Act are to be treated as null and void.

8. Per contra, counsel appearing on behalf of respondent bank submits that the bank has followed the procedure in toto. They have passed a reasoned order in relation to objection filed by the petitioners vide order dated October 17, 2024. Subsequently, the documents clearly show that the service was attempted on all the three petitioners, and the consignment sent to the residential address of the petitioner no.2 and 3 were returned with the postal remark " दरियाप्त किया लिखित पते पर गस्त के दौरान अनिश्चित काल के लिये ताला बन्द रहता है अतः Left Sd. 18.10.2024" With regard to the service on

the petitioner no.1, it appears that a wrong postal pin code was given and therefore service could not be completed. However, it is surprising that notice under Section 13(4) of the SARFAESI Act was served and received by the petitioner nos. 2 and 3 at the same address to which notice was attempted to be served for the order dated October 17, 2024. This fact of service is also controverted by learned counsel for the petitioners who submits that the notice under Section 13(4) of the SARFAESI Act was obtained by the petitioners after having personally gone to the bank. The above fact is not proved, in any manner, by learned counsel for the petitioners.

9. Firstly, we are not joining issue with the principles culled out by the High Court of Orrissa, High Court of Allahabad and Hon'ble Supreme Court in the judgements cited above. We are consensus *ad idem* with the views enunciated in those judgements. However, the facts of this particular case are slightly different. Firstly, the objection raised by the petitioners was undisputedly dealt with by the bank by the order dated October 17, 2024. Furthermore, undisputedly the said order was sent by post to the petitioners. This is not a case of an order being passed and simply being put in the drawer of the person passing the said order. This is a case where the bank duly tried to serve the order to the petitioners. Subsequently, we see that when the notice under Section 13(4) was issued on November 17, 2024, the same was received by the petitioners and the petitioners challenged the same by way of an S.A. before the Debts Recovery Tribunal on December 13, 2024. In the said challenge, at paragraph 19 of the S.A. application, the petitioners have stated that the provisions of Section 13(3)A of the SARFAESI Act were not complied with and in the grounds

the petitioners have further challenged that the bank has not followed the mandatory provisions of law. We further find that when the writ petition was filed on January 02, 2025, there was no mention of the S.A. application having been filed by the petitioners. It is only on January 8, 2025, when the matter was taken up, that the said fact was brought on record by the petitioners. On that date a copy of the order dated October 17, 2024 was also handed over to counsel appearing on behalf of petitioners. Subsequent to the same, the matter is continuing before the Debts Recovery Tribunal and the petitioners are challenging the actions of the bank authorities.

10. The challenge before this Court is only with regard to whether the bank acted correctly by proceeding with the Section 13(4) of the SARFAESI Act when proper service of the order under Section 13(3A) was not executed by the bank.

11. In our view, the factum of passing of the order under Section 13(3A) of the SARFAESI Act and the attempt to carry out service of the same on the petitioners coupled with the fact that the Section 13(4) notice was received by the petitioners leads us to the conclusion that the petitioners have missed the bus. Having now challenged the Section 13(4) notice before the Debts Recovery Tribunal, the petitioners cannot be allowed to sail on two boats at the same time by raising the earlier proceedings under Section 13(3A) of the SARFAESI Act before this Court. It is also to be noted that the petitioners have also taken the ground with regard to Section 13(3A) in the S.A. application before the Debts Recovery Tribunal.

12. Keeping in view the judgement of Hon'ble Supreme Court in the case of **United Bank Of India vs Satyawati Tondon & Ors reported in 2010 (8) SCC 110** at paragraph nos. 45, 46 and 47, which are delineated below:-

"45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad [AIR 1969 SC 556] , Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107] and some

other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order.

47. In *Thansingh Nathmal v. Supdt. of Taxes* [AIR 1964 SC 1419 : (1964) 6 SCR 654] the Constitution Bench considered the question whether the High Court of Assam should have entertained the writ petition filed by the appellant under Article 226 of the Constitution questioning the order passed by the Commissioner of Taxes under the Assam Sales Tax Act, 1947. While dismissing the appeal, the Court observed as under: (SCC p. 1423, para 7)

“7. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226

trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

13. This Court is required not to interfere in matters with regard to the SARFAESI Act unless this Court finds patent illegality and/or *mala fide* actions being taken by the bank authorities. In the present case, the bank has acted in accordance with law as they have passed an order under Section 13(3A) of the SARFAESI Act and also served (attempted to serve) the order, which came back in the case of two of the petitioners as "door is always locked".

14. In such a case, no *mala fide* intent can be imposed on the bank authorities. Furthermore, since Section 13(4) notice has been issued and subsequently 13(8) proceedings of sale has also taken place, we do not find it fit to interfere with the entire proceedings only for the reason that service of the order under Section 13(3A) of the SARFAESI Act was not properly done.

15. The entire proceedings under the SARFAESI Act was required to be challenged by the petitioners before the Debts Recovery Tribunal, which they have done prior to filing of this writ and the matter is pending before the Debts Recovery Tribunal. Furthermore, there is a provision for statutory appeal against the

orders passed by Debts Recovery Tribunal before the Debts Recovery Appellate Tribunal.

16. In light of the same, we do not find any reason to interfere with the Section 13(4) proceedings and the subsequent proceedings undertaken by the bank.

17. Accordingly, with the above observations, the writ petition is ***dismissed***.

(2025) 4 ILRA 285
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.04.2025
BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Writ C No. 6327 of 2025

Anuj Tyagi **...Petitioner**
Versus
District Election Officer (Municipal Board
General Election-2023), Collectorate
District Ghaziabad & Ors. ...Respondents

Counsel for the Petitioner:

Akash Tyagi, Neha Tyagi, Pankaj Kumar Tyagi, Satish Kumar Tyagi

Counsel for the Respondents:

C.S.C., Ramesh Kumar Pandey, Tarun Agrawal

Civil Law - The Uttar Pradesh Municipal Corporations Act, 1959 - Sections 63(3) &

62 (4)-Amendment application was moved by election petitioner/respondent no. 4-to implead the other five unsuccessful candidates as respondents- allowed by an ex-parte order on 17.09.2024 -recall application-rejected – impugned-defect of non-joinder of all contesting candidates in an election petition is not a curable defect- Section 63 (3) - in an election petition, petitioner has to join as respondents in his petition all the contesting candidates-Section 62(4)-provides the time limit for filing of election

petition-any defect can be cured within the time limit prescribed —no alteration can be made once the time prescribed therein expires—impugned orders against the provisions of Section 63(3) read with Section 62(4) of the Act of 1959.

W.P. allowed. (E-9)

Cases Cited:

1. Smt. Jyoti Vs Kusma Devi, 2019 (2) AILLJ 262;
2. Ramanand Gaur Vs Ram Sanehi & ors., 2012 (4) ADJ 212
3. Patangrao Kadam Vs Prithviraj Sayajirao Yadav Deshmukh & ors., (2001) 3 SCC 594.
4. Har Swarup Vs Brij Bhushan Saran, AIR 1967 SC 836;
5. Amin Lal Vs Hunna Lal, AIR 1965 SC 1243
6. Mohan Raj Vs Surendra Kumar, AIR 1969 SC 677;
7. Chaturbhuj Chunnilal Vs Election Tribunal, Kanpur AIR 1958 All 809

(Delivered by Hon'ble Rohit Ranjan
Agarwal, J.)

1. The short controversy before the Court is - “As to whether by amendment application moved under Order VI Rule 17 CPC, amendment can be made in an election petition filed by an unsuccessful candidate impleading the other contesting candidates who were not initially joined in the election petition?”

2. Facts in brief, leading to the present case, are that an election for Corporator for Ward No. 87, Gyankhand Indirapuram, Ghaziabad was held on 11.05.2023. Counting was held on 13.05.2023 and result was declared and petitioner was declared to be successful

getting 1291 votes, while the election petitioner, respondent no. 4 secured only 1181 votes.

3. An Election Petition No. 06 of 2023 was filed by respondent no. 4 in which only returned candidate/petitioner along with District Election Officer, Ghaziabad; State Election Commissioner, Lucknow and Returning Officer, Ward No. 87, Ghaziabad were made parties. For the election of Ward No. 87, seven candidates had contested the election, but petitioner had not impleaded the other five unsuccessful candidates as party in the election petition.

4. Petitioner contested the election petition and filed his written statement. An amendment application was moved by election petitioner/respondent no. 4 on 12.09.2024 which was allowed by an ex-parte order on 17.09.2024 permitting the election petitioner to implead the other five unsuccessful candidates as respondents in the election petition. Petitioner/returned candidate filed a recall application which has been rejected by order dated 29.01.2025 which is under challenge in the present writ petition along with order dated 17.09.2024 allowing the amendment application.

5. Counsel for petitioner submitted that election petition filed by respondent no. 4 is defective and Section 62(4) of The Uttar Pradesh Municipal Corporations Act, 1959 (*hereinafter called as "the Act of 1959"*) prescribes the period for filing an election petition. Further, Section 63(3) provides that where the petitioner claims a declaration under Section 64, all the contesting candidates, other than the petitioner, shall be joined as respondents. According to him, the petition moved was

defective and non-joinder of necessary party will lead to inevitable conclusion that petition has to be dismissed being beyond time under Section 66.

6. Reliance has been placed upon the decision rendered by co-ordinate Bench of this Court in case of **Smt. Jyoti vs. Kusma Devi, 2019 (2) AILLJ 262; Ramanand Gaur vs. Ram Sanahi and others, 2012 (4) ADJ 212** and decision of Supreme Court rendered in **Patangrao Kadam vs. Prithviraj Sayajirao Yadav Deshmukh and others, (2001) 3 SCC 594**.

7. Counsel appearing for respondent no. 4 submitted that defect is a curable defect and the case laws cited by petitioner are not applicable in the instant case as it is under the Act of 1959 while the decision so placed is in regard to Representation of People Act, 1951. According to him, Section 66 envisages that an election petition may be dismissed if not presented within the time allowed by this Act or the provisions of Section 79 relating to deposit of security or the necessary court-fee has not been complied with.

8. In the instant case, the election petition was filed within the prescribed period and only the other contesting candidates were not joined as respondents in the election petition which will not go to the root of the matter and election petition cannot be thrown out. The amendment sought does not change the character of the case and only the other contesting respondents have joined in the election petition.

9. I have heard rival submissions and perused the material on record.

10. Before advertng to decide the issue in hand, a cursory glance of Section 62, 63, 64, 66 of the Act of 1959 are necessary for better appreciation of the case, which are extracted here-asunder:-

“Section 62. Questioning of election of Corporator. – (1) *The election of any person as Corporator may be questioned by any unsuccessful candidate at the election or by any person whose nomination paper was rejected at the election, or by any elector of the ward concerned.*

(2) *The petition may be presented on any one or more of the grounds mentioned in section 71.*

(3) *The election of any person as Corporator shall not be questioned on the ground that the name of any person qualified to vote, has been omitted from, or the name of any person not qualified to vote, has been inserted in the electoral roll or rolls.*

(4) *The petition shall be presented to the District Judge, exercising jurisdiction in the City within 30 days of the declaration of result of the election.*

Section 63. Forms and contents of petitions. – (1) *An election petition shall specify the ground or grounds on which the election of respondent is questioned and shall contain a concise statement of the material facts on which the petitioner relies, and shall set forth full particulars of any corrupt practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice.*

(2) *The petition and if there is any schedule or annexure to the petition, such schedule or annexure also, shall be signed by the petitioner and verified in the*

manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings.

(3) *A petitioner shall join as respondent to his petition. –*

(a) *where the petitioner claims a declaration under section 64, all the contesting candidates, other than the petitioner, and in any other case all the returned candidates ;*

(b) *any other candidate against whom allegations of any corrupt practice are made in the petition.*

Section 64. Relief that may be claimed by the petitioner. – *A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.*

Section 66. Petition when to be dismissed. – *If an election petition has not been presented within the time allowed by this Act or it does not comply with any provisions made under section 79 relating to deposit of security or the necessary court-fee payable thereon is not furnished within the time allowed therefor it shall forthwith be rejected by the District Judge.”*

11. Section 62 provides for the questioning of election of a Corporator by any unsuccessful candidate. It can be presented on any one or more grounds as mentioned in section 71. Sub-section (4) of Section 62 is of great relevance as it prescribes the time limit within which an election petition could be presented. A period of 30 days has been provided from the declaration of result for the presentation of election petition.

12. Section 63 provides forms and contents of petitions. It lays down that an

election petition shall specify the ground or grounds on which the election of respondent is questioned and it shall contain a concise statement of the material facts on which the petitioner relies. Sub-section (2) provides that if there are any schedule or annexure to the election petition, it shall be signed by the petitioner and verified in the manner as laid down in the Code of Civil Procedure, 1908, for verification of pleadings. Sub-section (3) of Section 63 is of great relevance as it clearly provides that petitioner shall join as respondent to his petition, all the contesting candidates, other than the petitioner, where the petitioner claims a declaration under Section 64, and in any other case all the returned candidates. Thus, sub-section (3) clearly clarifies that all contesting candidates has to be joined as respondents in an election petition. This provision has to be read in consonance with sub-section (4) of Section 62, which requires an election petition to be presented within 30 days of the declarations of the result. Joinder of all contesting candidates is must for the maintainability of the petition questioning election of any Corporator under Section 62 read with Section 63. Result of non-joinder of all necessary parties would lead to an inevitable conclusion that election petition as mandated under sub-section (4) of Section 64 was not presented within 30 days from the date of declaration of result, which would lead to a situation where the petition may be dismissed under Section 66.

13. The defect of non-joinder of all contesting candidates in an election petition is not a curable defect. The Hon'ble Supreme Court while dealing with matter under Representation of People Act in **Patangrao Kadam (supra)** considering the earlier view of Apex Court rendered in

Har Swarup vs. Brij Bhushan Saran, AIR 1967 SC 836; Amin Lal vs. Hunna Lal, AIR 1965 SC 1243 and decision in **Mohan Raj vs. Surendra Kumar, AIR 1969 SC 677; Chaturbhuj Chunnilal vs. Election Tribunal, Kanpur AIR 1958 All 809** held that impleadment under Order I Rule 10 and amendment under Order VI Rule 17 is power preserved to the Court, but when the Act makes a person necessary party and provides that petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. Relevant para 20 is extracted here-asunder:-

“20. The view that a candidate, who is duly nominated, continues to be a candidate for the purpose of Section 82(b) in spite of withdrawal, is supported by the decisions of Har Swarup [AIR 1967 SC 836 : (1967) 1 SCR 342] and Amin Lal v. Hunna Mal [AIR 1965 SC 1243 : (1965) 1 SCR 393]. This Court referring to the said decisions in Mohan Raj v. Surendra Kumar Taparia [AIR 1969 SC 677 : (1969) 1 SCR 630] agreed with the said view. Further the decision in Chaturbhuj Chunnilal v. Election Tribunal, Kanpur [AIR 1958 All 809] taking the same view after elaborate consideration on all aspects touching the question is approved. Dealing with the applications made for impleadment under Order 1 Rule 10 and amendment under Order 6 Rule 17, in para 10 of the same judgment, this Court had stated thus: (AIR p. 681)

“No doubt the power of amendment is preserved to the Court and Order 1 Rule 10 enables the Court to strike out parties but the Court cannot use Order 6 Rule 17 or Order 1 Rule 10 to avoid the consequences of non-joinder for which a special provision is to be found in the Act. The Court can order an amendment and

even strike out a party who is not necessary. But when the Act makes a person a necessary party and provides that the petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the Representation of the People Act and any rules made thereunder (see Section 87). When the Act enjoins the penalty of dismissal of the petition for non-joinder of a party the provisions of the Civil Procedure Code cannot be used as curative means to save the petition.”

14. The co-ordinate Bench of this Court in **Smt. Jyoti (supra)** while dealing with a matter under U.P. Municipalities Act, 1916 where the provisions are somewhat similar to those of the Act of 1959 held that an amendment cannot be allowed to remove a defect that may warrant rejection of an election petition.

15. For better understanding, Section 20 of the U.P. Municipalities Act, 1916 is extracted here-asunder:-

“20. From and presentation of election petitions:-

(1) An election petition shall be presented within 30 days after the day on which the result of the election sought to be questioned is announced by the Returning Officer, and shall specify the ground or grounds on which the election of the respondent is questioned and shall contain a concise statement of the material facts on which the petitioner relies and set forth the full particulars of any corrupt practices that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practices and the

dates and place of the commission of each such practice.

(2) The petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908), for the verification of pleadings.

(3) The petition may be presented by any candidate in whose favour votes have been recorded and who claims in the petition to be declared elected in the room of the person whose election is questioned or by ten or more electors of the municipality or by a person who claims that his nomination paper was improperly rejected.

(4) The person whose election is questioned and, where the petitioner claims that any other candidate should be declared elected in the room of such person, every unsuccessful candidate who is not a petitioner in the petition shall be made a respondent to the petition.

(5) The petition shall be presented to the District Judge exercising jurisdiction in the area in which the municipality, to which the election petition relates, is situate:

Provided that the petition shall not be entertained by the District Judge unless it is accompanied by a treasury challan showing that the prescribed security has been deposited.”

16. Sub-section (4) of Section 20 provides that where an election is questioned and petitioner claims that any other candidate should be declared elected in the room of such person, every unsuccessful candidate who is not a petitioner in the petition shall be made a respondent to the petition. Sub-section (4) of Section 20 is somewhat similar to sub-section (3) of Section 63 of the Act of 1959 which also provides that petitioner shall

join all the contesting candidates as respondents to his petition. The Court proceeded to hold that amendment if allowed would be against the statutory provisions of Section 20(4) of the Act of 1916. Relevant paras 20, 21, 22 and 23 are extracted here-asunder:-

“20. By virtue of section 23 of the Act, 1916, courts have applied the general provisions of Order 6 Rule 17 of the Code of Civil Procedure to allow amendments. However, a plain reading of section 23 of the Act, 1916 would go to show that general provisions of the Code of Civil Procedure could be applied only if there is no inconsistent provision in the Act or the Rules. Sub-section (4) of section 20 of the Act, 1916 clearly provides that where the election petition claims that any other candidate should be declared elected in the room of such person whose election is questioned, every unsuccessful candidates, if not impleaded as the petitioner, be made a respondent to the petition. A defect in that regard would have to be dealt with in the manner provided in Section 22 of the Act, 1916. Under the circumstances, the general powers available under Order 6 Rule 17 C.P.C. cannot be invoked to remove a defect that may warrant rejection of the petition under Section 22 of the Act, 1916, unless removal of such defect is sought within such period of time as may be permissible under the Act, 1916.

21. The decision of the apex court in the case of Harish Chandra's case (supra) as well as K. Venkateswara Rao's case (supra) is clear on the issue that power under Order 6 Rule 17 C.P.C. cannot be exercised to alter the character of the election petition so as to make it in substance a new petition, if a fresh petition on that cause of action would by then be barred.

22. In the instant case, the election petition as instituted was only to declare the election of the returned candidate as null and void. There was no prayer by the election petitioner to declare him elected in the room of the person whose election was questioned i.e. the returned candidate. With the amendment, the character of the petition was sought to be changed so as to include a relief for such declaration and, to maintain such a relief, to add every unsuccessful candidate as party respondent.

23. Admittedly, the amendment application was filed after the period of limitation provided under the Act, 1916 for presentation of such an election petition had expired. Therefore such an amendment application could not have been entertained and allowed in view of the law laid down by the apex court in Harish Chandra's case (supra) and K. Venkateswara Rao's case (supra). The decision in Smt. Sarita Gupta's case (supra) relied upon by the learned counsel for the respondent, with due respect, cannot come to the rescue of the respondent inasmuch as the said decision fails to notice the apex court's decisions that have been noticed herein above.”

17. Thus, sub-section (3) of Section 63 clearly spells out that in an election petition, petitioner has to join as respondents in his petition all the contesting candidates.

18. In the instant case, election petition filed on 31.05.2023 did not include the other five unsuccessful candidates - 1. Ashwani Kumar Singh 2. Salek Chandra Tyagi 3. Nand Lal Sharma 4. Gaurav Kumar and 5. Rahul Mani Kudesiya. It was by amendment made after more than one year that an application under Order VI

Rule 17 was moved on 12.09.2024 for impleading the other five unsuccessful candidates as respondents in the petition. The said amendment application is not maintainable as the Act clearly provides in sub-section (3) of Section 63 that election petition should be joined by all contesting candidates as respondents.

19. The defect in the election petition cannot be cured through an amendment application moved by election petitioner. Section 62(4) provides the time limit for filing of election petition. Any defect can be cured within the time limit prescribed under the said provision and no alteration can be made once the time prescribed therein expires.

20. The court below had wrongly allowed the amendment application and rejected the recall application filed by returned candidate which is against the provisions of Section 63(3) read with Section 62(4) of the Act of 1959.

21. In view of above, the order dated 17.09.2024 passed on the amendment application and order dated 29.01.2025 passed on the recall application are hereby set aside.

22. The writ petition stands allowed.

23. The question as framed above stands answered that is in favour of petitioner and against respondent no. 4/election petitioner.

(2025) 4 ILRA 291

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 10.04.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE DR. YOGENDRA KUMAR
SRIVASTAVA, J.

Writ C No. 10619 of 2025

Ishan Chaudhary & Anr. ...Petitioners
Versus
Union of India & Ors. ...Respondents

Counsel for the Petitioners:

Akhileshwar Pratap Singh, Atul Kumar

Counsel for the Respondents:

A.S.G.I, Komal Mehrotra

Civil Law - The Uttar Pradesh Revenue Code, 2006- Section 80 -Application for allotment of dealership of a Retail outlet (Petrol Pump -rejected-the land obtained by the petitioners on lease- application did not meet 'Dealer Selection Guidelines 2023' - as 'there are multiple co-owners -whereas lease deed is done from only one co-owner-impugned- Section 80 (4) -the division of holding and the determination of shares of the co-bhumidhars in a joint holding- is a pre-condition for seeking declaration Section 80 (1) and (2)- reverse implication cannot be inferred- no document to demonstrate that the division of property between all the co-owners -in case only one of the co-bhumidhars is desirous of getting a declaration for his share in the land with joint interest-application be entertained only after the respective shares of the co-bhumidhars land are divided.

W.P. dismissed. (E-9)

(Delivered by Hon'ble Dr. Yogendra
Kumar Srivastava, J.)

1. Heard learned counsel for the petitioners and learned counsel appearing for the respondents.

2. Present writ petition has been filed, seeking to assail the order dated 4.3.2025 passed by respondent

no.4/Territory Manager (Retail) Mathura in terms of which, the petitioners have been found to be ineligible for allotment of Retail-outlet (Petrol Pump) dealership.

3. As per the pleadings in the writ petition, the petitioners applied for allotment of dealership of a Retail-outlet (Petrol Pump), location at Village Nagla Santhal, Tehsil Kheragarh, on Kheragarh to Saipu Road, District Agra, in response to a notification dated 28.6.2023 issued by respondent no.2-Bharat Petroleum Corporation Ltd.1.

4. The land which had been offered for the purpose of establishing the retail-outlet was stated to have been obtained by the petitioners on lease executed by one Vijay Singh, being part of Khasra No.177, measuring an area of 1332 sq. meters, situated at Village Nagla, Santhal, Tehsil-Kheragarh, District Agra.

5. The documents uploaded by the petitioners and the information provided by them in the application were evaluated by the Scrutiny Committee of respondent no.2-BPCL and it was found that the application did not meet 'Dealer Selection Guidelines 2023' and, therefore, the application was rejected by means of an e-mail dated 16.8.2024, wherein the reason for rejection was mentioned as 'there are multiple co-owners of offered khasra no.177 as per uploaded copy of khatauni, whereas lease deed is done from only one co-owner'.

6. The petitioners, at this stage, filed a writ petition, being Writ-C No.40696 of 2024, which was disposed of by means of an order dated 16.1.2025, directing respondent no.2-BPCL to decide the representation dated 23.8.2024

submitted by the petitioners with regard to their claim.

7. Pursuant to the aforesaid order passed in Writ-C No.40696 of 2024, the representation of the petitioners was examined and in terms of an order dated 4.3.2025, the petitioners have been held to be ineligible for allotment of retail-outlet dealership. Aggrieved by the said order dated 4.3.2025, the present writ petition has been filed.

8. It has been argued on behalf of the petitioners that the selection of the petitioners has been cancelled only on the ground that the lease deed ought to have been executed by all the co-tenure holders, whereas the land in question, which was offered by them, had already been partitioned by an order dated 20.12.2019, declaring the share of Vijay Singh, the person who had executed the lease deed in favour of the petitioners. It is urged that as per terms of sub-section (4) of Section 80 of the Uttar Pradesh Revenue Code, 20062, once the declaration has been made under Section 80, that would presuppose that the land in question had already been divided/partitioned in accordance with the provisions of law.

9. Learned counsel appearing on behalf of respondent nos.2 to 4 has controverted the aforesaid argument by submitting that the order dated 20.12.2019 has been passed under Section 80 (1) of the Code, 2006, which is only with regard to the declaration of the non-agricultural use of the land, and cannot be construed to be an order by which, the land in question could be said to have been partitioned.

10. It has been pointed out that as per clause no.4 (vi) of the 'Selection

Brochure' for Selection of Dealers, if the offered land is on long term lease and there are multiple co-owners, then such lease deed should have been executed by all the co-owners of the offered plot. In the instant case, the lease deed, having not been executed by all the co-owners, the same is to be treated as invalid for the purpose of selection of dealers.

11. We have heard learned counsel for the parties and perused the records.

12. The Selection Brochure for selection of dealers contains a clear stipulation under Clause No.4 (vi) that where the offered land is on long term lease and there are multiple owners, the lease should be executed by all the co-owners, and in the absence of the lease deed having been executed in such a manner, it would be treated to be invalid.

13. It is an undisputed fact that the lease deed had been executed in favour of the petitioners by only one of the co-owners of the plot whereas, as per the revenue record, i.e. Khatauni extract, there are four other co-owners of the plot in question.

14. Contention, which has been put forth on behalf of the petitioners that the land in question had been partitioned by means of the order dated 20.12.2019 has not been accepted by the respondent no.4 for the reason that the said order passed under Section 80 (1) of the Code, 2006 had the effect of declaring non-agricultural use of the land and could not be construed to be an order which would have the effect of creating a partition between the co-owners of the land in question. The order impugned dated 4.3.2025 passed by respondent no.2 clearly takes note of this

factual position in paragraphs VIII and IX, which are extracted below:

"VIII. Further we like to draw your kind attention to the information mentioned in your application form regarding land details in which you have mentioned that location Khasra/Gat/Survey No.177 is owned solely by Aditya Chandra and Ishan Chaudhary. You have taken lease from only one co-owner of the plot. **However as per Khatauni there are four other co-owners in same gata number.** This is in violation of clause no.22 False Information of Dealer Selection Guidelines 2023 pointed out in this letter under II (b).

IX. Based on documents provided by you and details filled in application, it can be concluded that certain portion of offered plot is converted from agriculture to non-agriculture under section 80 of U.P. Revenue Act, 2006 but not partitioned. Also land conversion under section 80 of U.P. Revenue can't be construed as partition as it is conditional and subjected to adherence to compliance of condition mentioned in conversion order. **Hence your lease deed is not valid as per Brochure for Dealer Selection Guidelines 2023."**

15. In order to examine the contention put forth on behalf of the petitioners that as per the terms of sub-section (4) of Section 80 of the Code, 2006, once a declaration had been made under sub-section (1), that would create a presumption that the land in question had already been partitioned, we may be required to refer to the relevant statutory provisions.

16. The Uttar Pradesh Revenue Code, 2006 is an Act to consolidate and amend the law relating to land tenure and

land revenue in the State of Uttar Pradesh and to provide for matters connected therewith and incidental thereto. The declaration as to non-agricultural use of land is to be made as per terms of Section 80 of the Code, 2006, which is extracted below:

"80. Use of holding for Industrial, Commercial or Residential purposes. –

(1) Where a bhumidhar with transferable rights uses his holding or part thereof, for industrial, commercial or residential purposes, the Sub-Divisional Officer may, *suo motu* or on an application moved by such bhumidhar, after making such enquiry as may be prescribed, either make a declaration that the land is being used for the purpose not connected with agriculture or reject the application. The Sub-Divisional Officer shall take a decision on the application within forty five working days from the date of receipt of the application. In case the application is rejected, the Sub-Divisional Officer shall state the reasons in writing for such rejection and inform the applicant of his decision.

Provided that if the application for declaration is accompanied with the prescribed fee and in case of joint holding, no objection of co-tenure holders is attached in case of co-tenure holder and if the declaration is not made by the Sub-Divisional Officer within forty five days as aforesaid, then the declaration shall be deemed to have been made. Tehsildar will make a record of it in the revenue records, with the comment "subject to the order of the Sub-Divisional Officer".

If any affected party wants to file an objection in relation to the said declaration, it may file an objection in the competent court.

(2) Where a bhumidhar with transferable rights proposes to use in future

his holding or part thereof, for industrial, commercial or residential purposes, the Sub-Divisional Officer may on an application moved by such bhumidhar, after making such enquiry as may be prescribed, either make a declaration that the land may be used for the purpose not connected with agriculture or reject the application, within forty five working days from the date of receipt of the application. In case the application is rejected, the Sub-Divisional Officer shall state the reasons in writing of such rejection and inform the applicant of his decision:

Provided further that if the bhumidhar fails to start the proposed non-agricultural activity within a period of five years from the date of declaration under this sub-section, then the declaration under sub-section (2) for the holding or part thereof shall lapse:

Provided also that a declaration under this sub-section (2) shall not amount to change of land use and the land shall continue to be treated as agricultural land only. However, the bhumidhar shall be entitled to obtain loan and other necessary permissions, clearances, etc. for the activity or project, proposed on the holding or part thereof, for which declaration under this sub-section has been obtained.

(3) A bhumidhar possessing declaration under sub-section (2) for his holding or part thereof, may apply to Sub-Divisional Officer for converting declaration under sub-section (2) to a declaration under sub-section (1), after completion of construction activity or start of the proposed non-agricultural activity, within a period of five years from declaration under sub-section (2). On receipt of such an application, the Sub-Divisional Officer, after making such enquiry as necessary, shall approve or reject the application within a period of 15

days from the receipt of the application. In case of rejection, he shall record in writing the reasons for such rejection:

Provided that for conversion of declaration under sub-section (2) to a declaration under sub-section (1), the bhumidhar shall be liable to pay only the balance amount of fee payable, calculated at prevailing circle rate, after adjusting the amount already paid by him for declaration under sub-section (2) earlier.

(4) No application for a declaration under sub-section (1) or sub-section (2), moved by any co-bhumidhar having undivided interest in bhumidhari land shall be maintainable, unless application is moved by all the co-bhumidhars of such bhumidhari land. In case only one of the co-bhumidhar wants to get a declaration for his share in the land with joint interest, then such an application shall be entertained only after the respective shares of the co-bhumidhars in the land have been divided in accordance with the provisions of law.

(5) The application for declaration [under sub-section (1) or sub-section (2)] shall contain such particulars and shall be made in such manner as may be prescribed.

(6) Where the application under sub-section (1) or sub-section (2) is made in respect of a part of the holding, the Sub-Divisional Officer may, in the manner prescribed, demarcate such part for purposes of such declaration.

(7) No declaration under this section shall be made by the Sub-Divisional Officer, if he is satisfied that the land or part thereof is being used or is proposed to be used for a purpose which is likely to cause a public nuisance or to affect adversely public order, public health, safety or convenience or which is against the uses proposed in the master plan.

(8) In case the land or part thereof for which a declaration under this section is being sought falls within the area notified under any Urban or Industrial Development Authority, then prior permission of the concerned Development Authority shall be mandatory.

(9) The State Government may fix the scale of fees for declaration under this section and different fees may be fixed for different purposes:

Provided that if the applicant uses the holding or part thereof, for his own residential purpose, no fee shall be charged for the declaration under this section."

17. It would be pertinent to take note of the provision, as it originally stood prior to being substituted by Section 8 of the U P Revenue Code (Amendment) Act, 2019 (Act No.7 of 2019), which reads as under:

"80. Use of holding for Industrial, Commercial or Residential purposes. – (1) Where a Bhumidhar with transferable rights uses his holding or part thereof, for industrial, commercial or residential purposes, the Sub-Divisional Officer may, suo motu or on an application moved by such Bhumidhar, after making such inquiry as may be prescribed, either make a declaration that the land is being used for the purpose not connected with agriculture or reject the application. The Sub-Divisional Officer shall state the reasons in writing of such declaration or rejection and inform the applicant of his decision within forty five working days from the date of receipt of the application:

Provided that no such declaration under this section shall be made merely on the ground that the holding or part thereof is surrounded by boundary wall or is "Parti" on the spot:

Provided further that no application for the declaration under this sub-section moved by any co-bhumidhar having undivided interest in Bhumidhari land shall be maintainable, unless application is moved by all the co-bhumidhars of such bhumidhari land or their interests therein are divided in accordance with provisions of law.

(2) The application for declaration under sub-section (1) shall contain such particulars and shall be made in such manner as may be prescribed.

(3) Where the application under sub-section (1) is made in respect of a part of the holding, the Sub-Divisional Officer may, in the manner prescribed, demarcate such part for purposes of such declaration.

(4) No declaration under this section shall be issued by the Sub-Divisional Officer, if he is satisfied that the land is to be used for a purpose which is likely to cause a public nuisance or to affect adversely public order, public health, safety or convenience or against uses purposes in the Master Plan.

(5) The State Government may fix the scale of fees for declaration under this section and different fees may be fixed for different purposes:

Provided that if the applicant uses the holding or part thereof for his own residential purpose, no fee shall be charged for the declaration under this section."

18. The relevant rules related to Section 80 of the Code, 2006, under the U P Revenue Code Rules, 20163 are also reproduced below:

"85. Application for declaration (Section 80). (1) A bhumidhar with transferable rights using his holding or any part thereof for a purpose not connected with agriculture may apply to the Sub-

Divisional Officer for a declaration under section 80(1) in R.C. Form-25.

(2) The applicant shall pay the required amount of declaration fee which shall be one percent of the amount calculated as per the circle rate for agricultural purpose fixed by Collector of the district concerned or as per the rate fixed by State Government from time to time.

(3) On receipt of the application under sub-rule (1), the Sub-Divisional Officer may cause an inquiry to be made through a revenue officer not below the rank of a Revenue Inspector for the purpose of satisfying himself that the holding or part thereof is really being used for a non-agricultural purpose. The concerned officer shall, after spot verification submit his report to the Sub-Divisional Officer indicating the purpose for which the holding or part thereof is being actually used.

86. Notice to the bhumidhar (Section 80). – Where the proceedings under section 80(1) has been initiated by the Sub-Divisional Officer on his own motion, he shall issue notice to the bhumidhar concerned, and the inquiry referred to in rule 85(3) shall be held after the reply, if any, of the bhumidhar is submitted.

87. Grant of declaration (Section 80). – If after scrutinizing the report of the revenue officer, the Sub-Divisional Officer is satisfied:

(a) that the entire holding is being used for a purpose not connected with agriculture; and

(b) that the conditions specified in section 80(4) are complied with, he may make a declaration under section 80(1), in respect of such holding.

88. Apportionment of Land Revenue (Section 80). – (1) If only a part

of the holding is being used by a bhumidhar with transferable rights for a non-agricultural purpose, and the Sub-Divisional Officer is satisfied that the provisions of the second proviso to section 80(1) have not been contravened, he may make a declaration only with respect of such part, provided that the cost of demarcation as per sub-rule (2) of the rule 22 is deposited by the bhumidhar before such declaration.

(2) Where the proceeding for declaration in respect of a part of the holding is initiated by the Sub-Divisional Officer suo motu, the cost of such demarcation shall be recovered by the Sub-Divisional Officer as arrears of land revenue.

(3) In every case of declaration under sub-rule (1) or sub-rule (2), the demarcation shall be made on the basis of the existing survey map, and the Sub-Divisional Officer shall apportion the land revenue payable by such bhumidhar.

(4) The Sub-Divisional Officer shall make an endeavor to conclude the proceeding for declaration under sub-section (1) of section 80 within the period of 45 days from the date of registration of the application and if the proceeding is not concluded within such period the reasons for the same shall be recorded.”

19. The second proviso to sub-section (1) of Section 80 of the Code, 2006, as it originally stood, provided, in clear terms, that no application for declaration under sub-section (1) moved by any co-bhumidhar having undivided interest in bhumidhari land shall be maintainable, unless the application is moved by all co-bhumidhars of such bhumidhari land or their interests therein are divided in accordance with the provisions of law.

20. Rule 88 of the Rules, 2016, which related to apportionment of land revenue consequent to the declaration made under Section 80 of the Code, 2006 provides for a demarcation in case declaration had been sought only for a part of the holding which was being used for non-agricultural purpose. The demarcation in the said case is to be made as per the procedure prescribed under Rule 22 of the Rules, 2016, which relates to settlement of boundary disputes envisaged under Section 24 of the Code, 2006.

21. In terms of Section 8 of the U P Revenue Code (Amendment) 2019 (Act No.7 of 2019), Section 80 of the Code, 2006, as it originally stood, has been substituted in its entirety. Sub-section (4) of Section 80 of the Code, 2006, as it presently stands, provides, in clear terms, that no application for declaration under sub-section (1) or sub-section (2) moved by any co-bhumidhar, having undivided interest in a bhumidhari land shall be maintainable, unless the application is moved by all the co-bhumidhars of such bhumidhari land. It further provides that in case only one of the co-bhumidhars wants to get a declaration for his share in the land with joint interest, then such an application shall be entertained only after the respective shares of the co-bhumidhars in the land have been divided in accordance with the provisions of law. The division of holding consequent to which shares of co-bhumidhars in a land can be divided, is to be as per the terms of Section 116 of the Code, 2006.

22. As a consequence of division of holding under Section 116 of the Code, 2006, it is enjoined upon the court concerned, as a duty under sub-section (1) (b) of Section 117, to apportion the land

revenue payable in respect of each such division. The procedure pertaining to division of holdings is provided under Rules 107, 108 and 109 of the Rules, 2016 and in terms of Rule 109 (8) (c), it is provided that at the stage of the final decree, the Court concerned shall apportion the land revenue payable by the parties.

23. Sub-section (4) of Section 80 of the Code, 2006 contains a clear interdict against any application, being moved by any co-bhumidhar having undivided interest in the bhumidhari land, for a declaration under sub-section (1) or sub-section (2), unless the application is moved by all co-bhumidhars of such bhumidhari land. It further provides that in case only one of the co-bhumidhars is desirous of getting a declaration for his share in the land with joint interest, then such an application shall be entertained only after the respective shares of the co-bhumidhars in the land are divided in accordance with the provisions of law.

24. A plain reading of the aforesaid provisions would make it clear that the application, at the instance of a co-bhumidhar having his share in the land with joint interest, would have to be preceded by the determination of shares of the co-bhumidhars in the land in question in accordance with the provisions of law. This would mean that an application for declaration under sub-section (1) or sub-section (2) at the behest of any co-bhumidhar, having undivided interest in the bhumidhari land, would be maintainable only upon fulfilment of the necessary pre-condition that the land in question had been divided in accordance with the provisions of law, i.e. as per the provisions contained under Section 116 of the Code, 2006 and the relevant Rules.

25. The argument which has been raised on behalf of the petitioners that the

declaration under Section 80 (1) of the Code, 2006 would necessarily mean that the land in question had already been divided, cannot be accepted for the reason that as per the provisions contained in sub-section (4) of Section 80 of the Code, 2006, the division of holding and the determination of shares of the co-bhumidhars in a joint holding, is a pre-condition for seeking declaration under sub-section (1) or sub-section (2) of Section 80 of the Code, 2006; however the reverse implication cannot be inferred.

26. In the instant case, no document has been placed on record to demonstrate that the division of property in question had been made between all the co-owners as per the provisions contained in Section 116 of the Code, 2006.

27. Having regard to the aforesaid position, we do not find any material error or illegality in the order impugned, so as to interfere with the same in the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

28. The writ petition lacks merit and is, accordingly, **dismissed**.

(2025) 4 ILRA 298

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 29.04.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.

Writ C No. 21818 of 2023

Santosh Kumar

...Petitioner

Versus

Assistant

Secretary/Deputy

Secretary/Secretary

Insurance

Ombudsman, Lucknow & Ors.

...Respondent

Counsel for the Petitioners:

Mr. Hari Bans Singh

Counsel for the Respondents:

Ms. Shruti Malviya

Civil Law - Constitution of India, 1950 – Article 226 – Insurance Act, 1938 – Section 45 – Insurance Ombudsman Rules, 2017 – Rules 13(1), 14(1), 14(3), 14(5) & 17(3)(ii) – Indian Contract Act, 1872 – Section 37 – Writ of Certiorari – Life Insurance Claim – Non-Disclosure of Previous Policy – Principle of Uberrimae Fidei – Material Fact – Contra Proferentem Rule – Burden of Proof – Arbitrary Rejection.

Held:

The petitioner sought a writ of certiorari to quash orders dated 23.03.2021 by the Life Insurance Corporation (LIC) and 19.05.2023 by the Insurance Ombudsman, rejecting a death claim under policy no. 205602934 for Rs. 15 lakh, and to direct payment to the petitioner, nominee of his deceased wife, Meera Devi. The policy, issued on 16.08.2018, was repudiated for non-disclosure of a previous LIC policy (no. 205601558, dated 28.05.2018) in the proposal form, alleging fraudulent suppression. The Ombudsman's rejection cited procedural grounds, including lack of written complaint, pecuniary jurisdiction, and limitation. The Court held that the non-disclosure was not fraudulent, as the insured had disclosed prior policies to the LIC agent, who advised that such details were already in LIC's records, leaving column 9 blank. Relying on *Manmohan Nanda v. United India Assurance Co. Ltd., (2022) 4 SCC 582*, the Court ruled that if an insurer accepts a premium and issues a policy despite a blank column, it waives the right to repudiate for non-disclosure unless the omission is material and fraudulent. The LIC failed to prove fraud under Section 45 of the Insurance Act, 1938, and the blank column, linked to a policy within LIC's records, was not a material suppression, especially as the insured's death was due to a sudden heart attack unrelated to prior ailments. The Ombudsman's order was arbitrary, lacking merit-based consideration. Both impugned

orders were quashed, and LIC was directed to pay the insured sum within six weeks.

Writ petition allowed; impugned orders quashed; LIC directed to pay insured sum within six weeks.

Case Law Discussed:

1. *Reliance Life Insurance Co. Ltd. Vs Rekhaben Nareshbhai Rathod, (2019) 6 SCC 175* – Non-disclosure of prior policies from another insurer is material, justifying repudiation.
2. *Manmohan Nanda Vs United India Assurance Co. Ltd., (2022) 4 SCC 582* – Insurer must verify blank columns in proposal forms; accepting premium waives repudiation rights unless non-disclosure is material and fraudulent.
3. *Mahakali Sujatha Vs Future Generali India Life Insurance Co. Ltd., (2024) 8 SCC 712* – Burden lies on insurer to prove fraudulent non-disclosure of material facts.
4. *Mahaveer Sharma Vs Exide Life Insurance Co. Ltd., 2025 SCC OnLine SC 435* – Materiality of non-disclosure assessed case-by-case; insurer bears burden of proving fraud.
5. *Smt. Parul Agrawal Vs Life Insurance Corporation of India, 2024:AHC:36063-DB* – Supports insurer's duty to verify proposal form details.
6. *Satwant Kaur Sandhu Vs New India Assurance Co. Ltd., (2009) 8 SCC 316* – Information sought in proposal form presumed material.
7. *Canara Bank Vs United India Insurance Co. Ltd., (2020) 3 SCC 455* – Blank column does not constitute misdescription; insurer must clarify ambiguities before issuing policy.

Observation:

The Court noted that the insured disclosed prior policies to the LIC agent, who left column 9 blank, assuring that LIC's records contained the

details. LIC issued the policy bond after accepting the premium, implying verification of the proposal form and linked financial documents (Aadhar, PAN). The non-disclosed policy was with LIC itself, and minimal due diligence would have revealed it. The insured's death from a heart attack was unrelated to prior health issues, and LIC's failure to return premiums suggested repudiation was not solely for misstatement but implied fraud, which was unproven. The Ombudsman's rejection on procedural grounds was whimsical, ignoring the petitioner's compliance with submission requirements.

(Delivered by Hon'ble Shekhar B. Saraf, J.)

1. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner prays for issuance of a writ of certiorari quashing the impugned order dated May 19, 2023 whereby Assistant Secretary/Deputy Secretary/Secretary, Insurance Ombudsman, Lucknow (hereinafter referred to as 'respondent no.1') has dismissed the complaint filed by the petitioner against rejection of life insurance claim by the Senior Divisional Manager, Life Insurance Corporation (LIC) Division Office, Prayagraj (hereinafter referred to as 'respondent no.3') concerning policy no.205602934 vide impugned order dated March 23, 2021 which has also been challenged. The petitioner further prays to command the respondents to release the amount of insurance claim of his deceased wife in favour of petitioner.

FACTS

2. The factual matrix of the present writ petition is delineated below:

a. On August 16, 2018 the petitioner's wife, Late Meera Devi (hereinafter referred to as 'insured')

obtained a life insurance policy from Life Insurance Corporation of India (hereinafter referred to as 'LIC'), bearing Policy No.205602934, for a sum assured Rs. 15 lakh through an LIC agent. The petitioner, being the husband of the insured, was duly nominated as the nominee in the said policy. Upon deposit of the first premium amounting to Rs.1,15,416/- the policy bond was issued and delivered to the insured through the LIC agent.

b. While applying for the policy, the insured allegedly furnished all the requisite details in the application form in accordance with terms and conditions prescribed by LIC as instructed by the agent. Moreover, it was affirmed that no material information was concealed or misrepresented.

c. Unfortunately, on July 8, 2019 the insured passed away due to a heart attack. Thereafter, petitioner, in his capacity as a nominee, submitted a representation before the Branch Manager, LIC, Phoolpur Branch, Prayagraj seeking disbursement of the insurance claim arising out of the death of his wife.

d. As per the terms and conditions of the LIC policy, upon the death of the insured, the entire sum assured becomes payable to the nominee. In the present case, the petitioner, being the nominee, became entitled to receive the death claim benefits.

e. Accordingly, the petitioner submitted an application requesting disbursement of the death claim under the policy dated August 16, 2018. However, vide impugned order dated March 23, 2021, respondent no.3 repudiated the petitioner's claim, stating that insured had withheld correct information regarding her previous policy at the time of effecting the present assurance, thereby, violating the disclosure requirements. It was alleged that

non-disclosure of such material information constituted concealment, and therefore, the claim was held to be non payable. The petitioner was however, granted liberty to approach the Zonal Manager, Kanpur, in case he was dissatisfied with the rejection of claim.

f. Thereafter, the petitioner submitted an application on April 16, 2021 before the Regional Manager, LIC Kanpur (hereinafter referred to as 'respondent no.2'), requesting therein for release of the death claim.

g. The petitioner submitted another representation dated July 20, 2021 before the Chairman of Yogkshem Jeevan Beema, Mumbai, seeking redressal against the rejection of the insurance claim pursuant to the order dated March 23, 2021 issued by the respondent no.3.

h. On August 13, 2021, the insurance claim of petitioner's wife was rejected by respondent no.2 on the ground of non-disclosure of a previous insurance policy. The said decision was communicated to the petitioner by respondent no.3 vide letter dated September 17, 2021. The petitioner was granted liberty to approach the Executive Director, LIC Central Office, Mumbai in the event of dissatisfaction with the aforesaid order.

i. Subsequently, on April 15, 2023 the petitioner once again submitted a comprehensive representation before respondent no.1 against the rejection order dated March 23, 2021. In the said representation, the petitioner reiterated that no material concealment had been made by the insured at the time of issuance of the policy, thus, the basis for the rejection was erroneous. He accordingly requested that the death claim be released in his favour, being the nominee.

j. In response to the aforementioned representation, respondent no.1 issued a letter dated April 21, 2023 demanding certain documents from the petitioner for reconsideration of insurance claim.

k. In compliance with the said communication, the petitioner submitted a fresh representation dated May 6, 2023, along with all requisite documents by registered post addressed to respondent no.1.

l. Despite such compliance, the petitioner's claim was once again rejected vide impugned order dated May 19, 2023 passed by respondent no.1 on the following grounds:

(i) that the petitioner has not submitted a complaint in writing before respondent no.1 in accordance with Rule 13(1), 14(1), 14(3), 14(5), 17(3)(ii) of Insurance Ombudsman Rule, 2017.

(ii) that the complaint was not addressed to the office of respondent no.1.

(iii) that the complaint was barred by limitation.

(iv) that the complaint was outside the pecuniary jurisdiction.

m. Aggrieved by the rejection orders dated March 23, 2021 and May 19, 2023 the petitioner has approached this Court seeking aforementioned relief.

n. A counter-affidavit and supplementary counter-affidavit has been filed on behalf of respondent no.2 and 3 contending that the insurance claim was rejected on account of non-disclosure of previous policy bearing no.205601558 in the proposal form. It is further asserted that incorrect information was provided by the insured in 'column 7a' and 'column 9' of the proposal form, which had been duly filled by the insured herself along with a self-declaration affirming that no fact had been suppressed.

o. The petitioner has filed a rejoinder affidavit and supplementary rejoinder affidavit, reiterating the stand taken in the writ petition. The petitioner has contended that the proposal form was filled in accordance with instructions provided by the LIC agent, and copies of financial documents of the insured like Aadhar card and PAN card were appended thereto. It is further submitted that column 9 of the proposal form was left blank upon the advice of the agent, who had stated that the details of previous policy would already be available in the LIC's records.

CONTENTIONS OF THE PETITIONER

3. The learned counsel appearing on behalf of the petitioner has made the following submissions:

a. Before obtaining the said policy, the insured had provided all necessary particulars and disclosed the details of her existing LIC policies in the application form furnished by the LIC agent. No information was concealed, and the omission of one previous policy was based solely on the assurance by LIC agent that such details were already available in LIC's record. Accordingly, the insured affixed her signature to the proposal form in a routine manner, relying on the instruction of the agent.

b. The respondents have failed to furnish any documentary proof or material indicating that the insured had violated any terms and conditions. The respondents were duty bound to examine the entire records as per their need and no specific question with regard to disclosure of earlier policy was raised by

the respondents before issuing the said policy.

c. Respondent no.3 rejected the claim of the insured vide order dated March 23, 2021 on the ground of concealment of previous policy, and again on May 19, 2023 citing lack of pecuniary jurisdiction. The insured through her agent, had disclosed all relevant details including previous policy information and had made the requisite declarations in the proposal form.

d. The issuance of the policy bond in favour of the insured upon receipt of the first premium implies that the proposal form was duly verified, scrutinized and accepted by the competent authority. The respondent authority is legally bound to examine the proposal form before issuing the bond. Even if the previous policy details were not explicitly stated, such information could have been retrieved from LIC's internal records or digital database. Had there been any discrepancy or concealment, the policy bond would not have been issued.

e. The death claim in the present matter cannot be barred in view of Section 45 of Insurance Act, 1938.

f. Even if the insured by any chance has not mentioned about the earlier policy in the proposal form, then also on the basis of said error the death claim cannot be denied by the respondents.

g. The rejection order dated March 23, 2021 passed by the respondent no.3 as well as the subsequent rejection order dated May 19, 2023 passed by the respondent no.1 are arbitrary, unjust, improper and against the statutory provisions governing insurance law.

h. In the impugned order dated March 23, 2021, the respondents objected to not mentioning of only one previous policy no. 205601558, although before

taking the present policy amounting to Rs.15 lakh, the insured had already taken three earlier policies bearing no.311496904, 314004138 and 205601558 amounting to Rs.50,000, Rs.50,000 and Rs.3,70,000 respectively. All these policies were disclosed to the agent at the time of applying. The failure to include such information in the proposal form was solely due to the agent's assurance that the details were already recorded in the LIC's database. Hence, there was no wilful concealment on the part of the insured.

i. To buttress his argument, counsel has placed reliance on **Mahaveer Sharma v. Exide Life Insurance Co. Ltd.** reported in 2025 SCC OnLine SC 435.

CONTENTIONS OF THE RESPONDENTS

4. The learned counsel appearing on behalf of respondents has made the following submissions:

a. Before obtaining the policy, the insured herself filled out the proposal form in which she deliberately furnished the incorrect information in column 7a, and column 9 of the proposal form with regard to previous policies.

b. Death of insured occurred on July 8, 2019, and the rejection by respondent no.2 dated August 13, 2021 was intimated on September 17, 2021 but the petitioner has made representation before the Insurance Ombudsman on April 15, 2023, that is, within three years subsequent to rejection in accordance with Section 45 of the Insurance Act, 1938.

c. Section 45 of the Insurance Act, 1938 curtails the right of the insurer to question the policy after three year from the date of the policy, that is, from the date of issuance of policy, the date of

commencement of risk, the date of revival of the policy, or the date of the policy's rider, whichever is later. Petitioner's wife took policy on August 16, 2018, died on July 8, 2019 and policy was called in question on ground of mis-statement vide order dated March 23, 2021 by respondent no.3 that is within three years. Hence, the rejection order is in consonance with Section 45 of the Insurance Act, 1938.

d. Respondent no.1 appositely passed an order dated May 19, 2023, on the ground of want of jurisdiction as Rule 17(3) (II) of Insurance Ombudsman Rules, 2017 explicitly prohibits the Ombudsman to award compensation exceeding thirty lakhs.

e. The insured had made a self-declaration in the proposal form affirming the accuracy of the information provided, and the form was also duly signed by her. As such, there is no valid basis to disbelieve the information given in the form in view of Section 37 of the Indian Contract Act, 1872.

f. It was the obligation on the part of the insured to disclose all the information to the best of her knowledge in the proposal form. An Insurance policy is governed by the principle of *uberrimae fidei*, meaning a contract of utmost good faith requiring the assured to make full and truthful disclosure. When specific information on a specific aspect is sought in a proposal form, the insured is under a solemn obligation to provide complete and accurate details.

g. The previous policy no.205601558 commenced from May 28, 2018, whereas, policy under dispute having policy no. 205602934 commenced from August 16, 2018 and both the policies were purchased within

three months. Therefore, it is unreasonable to believe that the petitioner was unaware of the previous policy purchased by him.

h. To buttress her argument, she has placed reliance upon a judgment of the Apex Court in **Reliance Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod reported in (2019) 6 SCC 175**. The relevant paragraphs of the judgment are quoted below:

“31. The finding of a material misrepresentation or concealment in insurance has a significant effect upon both the insured and the insurer in the event of a dispute. The fact it would influence the decision of a prudent insurer in deciding as to whether or not to accept a risk is a material fact. As this Court held in Satwant Kaur [Satwant Kaur Sandhu v. New India Assurance Co. Ltd., (2009) 8 SCC 316 : (2009) 3 SCC (Civ) 366] “there is a clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance”. Each representation or statement may be material to the risk. The insurance company may still offer insurance protection on altered terms.

32. In the present case, the insurer had sought information with respect to previous insurance policies obtained by the assured. The duty of full disclosure required that no information of substance or of interest to the insurer be omitted or concealed. Whether or not the insurer would have issued a life insurance cover despite the earlier cover of insurance is a decision which was required to be taken by the insurer after duly considering all relevant facts and circumstances. The disclosure of the earlier cover was material to an assessment of the risk which was being undertaken by the insurer. Prior to undertaking the risk, this information could potentially allow the insurer to question as

to why the insured had in such a short span of time obtained two different life insurance policies. Such a fact is sufficient to put the insurer to enquiry.

34. We are not impressed with the submission that the proposer was unaware of the contents of the form that he was required to fill up or that in assigning such a response to a third party, he was absolved of the consequence of appending his signatures to the proposal. The proposer duly appended his signature to the proposal form and the grant of the insurance cover was on the basis of the statements contained in the proposal form. Barely two months before the contract of insurance was entered into with the appellant, the insured had obtained another insurance cover for his life in the sum of Rs 11 lakhs. We are of the view that the failure of the insured to disclose the policy of insurance obtained earlier in the proposal form entitled the insurer to repudiate the claim under the policy.

i. To buttress her argument, counsel has further placed reliance on **Smt. Parul Agrawal v. Life Insurance Corporation of India and others** in Special Appeal Defective No. 782 of 2023 (Neutral Citation No.2024:AHC:36063-DB).

ANALYSIS

5. We have considered the rival submissions canvassed by both the sides and have perused the materials placed on record. It is necessary to preface our analysis with reference to two issues firstly, the nature of the disclosure made by the insured in the proposal form and secondly, the ground of repudiation of claim.

6. The learned counsel for the petitioner has pleaded that the insurer has illegally rejected the claim vide order dated March 23, 2021 on the ground of non-disclosure of a previous policy. Insured had taken the policy through an agent and she had already given the information of the previous policy to the agent before taking policy but the agent assured her that the earlier policy was already within the knowledge of LIC, therefore, is not needed to be mentioned in the proposal form. The form was filled-up and the insured in a routine manner had signed the same without getting into details of the queries mentioned in the proposal form. It is further contended that though the information has not been wilfully withheld, the same should not deprive the petitioner of his lawful right to claim insurance due to fault of the agent of LIC.

7. Per contra, the learned counsel for the respondents vehemently refutes the submissions of the learned counsel appearing on behalf of the petitioner and submits that the information regarding previous policy is pertinent for the insurer to decide the claim and the same has been mis-stated by the insured in the proposal form by mentioning 'No' in 'column 7a' and 'column 9' was left blank which required diligent mentioning of the previous policies (including surrendered or lapsed policy) purchased during the past 3 years. Ergo, there is a breach of declaration made at bottom of the proposal form, making the policy liable to repudiation.

8. There is no dispute of the fact that policy in dispute was taken on August 16, 2018, death of insured occurred on July 8, 2019 due to a heart attack and claim was repudiated on March 23, 2021 by the insurer. It is also undisputed that there was

one previous policy bearing no.205601558 issued in favour of Late Meera Devi (wife of the petitioner) with its commencement being dated May 28, 2018 and in addition to that petitioner in its supplementary rejoinder affidavit has also admitted two other policies bearing no. 311496904 and 314004138. It is to be noted that the previous three policies were paid by the LIC.

9. The respondents have not raised any concern with the two policies bearing no.311496904 and 314004138 taken in the year 2002 and 2010 respectively. The dispute is only with the non-disclosure of one previous policy bearing no. 205601558 (date of commencement on May 28, 2018) in the proposal form as a ground of repudiation by LIC in order dated March 23, 2021.

10. Upon perusal of copy of the proposal form produced by respondents in its counter affidavit, it is to be noted that the query on which there was repudiation of claim by the insurer was with regard to 'column 9' which was left blank by the agent of LIC. The questions enquired in 'column 9' which was left blank in the proposal form in verbatim is as follows:

"9. Please give details of your previous insurance taken from LIC as well as from private insurers (including policies surrendered/lapsed during last 3 years)"

11. Moreover, the questions enquired in 'column 7a' and 'column 8a' of the proposal form and their corresponding answers given by the insured in verbatim are as follows:

"7.a. Is your life now being proposed for another assurance or an

application or revival of a policy on your life or any other proposal under consideration in any office of the corporation or to any other insurer? If yes, give detail:

Reply: No

8.a Has a proposal (or an application of revival of a policy) on your life made to any office of the Corporation or to any other insurer ever been:

Reply: No”

12. It is to be further noted that insured had also undergone a medical examination on June 29, 2018 by the insurer wherein her medical report also substantiates her good health condition which implies that there was nothing wrong with her health condition.

13. We are cognizant and conscious of the judgment of the Supreme Court in **Rekhaben Nareshbhai Rathod** (Supra) wherein the repudiation of the insurance claim was due to complete failure to disclose previous insurance claim as availed by the insured. The present case is different from the *Rekhaben Nareshbhai Rathod* (Supra) as in the former case, the reply was given in the negative and in the present case the column was left blank. The insured in the former case had taken previous non-disclosed policy from a different insurer unlike the present dispute wherein both the policies are with the same insurer.

14. It is pertinent to note that basically there are two rejection orders dated March 23, 2021 and May 19, 2023 passed by respondent no.3 and respondent no.1 respectively. The rejection order dated March 23, 2021 passed by respondent no.3 is on the ground of non-disclosure of a previous policy no.205601558 but the

subsequent rejection order dated May 19, 2023 in continuation of the previous order, passed by respondent no.1/Insurance Ombudsman on May 19, 2023 is on absurd grounds, which is in verbatim delineated below:

“Re:Policy No.: 205602934

We have received your letter dated 08-MAY-2023 alongwith the enclosures

In this connection, we may inform you that your complaint cannot be considered by this office as the complaint is not within the scope of Insurance Ombudsman Rules, 2017 (IO Rules) as following –

1) As per Rule 14 (3) of IO Rules, "no complaint to the Insurance Ombudsman shall lie unless-

(a) the complainant makes a written representation to the insurer named in the complaint and

(i) either the insurer had rejected the complaint; or

(ii) the complainant had not received any reply within a period of one month after the insurer received his representation; or

(iii) the complainant is not satisfied with the reply given to him by the insurer".

Your complaint does not satisfy this condition. You may please make a written representation to the insurer.

2) According to Rule 13 (1) of 10 Rules –

"The Ombudsman shall receive (and consider complaints or disputes relating to-

(a) delay in settlement of claims, beyond the time specified in the regulations, framed under the Insurance Regulatory and Development Authority of India Act, 1999;

(b) any partial or total repudiation of claims by the life insurer, General insurer or the health insurer;

(c) disputes over premium paid or payable in terms of insurance policy;

(d) misrepresentation of policy terms and conditions at any time in the policy document or policy contract;

(e) legal construction of insurance policies in so far as the dispute relates to claim;

(f) policy servicing related grievances against insurers and their agents and intermediaries;

(g) issuance of life insurance policy, general insurance policy including health insurance policy which is not in conformity with the proposal form submitted by the proposer,

(h) non-issuance of insurance policy after receipt of premium in life insurance and general insurance including health insurance; and

(i) any other matter resulting from the violation of provisions of the Insurance Act, 1938 or the regulations, circulars, guidelines or instructions issued by the IRDAI from time to time or the terms and conditions of the policy contract, in so far as they relate to issues mentioned at clauses (a) to (f)".

Your complaint is not related to any of the points from point No. (a) to (i) above.

3) As per Rule 14 (1) of IO Rules, "any person who has a grievance against an insurer, may himself or through his legal heirs, nominee or assignee, make a complaint in writing to the Insurance Ombudsman".

Your complaint does not satisfy this condition

In terms of Rule 14(5) of IO Rules, "No complaint before the Insurance Ombudsman shall be maintainable on the

same subject matter on which proceedings are pending before or disposed of by any court or consumer forum or arbitrator.

Accordingly your complaint cannot be considered by us.

5) The policy (under which you have made the complaint) is not issued under personal lines of insurance, group insurance policies, policies issued to sole proprietorship or micro enterprises in terms of Rule 4 of the IO Rules. Therefore your complaint cannot be considered by us.

6) As per Rule 17 (3)(ii) of IO Rules, Insurance Ombudsman can "not award compensation exceeding rupees thirty lakhs (including relevant expenses, if any)". You have claimed compensation of more than Rs.30 lakhs; therefore **your complaint cannot be considered by us.**

7) The complaint is not addressed to this office.

8) Complaint is time barred."

15. A perusal of the order dated May 19, 2023, reveals that the decision passed by the Insurance Ombudsman lacks consideration on merits and is entirely vague. Despite the nominee of the insured having submitted a written representation dated April 15, 2023; the existence of a rejection order dated March 23, 2021, from the insurer repudiating the insurance claim; with no proceedings pending before any court or arbitrator; the insurance policy issued under personal lines; the complainant seeking an assured sum of only Rs.15 lakhs; the complaint being duly addressed to the office of Insurance Ombudsman; and the complaint having been filed within the time frame stipulated in the Ombudsman's letter dated April 21, 2023 requesting certain documents; the Insurance Ombudsman has arbitrarily, capriciously and whimsically rejected the complaint without any application of mind

by simpliciter quoting the rules for filing a complaint as per the Insurance Ombudsman, Rules 2017.

16. The repudiation in the present case was within a period of three years from the date of commencement of policy. This assumes significance in view of the provisions of Section 45 of the Insurance Act, 1938. The said provision in verbatim is as follows:

“45. Policy not be called in question on ground of misstatement after three years. —(1) No policy of life insurance shall be called in question on any ground whatsoever after the expiry of three years from the date of the policy, i.e., from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of rider to the policy, whichever is later.

(2) A policy of life insurance may be called in question at any time within three years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground of fraud:

Provided that the insurer shall have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision is based.

Explanation I. —For the purposes of this sub-section, the expression “fraud” means any of the following acts committed by the insured or by his agent, with intent to deceive the insurer or to induce the insurer to issue a life insurance policy: —

(a) the suggestion, as a fact of that which is not true and which the insured does not believe to be true;

(b) the active concealment of a fact by the insured having knowledge or belief of the fact;

(c) any other act fitted to deceive; and

(d) any such act or omission as the law specially declares to be fraudulent.

Explanation II. —Mere silence as to facts likely to affect the assessment of the risk by the insurer is not fraud, unless the circumstances of the case are such that regard being had to them, it is the duty of the insured or his agent keeping silence, to speak, or unless his silence is, in itself, equivalent to speak.

(3) Notwithstanding anything contained in sub-section (2), no insurer shall repudiate a life insurance policy on the ground of fraud if the insured can prove that the misstatement of or suppression of a material fact was true to the best of his knowledge and belief or that there was no deliberate intention to suppress the fact or that such misstatement of or suppression of a material fact are within the knowledge of the insurer:

Provided that in case of fraud, the onus of disproving lies upon the beneficiaries, in case the policyholder is not alive.

Explanation. —A person who solicits and negotiates a contract of insurance shall be deemed for the purpose of the formation of the contract, to be the agent of the insurer.

(4) A policy of life insurance may be called in question at any time within three years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground that any statement of or suppression of a fact material to the expectancy of the life of the insured was incorrectly made in the proposal or other

document on the basis of which the policy was issued or revived or rider issued:

Provided that the insurer shall have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision to repudiate the policy of life insurance is based:

Provided further that in case of repudiation of the policy on the ground of misstatement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till the date of repudiation shall be paid to the insured or the legal representatives or nominees or assignees of the insured within a period of ninety days from the date of such repudiation.

Explanation. —For the purposes of this sub-section, the misstatement of or suppression of fact shall not be considered material unless it has a direct bearing on the risk undertaken by the insurer, the onus is on the insurer to show that had the insurer been aware of the said fact no life insurance policy would have been issued to the insured.

(5) Nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal. “

17. As per Section 45 of the Insurance Act, 1938, the policy may be called in question within three years mainly on two grounds, firstly, on the ground of fraud and secondly on the ground of misstatement or suppression of a material fact. As per second proviso to sub-section (4) of Section 45 of the Insurance Act, 1938 it is

clear that if the policy is being repudiated on the ground of mis-statement or suppression of a material fact, and not on the ground of fraud, the premiums collected by the insurer are to be returned within a period of ninety days from the date of such repudiation. In the present case, the respondent/Insurance Company has made no such return of the premiums. Accordingly, it is clear from the action of the respondents that the policy has been repudiated on the ground of fraud.

18. As per sub-section (3) of Section 45, the insurer cannot repudiate the policy on the ground of fraud if, the insured can prove that there was no deliberate intention to suppress the material fact or suppression of a material fact are within the knowledge of the insurer. In case of **Mahaveer Sharma** (Supra), the Apex Court has held that the burden of proving the repudiation on ground of fraud lies on the insurer.

“16. In Mahakali Sujatha (Supra), this Court observed that if a claim was repudiated on the ground that the policy holder has suppressed material facts in his application form with respect to existing life insurance policies from other insurers, the burden is on the insurer to prove the allegation of non-disclosure of the material fact and that the non-disclosure was fraudulent.”

19. In **Manmohan Nanda v. United India Assurance Co. Ltd.** reported in (2022) 4 SCC 582 the Apex Court has held that principle of utmost good faith imposes meaningful reciprocal duties owned by the insured to the insurer and vice-versa. The court also laid down various tests for determination of material facts and also highlights the doctrine of

contra proferetum in standard form contract. The relevant paragraphs of the judgment are quoted hereinbelow:

“34. Under the provisions of the Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002 the Explanation to Section 2(d) defining “proposal form” throws light on what is the meaning and content of “material”. For an easy reference the definition of “proposal form” along with the Explanation under the aforesaid Regulations has been extracted as under:

“2. Definitions.-In these Regulations, unless the context otherwise requires-

* * *

(d) “Proposal form” means a form to be filled in by the proposer for insurance, for furnishing all material information required by the insurer in respect of a risk, in order to enable the insurer to decide whether to accept or decline, to undertake the risk, and in the event of acceptance of the risk, to determine the rates, terms and conditions of a cover to be granted.

Explanation—“Material” for the purpose of these Regulations shall mean and include all important, essential and relevant information in the context of underwriting the risk to be covered by the insurer.”

Thus, the Regulation also defines the word “material” to mean and include all “important”, “essential” and “relevant” information in the context of guiding the insurer in deciding whether to undertake the risk or not.

35. Just as the insured has a duty to disclose all material facts, the insurer must also inform the insured about the terms and conditions of the policy that is

going to be issued to him and must strictly conform to the statements in the proposal form or prospectus, or those made through his agents. Thus, the principle of utmost good faith imposes meaningful reciprocal duties owed by the insured to the insurer and vice versa. This inherent duty of disclosure was a common law duty of good faith originally founded in equity but has later been statutorily recognised as noted above. It is also open to the parties entering into a contract to extend the duty or restrict it by the terms of the contract.

36. The duty of the insured to observe utmost good faith is enforced by requiring him to respond to a proposal form which is so framed to seek all relevant information to be incorporated in the policy and to make it the basis of a contract. The contractual duty so imposed is that any suppression or falsity in the statements in the proposal form would result in a breach of duty of good faith and would render the policy voidable and consequently repudiate it at the instance of the insurer.

40. If a fact, although material, is one which the proposer did not and could not in the particular circumstances have been expected to know, or if its materiality would not have been apparent to a reasonable man, his failure to disclose it is not a breach of his duty.

Contra proferentem rule

45. The *contra proferentem* rule has an ancient genesis. When words are to be construed, resulting in two alternative interpretations then, the interpretation which is against the person using or drafting the words or expressions which have given rise to the difficulty in construction, applies. This rule is often invoked while interpreting standard form

contracts. Such contracts heavily comprise of forms with printed terms which are invariably used for the same kind of contracts. Also, such contracts are harshly worded against individuals and not read and understood most often, resulting in grave legal implications. When such standard form contracts ordinarily contain exception clauses, they are invariably construed contra proferentem rule against the person who has drafted the same.

52.6. *Canara Bank v. United India Insurance Co. Ltd. [Canara Bank v. United India Insurance Co. Ltd., (2020) 3 SCC 455 : (2020) 2 SCC (Civ) 126] , is a case in which this Court held that if a column is left blank, the insurance company should ask the insured to fill up the column. If the insurance company while accepting the proposal form does not ask the insured to clarify any ambiguity then the insurance company after accepting premium cannot urge that there was a wrong declaration made by the insured. Leaving out a column blank does not mean that there was a misdescription of facts. To make a contract void, the non-disclosure should be of some very material fact. Therefore, the insurer therein was directed to indemnify the insured in the case. The judgment in Satwant Kaur Sandhu [Satwant Kaur Sandhu v. New India Assurance Co. Ltd., (2009) 8 SCC 316 : (2009) 3 SCC (Civ) 366] was distinguished and held not applicable in this case.*

55. On a consideration of the aforesaid judgments, the following principles would emerge:

55.1. There is a duty or obligation of disclosure by the insured regarding any material fact at the time of making the proposal. What constitutes a material fact would depend upon the nature of the insurance policy to be taken, the risk

to be covered, as well as the queries that are raised in the proposal form.

55.2. What may be a material fact in a case would also depend upon the health and medical condition of the proposer.

55.3. If specific queries are made in a proposal form then it is expected that specific answers are given by the insured who is bound by the duty to disclose all material facts.

55.4. If any query or column in a proposal form is left blank then the Insurance Company must ask the insured to fill it up. If in spite of any column being left blank, the Insurance Company accepts the premium and issues a policy, it cannot at a later stage, when a claim is made under the policy, say that there was a suppression or non-disclosure of a material fact, and seek to repudiate the claim.

55.5. The Insurance Company has the right to seek details regarding medical condition, if any, of the proposer by getting the proposer examined by one of its empanelled doctors. If, on the consideration of the medical report, the Insurance Company is satisfied about the medical condition of the proposer and that there is no risk of pre-existing illness, and on such satisfaction it has issued the policy, it cannot thereafter, contend that there was a possible pre-existing illness or sickness which has led to the claim being made by the insured and for that reason repudiate the claim.

55.6. The insurer must be able to assess the likely risks that may arise from the status of health and existing disease, if any, disclosed by the insured in the proposal form before issuing the insurance policy. Once the policy has been issued after assessing the medical condition of the insured, the insurer cannot repudiate the claim by citing an existing medical

condition which was disclosed by the insured in the proposal form, which condition has led to a particular risk in respect of which the claim has been made by the insured.

55.7. In other words, a prudent insurer has to gauge the possible risk that the policy would have to cover and accordingly decide to either accept the proposal form and issue a policy or decline to do so. Such an exercise is dependent on the queries made in the proposal form and the answer to the said queries given by the proposer.”

(Emphasis Added)

20. In **Mahakali Sujatha v. Future Generali India Life Insurance Co. Ltd.** reported in (2024) 8 SCC 712, the Supreme Court further held that in insurance contracts, the onus of proving allegations of non-disclosure of material facts and any fraudulent intent lies solely with the insurer. This means the insurer must provide concrete evidence to substantiate claims of misrepresentation or suppression of material information by the insured. The relevant paragraphs of the judgment are quoted hereinbelow:

“39. From the aforementioned discussion, it is clear that the principle of utmost good faith puts reciprocal duties of disclosure on both parties to the contract of insurance. These reciprocal duties mandate that both the parties make complete disclosure to each other, so that the parties can take an informed decision and a fair contract of insurance exists between them. No material facts should be suppressed, which may have a bearing on the risk being insured and the decision of the party to undertake that risk. However, not every question can be said to be material fact and the materiality of a fact has to be adjudged

as per the rules stated in the aforementioned judgment.

42. The question before this Court in *Rekhaben case*[*Reliance Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod*, (2019) 6 SCC 175 : (2019) 3 SCC (Civ) 174] was, whether, the repudiation could be sustained on the grounds of suppression of information about other insurance policies. It is pertinent to note that the insured therein had admitted the non-disclosure of the earlier cover for life insurance held by him, but argued that the non-disclosure of such information was not a material fact whose suppression would allow for repudiation of the claim under Section 45. Therefore, the Court ruled in favour of the insurance company and held that such suppression was indeed a material suppression of information, as it had a bearing on the decision of the insurer to enter into the contract of insurance or not.

44. However, the aforesaid judgment in *Rekhaben case*[*Reliance Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod*, (2019) 6 SCC 175 : (2019) 3 SCC (Civ) 174] is distinguishable from the present case, insofar as there is no admission by the appellant herein of any previous policies taken by the insured. In that case, after the admission by the policy holder, the Court was tasked only with the question of whether the fact about previous policies qualified to be a “material fact” that was suppressed. However, in the present case, in light of Section 45 of the Insurance Act, 1938, the burden rests on the insurer to prove before the Court that the insured had suppressed the information about the previous policies. This burden of proof has

to be duly discharged by the insurer in accordance with the law of evidence.”
(Emphasis Added)

21. In **Mahaveer Sharma (Supra)**, the Supreme Court has held that while insurance contracts are based on the principle of *uberrima fides* (utmost good faith), not every omission amounts to material suppression. The Court emphasized that the materiality of a fact must be assessed from the perspective of a prudent insurer and depends on the factual matrix of each case. The relevant paragraphs of the judgment are quoted hereinbelow:

“12. An insurance is a contract uberrima fides. It is the duty of the applicant to disclose all facts which may weigh with a prudent insurer in assuming the risk proposed. These facts are considered material to the contract of insurance, and its non-disclosure may result in the repudiation of the claim. The materiality of a certain fact is to be determined on a case-to-case basis. The aforementioned judgments illustrate instances of material facts, wherein the non-disclosure of certain medical conditions was held to be material in the context of a Mediclaim policy.

15. In **Mahmohan Nanda (supra)**, on a consideration of several judgments, this Court deduced, *inter alia*, the following principles:

“xxx

55.1 *There is a duty or obligation of disclosure by the insured regarding any material fact at the time of making the proposal. What constitutes a material fact would depend upon the nature of the*

insurance policy to be taken, the risk to be covered, as well as the queries that are raised in the proposal form.

55.2 *What may be a material fact in a case would also depend upon the health and medical condition of the proposer.*

55.3 *If specific queries are made in a proposal form then it is expected that specific answers are given by the insured who is bound by the duty to disclose all material facts.*

55.4 *If any query or column in a proposal form is left blank then the insurance company must ask the insured to fill it up. If in spite of any column being left blank, the insurance company accepts the premium and issues a policy, it cannot at a later stage, when a claim is made under the policy, say that there was a suppression or non-disclosure of a material fact, and seek to repudiate the claim.”*

16. In **Mahakali Sujatha (supra)**, this Court observed that if a claim was repudiated on the ground that the policy holder has suppressed material facts in his application form with respect to existing life insurance policies from other insurers, the burden is on the insurer to prove the allegation of non-disclosure of the material fact and that the non-disclosure was fraudulent. Further, the burden of proving the fact, which excludes the liability of the insured to pay compensation lies on the insured alone and no one else.”

22. Upon a perusal of the umpteen judgments cited by both the parties and sifting through the ratios laid down by the Apex Court in the various judgments, following principles can be culled out:

A. There is a duty or obligation of disclosure by the insured regarding any material fact at the time of making the

proposal and what constitutes a material fact would depend upon the nature of insurance policy taken, the risk covered, as well as the queries raised in the proposal form.

B. The test is whether the facts in question would influence the prudent insurer or not. If the mind of a prudent insurer would be affected, either in deciding whether to take the risk at all or in fixing the premium by knowledge of a particular fact then the fact will be a material fact.

C. A material fact would also depend upon health and medical condition of the proposer.

D. The *contra proferentem* rule has an ancient genesis. When words are to be construed, resulting in two alternative interpretations then, the interpretation which is against the person using or drafting the words or expressions which have given rise to the difficulty in construction, applies. When such standard form contracts ordinarily contain exception clauses, they are invariably construed *contra proferentem* rule against the person who has drafted the same.

E. If specific queries are made in the proposal form then it is the duty of the insured to answer that specific queries, but if any query or column in a proposal form is left blank then the insurance company must ask the insured to fill it up. If in spite of any column being left the insurance company accepts the premium, and thereafter, issued policy bond, it cannot at a subsequent stage repudiate the claim of the insured. It is the duty of the insurer to verify the details of previous policy which is already on record with them.

CONCLUSION

23. Upon examining the facts of the present case, it is to be noted that the petitioner had taken four policies from the LIC. For three of the said policies, the LIC has made payment with regard to the claims made by the Petitioner. However for the last policy that was taken on August 16, 2018, for the sum assured of Rs.15 lakh, the same was rejected by the LIC on the ground that the 'column 9' of the proposal form was left blank by the petitioner. In fact, clause 9 specifically sought for details of policies that have been taken by the petitioner within the past three years and the petitioners did not mention that the petitioner had previously taken a policy bearing no.205601558 from LIC itself for a sum assured of Rs.3,70,000 on May 28, 2018 less than three months before taking the present policy.

24. In our view, this is not suppression of a 'material fact' and accordingly the LIC cannot shrug away from the responsibility by merely taking the ground that the previous policy was not disclosed. The petitioner has pleaded that he had disclosed the information to the agent of the LIC and as per the agent the said previous policy is not required to be filled-up in the form as it was already within the records of LIC. The insured had also given copy of his PAN card and Aadhar card to the respondents while filling up the proposal form. Moreover, issuance of policy bond imputes verification of proposal form along with financial documents like Aadhar and PAN with which all the previous policies are linked. The earlier policies all being purchased from LIC, one would expect that minimum due diligence would be carried out by LIC also.

25. Applying the aforesaid judgment to the facts of the case, it is to be

noted that if in spite of any column being left blank, the insurance company accepts the premium and issues a policy bond, it is presumed to have waived of its right to repudiate the policy on ground of suppression or non-disclosure of a material fact at a later stage. Thus, it is the burden of the respondents to verify the details provided by the insured available with the office of the LIC before issuance of policy bond. Mere shifting of their burden upon the petitioner from his rightful claim would not help the respondents in any manner specially when the previous policy as well as the present policy are given by the same insurer.

26. It is to be noted that the Supreme Court in the case of *Mahaveer Sharma (Supra)*, after examining the judgments in the cases of *Rekhaben Nareshbhai Rathod (Supra)*, *Manmohan Nanda (Supra)* and *Mahakali Sujatha (Supra)*, categorically affirmed the principles established in the case of *Manmohan Nanda (Supra)*. The principles as culled out in paragraph 22 as above, clearly require the insurer to be more vigilant while issuing a policy. As categorically stated in paragraph 55.4 of the judgment in the case of *Manmohan Nanda (Supra)*, it is the duty of the Insurance Company to ask the insured to fill up any particular column that may have been left blank and if the insurer does not do so and goes ahead in issuing the insurance bond, it cannot, at a later stage, repudiate the contract on the ground of suppression or non-disclosure of a particular fact. In the instant case, the petitioner had only taken policies from the LIC and a minimum due diligence by the LIC would have revealed that the petitioner had taken a previous policy from the LIC. The LIC not seeking any clarification with regard to the blank column and subsequently accepting the premiums and issuing the insurance bond, has waived its right to repudiate the contract on the basis of suppression of material facts or non-

disclosure of material facts. What is to be further noted is that any non-disclosure in the present case, was not with regard to health of the petitioner and the petitioner died of a sudden heart attack that was not connected to any previous ailments. In light of the same, the particular action in the instant case of repudiating the contract by the LIC is arbitrary and against the principles of law established by the Supreme Court.

27. The order passed by the Insurance Ombudsman is also of no assistance to the respondents as the same is clearly an order without application of mind as pointed out in paragraph 14 herein above.

28. In light of the above, the impugned orders are quashed and set-aside with a direction upon the LIC to make payment of the insured sum in accordance with law to the petitioner within a period of six weeks from date.

29. With the above directions, the writ petition is disposed of.

30. Since a point of law was involved, there shall be no order as to costs.

(2025) 4 ILRA 315
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 10.04.2025
BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1003201 of 2002

Devesh Chandra Dwivedi ...Petitioner
Versus
Commissioner Faizabad & Ors.
...Respondents

Counsel for the Petitioner:

H.S. Jain, A.K. Balediha, D.C. Mukherjee,
Hari Om Singh, Pradeep Shukla, Pt. S.
Chandra

Counsel for the Respondents:

C.S.C., Ashok Kumar Balediha, B.K. Singh,
M.A. Khan, M.A. Siddiqui, R.N. Gupta

**Civil Law – Constitution of India, 1950 –
Article 226 - Uttar Pradesh Zamindari
Abolition and Land Reforms Rules, 1952 –**

**Rule 285-H, 285-I, 285-J - Uttar Pradesh
Zamindari Abolition and Land Reforms
Rules, 1952 - Section 154 - Writ Petition –**

filed by petitioner (auction purchaser) - challenges the order of the Additional Commissioner, along with prior mutation-related orders of December 1999, in respect of land in question auctioned in his favour in 1989 after its original owner defaulted on a bank loan – original tenure holder took loan from the Bank, against the said land in question – due to default in loan payment – DM appointed SDM to hold the auction – SDM held auction as per Rule – in March 1989, auction sale was conducted, by SDM in favour of petitioner – SDM confirmed the auction sale on June 1989 – however, under the political pressure and due to extraneous reasons cancelled the auction sale deed in July, 1989 – subsequently, petitioner filed objection – rejected in Feb. 1990 – later on, petitioner (auction purchaser) approached to the DM – on instruction, SDM issued order of sale-certificate in Jan. 1992, which was registered in the office of Sub-Registrar in favour of the petitioner – despite of sale confirmation and auction sale deed in favour of petitioner he could not get possession on the land nor sale amount is ever returned – on the other hand, in absence of objection on behalf of borrower auction sale was become confirmed after 30 days automatically by fiction of law – further, after death of borrower his son fraudulently deposited the money in bank in June, 1999 and thereafter, executed a sale-deed of the land in question to a third person, in whose favour tehsildar mutated his name on revenue record – against which petitioner (auction purchaser) approached to the SDM – SDM set-aside the order of mutation – Revision – additional commissioner set-aside the order of SDM – present writ petition – court, after thoroughly examining the

legal provisions under Rule 285-H to 285-J of the UPZA & LR Rules and the facts on record, held that, (i) the auction sale of the disputed land in favour of the petitioner attained finality after no objections were filed within the stipulated 30-day period, – (ii) making mutation by the Tehsildar and sale-deed executed by the bank in favour of third person were legally invalid and amounted to concealment of material facts – (iii) further, the SDM had rightly restored the petitioner's name, - and (v) the Commissioner has committed gross illegality in reversing this without due consideration of the statutory provisions - consequently, the writ petition is allowed - impugned judgment and orders are set-aside - direction issued to the SDM to hand over possession of the auctioned-land to the petitioner and Tehsildar to grant mutation in his favour within four weeks. (Para no. 11,)

Writ Petition Allowed. (E-11)

List of referred Cases: -

1. Jagat Pal Singh Vs St. of UP & ors.– 1994
(12) LCD 612 – DB Allahabad.

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Pt. S. Chandra, learned counsel for the petitioner and Shri Shiv Ganesh Singh, learned Standing Counsel appearing for the respondents-State.

2. By means of the present writ petition, the petitioner is challenging judgment and order dated 28.08.2002 passed by the Additional Commissioner (Judicial), Faizabad Division, Faizabad (Opposite party no.2 in Revision No.5583, contained in Annexure-27 to the writ petition and order dated 20.12.1999 passed by the Additional/ Naib Tehsildar rejecting the application of the petitioner for mutation, contained in Annexure-20 and order dated 21.12.1999 passed by the Additional/ Naib Tehsildar directing to record the name of Anjum Faroz over the

land in dispute, contained in Annexure-21 with further prayer that the direction in the nature of Mandamus be issued to the opposite parties not to implement the impugned judgment and order dated 28.08.2002 passed by the opposite party no.2.

3. Factual matrix of the case is that one Jagesher son of Hari Charan took loan from bank of Baroda in the year of 1981 against Plot No.1025 area 0-8-0, plot No.1344 area 0-3-10 and Plot No.961 area 0-2-5 situated at Village Katka Khanpur, Tehsil Sadar, District Sultanpur. Due to default of loan payment, District Magistrate appointed S.D.M. Sadar to hold the auction and S.D.M. Sadar, Sultanpur held auction as per Rule on 8.3.1989. Auction sale was conducted on 8.3.1989 by S.D.M. in favour of petitioner i.e. Devesh Chandra Dwivedi.

S.D.M. made confirm the action sale by order dated 23.06.1989. S.D.M., Sadar, under political pressure and due to extraneous reasons cancelled the auction sale dated 8.3.1989 by order dated 28.07.1989 without power and jurisdiction. Subsequently, the petitioner filed objection before District Magistrate against order dated 28.07.1989 under Rule 285H but District Magistrate by order dated 9.2.1990 refused to entertain with observation that this remedy is open to aggrieved person whose land is auctioned and it is not for who has purchased the land.

Petitioner (auction purchaser) approached the District Magistrate, Sultanpur narrated the whole facts. He instructed to contact SDM, the SDM, Sadar issued order of sale certificate on 10.01.1992 ignoring earlier order of SDM dated 28.07.1989 which was without jurisdiction. Sale Officer executed sale deed on 10.01.1992 in office of Sub

Registrar, Sadar, Tehsil Sultanpur in favour of petitioner-Devesh Chandra Dwivedi and the same is still intact and not cancelled in any proceeding but despite of sale confirmation and auction sale deed in favour of petitioner he could not get possession on the land nor sale amount is ever returned to petitioner.

Shri Jageshar took loan and his legal heir did not file objection within 30 days before Collector or Commissioner, Faizabad under Rule 285-I of UPZA & LR Rules, 1952. As such, as per statute Rule 285-J the auction sale was become confirmed after 30 days automatically by fiction of law.

After Death of Shri Jageshar, his son by making concealment of fact deposited money in bank on 16.06.1999 in Bank and executed sale deed illegally in favour of one Sri Anjum Faroz on 23.06.1999. Tehsildar Sadar by order dated 20.12.1999 (Annexure-20 of the writ petition) passed the order of mutation. Against the order executing sale deed, the petitioner approached the SDM stating the fact that the land in question has been auctioned and sale has been confirmed in favour of the petitioner. Thereafter, S.D.M. by order dated 27.11.2000 (Annexure No.24) set aside the order of Tehsildar and restored the name of petitioner.

Against the aforesaid order, revision was filed before the Additional Commissioner, Faizabad Division, Faizabad. Commissioner Vide order dated 28.8.2002 set aside the order of the SDM which is not challenged in the present writ petition.

4. Assailing the impugned order, submission of learned counsel for the petitioner is that Rule 285-J of the Zamindari Abolition and Land Reforms Rules provides that on expiration of 30

days from the date of sale if no such application as is mentioned in Rule 285-H or Rule 285-I has been made or if such application has been made and rejected by Collector or Commissioner, the Collector shall pass an order confirming the sale after satisfying himself that the purchase of land in question by the bidder would not be in contravention of the provisions of Section 154. In this view of the matter, the order passed under this Rule shall become final.

5. Next submission of learned counsel for the petitioner is that under Rule 285-A, power of the Assistant Collector/SDM is delegated by Collector, as such once the sale was become confirmed on 23.6.1989 passed by the SDM, thereafter he was having no authority in law to review or recall his power which was delegated by the Collector.

6. Next submission of learned counsel for the petitioner is that the Additional Commissioner in passing the order dated 28.8.2002 has committed manifest error of law by concealing the material fact that son of Jageshar deposited money in bank on 16.6.1999 and bank executed sale deed illegally in favour of one Sri Anjum Faroz on 23.6.1999. Tehsildar, Sadar by order dated 20.12.1999 passed the order of mutation.

7. Next submission of learned counsel for the petitioner is that Appellate Court has illegally been set aside the order passed by the SDM on 27.11.2000. He further submits that under Rule 285-J of U.P.Z.A. & L.R. Rule, 1952, after expiry of 30 days there is provision of statutory confirmation of auction sale.

In support of his submission, learned counsel for the petitioner has placed reliance upon a judgment rendered

in the case of **Jagat Pal Singh v. State of U.P. and others reported in 1994(12)LCD Page 612 DB Allahabad.**

8. On the other hand, learned Standing Counsel submits that there is no illegality or infirmity in the order passed by the Additional Commissioner and it is just and valid order. Next submission of learned Standing Counsel is that after deposit of money by the son of Jageshar, Bank executed sale deed in favour of Sri Anjum Faroz.

9. Having heard the rival submissions of learned counsel for the parties, I have perused the material on the record as well as case-law cited by learned counsel for the petitioner.

10. To decide the controversy in hand, provisions of Rules 285-H, 285-I and 285-J of the U.P. Zamindari Abolition and Land Reforms Rules, 1952 are being quoted hereinbelow:

"285-H. (1) *Any person whose holding or other immovable property has been sold under the Act may, at any time within thirty days from the date of sale, apply to have the sale set aside on his depositing in the Collector's office-*

(a) for payment to the purchaser, a sum equal to 5 per cent of the purchase money; and

(b) for payment on account of the arrear, the amount specified in the proclamation in Z.A. Form 74 as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been paid on that account; and

(c) the cost of the sale.

On the making of such deposit, the Collector shall pass an order setting aside the sale:

Provided that if a person applied under Rule 258-I to set aside such sale he shall not be entitled to make an application under this rule.

(2)[***]

SYNOPSIS

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1. Extension of period of depositing amount under Rule 285-H.- The power of Court to extend the period of depositing amount stipulated in Rule 285-H of Rules of 1952, is not in any manner fettered by Rule 285-J. High Court under Article 226 has power not only to issue prerogative writs but it can also issue such orders as may be deemed fit and proper in the ends of justice for the enforcement of rights conferred by Part III and for any other purpose.

2. Setting aside of sale- Material irregularity.- Rules provide that any person whose holding or other immovable property has been sold under the Act, may at any time within 30 days from the date of sale, apply to the Collector to have the sale set aside on his depositing in Collector's Office the amount enumerated in clause (1) to (3) of the Rules.

3. Setting aside of sale.- On expiration of 30 days from the date of sale, the Collector was enjoined to pass an order confirming the sale after satisfying himself that the purchase of land in question by the bidder would not contravene the provisions of Section 154 of the Act, provided that no application as mentioned in Rule 285-H and 285-I of Rules has been made for

cancellation of auction sale or if made had been rejected by the Collector.

In order XXI, Rule 89 as well as in Rule 285-H, U.P. Zamindari Abolition and Land Reforms Rules, the sale shall be set aside if the person whose property is sold applies to have the sale set aside on his depositing the amount referred to in these provisions. The application is consequent to the deposit. Section 5 of the Limitation Act applies to limitation in appeals and applications but not to the act of deposit of money, which is the pre-condition for filing the application for setting aside the sale, for this reason too, Section 5 of Limitation Act has no application.

4. Objection under.- From Rule 285-H, it appears that only the owner of holding has right to prefer objection within 30 days of auction sale for setting aside sale and the Collector has power to set aside the sale. Further, a plain reading of Rule 285(1) shows that within a period of thirty days from the date of sale, application can be made to the Commissioner to set aside the sale on the ground of some material irregularity etc, since under Rule 285-H, 285(1), the objection can be made by any person before the Commissioner.

[285-I.(i)] At any time within thirty days from the date of the sale, application may be made to the Commissioner to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it; but no sale shall be set aside on such ground unless the applicant proves to the satisfaction of the Commissioner that he has sustained substantial injury by reason of such irregularity or mistake.

(ii)[***]

(iii) The order of the Commissioner passed under this rule shall be final.

SYNOPSIS

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1. Alternative Remedy to approach Board of Revenue.-Where no request was made before the Trial Court by revisionist for issuance of a decree, nor any satisfactory reason was given for delay so caused, there was no justification to accept such request As findings of Courts below are concurrent, no jurisdictional error is committed, the revision fails for no grounds.

2. Maintainability of revision.-No revision could be filed before the Commissioner by a person who could make an application under Section 173 or 174 of the Act or under Rule 285-H or 285-I of the Act and Rules. Otherwise, the bar put by Section 175 of the Act and Rule 285-K of Rules, will become meaningless.

3. Maintainability of special appeal.- The Commissioner records findings after giving notice to parties and giving them opportunities of adducing oral and documentary evidence. The controversy is decided fairly and objectively on the basis of evidence adduced by parties. Such decision has to be consistent with principles of natural justice and general principle of law.

4. Nature and scope of.- While considering the provisions contained in Rule 285-I, the principle of the Golden or

purposive rule of interpretation should be applied . It shall always not be possible for the farmers or persons belonging to lower cadre of society to approach the High Court under Article 226 of the Constitution.

Rule 285-I of the Rules, provides for filing an objection before the Commissioner. Therefore, the application filed before the Collector is not maintainable and it is open to the petitioner to approach the Commissioner.

5. Order of Commissioner- Shall be final.- The time limit given in Rule 285-I is 30 days from the date of sale. Admittedly, sale objection was filed beyond 30 days. It has also been mentioned in this Rule that sale shall not be set aside on the ground of irregularity or mistake in publishing or conducting it unless, the applicant proves to the satisfaction of the Commissioner that he has sustained substantial injury by reason of such irregularity or mistake. Rule 285-I (iii) makes it clear that order of the Commissioner passed under this Rule shall be final.

285-J. On the expiration of thirty days from the date of the sale if no such application as is mentioned in Rule 285-H or Rule 285-I, has been made or if such application has been made and rejected by the Collector or the Commissioner, the Collector shall pass an order confirming the sale after satisfying himself that the purchase of land in question by the bidder would not be in contravention of the provisions of Section 154. Even order passed under this rule shall be final.

11. On perusal of the provisions contained under Rule 285-J, it is evident that on expiration of 30 days from the date of sale if no such application as is mentioned in Rule 285-H or Rule 285-I has been made or if such application has been made and rejected by the Collector or the

Commissioner, the Collector shall pass an order confirming the sale after satisfying himself that the purchase of land in question by the bidder would not be in contravention of the provisions of Section 154 and the order passed under the said Rules shall be final. Therefore, the Tehsildar, Sadar has committed manifest error of law in passing the order dated 20.12.1999 making mutation on the sale deed executed by the bank concealing the material fact to Shri Anjum Faroz.

12. The S.D.M., Sadar vide order dated 27.11.2000 set aside the order of Tehsildar considering the material on record and restored the name of the petitioner.

13. In support of the his submission, learned counsel for the petitioner placed reliance upon the judgment rendered in the case of **Jagat Pal Singh (supra)**. Paragraphs 4 and 6 of the judgment is extracted hereinbelow:

"4. Learned counsel for the petitioner, learned Standing Counsel for opposite parties 1,2 and 3 and the learned counsel for opposite party no.6 have been heard. Learned counsel for the petitioner has argued that the property which was sold for realization of the amount by means of the auction dated 10.2.1976 was purchased by the petitioner. According to him the entire amount of the bid was deposited by the petitioner on 24.2.1976. Thereafter the Sub-Divisional Officer confirmed the auction by his order dated 19.3.1976, a copy of which is annexure-1 to the writ petition. A perusal of this order goes to show that the Sub-Divisional Officer while confirming the auction granted time till 25th March, 1976 to the objector to get the land released after

depositing the amount due. It may be recalled at this stage that some objection was filed by Smt. Sursata Devi, opposite party no.4, before the Sub-Divisional Officer. Now the question which arises in the present case is as to whether the Sub-Divisional Officer had power under the provisions of the Zamindari Abolition and Land Reforms Act and the Rules framed thereunder to confirm the sale and whether he had also power to grant time for payment of the amount due to the objector simultaneously with the confirmation of the sale. Taking the second point at fist it may be stated that the sale was confirmed by the Sub-Divisional Officer. The authority confirming the sale cannot grant time to the objector to pay or deposit the amount for which the recovery proceedings were taken or for which the sale was held. In this connection certain provisions of the Rules framed under the Zamindari Abolition and Land Reforms Act have to be perused. There are two provisions in the Zamindari Abolition and Land Reforms Rule, 1952 under which the attached property is sold, These are Section 284 and Section 286 of the Z.A. & L. R. Act. Rule 285 A provides that every sale under Sections 284 and 286 shall be made either by the Collector in person or by an Assistant Collector specially appointed by him in this behalf. It goes to show that the sale under both the above sections 284 and 286 of the Zamindari Abolition and Land Reforms Act, is to be conducted by the Collector in person or by an Assistant Collector specially appointed by him in this behalf. Rule 285-C of the Zamindari Abolition and Land Reforms Rules, 1952 provides that if the defaulter pays the arrears in respect of which the land or other immovable property is to be sold, at any time before the day fixed for the sale, to the person authorized to collect the amount in arrears

or to the person appointed under Rule 285-A to conduct the sale, the sale officer, on being satisfied of the payment, shall stay the sale. After the sale is held then the person who has purchased the property i.e. the auction purchaser shall have to deposit 25% of the amount of the bid forthwith and if that amount is not deposited then the sale is to take place again. This provision is made in Rule 285-D of the Zamindari Abolition and Land Reforms Rules. The entire amount of the purchase money is to be deposited within 15 days of the sale by the purchaser in the district treasury or sub-treasury and in case of default in deposit of the amount, the amount of 25% which was initially deposited at the fall of the hammer shall stand forfeited to Government and the property shall be re-sold. This provision is made under Rule 285-E of the Zamindari Abolition and Land Reforms Rules. Rule 285-F of the above Rules further provides that if the proceed of the sale which is eventually made are less than the price bid by such defaulting purchaser then the difference shall be recoverable from him as if it were an arrear of the revenue. Thereafter the provisions of Rule 285-H are there to safeguard the interest of the person whose property has been sold. It provides that any person whose holding or other immovable property has been sold under the Act may, at any time, within thirty days from the date of sale, apply to have the sale set aside on his depositing in the Collector's office the payment on account of the arrear, the amount specified in the proclamation in Z.A. Form 74, for the recovery of which the sale was ordered, the costs of the sale and a sum equal to 5 per cent of the purchase money, for payment to the purchaser, less any amount which might have been deposited. On making such deposits the Collector shall pass an order setting aside

the sale. This provision has been made in order to give a chance to the person whose immovable property has been sold to retain the same subject to the deposit of the amounts specified in this Rule. 5% amount of the auction money deposited by the person whose immovable property has been sold is to be paid to the auction purchaser in order to compensate him for the loss occurred to him. This Rule has a proviso attached to it which says that if a person applied under Rule 285-I to set aside such sale then he shall not be entitled to make an application under this Rule.

6. Rule 285-J of the Zamindari Abolition and Land Reforms Rules provides that after the expiration of thirty days from the date of the sale if no such application as is mentioned in Rule 285-H or Rule 285-I, has been made or if such application has been made and rejected by the Collector or the Commissioner, the Collector shall pass an order confirming the sale after satisfying himself that the purchase of land in question by the bidder would not be in contravention of the provisions of Section 154 of the U.P. Zamindari Abolition and Land Reforms Act. Section 154 of the above Act deals with restriction on transfer by a bhumidhar where the land exceeds as per limit fixed by this Section. Thus the Collector has no option but to confirm the sale on the expiry of 30 days if no objection has been made under Rule 285-H or Rule 285-I or if made but has been rejected by the Collector or the Commissioner and the Collector is duty bound to confirm the sale after satisfying himself that the provisions of Section 154 of the Zamindari Abolition and Land Reforms Act have not been contravened. Thus a perusal of this provision goes to show that the Collector has no power to grant time to the person whose property has been sold. The time which is fixed by the statute can be availed

by the person whose property has been sold but cannot be extended by the Collector specially after the sale has been confirmed. Therefore the time granted by the Sub-Divisional Officer on 19.3.1976 to the person whose property has been sold, to deposit the amount, has no legal sanctity and, as such, has to be ignored."

14. On perusal of the paragraph 4 of the aforesaid judgment, it is transpired that after auction, the entire amount was deposited in pursuance to an auction. Thereafter, Sub-Divisional officer confirmed the auction by his order dated 19.3.1976 and thereafter sale was confirmed and after confirmation of sale, the Sub-Divisional Officer cannot grant time to the objector to pay or deposit the amount for which the recovery proceedings were taken or for which the sale was held. It was also considered that Rule 285-A provides that every sale under Sections 284 and 286 shall be made either by the Collector in person or by an Assistant Collector specially appointed by him in this behalf.

In the present case, the S.D.M. was specially appointed by the Collector to make auction of the property.

15. It has also been provide that any person whose holding or other immovable property has been sold under the Act may at any time, within thirty days from the date of sale, apply to have the sale set aside on his depositing in the Collector's office the payment on account of the arrear, the amount specified in the proclamation in Z.A. Form 74, for the recovery of which the sale was ordered.

In the present case, for more than 30 days, no application nor deposit was

made by the person whose land was auctioned.

16. In view of the provisions contained in Rule 285-H and Rule 285-I, the Collector has no option but to confirm the sale on expiry of 30 days, if no objection has been made under the aforesaid Rules.

17. In the present case, auction sale was confirmed by the S.D.M. who was authorized by the Commissioner for auction sale of the property, therefore no illegality whatsoever has been committed in confirming the auction sale made by the S.D.M. On deposit of money by the land holder of the property of the auction sale to the Bank, sale deed was executed which is nullified in the eyes of law and no reliance can be placed on the sale deed executed by the Bank and the order of the S.D.M. setting aside the order of mutation is just and valid. The Commissioner has committed gross illegality in passing the impugned order dated 28.8.2002 and has not been taken into consideration the provisions referred hereinabove and the judgment relied upon by the learned counsel for the petitioner.

18. Considering in totality of facts and circumstances of the case, the writ petition succeeds and is hereby **allowed**. Impugned judgment and order dated 28.08.2002 passed by the Additional Commissioner (Judicial), Faizabad Division, Faizabad (Opposite party no.2 in Revision No.5583, contained in Annexure-27 to the writ petition) and order dated 20.12.1999 passed by the Additional/ Naib Tehsildar rejecting the application of the petitioner for

19. However, the S.D.M., Sadar, Sultanpur is directed to hand over the possession of Plot No.1025 Area 0-8-0, Plot No.1344 Area 0-3-10 and Plot No.961 Area 0-2-5 situated at Village Katka Khanpur, Tehsil Sadar, District Sultanpur after granting mutation on the basis of confirmation of sale in view of above-referred provisions to the petitioner within a period of four weeks from the date of production of a certified copy of this order.

BEFORE

Writ Tax No. 303 of 2025

Counsel for the Petitioner:
Shobhit Kant, Anshuman Asthana

Civil Law - Uttar Pradesh Goods and Services Tax Act, 2017 - Sections 44(1), 73(9) & 73(10) - Writ of Certiorari - Ex-Parte Assessment Order - Limitation Period - Extension of Time Limit by Notification - Jurisdiction - Alternative Remedy of Appeal.

The petitioner challenged an ex-parte assessment order dated 13.12.2023 under Section 73(9) of the U.P. GST Act, 2017, imposing a tax liability of Rs.1,12,827.38, penalty of Rs.20,000, and interest of Rs.1,14,787.42, contending it was time-barred under Section 73(10). The petitioner relied on *Writ Tax No. 264 of 2024*, which quashed similar orders for the financial year 2017-18 as beyond the three-year limit from the extended annual return filing date of 05.02.2020 (i.e., 05.02.2023). The respondents cited notifications dated 21.07.2022 (effective from 01.03.2020, extending the limit to 30.09.2023) and 24.04.2023 (effective from 31.03.2023, extending to 31.12.2023) for the financial year 2017-18. The Court held that the notification dated 21.07.2022, not considered in *Writ Tax No. 264 of 2024*, validly extended the limitation period, and the order dated 13.12.2023 was within the extended limit of 31.12.2023. As the notifications were unchallenged and an appellate remedy was available, the writ petition was dismissed as not maintainable.

Writ petition dismissed; alternative remedy of appeal available.

1. *Writ Tax No. 264 of 2024* - Orders under Section 73(9) for financial year 2017-18 quashed as time-barred, but decision overlooked notification dated 21.07.2022 extending limitation.

The Court observed that the notification dated 21.07.2022, effective from 01.03.2020,

extended the limitation period under Section 73(10) to 30.09.2023, and the subsequent notification dated 24.04.2023 further extended it to 31.12.2023 for the financial year 2017-18. The impugned order dated 13.12.2023 was thus within the permissible time frame. The petitioner's reliance on *Writ Tax No. 264 of 2024* was misplaced due to the earlier judgment's failure to consider the 21.07.2022 notification, which altered the limitation period. The petitioner did not challenge the notifications, and an alternative remedy of appeal was available. The Court noted a proposed review application for *Writ Tax No. 264 of 2024* due to the oversight of the 21.07.2022 notification.

(Delivered by Hon'ble Rajan Roy, J.
&
Hon'ble Om Prakash Shukla, J.)

1. Shri Shobit Kant, learned counsel for the petitioner and Shri Rajesh Tiwari, learned Additional Chief Standing Counsel for the State.

2. By means of this writ petition the petitioner has challenged ex-parte order dated 13.12.2023 passed by the Deputy Commissioner, Sector 21, State GST, Lucknow under Section 73(9) of Goods Service Tax Act, 2017 by which tax liability of Rs.1,12,827.38/- as well as the penalty of Rs.20,000/- and interest of Rs.1,14,787.42/- have been imposed.

3. The contention of the petitioner's counsel was that order is time barred. He invited our attention to a judgment passed by us on 12.11.2024 in Writ Tax No. 264 of 2024 to submit that based on

the said judgment this writ petition is liable to be allowed. The said judgment reads as under:-

"1. Supplementary affidavit on behalf of petitioner and short counter affidavit on behalf of State filed today are taken on record.

2. Heard Shri Anuj Kudesia, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State as also Shri Akhilesh Kumar, Deputy Commissioner, State G.S.T., Lucknow, who is present before this Court.

3. The present writ petition has been filed with the following reliefs:-

"i) to issue a writ, order or direction in the nature of Certiorari quashing the order on Form GST DRC-13 dated 05.10.2024 issued by Deputy Commissioner, State Tax, Sector 05, Lucknow contained as annexure no. 1 to this writ petition.

ii) to issue a writ, order or direction in the nature of certiorari quashing the assessment order and DRC-07 dated 02.12.2023 issued by Deputy Commissioner, State Tax, Sector-5, Lucknow contained as annexure no. 2 to this writ petition.

iii) to issue a writ, order or direction in the nature of mandamus commanding the respondents to direct the petitioner bank to de-freeze the two bank accounts operated petitioners i.e. account No. 7711564951 and Accout No. 9946014812 in Kotak Mahindra Bank."

4. The contention of learned counsel for the petitioner is that the impugned orders are barred by sub Section 10 of Section 73 of the U.P.G.S.T. Act, 2017 (hereinafter referred to as, the Act, 2017) as they have been passed beyond the time limit prescribed therein as calculated from the due date of filing

annual returns prescribed in Section 44 (1), which was extended to 05.02.2020 and the time limit of three years ended on 05.02.2023 but the impugned orders are dated 05.10.2024 and 02.12.2023, therefore, the impugned orders are without jurisdiction.

5. After hearing the parties, what comes out is that for justifying the time limit within which the impugned orders have been passed under Section 73 (9) and (10) of the Act, 2017 for the financial year 2017-18 reliance is being placed upon a notification dated 24.04.2023 by which the time limit of three years mentioned in sub Section 10 of Section 73 was extended for the financial year 2017-18 upto 31.12.2023, however, what is being omitted from consideration by the opposite party is that this notification dated 24.04.2023 has been given retrospective effect only from 31.03.2023 and not prior to it, now, in this context we may refer to Section 73 (10) of the Act, 2017, which reads as under:-

"(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund."

6. We may also refer to Section 44(1) of the Act, 2017, which reads as under:-

"44. Annual return -(1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.

Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of Central tax shall be deemed to be notified by the Commissioner."

7. Ordinarily the due date for filing annual return is 31st December of the end of the Financial Year, which in the case of financial year 2017-18 would be 31.12.2018, however, this due date for filing annual return, as already observed earlier, was extended vide notification of the Central Board of Direct Taxes and Customs dated, 03.02.2018 to 05.02.2020 and this notification was adopted by the State of U.P. vide notification dated 05.02.2020. Based on this notification, the period of three years mentioned in sub Section 10 of Section 73 would end on 05.02.2023 meaning thereby, an order under sub Section 9 of Section 73 for the financial year 2017-18 could have been passed by 05.02.2023 but not after it. Now the opposite parties are relying on the notification dated 24.04.2023 to submit that in fact they could have passed the order under sub Section 9 of Section 73 uptill 31.12.2023 however in doing so, they omit to consider para no. 2 of the said notification which says that the notification dated 24.04.2023 would be applicable retrospectively but only from 31.03.2023 meaning thereby, if the time limit of three years prescribed in sub Section 10 of Section 73 read with sub Section 1 of Section 44 expired prior to 31.03.2023 then the notification dated 24.04.2023 extending the time limit for passing of an order under

sub Section 9 of Section 73 would not be applicable, apparently so.

8. Apparently the impugned orders are beyond the time limit prescribed under sub Section 10 of Section 73 as applicable for the financial year 2017-18 and therefore the impugned orders are beyond jurisdiction being barred by the time provided in the said provision, therefore, we allow the writ petition and quash the impugned orders dated 05.10.2024 and 02.12.2023 issued by the Deputy Commissioner, State Tax, Sector 05, Lucknow

9. Consequences shall follow, accordingly. The accounts of the petitioner which have been freezed shall be de-freezed."

4. However, Shri Rajesh Tiwari, learned Additional Chief Standing Counsel for the State has placed before us a Notification dated 21.07.2022 which was not brought to our notice while deciding the Writ Tax No. 264 of 2024. The said Notification reads as Under:-

"NOTIFICATION

No.-596/XI-2-22-9(47)/17-T.C.187-U.P.
Act-1-2017-Order-(249)-2022 Lucknow:
Dated: July 21, 2022

In exercise of the powers conferred by section 168A of the Uttar Pradesh Goods and Services Tax Act, 2017 (U.P. Act no. 1 of 2017) (hereinafter referred to as the said Act) read with section 20 of the integrated Goods and Services Tax Act, 2017 (13 of 2017) and in partial modification of the notifications No.-445/XI-2-9(47)/17-U.P. Act-1 of 2017-Order-(118)-2020 dated

11.05.2020 and No.-496/XI-2-21-9(47)17-U.P. Act-1-2017-Order-(186)-2021 dated 28.06.2021, the Governor, on the recommendations of the Council, hereby,-

(i) extends the time limit specified under sub-section (10) of Section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect of a tax period for the financial year 2017-18, up to the 30th day of September, 2023.

(ii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation under sub-section (10) of section 73 of the said Act for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of erroneous refund;

(iii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.

2. This notification shall be deemed to have come into force with effect from the 1st day of March, 2020."

5. When we take into consideration the notification aforesaid what we find is that though by virtue of the Central Board of Direct taxes and Customs Notification dated 03.02.2018 the date for filing annual return for the financial year 2017-18 which would normally be 31.12.2018 stood extended till 05.02.2020 and based on the said notification the period of three years mentioned in Sub-section 10 of Section 73 would end on 05.02.2023, meaning thereby, an order under Sub-Section 9 of Section 73 could have been passed by 05.02.2023 for the financial year 2017-18,

9. So far as the facts of the present case are concerned, the impugned order of assessment dated 13.12.2023 is not barred by time, therefore, the writ petition is not maintainable as remedy of appeal is prescribed against such an order.

The petitioner challenged an appellate order dated 10.11.2023 [Appeal No. 0513/2023, Assessment Year 2023-24] upholding a demand issued after the interception of goods in transit from Guwahati to Delhi via Uttar Pradesh on 21.09.2023 in Amroha. At interception, the petitioner produced valid tax invoices, e-

invoices, e-way bills, and bilty (GR), and the driver's statement in MOV-01 confirmed document accuracy. The physical verification report (MOV-04) noted no discrepancy between the goods and accompanying documents. However, the authorities later alleged the goods differed from those in the documents, a stand not supported by MOV-04. The Court held that once physical verification in MOV-04 confirmed no discrepancy, the revenue could not change its stand or introduce new grounds at a later stage, as this violated settled law against shifting administrative positions. Relying on *Jitendra Kumar v. State of U.P.*, Writ Tax No. 1425 of 2023, the Court quashed the impugned order, emphasizing that revenue cannot detain goods or issue demands based on inconsistent grounds post-verification. Any amount deposited by the petitioner was ordered to be refunded within three weeks.

Writ petition allowed.

Case Law Discussed:

1. *Jitendra Kumar Vs St. of U.P.*, Writ Tax No. 1425 of 2023, (2024) AHC 56789 - Revenue cannot change its stand or supplement grounds after initial action; detention based on invalid or inconsistent grounds is unlawful.

Observation:

The Court observed that the MOV-04 physical verification report, prepared after due inspection on 22.09.2023, confirmed the goods matched the tax invoices, e-invoices, e-way bills, and bilty, with no discrepancies noted. The respondents' subsequent claim of differing goods was unsupported by evidence and contradicted the manual entries in MOV-04, which required deliberate input by the officer. The failure to address MOV-04 findings in the

counter affidavit further weakened the revenue's case. The Court stressed that administrative actions, such as detention or demand, must be consistent with initial findings, and any volte-face causes prejudice to the assessee.

Result: Writ petition allowed; impugned order dated 10.11.2023 quashed; refund of deposited amount ordered within three weeks.

(Delivered by Hon'ble Piyush Agrawal, J.)

1. Heard Sri Aditya Pandey, learned counsel for the petitioner, and Sri R.S. Pandey, learned Additional Chief Standing Counsel for the State-respondents.

2. By means of this writ petition, the petitioner has assailed the order dated 10.11.2023 passed by the respondent no.1 in Appeal No.0513/2023, Assessment Year 2023-24.

3. Learned counsel for the petitioner submits that the goods in question was in transit from Guwahati, Assam to Delhi and while passing through the State of U.P., the same were intercepted by the respondent no.2 on 21.09.2023 in District- Amroha. At the time of interception, all documents were produced i.e. tax invoices, E-invoices and E-waybills and Bilties (GR) before the respondent no.2 and the statement of the driver of the vehicle was recorded in MOV-01 issued on 22.09.2023, which shows that all the documents were found to be correct, a copy of which has been annexed as **Annexure No.3** to this writ petition.

4. He further submits that in the MOV-04 i.e. the physical verification report, in the column of description of goods as per the invoice and description of goods in the conveyance was noted and no

difference as per the invoices and physical verification was pointed out, but thereafter, a somersault was taken by the authority that the goods were different than mentioned in the accompanying documents. He further submits that once the goods were verified physically and after getting the details of the goods mentioned in the accompanying tax invoices and when no discrepancy was found in the physical verification as mentioned in MOV-04, at a later stage, the authorities cannot take a different stand. On the said basis, the demand was issued against which an appeal was filed, which was also dismissed without considering the material available on record.

5. He further submits that even in the counter affidavit, not a word has been whispered about the MOV-04 while noting the goods in conveyance as no difference was found in the accompanying documents. He next submits that the authorities cannot be permitted to take a different stand at a later stage in spite of being no difference to be found at the time of inspection.

6. *Per contra*, learned Additional Chief Standing Counsel supports the impugned order.

7. Upon hearing the counsel for the parties, the Court has perused the records.

8. It is not in dispute that the goods in question were accompanied not only with the tax invoices, E-way bill, but also E-tax invoices, e-way bills as well as G.R. (bilties) and the statement of the driver of the vehicle was also recorded in MOV-01, a copy of which has been annexed as *Annexure No.3* to this writ petition.

9. Further, the MOV-04 was also issued after the physical verification of the

goods in question, a copy of which has been annexed as *Annexure No. 4* of this writ petition.

10. The perusal of the MOV-04 shows that in the description of goods as per the invoices including H.S.N. Code and description of goods in conveyance, no difference was pointed out. Once the goods in question, on the physical verification, was found as per the goods disclosed in the invoices, the revenue cannot be permitted to completely change its stand by supplementing different grounds. The argument raised by Sri R.S. Pandey, A.C.S.C. that as soon as H.S.N. Code is fed in the description of goods, the same goods appear in the description of goods as per the invoice (in Column of MOV-04) and therefore, the State authorities are not in a position to correct the field, and thus the description was found differently in the column of description of goods in conveyance could not be filled correctly.

11. On a pointed query put to the State that as soon as H.S.N. Code is fed in the column of description of goods as per invoice, whether the goods appear as per the code or it has to be fed, the answer was in negative i.e. the goods have to be fed manually.

12. A similar question was asked with regard to the filling of description of goods in conveyance in Column IV, he accepts that it has filled manually.

13. Once on the verification report i.e. MOV-04, the items are fed by the officer concerned, after due verification, the authorities cannot be permitted to completely change its stand or further permitted to supplement by different reasons or grounds, which were not taken

or mentioned while preparing the physical verification report in MOV-04.

14. The purpose of filling MOV-04, at the time of physical verification, is to find the correctness of the goods in transit from the accompanying documents and if the officer while preparing the MOV-04 did not find any change or difference in goods that of mentioned in the accompanying documents, the same cannot be permitted at a later stage for taking a different stand, as mentioned in the present case.

15. That this Court in the case of *Jitendra Kumar Vs. State of U.P. and Another (Writ Tax No.1425 of 2023) in para no. 5, 6 & 7* has held as under:-

“5. It is trite law, settled by a catena of Supreme Court judgments, that the Revenue cannot beat around the bush and keep changing the goal post at each stage. Once the Revenue had taken a particular stand, the same cannot be completely changed and/or supplemented by a different reason or ground.

6. In the present case, it is clear that the detention was made on the ground that the goods were not accompanied by valid documents. However, when the show-cause notice was issued, there is no whisper of any invalid document whatsoever. In fact, the stand was completely changed by the Revenue and this volte face cannot be countenanced by this Court. The detention of goods causes serious prejudice to an assessee and the same can only be done on the basis of specific, valid and reasonable grounds. In the present case, it is quite obvious that at the time of detention, the ground that was stated by the Revenue was incorrect. More so, there was no reason for the Revenue to have

detained the goods and the consequential actions that followed, were obviously vitiated.

7. In light of the findings above, we are of the view that the detention order and the subsequent show-cause notice were bad in law, and accordingly, both are quashed and set-aside.”

16. In view of the facts as stated above as well as in the light of the aforesaid judgment, the impugned order cannot be sustained in the eyes of law and the same is hereby quashed.

17. The writ petition is **allowed**, accordingly.

18. Any amount deposited by the petitioner during the pendency of the present litigation, shall be refunded to the petitioner within a period of three weeks from the date of production of certified copy of this order.

(2025) 4 ILRA 331
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.04.2025

BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE KSHITIJ SHAILENDRA, J.

Writ Tax No. 1406 of 2025

M/s Merino Industries Ltd., Hapur, U.P.
...Petitioner

Versus
State of U.P. & Anr. ..Respondents

Counsel for the Petitioner:
 Sri Anil Prakash Mathur

Counsel for the Respondents:
 Ankur Agarwal (S.C.)

Civil Law - Uttar Pradesh Goods and Services Tax Act, 2017 – Sections 74 & 75(4) – Writ of Certiorari – Principles of Natural Justice – Opportunity of Personal Hearing – Show Cause Notice – Violation of Mandatory Procedural Requirements – Costs Imposed.

Held:

The petitioner, engaged in manufacturing potato flakes, challenged an order dated 04.02.2025 under Section 74 of the U.P. GST Act, 2017, imposing a demand of Rs.5,82,67,589.12 for the period July 2017 to March 2018, alleging misclassification of potato flakes under tariff heading 2005-2000 instead of 1105-2000. A show cause notice dated 03.08.2024 marked the personal hearing date as 'NA' and required a reply by 19.08.2024. The petitioner's reply specifically requested a personal hearing, but the impugned order was passed without granting one, violating Section 75(4), which mandates a hearing when requested in writing or when an adverse decision is contemplated. Relying on *Laskin Engineering Pvt. Ltd. v. State of U.P.*, the Court held that denying a personal hearing breached principles of natural justice and the state's own circular dated 13.06.2024. The order was quashed, the matter was remanded for a fresh decision with a hearing, and a cost of Rs.20,000 was imposed on the Joint Commissioner SGST for non-compliance, to be deposited with the High Court Legal Services Committee within four weeks.

Writ petition allowed.

Case Law Discussed:

1. *Laskin Engineering Pvt. Ltd. Vs S. of U.P.*, Writ Tax No. 674 of 2024, (2024) AHC 32456 – Opportunity of personal hearing is mandatory under Section 75(4) before passing adverse orders; denial violates natural justice, warranting quashing of orders and potential disciplinary action.

Observation:

The Court observed that the show cause notice's indication of 'NA' for the personal hearing date,

despite a specific request in the petitioner's reply, and the subsequent ex-parte order demonstrated a mechanical approach by the authorities, ignoring Section 75(4) and the state's circular dated 13.06.2024, which reiterated the *Laskin Engineering* mandate. The respondents' failure to justify non-compliance in their instructions further highlighted procedural lapses. The Court noted recurring violations of natural justice in GST proceedings, such as denying hearings, setting improper hearing dates, or ignoring replies, which burden the judiciary and state resources. The imposition of costs and a directive for training and disciplinary action underscored the need for systemic reform.

Result: Writ petition allowed; impugned order dated 04.02.2025 quashed; matter remanded for fresh decision with personal hearing; cost of Rs.20,000 imposed on Joint Commissioner SGST, to be deposited within four weeks.

(Delivered by Hon'ble Arun Bhansali,
C.J.
&
Hon'ble Kshitij Shailendra, J.)

1. This petition has been filed by the petitioner aggrieved of the order dated 04.02.2025 passed by Joint Commissioner, SGST, Corporate Circle -1, Ghaziabad (Annexure-1) under Section 74 of Goods and Services Tax Act, 2017 (for short, 'the Act') wherein, a demand of Rs. 5,82,67,589.12/- has been created.

2. It is *inter alia* indicated in the petition that the petitioner is engaged in manufacture and supply of potato flakes besides other items. A show cause notice dated 03.08.2024 for the period July 2017 to March 2018, proposing to classify the product in question i.e. potato flakes under tariff heading 2005-

2000 instead of 1105-2000 was issued. In the notice, date by which the reply was required to be submitted was indicated as 19.08.2024 and in column pertaining to date of personal hearing 'NA' was indicated and the same was the position pertaining to column pertaining to time of personal hearing.

3. A reply to the notice dated 03.08.2024 was filed by the petitioner through counsel on 19.08.2024 contesting the allegations made therein. In the reply, a specific prayer was made on behalf of the petitioner that no adverse order to the prejudice of the petitioner be passed without affording him an opportunity of hearing.

4. However, by the order impugned dated 04.02.2025, without affording any opportunity of hearing, the demand has been created.

5. It is submitted by learned counsel for the petitioner that the action of the respondents in passing the order impugned, without affording any opportunity of hearing to the petitioner is ex-facie contrary to the provisions of Section 75(4) of the Act. It was emphasized that the section which pertains to general provisions relating to determination of tax under sub-Section (4) clearly provides that an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

6. Despite the mandatory requirement of law, the show cause notice in the column pertaining to the date of personal hearing indicated 'NA' and despite specific prayer

made in response to the show cause notice for providing personal hearing, no opportunity of personal hearing was provided which action besides being contrary to the provisions of the Act, is contrary to the Circular dated 13.06.2024 issued by the Additional Commissioner Law, Commercial Tax, U.P. specifically referring to the judgement of this Court in the case of **Laskin Engineering Pvt. Ltd. Vs. State of U.P. and Another : Writ Tax No. 674 of 2024**, decided on 16.05.2024. The respondent has indulged in violation of provisions of law as well as the directions given by this Court and the State and, therefore, the order impugned deserves to be quashed and set aside.

7. Learned Standing Counsel has produced instructions wherein comments have been offered on the merit of the dispute and not a word has been indicated as to why the mandatory provisions of Section 75(4) of the Act have not been complied with.

8. This Court in the case of **Laskin Engineering Pvt. Ltd. (supra)** *inter alia* observed and directed as under:

"5. It is basic to procedural law under taxing statutes that opportunity of personal hearing must be provided to an assessee before any assessment/adjudication order is passed against him. Thus, we find it strange and wholly unacceptable merely because the substantive law has changed, the revenue authorities have changed their approach and are failing to observe that mandatory requirement of procedural law. They have thus denied opportunity of hearing to the assessee.

6. Section 75(4) of the Act reads as below:

"An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person."

7. It transpires from the record, neither the adjudicating authority issued any further notice to the petitioner to show cause or to participate in the oral hearing, nor he granted any opportunity of personal hearing to the petitioner.

8. On query made, the learned Additional Chief Standing Counsel fairly submits, in light of similar occurrences, noticed in other litigation, he had apprised the Commissioner, Commercial Tax, Uttar Pradesh, has issued Office Memo No. 1406 dated 12.11.2024. The same has been addressed to all Additional Commissioner to be communicated to all field formations for necessary compliance. It reads as below:

"1. The column in which date of personal hearing has to be mentioned, only N.A. is mentioned without mentioning any date.

2. The column in which time of personal hearing has to be mentioned, only N.A. is mentioned without mentioning time of hearing.

3. In some cases, the date of personal hearing is prior to which reply to the Show Cause Notice has to be submitted this is non-est and this practice has to be discontinued. The date of reply to the Show Cause Notice has to be definitely prior to the date of personal hearing.

4. In some cases, the date of personal hearing is on the same date to which reply to the Show Cause Notice has to be submitted-this is non-est and this practice has to be discontinued. The date of reply to the Show Cause Notice has to be

definitely prior to the date of personal hearing.

5. In all cases observed, the date of passing order either u/s 73(9)/74(9) etc. of the Act is not commensurate to the date of personal hearing. It is trite law that the date of the order has to be passed on the date of personal hearing. For eg., the date of furnishing reply to SCN is 15.11.2023 and date of personal hearing is 17.11.2023, then the date of order has to be 17.11.2023"

9. In view of the facts noted above, before any adverse order passed in an adjudication proceeding, personal hearing must be offered to the noticee. If the noticee chooses to waive that right, occasion may arise with the adjudicating authority, (in those facts), to proceed to deal with the case on merits, ex-parte. Also, another situation may exist where even after grant of such opportunity of personal hearing, the noticee fails to avail the same. Leaving such situations apart, we cannot allow a practice to arise or exist where opportunity of personal hearing may be denied to a person facing adjudication proceedings.

10. Thus, the impugned order cannot be sustained in the eyes of law. It has been passed in gross violation of fundamental principles of natural justice. The self imposed bar of alternative remedy cannot be applied in such facts. If applied, it would be of no real use. In fact, it would be counter productive to the interest of justice. Here, it may be noted, the appeal authority does not have the authority to remand the proceedings.

11. Accordingly, the writ petition is disposed of with the following observations/directions :

(i) The impugned order dated 19.08.2021 passed by the respondent no. 2-Deputy Commissioner, Commercial Tax

Department, Sikandrabad, Bulandshahar, is hereby set-aside.

(ii) The matter is remitted to the respondent no.2-Deputy Commissioner, Commercial Tax Department, Sikandrabad, Bulandshahar to pass a fresh order, in accordance with law, after affording due opportunity of hearing to the petitioner.

12. While, we proposed to impose heavy costs for the conduct offered by the respondent no. 2, we have been assured by the learned Additional Chief Standing Counsel, such occurrences will not be repeated in future.

13. Accordingly, we direct the Commissioner, Commercial Tax, Uttar Pradesh to undertake remedial measures including providing for disciplinary proceedings against erring officials, where fundamental principles of natural justice may be violated by the adjudicating authorities, without justifiable reason. "

9. It appears that pursuant to the direction issued by this Court, the office of the Commissioner issued Circular to all Additional Commissioners, Commercial Taxes quoting paragraph nos. 9 to 13 of the judgement in the case of **Laskin Engineering Pvt. Ltd. (supra)** and directed as under:

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10. From the above, it would be observed that this Court referring to office memo dated 12.11.2023 (wrongly typed as 12.11.2024) has found that Court cannot allow a practice to arise or exist where opportunity of personal hearing has been denied to a person facing adjudication proceedings. The Court also observed, that it proposed to impose heavy cost for the conduct of the officer, however, on an assurance given by the Additional Chief Standing Counsel that such occurrences will not be repeated in future, it was directed that remedial measures including disciplinary proceedings against erring officials would be taken by the respondents.

11. It is observed that besides the above, numerous petitions are being filed every day reflecting the gross violation of principles of natural justice by the officers wherein apparently as the entire procedure is online, the officers working in a wholly mechanical manner without advertent to the material available on record i.e. in their own system in electronic form, orders are being passed wherein in show cause notices, opportunity of hearing is being denied, the same dates are being fixed of filing reply and that of personal hearing, date of personal hearing is being fixed prior to the date of filing reply, cases where the reply has been filed, in the orders passed, it is indicated that no reply has been filed, if in a show cause notice, a date of hearing is fixed, in the reply filed by the assessee, the column pertaining to 'option for personal hearing' invariably, on account of the

system, indicates 'No' i.e. opportunity of personal hearing is refused by the assessee, even in cases where reply specifically requires providing opportunity of personal hearing, the same is being ignored and orders are being passed in a wholly mechanical manner without adverting to the facts of the case i.e. only referring to the date of show cause notice and confirming the demands. Innumerable cases have come before this Court where show cause notices have been issued and ex-parte assessments made after the cancellation of the GST registration of the firm, based on uploading of notices on the portal, without ensuring personal service of the notices. Such conduct of the officers in dealing with matters, besides resulting in huge loss of time on the part of the State Government, the same unnecessarily increases burden of this Court wherein numerous petitions every day, underlying violation of principles of natural justice, are being filed and as violations are so glaring, this Court is left with no option but to allow the petitions and remand back the matters to the authorities

12. The present case provides a glaring example of such conduct on the part of the officers of the State wherein besides denying opportunity of personal hearing in the show cause notice by indicating 'NA' in the column pertaining to date of personal hearing, despite specific prayer made for providing opportunity of hearing in reply, the order impugned has been passed without affording any opportunity of hearing.

13. In view of above fact situation, we are left with no option but to allow the petition filed by the petitioner with costs.

14. Consequently, the writ petition is **allowed**. The order impugned dated 04.02.2025 (Annexure-1) is quashed and set aside. The matter is remanded back to the Joint Commissioner SGST, Corporate Circle-1, Ghaziabad, respondent no. 2 for passing a fresh order after affording an opportunity of personal hearing to the petitioner.

15. A cost of Rs. 20,000/- is imposed on the Joint Commissioner SGST, Corporate Circle-1, Ghaziabad, who had issued the show cause notice dated 03.08.2024 and had passed the order dated 04.02.2025.

16. The cost shall be deposited by the officer with the High Court Legal Services Committee, High Court Allahabad within a period of four weeks.

17. It will be the responsibility of learned Standing Counsel to communicate this order to the officer concerned as well as to the Commissioner, Commercial Tax, U.P., who is further directed to ensure that a proper training is imparted to the officers to deal with the matters in a proper manner as apparently circulars issued to the said officers have been ignored and/or have not been adverted to.

18. Further, as already suggested in the case of **Laskin Engineering Pvt. Ltd. (supra)**, disciplinary proceedings may be initiated against erring officials failing which it is apparent that the State would continue to suffer on account of such acts of omissions and commissions by the

officers, which position should not be tolerated by the State.

(2025) 4 ILRA 337
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.04.2025

BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Writ Tax No. 1559 of 2024

M/s B M Computers	...Petitioner
Versus	
Commissioner, Commercial Taxes	
Lucknow & Ors.	...Respondents

Counsel for the Petitioner:
 Ms. Pooja Talwar

Counsel for the Respondents:
 C.S.C.

Civil Law - Uttar Pradesh Goods and Services Tax Act, 2017 – Section 129(3) – Rule 138 – Writ of Certiorari – Goods in Transit – E-Way Bill – Part B Non-Compliance – Intention to Evade Tax – Mandatory Procedural Requirements – Post-April 2018 Transactions.

Held:

The petitioner, a registered dealer in computer hardware, challenged a penalty order dated 06.03.2023 under Section 129(3) of the U.P. GST Act, 2017, and an appellate order dated 30.05.2024, for goods intercepted on 06.03.2023 at Luharli Toll Plaza, Greater Noida. The goods, transferred from Agra to Ghaziabad, were

accompanied by tax invoices and e-way bills, but Part B of e-way bill no. 411318901103 was not filled, and e-way bill no. 411318916631 incorrectly showed movement from Agra to Agra instead of Agra to Noida. The Court held that post the 14th Amendment to the U.P. GST Rules, 2017 (effective 01.04.2018), a complete e-way bill, including Part B, is mandatory under Rule 138. Non-compliance raises a rebuttable presumption of tax evasion, which the petitioner failed to rebut, as Part B was generated post-interception and the e-way bill misstated the destination. Relying on *Akhilesh Traders* and *Jhansi Enterprises*, the Court upheld the penalty, finding an intent to evade tax, and dismissed the petitioner's reliance on pre-April 2018 cases as distinguishable. The writ petition was dismissed, as no case for interference was made out.

Writ petition dismissed.

Case Law Discussed:

1. *Akhilesh Traders Vs St. of U.P.*, Writ Tax No. 1109 of 2019, (2024) AHC 18765 – Non-compliance with e-way bill requirements post-April 2018 raises a presumption of tax evasion, rebuttable by the owner/transporter; subsequent document production does not absolve liability.
2. *Jhansi Enterprises Vs St. of U.P.*, Writ Tax No. 1081 of 2019, (2024) AHC 15432 – Post-April 2018, complete e-way bill is mandatory;

subsequent furnishing of documents does not negate tax evasion intent.

3. *M/s Varun Beverages Ltd. v. State of U.P.*, [2023] UPTC (113) 331 – Distinguished as pre-April 2018, when e-way bill generation faced technical issues.

4. *M/s Falguni Steels Vs St. of U.P.*, [2024] UPTC 221 – Distinguished as pre-April 2018.

5. *Indeutsch Industries Pvt. Ltd. Vs St. of U.P.*, [2024] UPTC (116) 579 – Distinguished as pre-April 2018.

6. *M/s Exch. Therm Engineering Co. Vs St. of U.P.*, [2024] UPTC (116) 362 – Distinguished as pre-April 2018.

7. *M/s Rawal Wasia Yarn Dying Pvt. Ltd. Vs Commissioner Commercial Tax*, [2024] NTN (84) 213 – Distinguished as pre-April 2018.

Observation:

The Court observed that the petitioner's failure to fill Part B of the e-way bill and the incorrect destination (Agra to Agra instead of Agra to Noida) in e-way bill no. 411318916631 indicated an intent to evade tax, as the incomplete e-way bill delayed the validity period, allowing undetected transport. The generation of Part B post-interception at 4:28 AM on 06.03.2023, after the 3:16 AM interception, further supported

this intent. The appellate authority's order, though brief, was justified given the clear violation of Rule 138 post-April 2018, when e-way bill generation issues were resolved. The petitioner's reliance on pre-April 2018 cases was misplaced, as the mandatory requirement for a complete e-way bill became stringent after the 14th Amendment. The Court emphasized that such non-compliance undermines the GST regime's deterrence against tax evasion.

Result: Writ petition dismissed; penalty order dated 06.03.2023 and appellate order dated 30.05.2024 upheld.

(Delivered by Hon'ble Rohit Ranjan Agarwal, J.)

1. Heard learned counsel for the petitioner and Sri Arvind Kumar Mishra, learned Standing Counsel for State.

2. Through this writ petition, a challenge has been made to order dated 06.03.2023 passed by Assistant Commissioner, State Tax, Mobile Squad-5, Sector-5, Unit-1, Noida, under Section 129(3) of the U.P. State Goods and Service Tax Act, 2017 and Central Goods and Service Tax Act, 2017 imposing penalty and appellate order dated 30.05.2024 passed by Additional Commissioner, Grade-2 (Appeal)-3, State Tax, Noida, confirming the order of penalty passed by Assessing Authority.

3. The brief facts of the case are that petitioner is a registered dealer under the GST regime having GSTN No. 09AEWPA1632E1ZN. It is engaged in the

sale and purchase of computer and other hardware material. The petitioner firm had carried a stock transfer of goods from its Agra Headquarter to Ghaziabad Branch amounting to Rs.8,45,000/- and Rs.1,43,500/- inclusive of tax and issued invoice No. ST/OUT/BMC/365, e-way bill no. 4113 1890 1103 and ST/OUT/BMC/366, e-way bill no. 4113 1891 6631, respectively for the said transactions. The said transfer was taking place by taking services of one M/s Shagun Logistics Cargo Services. The vehicle along with goods were intercepted at Luharli Toll Plaza Dadri, Greater Noida at about 3:16 AM on 06.03.2023 by respondent no. 2. A physical verification of consignment of goods was carried out and a detention order was passed on 06.03.2023 stating that Part B is not updated in the e-way bill. On the same day, a show-cause notice was issued demanding response from the petitioner on the points raised therein and proposed demand. Petitioner appeared before the Assessing Authority and filed its reply and penalty was imposed under Section 129(3) of UPGST/CGST Act, 2017. The petitioner deposited the entire amount of penalty and got the vehicle released. Aggrieved by the order of penalty, petitioner firm preferred appeal before the Appellate Authority which was dismissed on 30.05.2024. Hence, the present writ petition.

4. Learned counsel for the petitioner submitted that first appellate authority has not applied its mind while rejecting the appeal and a non-speaking order has been passed. According to petitioner's counsel, goods were duly covered with tax invoices and only deficiency was that Part B of e-way bill was not filled which was a human error and to be filled by transporter. Reliance has been placed upon the

decisions in case of **M/s. Varun Beverages Limited vs. State of U.P. and 2 others reported in [2023 U.P.T.C. (113) 331]**, **M/s. Falguni Steels vs. State of U.P. and others, 2024 UPTC 221**, **Indeutsch Industries Pvt. Ltd. vs. State of U.P. & others reported in [2024 UPTC (Vol. 116) 579]**, **M/s. Exch. Therm Engineering Company vs. State of U.P. and others [2024 UPTC (Vol. 116) 362]** and **M/s Rawal Wasia Yarn Dying Pvt. Ltd. vs. Commissioner Commercial Tax and another [2024 NTN (Vol. 84) 213]**.

5. Learned Standing Counsel while opposing the writ petition submitted that there was an intention to evade the tax. He further submitted that when the goods were intercepted only Part A of the invoice No. ST/OUT/BMC/365, e-way bill no. 4113 1890 1103 was filled and Part B of the e-way bill required for transportation was not filled and it was generated on 06.03.2025 at 4:28 AM that is after about one hour when the vehicle was intercepted. It is further contended that invoice no. ST/OUT/BMC/366, e-way bill no. 4113 1891 6631 reflected that goods were being transported from Agra to Agra while the goods were brought from Agra to Noida for which no document was available.

6. It is further contended that petitioner firm deliberately did not fill Part B of e-way bill, due to which the required time limit for e-way bill did not start and the goods reached Noida. In such a situation, with the intention of evading tax, goods were brought in many vehicles using this document. He further submits that as per Rule 138 of the Act of 2017, complete e-way bill is mandatory.

7. It was lastly contended that the judgment relied upon by petitioner relate to

the period where the detention of goods was prior to April, 2018. According to him, in instances of detention that occurs subsequent to April, 2018, complete e-way bill is mandatory and required to be carried along with goods. Reliance has been placed upon the decision of co-ordinate Bench in case of **M/s. Jhansi Enterprises, Nandanpura, Jhansi vs. State of U.P. and others, Writ Tax No. 1081 of 2019**, decided on 01.03.2024 and decision rendered in case of **M/s. Akhilesh Traders vs. State of U.P. and others, Writ Tax No. 1109 of 2019**, decided on 20.02.2024.

8. I have heard respective counsel for the parties and perused the material on record.

9. The sole question for consideration is whether carrying complete e-way bill is mandatory for the movement of goods from one place to another. The question is no more *res integra* after the 14th Amendment of the Uttar Pradesh Goods and Service Tax Rules, 2017 which came into effect from 01.04.2018. Post amendment in the Rule, it has become obligatory that goods should be accompanied with complete e-way bill. The co-ordinate Bench in **Akhilesh Traders (supra)** had held that in case goods are not accompanied by e-way bill, a presumption may be read that there is an intention to evade tax. Such a presumption of evasion of tax then becomes rebuttable by the materials to be provided by the owner/transporter of the goods. Relevant paras 7 and 8 are extracted hereunder:-

“7. This Court in umpteen cases where penalties were being imposed under Section 129 of the Act though held that an intention to evade tax should be present, however, in the event the goods are not

accompanied by the invoice or the e-way bill, a presumption may be raised that there is an intention to evade tax. Such a presumption of evasion of tax then becomes rebuttable by the materials to be provided by the owner/transporter of the goods.

8. In the present case, one comes to an inexorable conclusion that the petitioner has not been able to rebut the presumption of evasion of taxes, as he has not been able to explain the absence of invoice and the E-Way Bill. Production of these documents subsequent to the interception cannot absolve the petitioner from the liability of penalty as the very purpose of imposing penalty is to act as a deterrent to persons who intend to avoid paying taxes owed to the Government. It is clear that if the goods had not been intercepted, the Government would have been out of its pocket with respect to the GST payable on the said goods.”

10. In **Jhansi Enterprises (supra)**, the co-ordinate Bench following the decision rendered in **Akhilesh Traders (supra)** further held that mere furnishing of documents subsequent to interception cannot be a valid ground to show that there was no intention to evade tax. The Court further held that reliance placed upon the decision by petitioner therein was of transaction prior to April, 2018 but after April, 2018, those difficulties have been resolved and there is no difficulty in generating and downloading the e-way bill. The Court held as under:-

“11. Mere furnishing of the documents subsequent to the interception can not be a valid ground to show that there was no intention to evade tax. There must be some reasonable grounds to justify the non-production of documents at the proper time.

12. Furthermore, the judgments upon which the petitioner is relying are prior to April 2018, when there were actually some difficulties with the generation of e-way bill. But after April, 2018 those difficulties have been resolved and now there is no difficulty in generating and downloading the e-way bill.

13. The argument raised by the counsel appearing on behalf of the petitioner that the vehicle was parked at the godown for unloading is not supported by the facts. The interception of the vehicle was in a place away from the godown and this entire argument is obviously an afterthought. Accordingly, the application of Section 129(3) of the Act by the authorities is valid and just in law.

14. In light of the above, I am of the view that the petitioner herein has not complied with the provisions of law, hence the steps taken by the respondent authorities are proper and in accordance with the law and require no interference by this court. “

11. In the instant case, it is an admitted case that the goods were intercepted by respondent no. 2 on 06.03.2023 at 3:16 a.m., while only Part A of the invoice No. ST/OUT/BMC/365, e-way bill no. 4113 1890 1103 was filed and Part B of the e-way bill required for transportation was not filled and it was generated on 06.03.2025 at 4:28 AM that is after about one hour when the vehicle was intercepted. Further, invoice no. ST/OUT/BMC/366, e-way bill no. 4113 1891 6631 reflected that goods were being transported from Agra to Agra while the goods were brought from Agra to Noida for which no document was available

12. Rule 138 of the Act of 2017 provides that complete e-way bill is

mandatory for commencement of movement of goods, which is extracted as under:-

“Rule-138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill.-

(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees—

(i) in relation to a supply; or

(ii) for reasons other than supply;

or

(iii) due to inward supply from an unregistered person, shall, before commencement of such movement, furnish information relating to the said goods in Part A of FORM GST EWB-01, electronically, on the common portal.

(2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or by railways or by air or by vessel, the said person or the recipient may generate the e-way bill in FORM GST EWB-01 electronically on the common portal after furnishing information in Part B of FORM GST EWB-01”

13. Moreover, conduct of the petitioner clearly reveals that an intention to evade the tax is there as not only the goods in transit were not accompanied by Part B of e-way bill but also goods were being transported from Agra to Noida while the e-way bill was issued by the petitioner firm from Agra to Agra.

14. Reliance placed upon the judgments is distinguishable in the facts of the present case as in those cases, the transaction was prior to April, 2018 where the benefit was given to those assesses. It is

mandatory on the part of the seller to download the complete e-way bill once the goods are put in transit. Only downloading Part A of e-way bill and non filling of Part B would not absolve the liability under the Act.

15. No case for interference is made out.

16. The writ petition fails and is hereby dismissed.

(2025) 4 ILRA 342
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.04.2025

BEFORE

THE HON'BLE SHEKHAR B. SARRAF, J.
THE HON'BLE DR. YOGENDRA KUMAR
SRIVASTAVA, J.

Writ Tax No. 1716 of 2025

M/s Arena Superstructures Private
Limited **...Petitioner**
Versus
Union of India & Ors. **...Respondents**

Counsel for the Petitioner:
 Ami Tandon, Rahul Agarwal, Saumya
 Srivastava

Counsel for the Respondents:
 A.S.G.I., C.S.C., Dhananjay Awasthi

Civil Law - Insolvency and Bankruptcy
Code, 2016 - Section 31 - Central Goods
and Services Tax Act, 2017 - Section 74(9)
 - Writ of Certiorari - Corporate Insolvency
 Resolution Process - Approved Resolution Plan -
 Extinguishment of Pre-CIRP Claims - Prohibition
 on Post-Approval Demands.

Held:

The petitioner, under Corporate Insolvency Resolution Process (CIRP) since 10.10.2020, challenged an assessment order and demand notice dated 04.02.2025 under Section 74(9) of the CGST/UPGST Act, 2017, for the financial year 2017-18, issued after the NCLT approved its Resolution Plan on 19.07.2022. The GST Department, notified during CIRP and having filed claims before the Resolution Professional, raised new claims post-approval. The Court held that Section 31 of the IBC, 2016, extinguishes all pre-CIRP statutory dues not included in the approved Resolution Plan upon NCLT approval, as established by Supreme Court precedents. The impugned order and notice, by imposing new liabilities, violated the IBC's clean slate principle for resolution applicants. Citing *Ghanshyam Mishra* and *Vaibhav Goyal*, the Court quashed the assessment order and demand notice as legally unsustainable, protecting the resolution process from post-approval disruptions.

Writ petition allowed; assessment order and demand notice dated 04.02.2025 quashed.

Case Law Discussed:

1. *Ghanshyam Mishra and Sons (P) Ltd. Vs Edelweiss Asset Reconstruction Co. Ltd.*, [2021] 126 Taxmann.com 132 (SC) / 166 SCL 237 - Pre-CIRP dues not included in the Resolution Plan are extinguished upon NCLT approval under Section 31 of IBC.
2. *N.S. Papers Ltd. Vs U.O.I.*, Writ Tax No. 408 of 2021, (2024) AHC 78943 - Post-Resolution Plan tax claims are invalid; assessment orders issued after CIRP approval

are quashed as contrary to IBC's clean slate principle.

3. *Vaibhav Goyal & anr. Vs Deputy Commissioner of Income Tax & anr.*, Civil Appeal No. 49 of 2022, (2025) SCC OnLine SC 456 - Statutory dues for pre-CIRP periods, not part of the Resolution Plan, are extinguished; post-approval demands are unenforceable.

4. *Committee of Creditors of Essar Steel India Ltd. Vs Satish Kumar Gupta & ors.*, [2019] 16 SCR 275 - Approved Resolution Plan bars new or undecided claims to ensure a clean slate for the resolution applicant.

Observation:

The Court observed that the GST Department, despite being informed of the CIRP and participating by filing claims, issued the impugned assessment order and demand notice post-NCLT approval on 19.07.2022, contravening the IBC's framework. Supreme Court rulings in *Ghanshyam Mishra* and *Vaibhav Goyal* clarify that pre-CIRP claims not included in the Resolution Plan are extinguished upon approval, ensuring a clean slate for the resolution applicant. The department's post-approval action for 2017-18 dues was an impermissible attempt to impose unforeseen liabilities, undermining the IBC's objective of a fresh start. The Court emphasized that such claims disrupt the resolution process and cannot be sustained.

(Delivered by Hon'ble Shekhar B. Saraf, J.)

Heard Sri Rahul Agarwal, learned counsel appearing along with learned counsel, Ms. Saumya Srivastava and Sri Ami Tandon for the petitioner and Sri Naveen Chand Gupta, learned counsel

appearing along with learned counsel, Sri Gopal Varma, for the Union of India.

This is a writ petition under Article 226 of the Constitution of India, wherein the writ-petitioner has sought the following prayers along with certain ancillary reliefs:

"(i) Issue an appropriate writ, order or direction in the nature of **CERTIORARI** or any other appropriate writ for quashing the Impugned Assessment Order dated 04.02.2025 bearing Reference No: ZD090225039501M passed under Section 74(9) of CGST/UPGST Act, 2017 by the Deputy Commissioner [Respondent No. 5] as well as the Impugned Demand Notice issued in pursuance to the Impugned Order dated 04.02.2025 passed under Section 74 of the CGST/UPGST Act, 2017 against the Petitioner relating to financial year 2017-2018.

(ii) Issue an appropriate writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ commanding/directing the Respondents not to recover tax, interest and penalty imposed upon the Petitioner in pursuance to the Demand Notice and Impugned Order dated 04.02.2025 bearing Reference No: ZD090225039501M passed by the Deputy Commissioner [Respondent No. 5] against the Petitioner."

3. The case of the petitioner is that the petitioner went into a Corporate Insolvency Resolution Process (hereinafter referred to as CIRP), on October 10, 2020. A Resolution Professional was appointed on the same day and thereafter proceedings continued before the National Company Law Tribunal (in brevity NCLT). As per the procedure, the creditors were asked to submit their claims before the Resolution

Professional. Specific notice was also sent to G.S.T. Department at Noida by the Resolution Professional to the/of the petitioner. The impugned order, with regard to the Assessment Year 2017-18 was passed by the respondent No. 5 on February 4, 2025. On 19.07.2022, the Resolution Plan was approved by the NCLT.

4. Sri Rahul Agarwal, learned counsel appearing on behalf of the petitioner, to buttress his argument that once the Resolution Plan has been approved by the NCLT, the G.S.T. Department cannot create further dues by way of passing orders, has relied upon the following judgments, viz. **(i) Ghanshyam Mishra and Sons (P) Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd.**, reported in [SC] [2021] 126 Taxmann.com 132/166 SCL 237 (SC), **(ii) N.S. Papers Ltd. Vs. Union of India and Others** [Writ Tax No. 408 of 2021, decided on December 11, 2024], **(iii) Vaibhav Goyal & Another Vs. Deputy Commissioner of Income Tax & Another** [Civil Appeal No. 49 of 2022, decided on March 20, 2025] (SC) and **(iv) Committee of Creditors of Essar Steel India Ltd. Through Authorised Signatory Vs. Satish Kumar Gupta & Others** [2019] 16 S.C.R. 275].

5. This Court, in Writ Tax No. 408 of 2021 [M/S NS Papers Limited And Another Vs. Union of India Through Secretary and Others], after dealing with a catena of judgments rendered by the Supreme Court and also other High Courts held as follows:

"11. He further submits that if proceedings under the Act could be initiated, continued with and culminated during the course of CIRP and institution of

Moratorium u/s 14 of the Code, the following may also kindly be considered, for these have a bearing on the fact that income tax proceedings should not get shadowed or extinguished merely by the institution of CRIP and passage of a moratorium order, unless the proceedings were clearly inconsistent with or repugnant to any provisions of the Code, which is not the case here.

12. Upon considering the facts and circumstances of the case, we are of the view that the arguments raised by the learned counsel appearing on behalf of the respondents is without any merit on two counts. Firstly, it is clear by the letter dated March 8, 2021 that the petitioner had informed the Income Tax Authorities with regard to approval of resolution plan. Secondly, the department itself had filed a claim before the Resolution Professional, and accordingly, the argument that the department was not aware of the IBC proceedings holds no water.

13. Even assuming that the department was not informed about the proceedings, the law is very clear as expounded in the judgments cited above. The resolution applicant cannot be saddled with new claims once a resolution plan has been approved.

14. The argument that an assessment that has been kept pending for a prior period and is quantified subsequent to the approval of the Resolution Plan is an argument in sophistry. If this argument is accepted then all authorities would be in a position to keep assessment/re-assessment pending till completion of the Resolution Plan, and thereafter, culminate the same and saddle the successful Resolution Applicant with an unknown burden. Such an action cannot be countenanced as the same would be an anathema to the fundamental principles of the moratorium

provided under the Code. The law cannot be read in a manner wherein the basic structure of the Code is breached by hindering the flow of the same by creation of roadblocks and dams ? the underlying principle of the Code is to give a fresh start to the Resolution Applicant. Any new liability being fastened after the approval of the Resolution Plan would inherently and palpably be illegal and go beyond the Lakshman Rekha of the Code.

15. In light of the above, the impugned assessment order dated April 28, 2021 is quashed and set aside. In the event any penalty proceedings have been initiated by the department, the writ petitioner shall be at liberty to challenge the same in accordance with law."

6. The above view has been fortified by the Supreme Court in **Vaibhav Goyal & Another Vs. Deputy Commissioner of Income Tax & Another** [Civil Appeal No. 49 of 2022, decided on March 20, 2025] (SC). The relevant paragraphs are delineated below:

"8. In view of the declaration of law made by this Court, all the dues including the statutory dues owed to the Central Government, if not a part of the Resolution Plan, shall stand extinguished and no proceedings could be continued in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 of the IB Code. In this case, the income tax dues of the CD for the assessment years 2012-13 and 2013-14 were not part of the approved Resolution Plan. Therefore, in view of sub-section (1) of Section 31, as interpreted by this Court in the above decision, the dues of the first respondent owed by the CD for the assessment years 2012-13 and 2013-14 stand extinguished.

12. Once the Resolution Plan is approved by the NCLT, no belated claim can be included therein that was not made earlier. If such demands are taken into consideration, the appellants will not be in a position to recommence the business of the CD on a clean slate. On this aspect, we may note what is held in paragraph 107 of the decision of this Court in the case of **Committee of Creditors of Essar Steel India Ltd.** [Civil Appeal No. 49 of 2022]. Paragraph 107 reads thus:

"107. For the same reason, the impugned NCLAT judgment [*Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388*] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. **A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove.** For these reasons, NCLAT judgment must also be set aside on this count."
(emphasis added)

13. The additional demands made by the first respondent in respect of the assessment years 2012-13 and 2013-14 will operate as roadblocks in implementing the approved Resolution Plan, and appellants will not be able to restart the operations of the CD on a clean slate.

14. We, therefore, hold that the demands raised by the first respondent against the CD in respect of assessment years 2012-13 and 2013-14 are invalid and cannot be enforced. We set aside the impugned orders of NCLT and NCLAT and allow the appeal accordingly."

7. In view of the above law laid down by the Supreme Court, we are of the view that the principle is crystal clear that once Resolution Plan has been approved by the NCLT, all other creditors are barred from raising their claims subsequently, as the same would disrupt the entire resolution process. The Supreme Court has categorically held the same as indicated above.

8. We accordingly find no reason to keep this matter pending and accordingly the impugned Assessment Order dated 04.02.2025 bearing Reference No: ZD090225039501M passed under Section 74(9) of CGST/UPGST Act, 2017 by the Deputy Commissioner [Respondent No. 5] as well as the Impugned Demand Notice issued in pursuance to the Impugned Order dated 04.02.2025 passed under Section 74 of the CGST/UPGST Act, 2017 against the Petitioner relating to financial year 2017-2018, are quashed.

9. The writ petition is accordingly allowed.

**ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 28.04.2025**

BEFORE

THE HON'BLE SAURABH LAVANIA, J.

Application U/S 482. No. 1133 of 2025

**Javed Ahmad @ Javed & Ors. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties**

Counsel for the Applicants:
Sajjad Hussain, Eshan Garg, Prachi Arya

Counsel for the Opposite Parties:
G.A., Mohd. Saud Khan, Prachi Arya

(A) Criminal Law - Fraud on Court - Quashing of Criminal Proceedings - Concealment of material facts and non-impleadment of necessary injured victims - Code of Criminal Procedure, 1973 - Sections 482 & 362 - Where order under Section 482 CrPC is obtained by fraud, same is liable to be recalled despite bar under Section 362 - Fraud on the Court vitiates judicial proceedings - Deliberate non-impleadment of injured parties amounts to misconduct and abuse of process - Application under Section 482 CrPC, based on concealment and fraud, cannot be sustained and the order passed therein is liable to be recalled with costs. (Para - 3,6,8,14,24,25,26)

(B) Words or Phrases - "Actus Curiae neminem gravabit" - The act of Court shall prejudice no one and in such a situation, the Court is under obligation to undo the wrong done to a party by the act of the Court - "Fraud vitiates every solemn proceeding" - No right can be claimed by a fraudster on the ground of technicalities. (Para - 15, 23)

(C) Practice & Procedure - Counsel's duty to assist the Court fairly - non-disclosure of material facts amounts to serious

professional misconduct - apology accepted with warning. (Paras 24(c), 31)

Final order quashing criminal proceedings under Section 482 CrPC was passed on basis of compromise - without impleading all injured persons who had refused to compromise - application for recall filed by State alleging fraud on Court. **(Para - 2,3,6,7,8)**

HELD: - It is a case of committing fraud with the Court. Instant application liable to be allowed with cost. Application for recall of order filed by the State allowed. Application under Section 482 Cr.P.C. restored to its original number. Sessions Trial No. 110 of 2017 restored to its original number. Costs imposed on applicants. **(Para -25,26,28)**

Directed to list application under S. 482 CrPC before appropriate Court at an early date as fresh. (E-7)

LIST OF CASES CITED: -

1. Smt. Sooraj Devi Vs Pyare Lal & anr., (1981) 1 SCC 500
2. Hotel Balaji & ors. Vs St. of A.P. & ors., AIR 1993 SC 1048
3. St. of Punj. Vs Davinder Pal Singh Bhullar (2011) 14 SCC 770
4. Ganesh Patel Vs Umakant Raroria, 2022 SCC OnLine SC 2050
5. Budhia Swain Vs Gopinath Deb (1999) 4 SCC 396
6. Mukesh Updhyay Vs St. of U.P. & anr., 2019:AHC:42284
7. Kusha Duruka Vs St. of Odisha, (2024) 4 SCC 432
8. Hussain Vs Gram Panchayat Roon Panchayat Samiti Mundwa, 2025 SCC OnLine Raj 271
9. S.P. Chengalvaraya Naidu Vs Jagannath & Ors., (1994) 1 SCC 1,

10. Ram Chandra Singh Vs Savitri Devi, (2003) 8 SCC 319 ,

11. Jai Narain Parasrampuriah Vs Pushpa Devi Saraf (2006) 7 SCC 756,

12. Madhukar Sadbha Shivarkar Vs St. of Maha., (2015) 6 SCC 557,

13. Jal Vidyut Nigam Vs Raj Kumar Rajinder Singh, (2019) 14 SCC 449

(Delivered by Hon'ble Saurabh Lavania, J.)

(Order on I.A. No. 02 of 2025, Application for Recall of Order)

1. Heard Shri Sajjad Husain, learned counsel for the applicants and Ms. Ankita Tripathi, learned A.G.A. for the State-opposite party.

2. This is an application filed by the State for recall of final order passed by this Court in exercise of its inherent power under Section 482 Cr.P.C. dated 12.02.2025 whereby this Court quashed the entire criminal proceedings on the basis of the compromise entered between the parties i.e. the applicants namely Javed Ahmad @ Javed S/o Kurban Ali, Sartaj S/o Kurban Ali, Mo. Zafar @ Jafar S/o Mo. Nafees and Hameedan @ Hameeda W/o Kurbaan Ahmad and the opposite party no. 2 namely Mohammad Naseem @ Naseem S/o Chutkau.

3. Instant application has been filed on the ground that the applicants have played fraud on the Court for the purposes of getting the final order dated 12.02.2025 whereby this Court quashed the criminal proceedings arising out of Case Crime No. 86 of 2017, Under Section 323, 504, 506, 452, 308, 324, 325, 304, 147, 148 IPC, Police Station Dewa, District- Barabanki

which were pending as Session Trial No. 110 of 2017 (State vs. Kurban and Ors.), when the order in issue dated 12.02.2025 was passed.

4. To establish the aforesaid, it is stated that the applicants approached this Court by means of *APPLICATION U/S 482 No. 11901 of 2024 in re: Javed Ahmad @ Javed And 3 Others Vs. State Of U.P. Thru Its Principal Sec. Deptt. Of Home And 3 others* and same was disposed of by this Court vide order dated 03.01.2025 for the purposes of getting the compromise verified by the trial Court.

5. It is also stated that in compliance of the order of this Court, the trial Court verified the compromise on 27.01.2025.

6. It is also stated that a perusal of the verification report dated 27.01.2025 would indicate/show that injured persons namely Majrub, Mo. Salman, Mufidul, Mahboob, Shabnam Bano and Naseera (mother of the deceased) refused to enter into compromise and this fact was not brought to the notice of this Court intentionally or unintentionally but the fact remains that this fact was not brought to the notice of this Court by Shri Sajjad Hussain, Advocate, learned counsel who drafted the application Section 482 Cr.P.C. for the applicants. The verification report indicated is extracted herein-under:

"मा० उच्च न्यायालय खण्डपीठ लखनऊ में योजित प्रार्थना पत्र U/S 482 No-11901/2024 जावेद आदि V/S सरकार आदि में पारित आदेश दिनांक-3/01/2025 के अनुपालन में न्यायालय के समक्ष उपस्थित होकर प्रथम पक्ष मोहम्मद नसीम को उनके

अधिवक्ता श्री विनीत कुमार द्वारा पहचान पर एवं फोटो को एवं द्वितीय पक्ष अभियुक्तगण जावेद अहमद उर्फ जावेद, सरताज, हमीदन व मो. जफर को उनके अधिवक्ता श्री आदित्य कुमार द्वारा पहचान पत्र एवं फोटो को सत्यापित किया। एवं यह भी उल्लेखनीय है कि मजरुब, मो० सलमान, मुफीदुल, महबूब, शबनम बानो एवं नसीरा (मृतक की मां) द्वारा शपथ पत्र दाखिल कर सुलह समझौता के तथ्य से इंकार किया।

तदनुसार प्रथम पक्ष नसीम व द्वितीय पक्ष अभियुक्तगण जावेद अहमद उर्फ जावेद, सरताज, हमीदन व मो० जफर के सुलह समझौता को तस्दीक किया जाता है।"

7. It is further stated that in the concerned incident to which the F.I.R dated 11.02.2017 was lodged against Accused Persons/Applicants by the Informant namely Salma for assaulting and inflicting grievous injuries to Taufiq (brother of Complainant) who succumbed to death due to the injuries sustained, and to other injured persons namely Mahboob (Brother-in-law of Complainant), Shanno (Sister of Complainant), Mohammad Salman (Nephew of Complainant), Mufidul (Sister in law of Complainant) Shanno (Sister of Complainant) and Mohammad Naseem (Husband of Complainant). However, all these victims were neither impleaded by Accused Persons/ applicants in Application under section 482 Cr.P.C. bearing No.11901 of 2024 (Javed Ahmad @ Javed and 3 others Vs State of U.P. and others)

nor in present Application under section 482 Cr.P.C. bearing No. 1133 of 2025.

8. It is also stated that the applicants deliberately did not implead all the Victims in the array of parties thereby misleading the Court, though all the victims were/are the necessary parties who were injured in the incident for which proceeding of ST No. 110 of 2017 (State Government Vs Kurban & Ors) registered as CNR No. UPBB010023332017, arising out of Case Crime No. 86/2017 under section 323, 504, 506, 452, 308, 324, 325, 204, 147 & 148 I.P.C Police Station Dewa District-Barabanki, was pending against accused persons/applicants before Additional District and Sessions Judge Barabanki.

9. It is also stated that in this view of the matter the order dated 12.02.2025 is liable to be recalled.

10. Opposing the prayer of the State to recall the final order dated 12.02.2025, Shri Sajjad Hussain, Advocate, learned counsel for the applicants in the application under Section 482 Cr.P.C. placed reliance on Section 362 Cr.P.C. and based upon the same, he stated that the final order passed in exercise of power under Section 482 Cr.P.C. cannot be recalled.

11. It would be apt to indicate that Shri Sajjad Hussain, Advocate could not dispute the aforesaid facts including that the injured namely Majrub, Mo. Salman, Mufidul, Mahboob, Shabnam Bano and Naseera (mother of the deceased) were not impleaded in the Application(s) under Section 482 Cr.P.C. as also that these injured persons refused to enter into the compromise with the applicants.

12. Considered the aforesaid and perused the records.

13. For the purposes of disposal of instant application for recall of final order dated 12.02.2025, this Court finds it appropriate to take note of the application preferred by the applicants under Section 482 Cr.P.C., drafted and signed by Shri Sajjad Hussain, Advocate, which is reproduced herein-under:-

"APPLICATION U/S 482 CR.P.C. No. OF 2025

(Now U/s 528 BNSS 2023)

1. Javed Ahmad @ Javed S/o Kurban Ali, aged about 52 years R/o Saidanpur, Saldanpur, Barabanki 225206

2. Sartaj S/o Kurban Ali, R/o lalapur, aged about 30 years Dewan, PO: Dewa Sharif, Dist: Bara Banki 225301

3. MO. Zafar @Jafar S/o Mo.Nafees aged about 27 years R/o VTC: Sipahiya, PO: Dewa Sharif, District: Barabanki 225301

4. Hameedan @Hameeda W/o Kurban Ahmad aged about 63 years R/o lalapur, Dewan, PO: Dewa Sharif, Dist: Bara Banki 225301

.....APPLICANTS

VERSUS

1. State of U.P. through its Principal Secretary Department of Home, Civil Secretariat, Hazratganj, Lucknow UP

2. Mohammad Naseem @Naseem S/o Chutkau R/o Sipahiya PS Dewa District Barabanki

.....OPPOSITE PARTIES
APPLICATION U/S 482
CR.P.C.(528 BNSS)

To,
 The Hon'ble Chief Justice and
 their accompanying Judges/Justice of High
 Court of Judicature Allahabad Lucknow
 Bench, Lucknow

THE APPLICANTS MOST
 RESPECTFULLY SHEWETH:

1. That Instant matter is not
 related to CBI/Prevention of Corruption
 Act/ED/matters relating to NRHM
 Scam/GPF Scam/matters of MP/MLA etc.

2. That the present petition is
 being filed before this Hon'ble Court for
 quashing the Charge Sheet No. A 51/17
 and cognizance order dt. 05.05.2017,
 summoning order dt. 10.05.2017 as well as
 entire proceedings ST No. 110 of 2017
 (State Government Vs Kurban & Ors)
 registered as CNR No.
 UPBB010023332017 arising out of Case
 Crime No. 86/2017 U/s
 323,504,506,452,308,324,325,304,147 &
 148 IPC Police Station Dewa District-
 Barabanki for the pending before Addl.
 District and Sessions Judge Barabanki in
 terms of verified compromise for securing
 the ends of justice.

3. That earlier the applicants
 have approached this Hon'ble Court vide
 application U/s 482 (528 BNSS) No. 11901
 of 2024 (Javed Ahmad @Javed Vs State of
 UP & Ors) for quashing of Charge Sheet
 No. A 51/17 and cognizance order dt.
 05.05.2017, summoning order dt.
 10.05.2017 as well as entire proceedings
 ST No. 110 of 2017 (State Government Vs
 Kurban & Ors) registered as CNR No.
 UPBB010023332017 arising out of Case

Crime No. 86/2017 U/s
 323,504,506,452,308,324,325,304,147 &
 148 IPC Police Station Dewa District -
 Barabanki for the pending before Addl.
 District and Sessions Judge Barabanki in
 terms of compromise, the Hon'ble Court
 has disposed of the application with
 direction to the applicants to appeal
 before the trial court for compromise
 verification and liberty to the applicants
 to approach this Hon'ble Court after
 compromise verification. Copy of the
 Hon'ble Court Order dt. 03.01.2025 in
 APPLICATION U/S 482 No.11901 of
 2024 (Javed Ahmad @Javed And 3
 Others Vs State Of U.P. Through Its
 Principal Secretary And 3 Others) is
 annexed herewith as Annexure No.1 to
 this application.

4. That as per the order of the
 Hon'ble High Court Order dt. 03.01.2025
 the applicants presented themselves
 along with the opposite party no.4 before
 the learned trial Court, who after all the
 legal process had verified the original
 compromise deed and prepared Its
 verification report on 27.01.2025. For
 perusal the certified copy of the
 verification report along with the
 certified copy of the compromise deed are
 collectively annexed as Annexure No. 2.

5. That Certified copy of Charge
 Sheet dt. 11.04.2017-Cognizance Order
 dt. 05.05.2017 & summoning order
 dt.10.05.2017 is collectively annexed
 herewith as Annexure No.3 to this
 application.

6. That now there's no fruitful
 purpose to continuing the proceedings in
 ST No. 110 of 2017 (State Government Vs
 Kurban & Ors) registered as CNR No.
 UPBB010023332017 pending before Addl.
 District and Sessions Judge Barabanki.

7. That as mentioned above both
 parties have already settled the dispute and

do not want to prolong the matter therefore a compromise deed was already achieved.

8. That the Hon'ble Supreme Court in *Glan Singh versus State of Punjab and Another* reported In 2012 (SCC) CrL. Law Journal 4934 had stated "54. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offerices are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end is peace is restored, securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well being of society and it is not safe to leave the crime doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavor having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc or the family dispute where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably,

Irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of it's inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such statement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed."

9. That in the interest of justice the above mentioned criminal proceedings are liable to be quashed in the light of the judgments of the Hon'ble Supreme Court laid down in *GIAN SINGH Vs. STATE OF PUNJAB AND ANOTHER* 2012 (SCC) CrL. Law Journal 33; *SHIJI AND OTHERS VERSUS RADHIKA AND OTHERS* Manu/SC/1341/20011 *NARINDER SINGH VERSUS STATE OF PUNJAB* (2014) 6 SCC 466; *YOGENDRA YADAV VERSUS STATE OF JHARKHAND* (2014) 9 SCC 653, *PARBATBHAI DAHIR @PARBATBHAI, BHIMSINGH BHAI KARMUR AND OTHERS VERSUS STATE OF GUJRAT* (2017) 9 SCC 641.

10. That there is no remedy available to the applicant except to file this application U/sec 482 Cr.P.C (528 BNSS).

PRAYER

Wherefore it is humbly prayed May this Hon'ble Court be pleased to quash the entire proceedings of ST No. 110 of 2017(State Government Vs Kurban & Ors) registered as CNR No. UPBB010023332017 arising out of Case Crime No. 86/2017 U/s 323,504,506,452,308,324,325,304,147 & 148 IPC Police Station Dewa District-Barabanki, pending before Addl. District and Sessions Judge Barabanki on the basis

of Compromise Verification Report dated 27.01.2025 prepared by learned Trial Court, on the respective direction of the Hon'ble High Court passed in APPLICATION U/S 482 No. -11901 of 2024 (Javed Ahmad @Javed And 3 Others Vs State Of U.P. Through its Principal Secretary And 3 Others) in the interest of justice. certified copy of the verification report along with the certified copy of the compromise deed are collectively annexed as Annexure No. 2 to this application.

Any other order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case may also be pleaded for securing the ends of justice."

14. No doubt that the final order in terms of Section 362 Cr.P.C. could not be recalled. However, in some circumstances the final order can be recalled, and the same can be deduced from the observations made in judgments referred herein-below.

15. Before referring the judgments, it would be apt to refer the maxim "Actus Curiae neminem gravabit", which indicates that the act of Court shall prejudice no one and in such a situation, the Court is under obligation to undo the wrong done to a party by the act of the Court.

16. In the case of **Smt. Sooraj Devi vs. Pyare Lal and another**, (1981) 1 SCC 500, the Hon'ble Apex Court took note of the expression "clerical or arithmetical error" indicated under Section 362 Cr.P.C. and in regard to the same observed as under:-

"A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the court. It represents that which the court never intended to say. It is

an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An arithmetical error is a mistake of calculation, and a clerical error is a mistake in writing or typing. Master Construction Co. (P) Ltd. v. State of Orissa [AIR 1966 SC 1047 : (1966) 3 SCR 99 : (1966) 17 STC 360]."

17. In the case of **Hotel Balaji and others vs. State of A.P. and others**, AIR 1993 SC 1048, the Hon'ble Apex Court observed as under:-

"To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter [A.M.Y. p. 18] : 'a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors'."

18. In the case of State of Punjab vs. Davinder Pal Singh Bhullar (2011) 14 SCC 770, Hon'ble Apex Supreme Court observed and held that :-

“III. BAR TO REVIEW/ALTER-JUDGMENT

44. *There is no power of review with the Criminal Court after judgment has been rendered. The High Court can alter or review its judgment before it is signed. When an order is passed, it cannot be reviewed. Section 362 Cr.P.C. is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and is disentitled to entertain a fresh*

prayer for any relief unless the former order of final disposal is set aside by a Court of competent jurisdiction in a manner prescribed by law. The Court becomes functus officio the moment the order for disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. There is also no provision for modification of the judgment. (See: Hari Singh Mann v. Harbhajan Singh Bajwa & Ors., AIR 2001 SC 43; and Chhanni v. State of U.P., AIR 2006 SC 3051).

45. Moreover, the prohibition contained in Section 362 Cr.P.C. is absolute; after the judgment is signed, even the High Court in exercise of its inherent power under Section 482 Cr.P.C. has no authority or jurisdiction to alter/review the same. (See: Moti Lal v. State of M.P., (2012) 11 SCC 427; AIR 1994 SC 1544; Hari Singh Mann (2001) 1 SCC 169; 2001 SCC (Cri) 113; and State of Kerala v. M.M. Manikantan Nair, (2001) 4 SCC 752 : AIR 2001 SC 2145).

46. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Cr.P.C. would not operate. In such eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to

establish that it was not at fault. (Vide: Chitawan & Ors. v. Mahboob Ilahi, 1970 Cr.L.J. 378 (All); Deepak Thanwardas Balwani v. State of Maharashtra & Anr., 1985 Cr.L.J. 23 (Bom); Habu v. State of Rajasthan, AIR 1987 Raj. 83 (F.B.); Swarth Mahto & Anr. v. Dharmdeo Narain Singh, AIR 1972 SC 1300; Makkapati Nagaswara Sastri v. S.S. Satyanarayan, AIR 1981 SC 1156; Asit Kumar Kar v. State of West Bengal & Ors., (2009) 2 SCC 703; and Vishnu Agarwal v. State of U.P. & Anr., AIR 2011 SC 1232).

47. This Court by virtue of Article 137 of the Constitution has been invested with an express power to review any judgment in Criminal Law and while no such power has been conferred on the High Court, inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code itself. (Vide: State Represented by D.S.P., S.B.C.I.D., Chennai v. K.V. Rajendran & Ors., AIR 2009 SC 46).

48. In Smt. Sooraj Devi v. Pyare Lal & Anr., AIR 1981 SC 736, this Court held that the prohibition in Section 362 Cr.P.C. against the Court altering or reviewing its judgment, is subject to what is "otherwise provided by this Code or by any other law for the time being in force". Those words, however, refer to those provisions only where the Court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the Court is not contemplated by the saving provision contained in Section 362 Cr.P.C. and, therefore, the attempt to invoke that power can be of no avail.

49. Thus, the law on the issue can be summarised to the effect that the criminal justice delivery system does not clothe the court to add or delete any words, except to correct the clerical or

arithmetical error as specifically been provided under the statute itself after pronouncement of the judgment as the Judge becomes functus officio. Any mistake or glaring omission is left to be corrected only by the appropriate forum in accordance with law."

19. It would be relevant to refer a judgment passed by Supreme Court in **Ganesh Patel vs. Umakant Raroria, 2022 SCC OnLine SC 2050** wherein it was held that an application for recall of order was maintainable as it was an application seeking a procedural review and not a substantive review to which Section 362 Cr.P.C. would be attracted. Supreme Court has placed reference on the aspect of difference between recall and review by referring a judgment passed in **Budhia Swain vs. Gopinath Deb (1999) 4 SCC 396**.

20. In the case of **Mukesh Updhyay vs. State of U.P. and another, 2019:AHC:42284**, this Court at Allahabad observed as under :-

"This issue has been dealt by the Hon'ble Supreme Court in the following judgments :-

The Hon'ble Supreme Court in the matter of Soorja Devi vs. Pyare Lal and Another reported at (1981) 1 SCC 500 has held in paras No.4, 5, 6 and 7 that :-

"4. The sole question before us is whether the High Court was right in refusing to entertain Criminal Miscellaneous Application No. 5127 of 1978 on the ground that it had no power to review its order dated 1st September, 1970. Section 362 of the Code of Criminal Procedure declares :- "Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when

it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error". It is apparent that what the appellant seeks by the application is not the correction of a clerical or arithmetical error. What she desires is a declaration that the High Court order dated September 1, 1970 does not affect her rights in the house property and that the direction to restore possession to Pyare Lal is confined to that portion only of the house property respecting which the offence of trespass was committed so that she is not evicted from the portion in her possession. The appellant, in fact, asks for an adjudication that the right to possession alleged by her remains unaffected by the order dated September 1, 1970. Pyare Lal disputes that the order is not binding on her and that she is entitled to the right in the property claimed by her. Having considered the matter, we are not satisfied that the controversy can be brought within the description "clerical or arithmetical error". A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the court. It represents that which the court never intended to say. It is an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An arithmetical error is a mistake of calculation, and a clerical error is a mistake in writing or typing. Master Construction Co. (P) Ltd. v. State of Orissa.

5. The appellant points out that he invoked the inherent power of the High Court saved by Section 482 of the Code and that notwithstanding the prohibition imposed by Section 362 the High Court had power to grant relief. Now it is well settled that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code.

Sankatha Singh v. State of U.P. It is true that the prohibition in Section 362 against the Court altering or reviewing its judgment is subject to what is "otherwise provided by this Code or by any other law for the time being in force". Those words, however, refer to those provisions only where the Court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the Court is not contemplated by the saving provision contained in Section 362 and, therefore, the attempt to invoke that power can be of no avail.

The Hon'ble Supreme Court in the matter of Narayan Prasad vs. State of Bihar reported at 2017 SCC Online SC 1738 has held that :-

6. In order to decide the controversy at hand, it would be useful to reproduce Sections 362 and 482 of The Code of Criminal Procedure, 1973 [hereinafter 'CrPC' for brevity]

362. Court not to alter judgment.- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

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

7. Plain reading of these Sections indicate that the prohibition under the Section 362 of Cr.P.C. is absolute; after the judgment is signed even the High Court in exercise of its inherent power under Section 482 of CrPC has no authority or jurisdiction to alter/review the same. The

inherent power under Section 482 of CrPC was purported to avoid the abuse of the process of the Court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code.

8. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the Court to exercise its inherent power to reconsider the matter."

Co-ordinate Bench of this Court in a judgment dated 30.5.2016 passed in Criminal Misc. Recall Application No.126367 of 2016 in Application u/s 482 No.5938 of 2016 has held that :-

"Full Bench of five Judges in Mahesh Vs. State, 1971 ALJ page 668 held, "the legal position can be summarized by laying down that the High Court is not possessed of general power to review, revise or reconsider the judgment or order duly pronounced in criminal appeal or a criminal revision, though the judgment or order can be so reviewed, revised or reconsidered in exceptional circumstances in exercise of the inherent power under Section 561-A (presently section 482), Cr.P.C, provided that the inherent power is so exercised for one of the three purposes detailed therein".

There is no power of review with the criminal court after the judgment has been rendered. The High Court can alter or review its judgment before it is signed. When an order is passed, it cannot be reviewed. Section 362 Cr.P.C is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and is dis-entitled to entertain a fresh prayer for any relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner

prescribed by law. The court becomes functus officio the moment the order for disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. There is also no provision for modification of the judgment. (Vide Hari Singh Mann Vs. Harbhajan Singh Bajwa, 2001 (1) SCC 169).

Moreover the prohibition contained in Section 362 Cr.P.C is absolute; after the judgement is signed, even the High Court in exercise of its inherent power under Section 482 Cr.P.C has no authority or jurisdiction to alter/review the same (vide Moti Lal Vs. State of M.P. (2012) 11 SCC 427).

If a judgement has been pronounced without jurisdiction or in violation of principle of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Cr.P.C would not operate. In such an eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault.(vide Chitawan Vs. Mahboob Ilahi, 1970 Cri. LJ 378(All), Asit Kumar Kar Vs. State of West Bengal (2009) 2 SCC 703)".

In view of the abovementioned judgments, the review petition is expressly barred under Section 362 Cr.P.C and applicant has not able to point out that impugned judgment was passed contrary to

the rule of natural justice or passed without jurisdiction, therefore, even under power of 482 Cr.P.C., this review application cannot be entertained. Thus, the present review application is rejected being not maintainable."

21. In the case of **Kusha Duruka v. State of Odisha, (2024) 4 SCC 432**, Hon'ble Apex Court has noted and held as under: -

"2. About three decades ago, this Court in Chandra Shashi v. Anil Kumar Verma [Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 421 : 1995 SCC (Cri) 239] was faced with a situation where an attempt was made to deceive the Court and interfere with the administration of justice. The litigant was held to be guilty of contempt of court. It was a case in which the husband had filed fabricated document to oppose the prayer of his wife seeking transfer of matrimonial proceedings. Finding him guilty of contempt of court, he was sentenced to two weeks' imprisonment by this Court. This Court observed as under : (SCC pp. 423-24 & 427, paras 1-2 & 14)

"1. The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only

to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.

14. The legal position thus is that if the publication be with intent to deceive the court or one made with an intention to defraud, the same would be contempt, as it would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid mens rea. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large. Anil Kumar is, therefore, guilty of contempt."

3. In K.D. Sharma v. SAIL [K.D. Sharma v. SAIL, (2008) 12 SCC 481] it was observed by this Court : (SCC p. 493, para 39)

"39. If the primary object as highlighted in Kensington Income Tax Commrs. [R. v. General Commissioners for the Purposes of the Income Tax Acts for the District of Kensington, ex p Princess Edmond De Polignac, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (KB & CA)] is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that

ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

(emphasis supplied)

4. In Dalip Singh v. State of U.P. [Dalip Singh v. State of U.P., (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324] , this Court noticed the progressive decline in the values of life and the conduct of the new creed of litigants, who are far away from truth. It was observed as under : (SCC pp. 116-17, paras 1-2)

"1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches

the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

(emphasis supplied)

5. In *Moti Lal Songara v. Prem Prakash* [Moti Lal Songara v. Prem Prakash, (2013) 9 SCC 199 : (2013) 3 SCC (Cri) 872] , this Court, considering the issue regarding concealment of facts before the Court, observed that "court is not a laboratory where children come to play", and opined as under : (SCC p. 208, paras 19-20)

"19. The second limb of the submission is whether in the obtaining factual matrix, the order passed by the High Court discharging the respondent-accused is justified in law. We have clearly stated that though the respondent was fully aware about the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the Revisional Court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused. Anyone who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud upon the court, and the maxim *suppressio veri, expressio falsi* i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. We are compelled to say so as there has been a calculated concealment of the fact before the Revisional Court. It can be stated with certitude that the respondent-accused tried to gain advantage by such factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to play possum.

20. The High Court, as we have seen, applied the principle "when

infrastructure collapses, the superstructure is bound to collapse". However, as the order has been obtained by practising fraud and suppressing material fact before a court of law to gain advantage, the said order cannot be allowed to stand."

(emphasis supplied)

6. It was held in the judgments referred to above that one of the two cherished basic values by Indian society for centuries is "satya" (truth) and the same has been put under the carpet by the petitioner. Truth constituted an integral part of the justice-delivery system in the pre-Independence era, however, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, the values have gone down and now litigants can go to any extent to mislead the court. They have no respect for the truth. The principle has been evolved to meet the challenges posed by this new breed of litigants. Now it is well settled that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Suppression of material facts from the court of law, is actually playing fraud with the court. The maxim *suppressio veri, expressio falsi* i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. It is nothing but degradation of moral values in the society, may be because of our education system. Now we are more happy to hear anything except truth; read anything except truth; speak anything

except truth and believe anything except truth. Someone rightly said that: "Lies are very sweet, while truth is bitter, that's why most people prefer telling lies."

7. In a recent matter, this Court again came across a litigant who had tried to overreach the Court by concealing material facts in *Saumya Chaurasia v. Enforcement Directorate* [Saumya Chaurasia v. Enforcement Directorate, (2024) 6 SCC 401 : 2023 SCC OnLine SC 1674 : 2023 INSC 1073]. It was a case where the appellant before this Court had challenged the order [Saumya Chaurasia v. Directorate of Enforcement, 2023 SCC OnLine Chh 1907] passed by the High Court [High Court of Chhattisgarh at Bilaspur in Miscellaneous Crl. Case No. 1258 of 2023] rejecting his bail application. He was accused of committing various crimes under the Penal Code, 1860 and the Prevention of Money-Laundering Act, 2002. His bail application was rejected by the High Court on 23-6-2023 [Saumya Chaurasia v. Directorate of Enforcement, 2023 SCC OnLine Chh 1907]. In the pleadings before this Court, it was mentioned that the High Court had committed gross error in not considering the charge-sheet dated 8-6-2023 and the cognizance order dated 16-6-2023, which clearly suggested that there was an error apparent on the fact of it. The fact which was available on record was that an order in the bail application was reserved by the High Court on 17-4-2023 [Saumya Chaurasia v. Enforcement Directorate, 2023 SCC OnLine Chh 5838] and pronounced on 23-6-2023 [Saumya Chaurasia v. Directorate of Enforcement, 2023 SCC OnLine Chh 1907]. Having some suspicion, this Court directed the appellant to file an affidavit to clarify the aforesaid position. There was no specific reply given to the aforesaid query to the

Court. Rather vague statements were made. Considering the facts available, this Court observed that there was a bold attempt by and on behalf of the appellant therein to misrepresent the facts for challenging the order [Saumya Chaurasia v. Directorate of Enforcement, 2023 SCC OnLine Chh 1907] impugned therein, regarding the conduct of the parties and the counsel, this Court made the following observations : (Saumya Chaurasia case [Saumya Chaurasia v. Enforcement Directorate, (2024) 6 SCC 401 : 2023 SCC OnLine SC 1674 : 2023 INSC 1073], SCC para 13)

"13. It cannot be gainsaid that every party approaching the court seeking justice is expected to make full and correct disclosure of material facts and that every advocate being an officer of the court, though appearing for a particular party, is expected to assist the court fairly in carrying out its function to administer the justice. It hardly needs to be emphasised that a very high standard of professionalism and legal acumen is expected from the advocates particularly designated senior advocates appearing in the highest court of the country so that their professionalism may be followed and emulated by the advocates practising in the High Courts and the District Courts. Though it is true that the advocates would settle the pleadings and argue in the courts on instructions given by their clients, however their duty to diligently verify the facts from the record of the case, using their legal acumen for which they are engaged, cannot be obliterated."

(emphasis supplied)

Finally, this Court dismissed the appeal with costs of Rs 1,00,000.

8. In *Pradip Sahu v. State of Assam* [Pradip Sahu v. State of Assam, (2024) 4 SCC 448] the accused who was

found to be guilty of concealing material facts from the court and against him the High Court [Gauhati High Court] had directed [Pradip Sahu v. State of Assam, 2021 SCC OnLine Gau 2835] for taking appropriate legal action, had challenged the order passed by the High Court before this Court. In the aforesaid case, first bail application filed by the appellant there was dismissed [Pradip Sahu v. State of Assam, 2021 SCC OnLine Gau 2832] by the High Court [On 11-11-2021] , thereafter he moved a second bail application before the High Court in which notice was issued on 30-11-2021 [Pradip Sahu v. State of Assam, 2021 SCC OnLine Gau 2833] . During the pendency of the aforesaid application before the High Court, the appellant therein moved a fresh bail application before the trial court on 1-12-2021, which was granted on the same day. The aforesaid facts came to the notice of the High Court on 8-12-2021 [Pradip Sahu v. State of Assam, 2021 SCC OnLine Gau 2834] when a report of the Registrar (Judicial) was received, who was directed to conduct the enquiry in the matter. However, on an apology tendered by the appellant therein and also considering the facts as stated that he belonged to Tea Tribe community and his brother, a cycle mechanic, who was also pursuing the case, did not appreciate the intricacy of the law. As a result of which, the mistake occurred. This Court, having regard to the unqualified apology tendered by the appellant therein, had set aside the order passed by the High Court to file FIR/complaint against the appellant therein.

9. May be in the facts of Pradip Sahu case [Pradip Sahu v. State of Assam, 2021 SCC OnLine Gau 2834] , this Court had accepted unconditional apology tendered by the appellant therein and in the given

fact situation accepted his apology but it is established that there is a consistent effort by the litigants to misrepresent the Court wherever they can."

22. In the facts of the present case, this Court finds it appropriate to refer some paras of the judgment passed by High Court of Rajasthan in the case of **Hussain Vs. Gram Panchayat Roon Panchayat Samiti Mundwa, Dist-Nagaur Through Sarpanch and Another**, reported in **2025 SCC OnLine Raj 271**, which are as under :-

28. In view of all the above observations and findings as recorded by this Court hereinabove, it is crystal clear that the Court was clearly misled by counsel for the appellants. All the submissions and arguments as raised by the counsel were/are totally incorrect and misleading.

29. In the present scenario, when the Courts are overloaded and overburdened with the number of listed cases where the daily cause list comprises of more than 300 matters per day and many a times, reaching to 600 matters per day, the Courts have no other option than to rely upon the submissions made by the counsels. In such a scenario, the Courts even pass orders relying upon the submissions as made by the counsels. It is the basic obligation of the litigant and his lawyer not to deceive or mislead the Court. This responsibility extends to every function including the presentation and interpretation of facts, drafting of pleadings and documents, legal argument and other submissions or communications with the Court. The duty not to intentionally mislead or deceive is only the bare minimum required of the advocate and solicitor. As an officer of the Court, he

is expected to advance the public interest in the fair administration of justice even if this could jeopardise his client's interests. Hence, he is not only required to inform the Court of all relevant decisions and legislative provisions of which he is aware but also bound not to make any statements which are inaccurate, untrue and misleading.

30. As held by the Hon'ble Apex Court in the case of D.P. Chadha v. Triyugi Narain Mishra, (2001) 2 SCC 221, professional misconduct is grave when it consists of betraying the confidence of a client and is gravest when it is a deliberate attempt at misleading the court or an attempt at practising deception or fraud on the court. Therein, the Court held as under:

"The client places his faith and fortune in the hands of the counsel for the purpose of that case; the court places its confidence in the counsel in case after case and day after day. A client dissatisfied with his counsel may change him but the same is not with the court. And so the bondage of trust between the court and the counsel admits of no breaking.

.....
24. It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In adversarial system it will be more appropriate to say while the Judge holds the reigns, the two opponent counsel are the wheels of the chariot. While the direction of the movement is controlled by the Judge holding the reigns, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of chariot. As a responsible officer of the court, as they are called - and rightly, the counsel have an over all

obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but overzealousness and misguided enthusiasm have no place in the personality of a professional. Yet a counsel, in his zeal to earn success for a client, need not step over the well-defined limits or propriety, repute and justness. Independence and fearlessness are not licences of liberty to do anything in the court and to earn success to a client whatever be the cost and whatever be the sacrifice of professional norms."

31. This Court also gets support of its view by observation made by the Hon'ble Apex Court in the case of Virender Singh v. State (Govt. of NCT of Delhi) Writ Petition(s) (Criminal) No(s). 296/2024 (decided on 10.09.2024) wherein the Court observed that, "it is not possible for Judges to go through each and every page of each and every case listed before the Court. Our system works on faith. We trust the members of the Bar when we hear cases. But, when we come across cases like this, our faith is shaken."

32. This Court is pained to observe that counsel for the appellants did not fairly state the facts before the Court but presented the same in such a way to mislead the Court as to the true facts and thereby, abused the process of law. The learned counsel not only made false and incorrect submissions but also withheld the true information which had a bearing in the matter. The counsel totally withheld the fact of the order dated 21.01.2025 passed in S.B. Writ Petition No. 9338/2024 whereby a Co-ordinate Bench of this Court had already directed the District Collector and Superintendent of Police, Nagaur to ensure the requisite police force and other help to the Gram Panchayat to remove the

encroachments. Therein, the Court further observed that in case the encroachers resist the Encroachment Removal Drive, the Gram Panchayat shall note their names and move an application in the present writ petition as to enable the Court to initiate proceedings for contempt against them."

23. Also, fraud vitiates every solemn proceeding and no right can be claimed by a fraudster on the ground of technicalities. (See: **S.P. Chengalvaraya Naidu Vs. Jagannath and Others**, (1994) 1 SCC 1, **Ram Chandra Singh v. Savitri Devi**, (2003) 8 SCC 319, **Jai Narain Parasrampuria v. Pushpa Devi Saraf** (2006) 7 SCC 756, **Madhukar Sadbha Shivarkar v. Madhukar Sadbha Shivarkar v. State of Maharashtra**, (2015) 6 SCC 557, **Jal Vidyut Nigam v. Raj Kumar Rajinder Singh**, (2019) 14 SCC 449).

24. Considered the aforesaid including undisputed facts of the case indicated in paras 6 to 8 of this judgment as also the following facts/reasons.

(a) based upon the compromise with one injured/victim the prayer was sought to quash the entire criminal proceedings;

(b) victim/injured persons namely Majrub, Mo. Salman, Mufidul, Mahboob, Shabnam Bano and Naseera (mother of the deceased) were not heard when the final order dated 12.02.2025 passed by this Court for the reason that they were not impleaded, to the view of this Court intentionally for this reason that they refused to enter into the compromise;

(c) non-impleadment of the victim/injured persons and concealing material facts from the Court for getting an order in favour of the applicants amounts to misconduct on the part of the Advocate;

(d) criminal proceedings related to Section 304 IPC cannot be quashed on the basis of compromise, which inadvertently relying upon the statement of counsel were quashed by this Court.

25. Upon due consideration of the aforesaid, I am of the firm view that it is a case of committing fraud with this Court and in this view of the matter, this Court finds that the instant application is liable to be allowed with cost.

26. Accordingly, the instant application for recall of order filed by the State is *allowed*.

The application under Section 482 Cr.P.C. is restored to its original number.

Sessions Trial No. 110 of 2017 (State vs. Kurban and Ors.), arising out of Case Crime No. 86 of 2017, Under Section 323, 504, 506, 452, 308, 324, 325, 304, 147, 148 IPC, Police Station Dewa, District- Barabanki, is also restored to its original number.

27. List/put up the application under Section 482 Cr.P.C. *before appropriate Court, at an early date, as fresh*.

28. Taking note of the aforesaid facts/reasons recorded for recalling of final order dated 12.02.2025 in para 24 of this judgment, this Court imposes cost of ₹ 25,000/- on each of the accused/applicants which shall be paid to the High Court Legal Services Lucknow within one month from today failing which the same shall be recovered as arrears of land revenue.

29. Office shall send a copy of this order to District Magistrate to take further steps in the matter in default of aforesaid.

30. The concerned Court is directed to do needful for ensuring the presence of the accused/applicants namely Javed Ahmad @ Javed S/o Kurban Ali, Sartaj S/o Kurban Ali, Mo. Zafar @ Jafar S/o Mo. Nafees and Hameedan @ Hameeda W/o Kurbaan Ahmad for the purposes of concluding the trial.

31. Considering the unconditional apology tendered by Shri Sajjad Hussain, Advocate, and expressing remorse and promise made that in future such misconduct would not be repeated as also the request of members of the 'Bar', though the conduct of the advocate is not worthy of being pardoned for the reason that on account of pendency of the large number of cases this Court relies upon the statements of the Members of the Bar who are supposed to make correct statements before the Court, the unconditional apology of Mr. Sajjad Hussain, Advocate is accepted and he is warned of and directed to be careful in not repeating such type of misconduct in future.

32. Office is directed to communicate the certified copy of this order to the trial Court forthwith.

(2025) 4 ILRA 363
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 24.04.2025

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Contempt Application (Civil) No. 3413 of 2023

Ambrish Dwivedi & Ors. ...Applicants
Versus

Sri Amnand Kumar Singh, M.D., Pradeshik Cooperative Dairy Federation Ltd., Lko. & Anr. ...Opposite Parties

Counsel for the Applicants:
Pradeep Kumar Tripathi

Counsel for the Opposite Parties:
Lalit Shukla

A. Contempt Law – Recall application – Maintainability – Contempt petition was disposed of ex-parte – Payment of 7% interest in compliance of writ order was not complied with, however, it was alleged that the same has been done – Making misrepresentation before the court was leveled in recall application – Effect – Held, misrepresentation is amount to fraud and fraud vitiates all proceedings and this Court is of considered opinion that this law will also similarly apply in the contempt petition in an event, the order is passed on misrepresentation or fraud on behest of either of the parties – Recall application is maintainable. (Para 23, 24 and 25)

Recall application allowed. (E-1)

List of Cases cited:-

1. St. Vs Baldev Raj; 1991 SCC Online All 1070
2. Mahaveer Prasad Verma Vs Central Administrative Tribunal, Lucknow; 2013 SCC OnLine All 13904
3. Durga Nagpal Vs C/M, Patronage Institute of Management Studies; 2013 SCC OnLine All 13298
4. United India Insurance Co. Ltd. Vs Rajendra Singh; 2003 SCC 581
5. Himalayan Cooperative Group Housing Society Vs Balwan Singh; (2015) 7 SCC 373

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. Heard Sri Pradeek Kumar Tripathi, counsel for the applicants and Sri Lalit Shukla, counsel for the opposite party.

2. The present application for recall of the order dated 20.2.2024 passed by this Court in Contempt Application (Civil) No. 3413 of 2023 has been moved and the order dated 20.2.2024 is quoted hereinunder:-

"Case called out.

None present for the petitioners.

Sri Lalit Shukla, learned counsel for opposite party submits that the order passed by the writ court has been complied with. He further submits that the petitioners have certain objections with respect to calculation of amount on interest part.

Since the calculation with respect to gratuity is the disputed question of fact and that can be raised before the appropriate forum, at appropriate stage.

In view of the aforesaid, no contempt is made out at this stage.

The contempt petition is dismissed.

Notices are discharged.

Consigned to record."

3. Learned counsel appearing for the applicants submits that the Writ A No. 6142 of 2022 (Ambrish Dwivedi And Others Vs. State of U.P. and Ors) was filed with a prayer of payment of interest on delayed payment of the gratuity as well as leave encashment to the petitioners therein. The Writ Court while passing the order dated 8.5.2023 in the aforesaid writ

petition, has noted the submission of counsel for the petitioners therein, that the petitioners retired in the year 2014 to 2020 whereas, the gratuity was paid in the month of August, 2021 and therefore, considering the facts and circumstances of the case and particularly, the provision of section 7(3A) of payment of Gratuity Act 1972, directed the respondents to ensure the payment of interest @7% p.a. on the amount of delayed payment of gratuity, from the date of their retirement till the actual payment made to them, within period of three months. The Writ Court was conscious sufficiently and therefore, it was further provided that if amount is not paid within a period of three months, the same shall carry further interest @ 7% p.a. on the unpaid interest. He submits that this order was passed after hearing the parties and this has attained finality. The order dated 8.5.2023 passed in Writ A No. 6142 of 2022 is read as follows:-

"1. Present petition has been filed by the petitioners claiming interest on delay in payment of the gratuity as well as the leave encashment to the petitioners.

2. Submission of learned counsel for the petitioners is that the petitioners retired in the year 2014 to 2020 (as detailed in Annexure No.1) whereas the gratuity was paid in the month of August, 2021 as detailed in Para -18 of the writ petition.

3. Considering the fact that on payment of gratuity, the statutory interest is prescribed under Section 7(3A) of the Payment of Gratuity Act, the present petition is disposed off directing respondents to ensure payment of interest at the rate of 7% per annum on the amount of delay in payment of gratuity.

4. The amount of interest shall be paid from the date of retirement till the

actual payment as indicated in Para - 18 of the writ petition.

5. The interest as directed to be awarded herein above, shall be paid to the petitioners positively within a period of three months from the date of production of a certified copy of this order.

6. In case, the amount is not paid within a period of three months as directed above, the same shall carry a further interest at the rate of 7% on the unpaid interest as directed above.

7. The writ petition is disposed off in above terms.

8. This order has been passed in the presence of Shri Shanker Lal, learned counsel appearing for respondent no. 2."

4. Referring the aforesaid, he submits that on some part of the delayed payment, the interest has been paid whereas, it has been misrepresented before the Court that the order passed by the Writ Court has been complied with. He has drawn attention towards the counter affidavit filed to the application for recall and submits that in fact, the opposite parties have failed to reply that the interest on the each and every part of the delayed payment of gratuity have been done.

5. In addition, he submits that in fact the counsel for the applicants could not appear before the Contempt Court on 20.2.2024, which is apparent from the order itself and on the sole submission of counsel for the opposite party, the contempt petition was dismissed assuming that the order passed by the Writ Court has been complied with and in fact the counsel for the opposite parties did not bring the true facts before the Court and thus, has misrepresented and therefore, submission is

that the order dated 20.2.2024 may be recalled.

6. On the other hand, learned counsel for the opposite party has vehemently opposed the submissions aforesaid and submits that since there was a dispute with respect to delayed payment of the interest on the rest of the gratuity amount and therefore, that is a disputed question of fact and that cannot be adjudicated at this stage, in a contempt petition. He also added that subsequently, coordinate bench of Contempt Court has also passed several orders in other contempt petitions, where the other such petitioners/applicants have been relegated before the appropriate forum for adjudication of such factual disputes, thus, submission is that the applicants are not entitled for any relief. Adding his arguments, he submits that review or recall application is not maintainable where the contempt petition is decided on merits.

7. Having heard counsel for the parties it transpires that the Writ Court while passing the order on 18.5.2023 in Writ No. 6142 of 2022 issued direction that the opposite party shall ensure the payment of interest with a specific rate of 7% p.a. on the amount of delayed payment of gratuity. It is also apparent from the order dated 20.2.2024 that on the date of passing of the order, the counsel for the applicants was not present and solely on the statement given by counsel for the opposite party, this Court has dismissed the contempt petition while considering that there was some disputed question of fact which remains to be adjudicated.

8. In fact gist of the argument of counsel for the applicants is that admittedly, there was delay in payment of

interest and some interest on the delayed amount of gratuity was given and so far as the first, second and third installments are concerned, the interest on the delayed payment has not been done.

9. The direction of the Writ Court is very clear in its terms that 7% p.a. interest on the delayed amount of payment of gratuity shall be paid and further, it has also been directed by the Court that the interest shall be paid from the date of retirement till the actual payment as is indicated in paragraph no. 18 of the writ petition. In fact this fact was not brought into the knowledge of the Court on the date of passing of the order dated 20.2.2024 and rather it was intimated that the order has been complied with and the contempt court under the impression that the order passed by the writ court has been complied with in letter and spirit dismissed the contempt petition.

10. The objection is raised by counsel for the opposite party that once a contempt application is dismissed/disposed of, there is no provision for recall of such order.

11. Time and again, this issue has been dealt with by the several verdicts of the Apex Court as well as the High Court. In the case of **State vs Baldev Raj 1991 SCC Online All 1070**. It has been held that the Contempt of Court Act, 1971, laid down the procedure and there is no express inherent power to the High Court for recall or review. Paragraph no. 13, 19 and 20 of the aforesaid judgment are quoted hereinunder:-

"13. Obviously the Contempt of Courts Act, 1971 not only defines civil and criminal contempt but also lays down the procedure. This Act does not expressly give

any inherent power to the High Court in matter of contempt of Court. It provides in S. 19 appeals from order or decision of the High Court in the exercise of its jurisdiction to punish for contempt. When the Act does not confer inherent power or power of recall or review and provides remedy against order or decision in the matters of contempt. the power of the High Court of recall or review in matters of contempt cannot be invoked.

19. It is evident that this ruling relates to the inherent powers of the High Court in respect of power exercised under Art. 226 of the Constitution. Facts of the case were quite distinguishable. Person at whose instance power of review was exercised was not earlier party to the petition. We are of the opinion that the powers of the High Court under Art. 226 are much wider to secure natural justice. At the risk of repetition it can be said that the powers of the High Court in matters of Contempt of Courts have been limited by the preamble of the Contempt of Courts Act, 1971. It provides elaborate procedure and then appeal against the order or decision of the High Court. We are of the opinion that the Act impliedly excludes power of recall or review. However, as stated earlier even after a final order or decision in matter of Contempt of Court a High Court has inherent power to correct clerical or typing mistake.

20. In the instant case we have heard Baldeo Raj and learned AGA at length. Contention of Baldev Raj that the case was fixed for hearing and on that date judgment could not have been delivered. Firstly this cannot be called a mistake. It is not unusual that after hearing judgment is delivered the same day. If a party refuses to argue and participate in hearing by making some application of frivolous nature the

High Court can pronounce judgment. This cannot be called a mistake apparent on the record or a mistake of clerical nature. Baldeo Raj further vehemently argued that the bench was biased against him. This can be a matter to be looked into in appeal but cannot be called a clerical mistake. Baldeo Raj was much aggrieved because at one stage the bench hearing the contempt case against him called the police and then expressed regret. Once again this is a matter to be considered in appeal and cannot be called a mistake apparent on the face of the record or a clerical mistake. Contention that Baldeo Raj did not get reasonable opportunity of hearing can be a ground of appeal but not for review or recall of judgment and order of conviction or correction of clerical mistake."

12. Further, the reliance has also been placed on the law rendered in the case of **Mahaveer Prasad Verma Vs. Central Administrative Tribunal, Lucknow reported in 2013 SCC OnLine All 13904**. Paragraph no. 4 of the abovesaid judgment is reproduced hereinunder:-

"By the order dated 10.1.2012, the contempt petition filed by the petitioner, was dismissed in his absence on the ground that the petitioner respondent has not moved any application to bring on record the successor since the contemner was transferred. Tribunal noted that an application for recall of an order passed in a contempt proceeding, is not maintainable. So far as the finding of Tribunal that recall/review application is not maintainable, seems to be correct. Virtually, recalling of the order dated 10.1.2012, will amount to review of earlier decision was was passed with the finding on merit to the extent that successor officer has not been brought on record.

Review/recall or appeal are the statutory remedies, vide AIR 1966 SC 641, Harbhajan Singh v. Karam Singh and others, 1988 (14) ALR 706, Vijai Bahadur Vs. State of U.P., 1995 (26) ALR 627, Ram Jiwan Singh and others Vs. The District Inspector of Schools, Kanpur and others, 1979 (5) ALR 168, 1998 (33) ALR 456, New India Assurance Co. Ltd. Vs. Smt. Bimla Devi and others, 1997 (88) RD 562, Smt. Shivraji and others Vs. Dy. Director of Consolidation, Allahabad and others, AIR 1970 SC 1273, Patel Narshi Thakershi and others Vs. Pradyumansinghji Arjunsinghji, 1987 (13) ALR 680, Dr. (Smt.) Kuntesh Gupta Vs. Mgt. of Hindu Kanya Mahavidyalaya, Sitapur etc., AIR 1964 SC 436, Laxman Purushottam Pimputkar Vs. The State of Bombay and others, and AIR 1965 SC 1457, Patel Chunibhai Dajibha etc. Vs. Narayanrao Khanderao Jambekar and another. Unless provided under the Act, no application for review/recall may be moved. The contempt of Courts Act, 1971 does not contain any provision for review of a judgment. Hence the impugned order dated 13.9.2012 does not seem to suffer from any impropriety or illegality"

13. It has been said that in the aforesaid case after passing the order, the otherside was trying to persuade the court for review/recall of the order and the same was denied.

14. The reliance has also be placed in the case of **Durga Nagpal Vs. Committee of Management, Patronage Institute of Management Studies reported in 2013 SCC OnLine All 13298** and has referred paragraph nos. 17 and 19 has been referred. Paragraph nos. 17 and 19 of the abovesaid judgment are quoted hereinunder:-

"17. Keeping in view the proposition of law discussed hereinabove, there appears to be no room of doubt that once contempt proceeding was dropped and contemnor was discharged, it was not open for the Contempt Judge to review his own order after entertaining the miscellaneous application for modification of final judgment. Since accused were discharged (supra) and proceeding was closed, the miscellaneous application for modification was not maintainable. Thus, Contempt Judge seems to have passed the impugned order without jurisdiction. Since the Contempt Judge exercised jurisdiction without any authority, the special appeal seems to be maintainable. Arguments advanced by the learned counsel for the respondents with regard to maintainability of special, seems to be misconceived and is not sustainable.

19. It is not so that respondent petitioner is remediless. Instead of moving a miscellaneous application for modification of order, the respondent petitioner could have filed fresh contempt petition on account of alleged violation of undertaking given before the Court as it constitute fresh cause of action or an application under Article 215 of Constitution of India could have been moved for action and punishment by the appropriate Court on account of violation of undertaking given and relied upon by the Court while discharging contemnor."

15. Referring the aforesaid, it has been emphasized that while moving the modification application after the final judgment was passed, request was made for reviewing the order and the same was rejected and it was held that Contempt Judge has no power to revive its own order. So far as the issues involved in the instant matter is that by misrepresenting, the

contempt petition got dismissed. In this background, this has become a conspicuous case in facts and law where, the effect and meaning of the misrepresentation has to be applied/interpreted.

16. Undoubtedly, there is no provision of review or recall in the contempt of Court Act 1971, but it does not mean that the proportion of the settled laws would also be redundant for the purpose of recall of such order.

17. This Court may refer the case Ram Chandra Singh Vs Savitri Devi reported in (2003) 8 SCC 319 wherein, it has been held that 'fraud is a conduct either by letter or words which induces the other person or authority' to take definite stand as a response to the conduct of the former either by word or letter and the misrepresentation itself amounts to fraud and misrepresentation consist in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood.

18. Further, in case of **United India Insurance Co. Ltd. Vs. Rajendra Singh 2003 SCC 581** it has very specifically been held in paragraph nos. 15 and 16 that no Court or tribunal can be regarded as powerless to recall its own order if the same is wrangled by misrepresentation or fraud. Paragraph nos. 15 and 16 of the abovesaid judgment are quoted hereinunder:-

"15. It is unrealistic to expect the appellant Company to resist a claim at the first instance on the basis of the fraud because the appellant Company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any

dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the Company to file a statutory appeal against the award. Not only because of the bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

16. *Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim."*

19. Again in the case of **Himalayan Cooperative Group Housing Society Vs. Balwan Singh (2015) 7 SCC 373**, it has been said in so many words that the Court is not bound by the statement or admissions of the lawyer as the matter of law or legal conclusions. In this regard paragraph no. 32 of the aforesaid judgment is quoted hereinunder:-

"32. Generally, admissions of fact made by a counsel are binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. A lawyer generally has no implied or

apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions?"

20. Having at glance on the aforesaid settled laws, it is borne out that so far as the case of Baldev Raj(Supra) referred by counsel for the opposite party, the same was against an order of conviction of contemner and instead filing an appeal which is provided in the statute, a recall application was moved, whereas, the remedy of the appeal lies under section 19 of Act 1971 and therefore, the aforesaid factual matrix of the case is altogether different than that of the present case.

21. So long as the case of **Durga Nagpal(Supra)** is concerned, the facts of this case are different to the instant case as in the abovesaid case, the ground of misrepresentation or fraud was not involved neither raised nor decided and therefore, the ratio of the abovenoted judgment would also not be applicable in the present matter.

22. Lastly, the case of **Mahaveer Prasad Verma(Supra)** which is cited by counsel for opposite party reveals that review/recall was moved, which was rejected by the Central Administrative Tribunal in default and the same was assailed before the High Court in the writ jurisdiction and thereafter, the same was quashed and the contempt petition was restored and the tribunal was directed to

decided the same to bring the successor on record, thus, the abovementioned case is factually different to the instant case.

23. The recall application is moved on the ground that it has unfairly been submitted before the contempt court that the order passed by the Writ Court has been complied with though, it was misrepresented before the Court. In the recall application in paragraph nos. 4, 5 and 6, it has specifically been stated that the interest of late payment of gratuity of some installments have not been paid yet and from perusal of the reply in paragraph no. 12 of the counter affidavit/objections filed by the opposite party, it is apparent that the same has not specifically been denied, rather it has been said that as per the availability of the funds, the payment has been made, but what happened with respect to the payment of interest as per the rate of 7% on the delayed payment is silent.

24. It is trite law that misrepresentation is amount to fraud and fraud vitiates all proceedings and this Court is of considered opinion that this law will also similarly apply in the contempt petition in an event, the order is passed on misrepresentation or fraud on behest of either of the parties.

25. In light of the aforesaid submissions and discussions, this Court is of considered opinion that the recall application is maintainable.

26. Consequently, the recall application succeeds, thus, the recall application is **allowed** and the order dated 20.2.2024 is hereby recalled.

Order on Contempt Petition

1. The Contempt Application (Civil) No. 3413 of 2023 is restored on it's original number.

2. List/put up this matter in the next month.

(2025) 4 ILRA 370
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 23.04.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE JITENDRA KUMAR SINHA, J.

Criminal Appeal No. 475 of 1984

Ferasat		...Appellant
	Versus	
State of U.P.		...Respondent

Counsel for the Appellant:
M. Islam

Counsel for the Respondents:
D.G.A.

(A) Criminal Law - appeal - Indian Penal Code, 1860 - Section 302 - Murder - Conviction - Eyewitness testimony corroborated by medical evidence - Non-appearance of appellant and counsel - Not always necessary to adjourn the matter in case both appellant or his counsels/lawyers are absent -Appeal can be decided on merits after perusal of record and judgment - Appointment of amicus curiae not mandatory - if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation - in the case of direct evidence, motive is of little significance or no significance. (Para -3,21)

(B) Criminal law - Dying declaration - Criminal Procedure Code, 1973 - Section 161 , Indian Evidence Act, 1872 - Section 32(1) - Statement of deceased recorded

under Section 161 Cr.P.C. admissible as dying declaration when related to cause of death and deceased dies subsequently. (Para -18)

Accused, step-son of deceased, was not contributing to household - had strained relationship with deceased - inflicted multiple knife blows in presence of eyewitness - Prompt FIR - Motive proved - Statement of deceased treated as dying declaration - conviction under Section 302 IPC challenged. **(Para - 7, 10, 18)**

HELD: - Appellate Court rightly relied on credible eyewitness testimony and dying declaration to affirm conviction under Section 302 IPC. Absence of appellant does not preclude merit-based disposal. Appointment of Amicus Curiae is discretionary, not mandatory. Conviction and sentence upheld. **(Para - 20,22,23)**

Criminal appeal dismissed. (E-7)

LIST OF CASES CITED: -

1. Surya Baksh Singh Vs St. of U.P., (2014) 14 SCC 222
2. Pradeep Bisoi @ Ranjit Bisoi Vs. St. of Odisha , 2019 (11) SCC 500

(Delivered by Hon'ble Vivek Kumar
Birla, J.
&
Hon'ble Jitendra Kumar Sinha, J.)

1. List has been revised. No one appears on behalf of appellant to press the present appeal. The appeal is of the year 1983.

2. As per office report dated 3.3.2022, the sole appellant, Firasat, is not traceable. NBW was issued against the appellant by the order dated 05.02.2024 of this Court. But the same could not be executed as the appellant no

longer resides on available address. Sureties are also not traceable.

3. This appeal is being heard and disposed of in view of law propounded by Hon'ble Apex Court in *Surya Baksh Singh vs. State of Uttar Pradesh, (2014) 14 SCC 222*, the Hon'ble Apex Court has held that it is always not necessary to adjourn the matter in case both appellant or his counsels/lawyers are absent and the Court can decide the appeal on merits after perusal of the record and the judgement of the trial Court. It has further been observed that if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation. It has also been observed that appointment of Amicus Curiae is also on the discretion of the court. In paragraph 26 of the said judgement, it was held that it is always not essential for the High Court to an appoint Amicus Curiae, paragraphs 24 and 26 of the said judgement whereof are quoted as under:

"24. It seems to us that it is necessary for the Appellate Court which is confronted with the absence of the convict as well as his Counsel, to immediately proceed against the persons who stood surety at the time when the convict was granted bail, as this may lead to his discovery and production in Court. If even this exercise fails to locate and bring forth the convict, the Appellate Court is empowered to dismiss the appeal. We fully and respectfully concur with the recent elucidation of the law, profound yet perspicuous, in K.S. Panduranga v. State of Karnataka, (2013) 3 SCC 721. After a comprehensive analysis of previous decisions our learned Brother had distilled the legal position into six propositions:

"19.1. that the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. *that the Court is not bound to adjourn the matter if both the Appellant or his Counsel/lawyer are absent;*

19.3. *that the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;*

19.4. *that it can dispose of the appeal after perusing the record and judgment of the trial court.*

19.5. *that if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the Appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and*

19.6. *that if the case is decided on merits in the absence of the Appellant, the higher court can remedy the situation.*

25.....

26. *Reverting back to the facts of the present case a perusal of the impugned order makes it abundantly evident that the High Court has considered the case in all its complexities. The argument that the High Court was duty-bound to appoint an amicus curiae is not legally sound. Panduranga correctly considers Mohd. Sukur Ali v. State of Assam (1996) 4 SCC 729 as per incuriam, inasmuch as the latter mandates the appointment of an amicus curiae and is thus irreconcilable with Bani Singh vs. State of U.P. (1996) 4 SCC 720. In the case in hand the High Court has manifestly discussed the evidence that have been led, and finding it of probative value, has come to the conclusion that the conviction is above Appellate reproach correction and interference. In view of the analysis of the law the contention raised before us that it was essential for the High Court to have appointed an amicus curiae*

is wholly untenable. The High Court has duly undertaken the curial responsibility that fastens upon the Appellate Court, and cannot be faulted on the approach adopted by it. In this respect, we find no error."

4. The aforesaid view has been followed by the Hon'ble Full Bench in Criminal Reference No.1 of 2024, In Re-Procedure To Be Followed In Hearing Of Criminal Appeals vs. State of U.P., decided on 22.01.2025, paragraph Nos. 151 and 152 whereof are quoted as under:

"151. The crux of the aforesaid observations of the three celebrated judgments rendered by the Hon'ble Supreme Court in Bani Singh and others Vs. State of U.P. 11, Surya Baksh Singh Vs. State of Uttar Pradesh 12 and K.S. Panduranga Vs. State of Karnataka 13, thus, covers the entire length and breadth of Question No. 5 formulated by the Division Bench at Lucknow for consideration by this Bench and no fresh exercise, in our considered opinion, is required to be undertaken by this Bench, including on one point which has been highlighted by the Division Bench at Lucknow i.e. whether the amicus curiae may be appointed even when the presence of the convict, appellant or accused-respondent may be secured and without his consent.

152. The aforesaid legal precedents would evidently canvass that the emphasis of the Apex Court has been on providing opportunity of being heard to the appellant who is willing to cooperate with the appellate court or his counsel and in this regard a process to cause his presence for the purpose of giving opportunity of being heard is required to be issued to him and when the court is satisfied that such appellant is deliberately avoiding his

presence before the court, in such a situation, the court may dispose of the appeal in the manner approved by the Hon'ble Supreme Court in Bani Singh and others Vs. State of U.P. 11, Surya Baksh Singh Vs. State of Uttar Pradesh 12 and K.S. Panduranga Vs. State of Karnataka 13 (i.e. after perusing the record/evidence vis-a-vis judgment of the trial court with the assistance of prosecutor and Amicus, if appointed) and we do not have any reason to deviate from the settled proposition laid down by the Apex Court in the above mentioned cases, moreover, the appointment of amicus is only for the purpose to provide fair trail to the appellant and also for rendering the assistance to the Court."

5. Under such circumstances, we proceed to consider the present appeal on merit with the help of Sri Rahul Asthana, learned A.G.A. for the State.

6. The present appeal has been filed by the appellant assailing his conviction and sentence passed by Sri Mahesh Chandra, the learned Additional Sessions Judge-8th, Bareilly vide judgement and order dated 11.01.1984 whereby the appellant has been convicted under Section 302 I.P.C. and has been sentenced to undergo imprisonment for life and he has further been sentenced to pay fine of Rs. 5,00/- and in default of payment of fine, R.I. for one year has also been awarded. The sentences have been ordered to run concurrently.

7. The prosecution story, in brief, is that the deceased Chutai had married with one Hasin Bi about three years back from the date of occurrence. Hasin Bi had seven children including Firasat from earlier marriage. Firasat had started separate working but he was not contributing

towards the expenses of the family. The deceased Chutai used to demand monetary contribution from the accused but the accused did not pay heed to it. The deceased Chutai asked the accused Firasat to live separately but even then the accused continued to live with Chutai. On account of this the relationship between the accused and the deceased had got strained and altercations, exchange of abuses, between the two had taken place multiple times. On 23.06.1983, about mid day, informant Aziz, who is brother-in-law of the deceased Chutai visited his house. Appellant/accused Firasat came there armed with a knife and stated that he would kill him as he had made his life miserable, after saying this, the accused gave several blows of knife to Chutai and made good his escape. The informant Aziz then took injured Chutai to the police station in his rickshaw and lodged the report. Originally, the case was registered under Section 307 I.P.C. but after the death of Chutai, the case was converted into Section 302 I.P.C. The police, after investigation, submitted charge sheet against appellant-accused Firasat @ Guddu.

8. The learned trial court framed charge against the accused under Section 302 I.P.C. to which the accused pleaded not guilty and claimed for trial. Prosecution examined eight witnesses in support of its case. PW-1 Dr. S.K. Jain, Medical Officer, district Hospital, Bareilly stated that on 25.06.1983 he conducted the post mortem of the dead body of Chutai and found following ante mortem injuries on his dead body:-

*"(i). Incised wound 2.5cm * 1.5 cm chest cavity deep on front of chest 6cm medial to right nipple of 3 o'clock position. Margin clean cut. Transversely placed.*

(ii). *Incised wound 2cm. x 1.5cm cavity deep on right side abdomen 9cm. above umblicus at 11 O'clock position transversaly placed, margin clean cut.*

(iii). *Incised wound 1.5cm x 0.5cm muscle deep on front of the left upper arm 6cm above elbow joint.*

(iv). *Incised wound 1cm. x 0.5cm skin deep on outer side of left elbow joint.*

(v). *Incised wound 1.5cm x 0.5cm skin deep on the outer side of left fore arm 5cm below elbow joint.*

(vi). *Incised wound 2cm x 1cm x 2cm deep on back of left 3cm below and below Axilla (Arm Pit).*

(vii). *Incised wound 1cm x 0.5cm skin deep on front of left knee joint.*

(vii). *Incised wound 1cm x 0.5cm skin deep on back of left thigh 6cm above knee."*

9. In the opinion of PW-1, the cause of death was shock and haemorrhage as a result of above injuries. PW-1 has proved the post mortem report Ext. ka1.

10. Informant/PW-2 Aziz has stated that the deceased Chutai was his brother-in-law and he had married Hasin Bi about three years back. Hasin Bi had seven children from her earlier marriage. A child was also born with Chutai but the child had died. This witness has further stated that the entire expenses of households were borne by Chutai and the accused Firasat, step son of Chutai, used to spend money on cinema and did not contribute anything towards households. It is further stated by PW-2 that Firasat used to demand pocket money from Chutai and on this account the relationship between them was strained. This witness has further stated that on the date of occurrence he was sitting at the house of Chutai (deceased) talking to him. At about 12:30 P.M., accused Firasat came

there armed with a knife and started abusing Chutai and threatened to kill him and gave several knife blows. PW-2 raised alarm but the accused managed to escape after inflicting five or six injuries to Chutai. This witness has further stated that he did not intervene as he was unarmed. PW-2 further stated that he took the injured Chutai to the police station on his rickshaw and lodged the report Ext. ka3. While being taken to police station, the injured Chutai was in conscious and full senses and was talking to PW-2. At the police station the Sub-Inspector recorded the statement of Chutai and then sent him to the hospital for medical examination along with one Constable. However, on the same day Chutai died due to injuries.

11. PW-3 Smt. Bijjan, an old lady has stated that about mid day on the date of occurrence she heard some noise and she reached at the door of Chutai when she saw accused Firasat @ Guddu coming out of the door with blood stained knife in his hand. The accused escaped towards masjid and his shirt was also blood stained.

12. PW-4 Sub-Inspector H.S. Bhargoti is a formal witness who has proved the chick F.I.R. of this case as Ext. ka4. PW-4 is also an Investigating Officer who conducted the investigation of this case. PW-4 has recorded the statement of injured Chutai at the police station and has filed a copy of the same in the trial court, which is Ext. ka5. He sent Chutai for medical examination with Constable Sobran Singh to the District Hospital. This witness has also recorded the statement of the informant and prepared site plan of the place of occurrence, which is Ext. ka6. From the spot He took in possession blood stained and plain soil and sealed it into two boxes, which are Ext. 1 and 2. He also

prepared fard statement as Ext. ka7. PW-4 also cut and took in his possession blood stained 'Ban' of the cot, on which the deceased was sitting at the time of alleged occurrence being committed. This witness also recorded the statement of several witnesses and on 24.06.1983, after Chutai succumbed to his injuries, made the conversion of the case from Section 307 I.P.C. to Section 302 I.P.C.

13. PW-5 Head Constable Raj Bahadur Singh has deposed that on 23.06.1983 at about 01:05 P.M. at P.S. Baradari, Aziz had lodged F.I.R., which was prepared by him. This witness has further stated that while Chutai remained at the police station he was in his senses and was talking. This witness further stated that S.I. H.S. Bhargoti recorded the statement of injured Chutai at the police station on the same day at about 3:30 P.M.

14. P.W.-6 Sobran Singh has deposed to the effect that on 23.06.1983 he took the injured Chutai to the hospital for medical examination and he was talking up to the gate of the hospital but when he was taken inside the hospital Chutai died. PW-6 came back to the PW-5 Raj Bahadur with a report from the hospital that the injured is dead and recorded the same in the G.D. report.

15. PW-7 S.I. Sahdev Singh has stated that on 24.06.1983 he was posted at P.S. Baradari. He prepared panchayatnama under direction of his superior officer along with Constable Lal Singh and Malkhan Singh. This witness has proved panchayatnama (inquest) as Ext. ka15. This witness has further stated that the dead body of the deceased was sealed by him and sent for post mortem through Constbale Lal Singh and Malkhan Singh.

The sample of seal is Ext. ka16. Photo lash (photo dead body) is Ext. ka17, challan lash (challan dead body) is Ext. ka18, Challan and letter of C.M.O. is Ext. ka19. Letter of R.I. in Ext. ka20.

16. PW-8 Constable Lal Singh has proved the inquest report and has stated in his deposition before the learned trial court that on 24.06.1983 S.I. Sahdeo Singh prepared the inquest of deceased Chutai in his presence. Learned trial court has recorded the finding that PW-1 is eye-witness and his testimony is wholly reliable.

17. The grounds taken in the appeal are that the conviction is bad in the eye of law and is against the weight of the evidence on record and the sentence is too severe. Now this Court is tasked with the duty to re-appreciate the evidence and come to the conclusion whether the learned trial court has appreciated the evidence in the right perspective or not?

18. PW-2 is informant, who is eye-witness and he is categorical in his statement that the accused inflicted several knife blows on the deceased Chutai in his presence. There is nothing in his cross-examination which could contradict him. This witness has further stated that he took the injured Chutai to the police station where the first information report was lodged by this witness and the statement of the injured was recorded by Sub-Inspector which is Ext. ka5, in which the injured Chutai has stated that it was the accused, who inflicted several knife blows on him. It is settled preposition of law that the statement of an injured person recorded under Section 161 Cr.P.C. is treated as dying declaration if the person making the same dies subsequently and the statement

relates to the cause of his death as affirmed by the Hon'ble Apex Court in the case of **Pradeep Bisoi @ Ranjit Bisoi Vs. State of Odisha reported in 2019 (11) SCC 500**. Relevant paragraph No.10 is delineated below:-

"10. Sub-section (2) to Section 162 incorporate a clear exception to what has been laid down in sub-section (1). The statement recorded by police under Section 161, falling within the provisions of clause (1) of Section 32 of Indian Evidence Act, thus, is clearly relevant and admissible. In Mukeshbhai Gopalbhai Barot (supra), this Court had occasion to consider Sections 161 and 162 of Cr.P.C. and Section 32 of the Evidence Act. In the above case, the victim, who received burn injuries on 14.09.1993 was admitted to Civil Hospital. Her statement was recorded by Executive Magistrate and by the Police. The statement recorded by police under Section 161 Cr.P.C. was discarded by the High Court taking the view that it had no evidentiary value. The view of the High Court was not accepted by this Court. In paragraph Nos. 4 and 5, this Court held that the statement of persons recorded under Section 161 can be treated as dying declaration after death. In paragraph Nos. 4 and 5, following has been laid down:-

"4. We have considered the arguments advanced by the learned counsel for the parties. At the very outset, we must deal with the observations of the High Court that the dying declarations Ex.44 and 48 could not be taken as evidence in view of the provisions of Section 161 and 162 of the Cr.P.C. when read cumulatively. These findings are, however, erroneous. Sub-Section (1) of Section 32 of the Indian Evidence Act, 1872 deals with several situations including the relevance

of a statement made by a person who is dead. The provision reads as under:

Sec.32. Cases in which statements of relevant fact by person who is dead or cannot be found, etc., is relevant. -

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-

(1) When it relates to cause of death. - When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."

We see that the aforesaid dying declarations are relevant in view of the above provision. Even otherwise, Section 161 and 162 of the Cr.P.C. admittedly provide for a restrictive use of the statements recorded during the course of the investigation but sub-Section (2) of Section 162 deals with a situation where the maker of the statement dies and reads as under:

"(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act."

5. A bare perusal of the aforesaid provision when read with Section 32 of the Indian Evidence Act would reveal that a statement of a person recorded under Section 161 would be treated as a dying declaration after his death. The observation of the High Court that the dying declarations Ex.44 and 48 had no evidentiary value, therefore, is erroneous. In this view of the matter, the first dying declaration made to the Magistrate on 14th September 1993 would, in fact, be the First Information Report in this case."

19. PW-3 Bijjan, though, she is not an eye-witness, has testified to the effect that when she heard the sound of quarrel she reached the house of Chutai but could only see the accused making good his escape with blood stained knife. This witness is wholly reliable on this point which corroborates the testimony of PW-2. The medical evidence of PW-1 also supports the prosecution case and corroborates the testimony of PW-2 as the Doctor has found eight incised wounds on various parts of the body including vital part like chest and abdomen as already referred to supra. Other witnesses are formal witnesses. PW-4 is the Investigating Officer, who has conducted investigation of the case and proved various prosecution papers. PW-5 is formal witness. Other witnesses are formal in nature who have already been referred to in the judgement.

20. In view of the discussions made above, since the PW-2 is eye-witness of the occurrence who is wholly reliable and Ext. ka5, the statement under Section 161 Cr.P.C. of the deceased acquires the status of dying declaration after his death, we are of the view that no infirmity or irregularity has been committed by the learned trial

court while appreciating the evidence on record and recording the finding of conviction and passing the sentence

21. So far as the motive is concerned, it is well settled that in the case of direct evidence, motive is of little significance or no significance. However, PW-2 has proved the motive of the commission of crime by the appellant/accused as the strained relationship between the deceased and accused on account of demand of money by the deceased from the accused for household expenses. The first information report is prompt and there is no delay in lodging the F.I.R. which lends additional credence to the prosecution case.

22. In view of above, this appeal lacks merit and deserves to be dismissed. The appeal is **dismissed**. The judgement and order dated 11.01.1984 passed by learned Additional Session Judge-8th, Bareilly in S.T. No.- 402 of 1983 (State Vs. Firasat) is affirmed.

23. Since, the accused appellant is absconding, his bail bonds are cancelled and the sureties are discharged. He shall be taken into custody forthwith. The Chief Judicial Magistrate and Senior Superintendent of Police/Superintendent of Police concerned shall ensure the arrest of the accused-appellant, Firasat.

24. Let a copy of this order be communicated by the Registrar (Compliance) to the Chief Judicial Magistrate concerned for compliance forthwith.

25. The Chief Judicial Magistrate concerned is also directed to send his compliance report within one month to Court from the date of receipt of this order.

II. Issue a writ, order or direction in nature of Mandamus commanding the respondents to allow the petitioner to continue on the Principal of Shri Dayanand Rameshwar Prasad Hansrani Arya Kanya

Inter College, Sitapur and to pay her salary regularly notwithstanding the order dated 20.12.2024 by which the earlier suspension order dated 9.11.2024, has been confirmed.”

3. Brief facts of the case are that the petitioner was initially appointed on the post of Lecturer (Hindi) in LRNS Inter College, Naimisharan on 23.01.1993. Thereafter, she was appointed on the post of Principal at the Shri Dayanand Rameshwar Prasad Hansrani Arya Kanya Inter College, Sitapur pursuant on the recommendation of the U.P. Secondary Education Commission on 22.08.2011.

4. The order of single operation dated 04.01.2019 was passed by the District Inspector of Schools, Sitapur on account of two rival groups competing for the Committee of Management of the Institution in question, therefore, authorized controller was appointed.

5. Sri Sudeep Kumar, learned counsel for the petitioner has submitted that the petitioner raised a voice against the repeated transfers of various employees/teachers of the Institution, by respondent no.5 under the approval of respondent no.4 resulting 33 posts fallen vacant and also against her harassment, which gave a cause to the respondent no.5 and respondent no.4 to take coercive action against her.

6. Opposite party no.5 has initially issued a suspension order on 04.10.2024 against the petitioner under Section 16(G) of the Uttar Pradesh Intermediate Education Act, 1921 (hereinafter referred to as “the Act, 1921”) by which the petitioner has been suspended from the post of Principal, Shri Dayanand Rameshwar

Prasad Hansrani Arya Kanya Inter College, Sitapur, prima-facie, on the ground of failure on part of the petitioner to comply the directions of this Court for reinstating one Smt. Rajrani into service.

7. The above-mentioned suspension order was assailed by the petitioner before this Court by filing writ petition bearing Writ-A No.9746 of 2024, in re: Dr. Gyanvati Dixit v. State of U.P. & Others, which was decided vide order dated 05.11.2024. This Court was pleased to quash the above-mentioned suspension order, with a direction that consequences to follow under law. This Court has given liberty to the competent authority to pass a fresh order, if required, in accordance with law (Annexure No.9).

8. The order dated 05.11.2024 was uploaded on 06.11.2024 and the same was served upon opposite party no.5 but opposite party no.5 without reinstating the petitioner has again issued a suspension order against the petitioner under Section 16-G of the Act, 1921 on 09.11.2024. Petitioner challenged the suspension order dated 09.11.2024 before this Court by filing Writ-A No.11061 of 2024 (Dr. Gyanvati Dixit v. State of U.P. and Others), which has been dismissed vide order dated 27.11.2024 but without expressing any opinion on the ground urged by the petitioner, so far it relates to the violation of Section-16-G (5)(a) of the Act, 1921.

9. The petitioner met opposite party no.2 on 12.11.2024 apprising him about her victimization at the behest of opposite party no.5.

10. During the pendency of the subsequent writ petition, counsel representing opposite party no.5, through

the short counter-affidavit, has brought on record one letter under the heading of charge-sheet/show-cause dated 20.11.2024 by which the petitioner was required to submit her explanation.

11. From perusal of the aforesaid letter dated 20.11.2024 it would reveal that in the aforesaid letter the allegations were referred calling reply of the petitioner so that the charge-sheet could be issued to the petitioner. Significantly, no material which makes the basis of allegation were served upon the petitioner. The aforesaid letter would further reveal that by the date issuance of the aforesaid letter opposite party no.5 has yet not issued any charge-sheet.

12. After the receipt of the aforesaid letter, the petitioner through her letter dated 05.12.2024 denied the allegations and requested to furnish the charge-sheet together with the documents so that the petitioner could give reply to the charge-sheet.

13. The charge sheet was issued to the petitioner which was served upon the petitioner on 15.01.2025. The District Inspector of Schools by the impugned order approved the suspension order dated 09.11.2024 in exercise of powers under section 16-G (7) of the Act, 1921.

14. While assailing the aforesaid impugned order dated 20.12.2024, Sri Sudeep Kumar has stated that the order passed by opposite party no.4 under Section 16-G (7) read with Regulation No.39 of Chapter-III under the Act, 1921 can only be passed after affording an opportunity to the delinquent employee in view of the provisions contained in

Regulation-39 read with Regulation-36 of Chapter-III under the Act, 1921.

15. Sri Sudeep Kumar has, however, submitted that the aforesaid provision of law nowhere categorically provides that an opportunity of hearing has to be accorded to the employee/ Teacher/Principal/ management yet the same has been evolved through various judicial pronouncements of this Court wherein this Court has held that an opportunity of hearing has to be given to the aggrieved person before the District Inspector of Schools either approves or rejects the suspension order.

16. Attention has been drawn towards para-12 in re; **Satya Pal Singh Vs. State of U.P. and others, 2006 SCC OnLine All 602**, paras-3 & 5 of the judgment of the Division Bench of this Court in re; **Hari Singh Rajput Vs. State of U.P. and others, 2015 SCC OnLine All 8499**; para-8 of **Deshraj Singh v. State of U.P., 2019 SCC OnLine All 4473**, and paras 6 & 11 of **Ram Vijay Singh Vs. State of U.P. and Others, 2023 SCC OnLine All 1310**.

17. Sri Sudeep Kumar has fairly submitted that the Hon'ble Single Judge in re; **C/M of Janta Inter College and Another Vs. State of U.P. and 3 Others, Writ-A No.909 of 2020**, vide judgment and order dated 06.05.2020, has observed that opportunity of hearing is not required before approving the suspension order but the aforesaid judgment has been delivered by the Hon'ble Single Judge without appreciating the ratio of the judgment of the Division Bench in re; **Hari Singh Rajput** (supra) in correct perspective. Sri Sudeep Kumar has, however, referred para-20 in re; **C/M Janta Inter College** (supra), which categorically says that if all the required papers and informations as

prescribed under sub-section (7) of Section 16-G of the Act, 1921 and Regulation 39 have been submitted by the Management to the District Inspector of Schools to obtain approval of suspension, then opportunity of hearing at the stage of granting approval or disapproval is not required to be afforded to the Management or the employee. But if the employee has submitted any representation or objection against the order of suspension, then the District Inspector of Schools shall afford an opportunity of hearing to the Management and the concerned employee while passing the order of approval or disapproval which must contain brief reasons. Perusal thereof clearly mandates two conditions; first, if all required papers and informations as prescribed under the law have been submitted by the Management to the District Inspector of Schools to obtain approval of suspension, then opportunity of hearing is not required and if any employee has submitted any representation or objection against the order of suspension, then such opportunity would be required. In the present case, the impugned order approving the suspension order does not indicate that it has been passed by proper application of mind inasmuch as no brief reasons have been recorded by the District Inspector of Schools as to how the suspension order has been passed by opposite party no.5 warrants confirmation. It is clear that at the time of passing the impugned order neither any representation of opposite party no.5 was available to opposite party no.4 nor the charge sheet was available with opposite party no.4.

18. Besides, after passing the suspension order dated 09.11.2024, the petitioner personally met with the Director, Madhyamik Education (opposite party no.2) on 12.11.2024 (Annexure No.14)

apprising about her victimization at the behest of opposite party no.5, therefore, the specific comments should have been asked from opposite party no.4 by opposite party no.2 and in that way before passing the impugned order dated 20.12.2024 by opposite party no.4, one opportunity of hearing could have been given to her in terms of para-20 in re; **C/M Janta Inter College** (supra).

19. Sri Sudeep Kumar has, therefore, submitted that the Division Bench of this Court in re; **Committee of Management, Maharajganj Inter College and another Vs. District Inspector of Schools, Maharajganj and another, 1999, SCC OnLine All 693**, vide para-4 thereof has held that Regulation 39 of Chapter-III under the Act, 1921 provides the particulars, which the report regarding suspension of the Head of the Institution or of the Teacher to be submitted to the Inspector is to contain and also provides the documents, which are to accompany the report. These provisions clearly demonstrate that approval or disapproval of suspension of a Teacher including Principal is not an empty formality. The Inspector is required to address himself to the grounds on which the order of suspension is founded as also the documents, if any, prima facie supporting the charges levelled against Head of the Institution or Teacher as the case may be. Sri Sudeep Kumar has reiterated that the impugned order granting approval to the suspension order suffers from patent illegality and is without application of mind inasmuch as while passing the impugned order, opposite party no.4 has failed to record his opinion as contemplated under Section 16-G (7) read with Regulation 39 of Chapter-III of the Act, 1921. Further, the impugned order does not indicate as to whether the District

Inspector of Schools has considered the relevant material, which was allegedly furnished while submitting the report under Regulation 39 of the Regulations under the Act, 1921. Sri Sudeep Kumar has also reiterated that in view of para-3 in re; Hari Singh Rajput (supra), an opportunity of being heard is to be granted to the Principal before granting approval to the suspension order. Since the impugned order has been passed in violation of the aforesaid provisions of law, therefore, the impugned order is liable to be set aside.

20. Sri Sudeep Kumar has lastly submitted that in terms of Regulation 39 read with Regulation 40 of the Regulations under the Act, 1921 for approving the suspension order, issuance of charge sheet is sine qua non and in the present case, charge sheet dated 08.01.2025 has admittedly been served upon the petitioner on 15.01.2025 whereas the suspension order has been approved by the District Inspector of Schools vide impugned order dated 20.12.2024.

21. *Per contra*, Sri Sanjeev Kumar Singh, learned Standing Counsel as well as Sri Ashutosh Singh, learned counsel for opposite party no.5 have submitted that since this Court while dismissing the writ petition of the petitioner vide order dated 27.11.2024 passed in Writ-A No.11061 of 2024, whereby the order of suspension dated 09.11.2024 was challenged has observed in para-30 that once the charges are serious as such the suspension order would squarely be covered by the provisions of Section 16-G (5)(a) of the Act, 1921 and thus, the petitioner has correctly been placed under suspension in terms of the aforesaid provision; the validity of suspension order has been upheld by this Court and the petitioner has

not assailed that order by filing appeal before the superior Court. Learned counsel for the opposite parties have, therefore, submitted that since validity of suspension order has been upheld, therefore, the same cannot be assailed. They have also stated that this Court in re; **C/M Janta Inter College** (supra) has held that opportunity of hearing is not required before granting approval of the suspension order, so that ground may not be taken by the petitioner. They have also submitted that the petitioner should participate in the departmental inquiry and direction may be issued to expedite the inquiry. Sri Ashutosh Singh has placed reliance upon the decision of this Court in re; **Ram Kripal Katiyar Vs. District Inspector of Schools and Ors., reported in MANU/UP/0556/2009**, submitting that before granting approval to the suspension order, the District Inspector of Schools is not required to afford an opportunity of hearing to the employee, who has been suspended by the Committee of Management.

22. Sri Sudeep Kumar, learned counsel for the petitioner has submitted that though this Court vide order dated 27.11.2024 (supra) in para-30 has observed that on account of serious charges, the petitioner has correctly been placed under suspension but in subsequent para i.e. para-31 this Court has categorically observed that it has not expressed any opinion with regard to the provisions of Section 16-G (5) (b) of the Act, 1921 that without issuance of charge sheet, the suspension order cannot be passed and this question is left open to be considered in an appropriate case. Therefore, the relevant aspect in this regard may be considered in this matter.

23. Having heard learned counsel for the parties and having perused the material

available on record, before adverting the arguments so advanced by the learned counsel for the parties, I would like to refer Section 16-G (5) of the Act, 1921, which reads as under:-

“(5) No Head of Institution or teacher shall be suspended by the Management, unless in the opinion of the Management –

(a) the charges against him are serious enough to merit his dismissal, removal or reduction in rank ; or

(b) his continuance in office is likely to hamper or prejudice the conduct of disciplinary proceedings against him; or

(c) any criminal case for an offence involving moral turpitude against him is under investigation, inquiry or trial.”

24. Regulation 39 (a), (c) & (d) of Chapter-III of the Regulations under the Act, 1921 reads as under:-

“39. (a) The report regarding the suspension of the head of institution or of the teacher to be submitted to the Inspector under sub-section (6) of Section 16-G shall contain the following particulars and be accompanied by the following document –

(a) the name of the persons suspended along with, particulars of the (posts including grades) held by him since the date of his original appointment till the time of suspension including particulars as to the nature of tenure held at the time of suspension, e.g., temporary, permanent or officiating;

(c) details of all the charges on the basis of which such person was suspended;

(d) certified copies of the complaints, reports and inquiry report, if any, of the inquiry officer on the basis of which such person was suspended.”

25. Para-12 in re; **Satya Pal Singh** (supra), paras-3 & 5 of the judgment of Division Bench of this Court in re; **Hari Singh Rajput** (supra), para-8 of **Deshraj Singh** (supra), paras 6 & 11 of **Ram Vijay Singh** (supra), para-4 of **Committee of Management, Maharajganj Inter College** (supra), para-7 in re; **Ram Kripal Katiyar** (supra) and para-20 in re; **C/M Janta Inter College** (supra) are required to be reproduced herein below.

26. Para-12 in re; **Satya Pal Singh** (supra) reads as under:-

“12. Under Clause (5) of section 16-G, the Committee of Management could suspend a teacher or a Head of the Institution on certain grounds mentioned therein. The order was forwarded under Clause (6) along with the papers prescribed under Regulation 39 of Chapter-III. These papers were required to be considered and the Inspector was required to apply his mind and was required to give the reasons while according approval or disapproval of the suspension order. In the present case, no reasons have been recorded and, therefore, it is clear, that the Inspector did not apply his mind to the facts and the circumstances of the case. There is another aspect of the matter. The Committee of Management while issuing the suspension order is not required to given an opportunity of hearing to the teacher or the head of the institution.

Therefore, at the stage when the order of suspension is being approved and the Inspector is required to apply his mind, it is at that stage, a bare minimum opportunity of hearing is required to be given to the suspended teacher or the Principal, as the case may be. This is the bare minimum requirement of the principles of natural justice, which is required to be given at that time, by the Inspector, while approving or disapproving the suspension order. This is on account of the fact, that the papers forwarded by the Committee of Management under Regulation 39 of Chapter III may contain the reasons, which are only one sided. The other side of the coin should also be considered and that is when the suspended teacher or the Principal would come into the picture. Consequently, in the opinion of the Court, the Inspector is also required to give an opportunity of hearing and hear the version of the suspended teacher or the principal before approving or disapproving the order of suspension. In the present case, no opportunity of hearing was provided to the petitioner.”

27. Paragraphs No.3 & 5 of the judgment of Division Bench of this Court in re; **Hari Singh Rajput** (supra) read as under:-

“3. When the District Inspector of Schools considers whether to approve an order of suspension under Section 16-G of the Act, it is a well settled principle of law that an opportunity of being heard ought to be granted to the teacher, the Principal and the Management. Moreover, it is also a well settled principle of law that the District Inspector of Schools must pass a reasoned order indicating at least brief reasons for granting his approval or, as the case may be, disapproval to the suspension

of a teacher (See: Committee of Management, Maharajganj Inter College v. District Inspector of Schools¹). In the present case, ex facie the order of the District Inspector of Schools dated 9 December 2014, which was in question before the learned Single Judge, did not indicate any reasons.

5. We have duly perused the order of the District Inspector of Schools dated 9 December 2014. The first paragraph of the order contains only a recital of the fact that following the enquiry report, the Management had resolved on 16 November 2014 to place the appellant teacher under suspension and, accordingly, an application was submitted on 4 December 2014 for approval. The second paragraph of the order only contains his conclusion granting approval. Not even brief reasons were indicated in the order, which is totally bereft of any reasons whatsoever. Moreover, it is not in dispute that the appellant was not given an opportunity of being heard, which has been held to be required in the judgment of the Division Bench noted above.”

28. Para-8 of **Deshraj Singh** (supra) reads as under:-

“8. In view of the exposition of law laid down by the Apex Court in Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati, (2015) 8 SCC 519 as also the observation of the subsequent division bench judgement of this Court in Hari Singh Rajput (supra) and also for the reasons narrated above, this Court is not inclined to accept the argument of respondents that an opportunity of hearing would not be required to be given by the Inspector at the

stage of grant of approval to the resolution of suspension.”

29. Paras 6 & 11 of **Ram Vijay Singh** (supra) read as under:-

“6. I have also perused the instruction placed by the learned Standing Counsel and it clearly transpires from the pleadings that while the petitioner was placed under suspension and the suspension order was forwarded to the District Inspector of Schools, it did not contain any of the document like resolution of the Committee of Management, chargesheet and other documents in support thereof.

11. The Committee of Management is directed to supply all requisite documents including the chargesheet dated 23.3.2023 and also all the relevant documents in support of the chargesheet, within two weeks from today. The District Inspector of Schools shall thereafter fix a date giving opportunity of hearing to the petitioner as well as Committee of Management within ten days and he shall proceed to pass further orders within next 15 days.”

30. Para-4 of **Committee of Management, Maharajganj Inter College** (supra) reads as under:-

“4. Having heard learned counsel for the parties, we are of the view that the order passed by the District Inspector of Schools cannot be sustained in law. A Division Bench of this Court in Committee of Management S.M.R.K. Inter College v. District Inspector of Schools, Ballia, has clearly held that order approving or disapproving resolution of Committee of Management to suspend

Principal or teacher must contain reasons and further that absence of reasons would vitiate the order. Admittedly, the District Inspector of Schools did not address himself to relevant papers forwarded alongwith the letter seeking approval of the suspension and declined to accord approval on consideration of the representation made by the respondent-teacher. Section 16-G(5) of the U.P. Intermediate Education Act, 1921 provides that no head of institution or teacher shall be suspended by the Management, unless in the opinion of the Management-(a) the charges against him are serious enough to merit his dismissal or removal or reduction in rank; or (b) his continuance in office is likely to hamper or prejudice the conduct of the disciplinary proceedings against him; or (c) any criminal case for an offence involving criminal turpitude against him is under investigation, inquiry or trial. Sub-section (6) requires that where any head of the institution or teacher is suspended by the Committee of Management, it shall be reported to the Inspector within a period stipulated therein and it further provides that the report shall contain such particulars as may be prescribed and be accompanied by all relevant documents. Regulation 39 of Chapter III of the Act provides the particulars, which the report regarding suspension of the head of institution or of the teacher to be submitted to the Inspector is to contain and also provides the documents, which are to accompany the report. Sub-section (7) of Section 16 clearly provides that no order of suspension shall, unless approved in writing by the Inspector, remain in force for more than 60 days. Section 16-G empowers the District Inspector of Schools to revoke an order of suspension after affording opportunity to the management in case he is satisfied that the disciplinary

proceedings against the head of the institution or the teacher are being delayed for no fault of the concerned teacher. These provisions clearly demonstrate that approval or disapproval of suspension of a teacher including the Principal is not an empty formality. The Inspector is required to address himself to the grounds on which the order of suspension is founded as also the documents, if any, prima facie supporting the charges levelled against the Head of the Institution or the teacher, as the case may be. In case the charges of the nature referred to in sub-section (5) of Section 16-G are prima facie supported by evidence then in that event the Inspector can not withhold approval. On the other hand in case the charges are of trivial nature and are not covered by the charges mentioned in sub-section (5) of Section 16-G and/or there are no prima facie documents or material in support of the charges then the Inspector may disapprove of the suspension of the Principal or the teacher as the case may be. In the instant case the District Inspector of Schools appears to have failed to discharge his statutory duty and given no reasons in support of the order. In the circumstances, therefore, the order passed by the District Inspector of Schools was liable to be quashed and the learned Single Judge erred in law in dismissing the writ petition. In fact the question was not examined by the learned Single Judge in the above perspective and instead the learned Single Judge dismissed the writ petition holding that while considering the approval or disapproval of suspension order no opportunity of hearing was required to be given by the District Inspector of Schools. It is true that a Division Bench of this Court has held in the case of Managing Committee, Dayanand Inter College v. District Inspector of Schools, that at the

stage of approval or disapproval of the suspension order the Inspector is not required to afford any opportunity of hearing to the management and that he is only to consider the relevant material referred to in Regulation No. 39 of Chapter III of the Regulations. The said decision, in our opinion, is of no avail. In the instant case, however, as pointed out above, the District Inspector of Schools did not address himself to the charges and the relevant documents and disapproved the suspension order on the basis of the representation made by the teacher concerned. If the suspension is to be disapproved on consideration of any defect pointed out by the concerned teacher by means of a representation, opportunity has to be afforded to the Management before disapproving of the suspension on any such defect in the proceedings."

31. Para-7 in re; **Ram Kripal Katiyar** (supra) reads as under:-

"7. The employer or the appointing authority before taking decision to initiate proceeding may hold a fact finding inquiry wherein the employee cannot claim right to be heard or to participate. Right of delinquent employee of hearing or affording opportunity arises only from the stage when the charges are framed against him in the disciplinary proceeding and not at any stage anterior to the framing of charges. The order suspending an employee in a pending proceeding or contemplated proceeding is not a quasi-judicial order but an administrative order and, therefore, it is not necessary to obtain explanation of the Government servant before placing him under suspension. At the time of passing of order of suspension the authority is only required to consider that the alleged

charge does not appear to be groundless, non-est or mala fide and it requires inquiry, and to hold fair inquiry it is necessary to keep him away from duty. (See Mohd. Ghouse v. State of Andhra Pradesh MANU/SC/0090/1956: AIR 1957 SC 246). We are, therefore, clearly of the view that at the stage of passing of order of suspension in a contemplated or pending departmental proceeding, there is no requirement of any opportunity of hearing to the Government servant or even to call for show cause. Thus, in view of the above legal position, non-affording of opportunity of hearing to the petitioner-appellant would not vitiate the impugned order of suspension."

32. Para-20 in re; **C/M Janta Inter College** (supra) reads as under:-

"20. Scope of consideration under Section 16G(7) read with Regulation 39 is very limited as has also been explained in the case of Ram Autar Verma (supra). Thus, a conjoint reading of the afore-noted four judgments reveal that if all the required papers and informations as prescribed under sub-section (7) of Section 16G of the Act, 1921 and Regulation 39 have been submitted by the Management to the District Inspector of Schools to obtain approval of suspension, then opportunity of hearing at the stage of granting approval or disapproval is not required to be afforded to the Management or the employee. But if the employee has submitted any representation or objection against the order of suspension, then the District Inspector of Schools shall afford an opportunity of hearing to the Management and the concerned employee while passing the order of approval or disapproval which must contain brief reasons. This view is further supported by

the provisions of sub-Section (8) of Section 16G, which specifically provides for an opportunity of hearing at the subsequent stage to the Management by the District Inspector of Schools while considering to revoke an order of suspension passed under sub-section (7) when the Inspector is satisfied that the disciplinary proceedings against the head of the Institution or teacher, is being delayed for no fault of the head of the Institution or the teacher."

33. Notably, Regulation 39 (a), (c) & (d) of Chapter-III of the Regulations under the Act, 1921 categorically provides that the report regarding the suspension of the Head of the Institution etc. shall contain relevant particulars and documents including details of all the charges on the basis of which such person was suspended as well as certified copies of the complaints, reports and inquiry report, if any, of the Inquiry Officer on the basis of which such person was suspended. If the aforesaid Regulation is read with Section 16-G (5) of the Act, 1921, no Head of the Institution etc shall be suspended by the Management unless in the opinion of the Management the charges against the employee are so serious entailing major punishment and the District Inspector of Schools must have subjective satisfaction on the charges and such consideration must be reflected in the order approving suspension order. In the present case, admittedly, the charge sheet has been issued against the petitioner on 08.01.2025 but the impugned suspension order has been approved by the impugned order dated 20.12.2024.

34. This Court while dismissing the earlier writ petition of the petitioner whereby the suspension order was assailed has categorically observed in para-31 that it

has not expressed any opinion with regard to the provisions of Section 16-G (5) (b) of the Act, 1921 that without issuance of charge sheet the suspension order cannot be passed and the said question would be considered at appropriate stage and I think by means of this petition, this fact may be considered.

35. When there was no charge sheet before the District Inspector of Schools, as to how the suspension order could have been approved by him. There may not be any charge sheet at the time of issuance of suspension order dated 09.11.2024 but at the time of approving the suspension order, there must be a charge sheet containing specific charges showing seriousness thereof before the District Inspector of Schools and if there was no charge sheet before the District Inspector of Schools at the time of granting approval of the suspension order, the impugned approval order dated 20.12.2024 would vitiate. This Court vide order dated 27.11.2024 (supra) has approved the suspension order but at that point of time, the order approving the suspension order was not before the Court and that question was left open by the Court in the aforesaid order for simple reason that if the District Inspector of Schools approves the suspension order without going through the seriousness of the charges, which could have been indicated in the charge sheet, the approval of suspension order would vitiate.

36. Though learned Single Judge of this Court in re; **C/M Janta Inter College** (supra) has observed that before approving the suspension order, opportunity of hearing to the employee is not required but it has been observed that the Management shall provide all required papers and informations in terms of Section 16-G of

the Act, 1921 read with Regulation 39 of the Regulations under the Act, 1921, so the District Inspector of Schools may either approve that suspension order after perusing all those documents and relevant material or disapprove the same. If the order is disapproved, an opportunity of hearing is to be given to the Committee of Management and to the charged employee in terms of Section 16-G (8) of the Act, 1921 but if that order is approved, no such opportunity would be required. However, if the employee has submitted any representation or objection against the order of suspension, then the District Inspector of Schools shall afford an opportunity of hearing to the Management as well as the concerned employee while passing order of approval or disapproval, which must contain brief reasons. In the present case, all required papers and informations including charge sheet have not been forwarded to the District Inspector of Schools, therefore, proper application of mind before granting approval of the suspension order was not possible and the petitioner had preferred one detailed representation dated 12.11.2024 to the Director, Madhyamik Education, so the petitioner should have been given an opportunity of hearing by the District Inspector of Schools before granting approval of the suspension order. Therefore, in the light of the observation of the Single Judge in re; **C/M Janta Inter College** (supra), the petitioner should be afforded a proper opportunity of hearing before granting approval to the suspension order. Had the petitioner been afforded an opportunity of hearing before passing the impugned order, the petitioner would have intimated the District Inspector of Schools that she has not received any charge sheet pursuant to the impugned suspension order dated 09.11.2024.

37. This Court in re; **Committee of Management, Maharajganj Inter College** (supra) has categorically observed that the provisions of Section 16-G of the Act, 1921 read with Regulation 39 of Chapter-III of the Regulations clearly demonstrate that approval or disapproval of suspension of Head of the Institution etc. is not an empty formality and the District Inspector of Schools is required to address himself to the grounds on which the order of suspension is founded as also the documents, if any, prima facie, supporting the charges levelled against the Head of the Institution.

38. This Court in re; **Satya Pal Singh** (supra) has categorically held that if the required papers are produced before the District Inspector of Schools, the Inspector was required to apply his mind and was also required to give the reason regarding approval or disapproval of the suspension order. In the case of **Satya Pal Singh** (supra), no reason was recorded by the District Inspector of Schools, therefore, this Court was of the view that the Inspector did not apply his mind to the facts and circumstances of the case. In the present case also, neither all required papers including copy of charge sheet was produced before the District Inspector of Schools nor the District Inspector of Schools has given his subjective satisfaction granting approval to the suspension order. For the aforesaid reason, this Court in re; **Satya Pal Singh** (supra) quashed the impugned order granting approval to the suspension order.

39. Division Bench of this Court in re; **Hari Singh Rajput** (supra) reiterated the aforesaid position of law and has also observed that before granting approval to the suspension order, proper opportunity of

hearing should be given to the employee. In para-5 of the aforesaid judgment, the Division Bench found that not even brief reasons were indicated in the order, which was totally bereft of any reasons whatsoever and in the present case also, the District Inspector of Schools has not given his subjective satisfaction and one letter-notice dated 07.08.2024 has been reiterated, which was subject matter to the earlier writ petition. Not only the above, if the allegations are taken on its face value, which have been considered in the impugned order dated 20.12.2024, prima facie, it appears that the allegations are vague which provides that the petitioner has allegedly tortured some students and had not provided basic amenities and requirements including mid-day meal to the students.

40. This Court in re; **Ram Vijay Singh** (supra) quashed the order of the District Inspector of Schools approving the suspension order for the reason that it did not contain any document like resolution of the Committee of Management, charge sheet and other documents in support thereof. In the present case, admittedly, no charge sheet was forwarded to the District Inspector of Schools inasmuch as the charge sheet dated 08.01.2025 was served upon the petitioner on 15.01.2025 i.e. after passing the impugned order dated 20.12.2024 granting approval to the suspension order.

41. Therefore, in view of the aforesaid facts and circumstances and the case laws cited by the learned counsel for the parties, it is clear that the District Inspector of Schools has not applied his mind to the facts and circumstances of the case as the same is not being reflected in the impugned order dated 20.12.2024. Admittedly, the

charge sheet has not been placed before the District Inspector of Schools for seeking approval of the suspension so in view of settled proposition of law, the District Inspector of Schools had no material before him to form a view so as to approve the suspension order as per procedure prescribed under the Act, 1921. Not only the above, in view of the given facts and circumstances, the District Inspector of Schools was also required to afford an opportunity of hearing to the petitioner on the question of approval of the suspension order.

42. Since the aforesaid error is apparent on the face of record, therefore, the impugned order dated 20.12.2024 (Annexure No.1) passed by the District Inspector of Schools, Sitapur is not liable to be sustained, accordingly, the same is set aside/ quashed.

43. The Committee of Management is directed to supply all requisite documents including copy of the charge sheet dated 08.01.2025, which was served upon the petitioner on 15.01.2025, and also all the relevant documents in support of the charge sheet to the District Inspector of Schools, Sitapur, within three weeks from today. The District Inspector of Schools shall thereafter fix date providing an opportunity of hearing to the petitioner as well as the Committee of Management within fifteen days and shall proceed to pass a fresh order within further period of fifteen days.

44. In view of the above, the writ petition is **allowed**.

(2025) 4 ILRA 390
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 16.04.2025

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.

Writ - A No. 3861 of 2025

Santosh Ji Mishra ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
 Pt. S. Chandra, Poonam Narayan

Counsel for the Respondents:
 C.S.C.

Civil Law - U.P. Intermediate Education Act, 1921 - Section 16-G - Regulations under U.P. Intermediate Education Act, 1921 - Regulations 2(2), 101 - In instant case, Government Order and amended Regulation dated 06.01.2022 require that candidates for promotion to Class-III posts must possess qualifications equivalent to direct recruits, including mandatory typing test - Since petitioner's promotion considered after amendment, compliance with typing requirement was essential - No typing test conducted, DIOS erroneously approved promotion on 22.10.2024, overlooking requirement - Judgment in Sudhanshu Tyagi (infra) upholding Government Order attained finality - If petitioner holds CCC certificate from DOEACC, his reluctance to appear in typing test is unwarranted - Petitioner shall not suffer prejudice by appearing in typing test pursuant to impugned order, his experience and length of service will be properly considered. (Para 15, 16)

Petition dismissed. (E-13)

List of Cases cited:

1. St. of U.P. & Ors. Vs Umesh Chandra Srivastava, Special Appeal (Defective) No.477 of 2010
2. Sudhanshu Tyagi Vs St. of U.P. & ors., Writ-A No.23580 of 2018, (Para 14 to 18)

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. Heard Pt. S. Chandra, learned counsel for the petitioner, Sri Ran Vijay Singh, learned Addl. Chief Standing Counsel for the State-opposite parties no.1, 2 & 3, Sri Ghanshyam Verma, who has filed Vakalatnama on behalf of opposite party no.6 and Sri Ajay Pratap Singh-II, who has filed Vakalatnama on behalf of opposite party no.7. Said Vakalatnamas are taken on record.

2. In view of the proposed order, notices to opposite parties no.4 & 5 are hereby dispensed with.

3. With the consent of learned counsel for the parties, this writ petition is being decided finally at the admission stage.

4. By means of this petition, the petitioner has prayed following main reliefs:-

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 28.03.2025 passed by the Director of Education (Madhyamik) Uttar Pradesh, Lucknow as contained in Annexure no.1 to this writ petition.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to not create obstruction in working and functioning of the petitioner on the post of clerk of B.P. Inter College, Kudwar, Sultanpur."

5. By means of order under challenge, the Director of Education (Madhyamik) has directed that for filling

up the post of Assistant Clerk from Class-IV post, typing test of the candidates/applicants should be conducted in view of the Government Notification dated 06.01.2022.

6. Pt. S. Chandra has submitted that the present petitioner had filed one writ petition bearing Writ-A No.7291 of 2024, which was decided by this Court directing the competent authority to take appropriate decision in the issue of the petitioner regarding his promotion on Class-III post. The Authorized Controller of the Institution in question passed an order dated 10.10.2024 (Annexure No.4) holding that the candidature of the petitioner is suitable for promotion on the post of Junior Assistant. The District Inspector of Schools, Sultanpur has given approval to the aforesaid order dated 10.10.2024 by means of order dated 22.10.2024 (Annexure No.2). Thereafter, appointment letter was issued by the Authorized Controller of the Institution on 23.10.2024 (Annexure No.3) and the petitioner submitted his joining on the post of Assistant Clerk on the same date i.e. 23.10.2024. Since then, the petitioner has been discharging his duties on the post of Assistant Clerk.

7. Opposite party no.6 preferred a letter dated 11.11.2024 to the Director of Education (Madhyamik) challenging the aforesaid promotion order of the petitioner on the ground that the petitioner is not having knowledge of typing, which is a required qualification, therefore, he could have not been appointed on the post of Assistant Clerk. On such complaint of opposite party no.6, the Director of Education (Madhyamik) called report from the District Inspector of Schools concerned and after considering the report of the

District Inspector of Schools and the relevant circular/ rules/ regulations etc., the impugned order dated 28.03.2025 has been passed directing to conduct typing test for making promotion on the post of Assistant Clerk.

8. Pt. S. Chandra has drawn attention of this Court towards Annexure No.8 of the writ petition, which is Chapter-III of the Regulations under the U.P. Intermediate Education Act, 1921 (hereinafter referred to as "the Regulations under the Act, 1921") indicating the conditions of service under Section 16-G of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as "the Act, 1921"). As per Regulation-2 (2) of the Regulations under the Act, 1921, post of Head Clerk/Clerk may be filled up through promotion under 50% promotional quota amongst Clerk and Class-IV employees, who are having prescribed eligibility for the post in question and completed five years of continuous service. Sri Chandra has stated that the petitioner is an eligible person as he is having required qualification and has completed more than five years continuous service. The qualification of the petitioner is Intermediate and is having CCC Certificate as photocopies of the aforesaid certificates have been shown to the Court, which have been enclosed with the writ petition. He has also stated that for making promotion on the post of Assistant Clerk, there is no requirement of typing test.

9. Attention has been drawn towards Annexure No.9 of the writ petition, which is a judgment and order dated 20.07.2010 passed by the Division Bench of this Court in **Special Appeal (Defective) No.477 of 2010, State of U.P. & Ors. Vs. Umesh Chandra Srivastava**. In the

aforesaid judgment, the Division Bench of this Court has categorically indicated that the source of recruitment under Rule 8 (2) of the Recruitment Rules (relating to the Rules which was under consideration before the Division Bench), which provides for procedure for recruitment by promotion, there is no requirement of qualifying typing test. Therefore, the Division Bench directed the Department to consider the claim of the respondent of that appeal for promotion on the basis of marks obtained by the respondent without asking him to pass typing test. □

10. Pt. S. Chandra has drawn attention of this Court towards Annexure No.11 of the writ petition, which is a Government Order dated 04.01.2017 providing the qualification for promotion on the post of Junior Assistant from Class-IV post. As per the aforesaid Government Order, the qualification for direct recruitment under 50% quota would be Intermediate, having CCC Certificate issued from DOEACC and knowledge of typing in Hindi/ English having speed of 25/30 words per minute. For 50% promotional quota, it has been indicated that the candidate must possess the qualification prescribed for direct recruitment and must have five years experience in continuous service. Pt. S. Chandra has stated that since for the post of Assistant Clerk, there is no need to have typing test and the petitioner is having qualification of Intermediate and CCC Certificate issued from DOEACC, therefore, he was fully eligible to be promoted on the post of Assistant Clerk. As per him, considering the aforesaid fact, the Authorized Controller has rightly proposed for his promotion on the post of Assistant Clerk and the District Inspector of Schools has rightly approved that promotion of the

petitioner and pursuant to that exercise, the petitioner has been discharging his duties on the post of Assistant Clerk w.e.f. 23.10.2024. Further submission is that the qualification prescribed under the Government Notification dated 06.01.2022 is for direct recruitment, not for the promotional posts. Pt. S. Chandra has further submitted that the Director of Education (Madhyamik) has no power to pass the impugned order. Therefore, by means of impugned order dated 28.03.2025 issuing direction to conduct the typing test is absolutely illegal, unwarranted and uncalled for.

11. *Per contra*, learned counsels for the opposite parties have stated that as per Chapter-III of the Regulations under the Act, 1921 relating to Section 16-G of the Act, 1921 i.e. condition of service, which has been categorically indicated under Regulation 2 of the Regulations under the Act, 1921 that class IV employee may be promoted on the post of Assistant Clerk, if he is having qualification for that post and has completed five years continuous service. The eligibility for promotion has been prescribed in the Government Order dated 04.01.2017 wherein it has been categorically indicated that Class-IV employee may be promoted on Class-III post if he is having all qualification prescribed for the direct recruitment and is having five years experience of continuous service. Since the qualification prescribed for the direct recruitment is the candidate must be having qualification of Intermediate, CCC Certificate issued from DOEACC and his typing speed in Hindi/English must be 25/30 words per minute as well as he is having five years experience in service. Since the petitioner has not stated

in his petition that he is having typing speed in Hindi/English @ 25/30 words per minute, therefore, he is lacking such qualification. Further, if the petitioner is having CCC Certificate from DOEACC and he is having typing speed in Hindi/English @ 25/30 words per minute, he should not have hesitated in appearing in typing test, which has been directed by the Director of Education (Madyamik) inasmuch as the Director is only following the procedure so prescribed and upheld by this Court in some cases.

12. Learned counsels for the opposite parties have also stated that by way of amendment through notification dated 06.01.2022, such qualification has been added under Regulation 101 of the Regulations framed under the Act, 1921. They have also stated that the judgment so cited by the learned counsel for the petitioner would not be applicable in the present case inasmuch as under the Rules so referred before the Division Bench, admittedly, there was no requirement of qualifying the typing test but in the present case, typing test is a mandatory qualification in terms of Government Order dated 04.01.2017 as well as vide notification dated 06.01.2022.

13. Learned counsels for the opposite parties have placed reliance upon the judgment and order dated 22.11.2018 passed by this Court in **Writ-A No.23580 of 2018, Sudhanshu Tyagi Vs. State of U.P. and 4 Others**, wherein similar controversy has been adjudicated and this Court upheld the validity of Government Order dated 04.01.2017. Paragraphs no.14 to 18 of the judgment in re; **Sudhanshu Tyagi** (supra) are being reproduced herein below:-

"14. The issue, however, has to be examined from a different perspective. Section 9 of the U.P. Intermediate Education Act, 1921 confers power upon the State Government to issue necessary instructions in the manner contemplated in the Act itself. Section 9(4) of the Act is relevant for the present purposes and is reproduced hereafter:-

" 9(4). Whenever, in the opinion of the State Government, it is necessary or expedient to take immediate action, it may, without making any reference to the Board under the foregoing provisions, pass such order or take such other action consistent with the provisions of this Act as it deems necessary, and in particular, may by such order modify or rescind or make any regulation in respect of any matter and shall forthwith inform the Board accordingly."

15. The power of the State Government is broad and comprehensive so as to include passing such order or to take such other action consistent with the provisions of this Act, as it may deem necessary, and by passing an order modify or rescind or make any regulation in respect of any matter and shall forthwith inform the Board accordingly. The power conferred in the State, therefore, by virtue of sub rule (4) of Rule 9 could be pressed for tracing source of power in issuing the Government Orders dated 23.8.2016 and 4.1.2017. It has also been noticed that the procedure and the qualification for promotion to a Class-III post is, otherwise, not specifically provided for in the Regulation. The State Government, therefore, would be well within its competence to prescribe the qualification as also the procedure to be followed for effecting promotion from Class-IV post to Class-III post. Such

exercise of power is otherwise not shown to be inconsistent with the provisions of the Act of 1921. Moreover, the power under Section 9(4) of the Act includes the power to modify or rescind or make a Regulation. In such circumstances the argument of inconsistency with the Regulations cannot be pressed on behalf of petitioner to resist the govt. orders dated 23.8.2016 and 4.1.2017 as well as consequential actions thereunder. The Government Orders dated 23.8.2016 and 4.1.2017 although are challenged but no valid reasons or grounds have been put forth on account of which any interference would be warranted, once the power to issue such direction is traced to statute and is otherwise not irrational or discriminatory.

16. The only grounds pressed on behalf of the petitioners to challenge the Government Orders are that:

(i) The statutory regulations have not been amended despite a clear stipulation made in the Government Order itself;

(ii) The Government Orders run counter to the statutory Rules of 2014 which stands adopted by virtue of Regulation 2(1) of the Regulations framed under Chapter-III.

17. So far as amendment in regulation is concerned, the same is merely a ministerial act and would not be a ground to interfere with the Government Order, particularly as there exists no provision in law, where under the decision taken under Section 9(4) of the Act needs to be incorporated by amending Regulations itself. No statutory obligation in that regard has been placed before the Court. The

argument advanced in that regard, therefore, cannot be accepted.

18. The second ground urged on behalf of the petitioner also can not be sustained in view of the clear power available to the State to amend the regulations, by virtue of Section 9(4) of the Act. The Statute confers power upon the State Government to amend or alter the regulation or to make regulations. Any provision in the regulations, therefore, cannot be relied upon to challenge the specific invocation of authority under the Act itself or an order passed thereunder. Therefore, no inconsistency is found in the Government Order vis-a-vis Regulation 2(1) of the Regulations. For all such reasons, the challenge laid to Clause-2 of the Government Order dated 4.1.2017, fails."

14. Having heard learned counsel for the parties and having perused the material available on record as well as the judgment so cited by the learned counsel for the parties, I am of the considered opinion that by means of impugned order dated 28.03.2025, the direction of the Director to conduct the typing test for filling up the post of Assistant Clerk under the promotional quota is absolutely proper as the same has been issued in terms of the Government Order dated 04.01.2017 and notification dated 06.01.2022.

15. The judgment so cited by the learned counsel for the petitioner would not be applicable in the present case inasmuch as in that case the Rules so referred were not having any provision where the requirement of qualifying the typing test was mandatory whereas in the present case, such qualification is mandatory. In the Government Order dated 04.01.2017, it has

been categorically indicated that the post under promotional quota for Class-III post would be filled up from the candidates, who are having qualification prescribed for the direct recruitment candidates and are having five years experience and requirement of typing test is mandatory for the direct recruitment candidates. The aforesaid condition has been inserted under the Regulation through amendment issued vide notification dated 06.01.2022 and the exercise in the present case for the petitioner had been undertaken after 06.01.2022. Admittedly, no typing test was conducted when the promotion of the petitioner on Class-III post was proposed by the Authorized Controller and this aspect was overlooked by the District Inspector of Schools while granting approval on 22.10.2024. Besides, this Court in re; **Sudhanshu Tyagi** (supra) has upheld the Government Order dated 04.01.2017 and that judgment and order has not been challenged as yet, therefore, as on today, that judgment and order has attained finality, so I am following the judgment and order passed by the Coordinate Bench in re; **Sudhanshu Tyagi** (supra). If the petitioner is having sound knowledge of computer as he is having CCC Certificate from DOEACC, he should not be hesitant in appearing in typing test.

16. It is needless to say that if the petitioner appears in typing test in terms of the impugned order dated 28.03.2025, no prejudice shall be caused to him for the reason that he challenged the impugned order dated 28.03.2025 passed by the Director of Education (Madhyamik), U.P., Lucknow and other qualifications of the petitioner e.g. his experience, length of service etc. would be considered properly. However, I am not inclined to interfere with the impugned order dated 28.03.2025

passed by the Director of Education (Madhyamik), U.P., Lucknow.

17. Accordingly, this writ petition is **dismissed**.

18. No order as to costs.

(2025) 4 ILRA 396
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 22.04.2025

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.

Writ - A No. 4208 of 2025

Jayant Kumar Singh ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Aaditya Singh

Counsel for the Respondents:
C.S.C., Brijesh Kumar Singh

Civil Law - Back wages - ReinSt. - Termination order dated 14.02.2025 is arbitrary and illegal, as it was passed without holding any inquiry and in violation of principles of natural justice - If only ground for termination was FIR which was lodged against petitioner and his judicial custody from 10.01.2025 to 17.01.2025, then proper course was to suspend him and conduct departmental inquiry - Direct termination on this basis causes stigma - Even if there are no service rules to conduct departmental inquiry against erring employee, basic requirement of giving fair hearing must be followed before passing punishment order - Competent Authority may pass appropriate order after hearing petitioner, with due expedition. (Para 11, 13)

Petition allowed. (E-13)

List of Cases cited:

1. Basudeo Tiwary Vs Sido Kanhu University & ors. reported in (1998) 8 SCC 194, (Para 9, 10)
2. Shasya Singh Vs St. of U.P. & ors. reported in 2020 SCC OnLine All 106, Service Single No.854 of 2020; (Para 11, 13)
3. Nar Singh Pal Vs U.O.I., & ors. reported in (2000) 3 SCC 588, (Para 6, 8, 10)

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. Heard Shri Vikram Singh, learned Advocate holding brief of Shri Aaditya Singh, learned counsel for the petitioner, Shri Vivek Shukla, learned Additional Chief Standing Counsel for the State-opposite party Nos.1, 2, & 3 and Shri Vikas Srivastav Bakshi, learned counsel, who has filed Vakalatnama on behalf of the opposite party No.4, the same is taken on record.

2. By means of this writ petition, the petitioner has prayed for the following reliefs:-

"(I) to issue a writ, order or direction in the nature of certiorari quashing the impugned termination order dated 14.02.2025 passed by the Respondent No.4, contained as Annexure No.1 to the writ petition.

(II) to issue a writ, order or direction in the nature of mandamus commanding the Respondents to reinstate the petitioner in service allowing him to perform his duties along with the back wages and all consequential benefits, while also extend the petitioner's services

analogous to the other similarly situated persons."

3. The precise contention of learned counsel for the petitioner is that the impugned order dated 14.02.2025 is a stigmatic order, has been passed on the basis of one fact that one F.I.R. against the petitioner is pending, of which trial has not been concluded by the learned trial court.

4. Learned counsel for the petitioner has submitted that the law is trite on the point that if any authority passes an order levelling any allegation regarding moral turpitude etc. of the employee, at-least one opportunity of hearing should be provided to him. In the present case, no such opportunity of hearing was provided to the petitioner and only on the basis of the fact that one F.I.R. has been lodged against him, his services has been dispensed with straightaway.

5. On the last date, when the case was taken up, learned counsels for the opposite parties were orally directed to seek instructions in the matter.

6. Today, Shri Vikas Srivastava Bakshi, learned counsel for the opposite party No.4 has submitted that he has received instructions in the matter and on the basis of such instructions he has submitted that the petitioner was untrained and temporary employee and in his appointment letter dated 11.02.2020 (Annexure No.4) it was categorically indicated that if any irregularity or complaint against the petitioner is received, his services would be dispensed immediately.

7. On being asked from learned counsel for the opposite party No.4 as to

whether the Competent Authority has treated the F.I.R. as irregularity or complaint against the petitioner, he has stated that the aforesaid F.I.R. has been treated as irregularity/ complaint against the petitioner.□ On further being asked from Sri Vikas Srivastava Bakshi as to whether there are any service rules to dispense with the services of an employee, he has submitted that there are no service rules to dispense with the services of an employee who has been engaged on temporary basis.□ He has also stated that even there are no service rules relating to conduct the departmental inquiry against any erring employee even if his status is permanent in nature.

8. Learned counsel for the petitioner has drawn attention of this Court towards the dictum of Apex Court rendered in the case in re: **Basudeo Tiwary vs. Sido Kanhu University and others reported in (1998) 8 SCC 194** referring paras-9 & 10 thereof wherein it has been clearly mandated that in case any punishment order is passed, at least one opportunity of hearing should be provided to the employee.□ For convenience, paras-9 & 10 read as under:-

"9. The law is settled that non-arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. It has come to be established, as a further corollary, that the audi alteram partem facet of natural justice is the antithesis of arbitrariness. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable which are components of fair treatment. The conferment of absolute power to terminate the services of an employee is

antithesis to fair, just and reasonable treatment. This aspect was exhaustively considered by a Constitution Bench of this Court in Delhi Transport Corpn. vs. D.T.C. Mazdoor Congress.

10. In order to impose procedural safeguards, this Court has read the requirement of natural justice in any situations when the statute is silent on this point. The approach of this Court in this regard is that omission to impose the hearing requirement in the statute under which the impugned action is being taken does not exclude hearing - it may be implied from the nature of the power - particularly when the right of a party is affected adversely. The justification for reading such a requirement is that the Court merely supplies omission of the legislature. (vide Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner & Ors. AIR 1978 SC 851) and except in case of direct legislative negation or implied exclusion. (vide S.L. Kapoor vs. Jagmohan & Ors.)."

9. Learned counsel for the petitioner has also drawn attention of this Court towards one judgment decided by this Court in the case in re: **Service Single No.854 of 2020; Shasya Singh vs. State of U.P. & others** reported in **2020 SCC OnLine All 106** referring paras-11 and 13 whereby this Court allowed the writ petition holding that before dispensing with the services of an employee, a proper inquiry should be conducted in case the impugned order is having allegations against the employee.□ For convenience, paras-11 & 13 are being reproduced here-in-below:-

"11. This Court in re: Faraz Hameed Ansari vs. Life Insurance

Corporation Of India Thru Chairman & Others reported in 2018(36) LCD 2062 has held in para 15, while considering various decisions of the Hon'ble Apex Court, para 15 is as under :

"15. Thus, even if the impugned action terminating the services of the petitioners is in the realm of a contract, the same would not be precluded from scrutiny in exercise of its powers of judicial review by this Court available to it under Article 226 of the Constitution of India. I am of the considered opinion that every action of the Corporation, whether statutory or non-statutory or administrative in nature, has to be necessarily in consonance with the constitutional mandate and the impugned order, thus, can be tested on the touchstone of Article 14 of the Constitution of India. In case, the impugned action is found to be unreasonable, irrational, illegal, perverse or unfair, the same can be interfered with in view of the law laid down by Hon'ble Supreme Court in the case of GRIDCO1 Ltd. (supra)."

13. Be that as it may, since the appointing authority are not satisfied with the conduct of the petitioner as being reflected in the impugned orders and the instruction letter and the recital to that effect has also been given in the impugned order, therefore, a proper departmental inquiry strictly in accordance with law should have been conducted and concluded against the petitioner to that effect if it is so warranted and after providing an opportunity of hearing to the petitioner any appropriate order can be passed. Any appropriate order can be passed only by the disciplinary authority independently and such order may not be passed pursuant to the direction being passed by the superior authority."

10. Learned counsel for the petitioner has further drawn attention of this Court towards the dictum of Apex Court rendered in the case in re: **Nar Singh Pal vs. Union of India and others reported in (2000) 3 SCC 588** wherein vide paras-6, 8 & 10 the Apex Court has held that:

"The appellant, although a casual labour, had acquired temporary status. Once an employee attains the "temporary" status, he becomes entitled to certain benefits one of which is that he becomes entitled to the constitutional protection envisaged by Article 311 of the Constitution and other articles dealing with services under the Union of India. The services were terminated on account of the allegation of assault made against the appellant. The order of termination in the instant case, cannot be treated to be a simple order of retrenchment. It was an order passed by way of punishment and, therefore, was an order of dismissal which, having been passed on the basis of preliminary inquiry and without holding a regular departmental inquiry, cannot be sustained."

11. Having tested the impugned order in the light of the aforesaid facts and circumstances and the decisions so cited above, I find that the impugned order dated 14.02.2025 is illegal, arbitrary and unwarranted inasmuch as the aforesaid punishment order has been passed in utter violation of principles of natural justice and without conducting any inquiry to that effect. Even if the reason to terminate the services of the petitioner is that one F.I.R. was lodged against him wherein he remained under judicial custody with effect from 10.01.2025 to 17.01.2025, the petitioner should have been placed under suspension pending the departmental

inquiry. But terminating his services only for the aforesaid reason casts stigma upon him. Besides, if there are no service rules to conduct the departmental inquiry against erring employee, at-least the principles of natural justice must be followed before passing the impugned punishment order. 12. Therefore, there is an apparent error on the face of the impugned order dated 14.02.2025, hence, the same is hereby set aside/ quashed only on the limited ground.

13. It is always open for the Competent Authority to pass appropriate order strictly in accordance with law by affording an opportunity of hearing to the petitioner and if such order is required, the same may be passed with expedition.

14. Since the impugned order dated 14.02.2025 has been set aside/ quashed, therefore, consequential order may be passed as per law.

15. The writ petition is, therefore, **allowed.**

16. Consequences to follow.

17. No order as to cost.

(2025) 4 ILRA 399
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 17.04.2025

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Writ A No. 4420 of 2024

Mohan Sharma	...Petitioner
Versus	
Court of Addl. Distt. Judge/Special (S.C./S.T.) Act Bahraich & Ors.	
	...Respondents

Counsel for the Petitioner:

Pritish Kumar, Amal Rastogi

Counsel for the Respondent:

Shobhit Harsh, Girish Chandra Sinha, Jatin Raheja, Shakti Kumar Sharma

Civil Law –U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972), Section 21(1)(a) – landlord-tenant dispute – Release application – Bonafide need – Comparative hardship – Relationship of landlord and tenant – Co-ownership claim by tenant – Effect of family settlement between co-owners – Split tenancy – Maintainability of release application – Mutation entries – Equitable relief—oral family partition valid – Tenant's status not converted into co-owner by partial purchase – Release application maintainable – Bonafide need and comparative hardship rightly found-Petition dismissed. (Paras 6, 13, 15 to 18, 21 to 29)

HELD:

In the entire petition filed before this Court and as per the arguments recorded above, the claim of the petitioner is that he had purchased a part of the property from respondent no.4 and thus, he became the co-owner. The said argument merits rejection for the sole reason that the appellate Court had recorded that properties with specified boundaries were purchased by virtue of the sale deeds, and in the entire petition, there is no averment/pleading that the said finding recorded by the appellate Court is erroneous or perverse. Thus, the argument is contrary to pleadings. (para 15)

As regards the argument of the petitioner that the relationship of landlord and tenant does not exist merits rejection inasmuch as in terms of the provisions contained under the Rent Control Act, the words used are 'that the landlord is a person to whom the

rent is payable and not actually paid. (Para 16)

In terms of the findings recorded that there was a family settlement/partition, clearly, in respect of the portion of which respondent no.3 had become the owner, the rent was payable to him and thus, the argument that the relationship of landlord and tenant was not established also merits rejection and is rejected. (Para 17)

As regards the third argument with regard to splitting of tenancy, the same further merits rejection for the reason that there was no splitting of tenancy. After the family settlement, the share which fell in the share of respondent no.4 was purchased by the petitioner of which the petitioner become the owner and the tenancy continued in respect of the share which fell in the share of respondent no.3, which was under the occupation of the petitioner, as such, the contention to that extent is rejected. (Para 18)

Petition dismissed. (E-14)

List of Cases cited:

- 1.Abdul Alim Vs Sheikh Jamal Uddin Ansari; AIR ONLINE 1997 SC 185
- 2.Kewal Singh Vs Mt. Lajwanti; AIR 1980 SC 161
- 3.Pramod Kumar Jaiswal & ors. Vs Bibi Husn Bano & ors.; 2005 AIR SCW 3240
- 4.Shabbir Ahmed Vs Syed Mohammad Ali Ahmed Kabir; 2016 (2) ALJ 1
- 5.Gulab Chand Verma Vs Badri Narain Mishr; AIR 2005 Allahabad 133
- 6.Nazar Mohammad & ors. Vs Pushpa Devi & ors.; 2014 Law Suit (All) 983
- 7.Periyammal (Dead) Through L.Rs. & ors. Vs Rajamani & anr. Etc., (Civil Appeal Nos.3640-3642 of 2025) decided on 06.03.2025

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Heard Shri Pritish Kumar, learned counsel for the petitioner and Shri Shobhit Harsh, learned counsel for the respondents.

2. Present petition has been filed by the petitioner challenging the order of release passed by the prescribed authority on 15.04.2023 under Section 12(1)(a) of U.P. Act No.13 of 1972 as well as order dated 29.03.2024 whereby the rent appeal preferred by the petitioner was dismissed.

3. The facts, in brief, are that respondent no.3 filed a release application being Application No.6 of 2009 under Section 21(1)(a) of U.P. Act No.13 of 1972 (hereinafter referred to as 'the Rent Control Act') seeking release of the premises in occupation of the petitioner as a tenant. The said premises as per the release application, comprised of one Kothri, one Khaprail, one tin shed and land appurtenant thereto, and the same was situate at Gata Nos.339, 340/1 & 346 in District Bahraich. In the said application, it was stated that respondent no.3 was aged about 16 years and the tenancy was created by respondent no.4 in favour of the father of the petitioner some time in the month of January, 1972. Respondent No.3 further pleaded that the property in question was bonafidely required for his two sons who were unemployed and would be opening a business of selling building materials. It was also stated that respondent no.3 was due to retire and would open a shop of general merchant at one portion of the premises after retirement. The petitioner rendered appearance and filed reply to the release application and argued that the tenancy in question was created in favour of the father of the petitioner by respondent no.4 herein. It was stated that respondent no.3 and respondent no.4 are real brothers. It was further pleaded that the property

under tenancy was ad-measuring 18 ft. by 175 ft. It was also stated that the rent in question was paid by the petitioner to respondent no.4 always and thus, the relationship of landlord and tenant exist in between the petitioner and respondent no.4 only, and there was no relationship of landlord and tenant in between the petitioner and respondent no.3. It was also pleaded that the petitioner was running a timber business and sawmill from the property in question and the rent in question was paid to respondent no.4. It is stated that father of the petitioner expired on 16.11.1995 and thereafter, the tenancy continued in favour of the petitioner on a yearly rent of Rs.2,400/- which was being paid to respondent no.4.

4. It was further pleaded that during the pendency of the petition, respondent no.4 sold off land ad-measuring 2000 sq.ft. out of the total land owned by respondent nos.3 & 4 to the petitioner and his wife vide registered sale deed dated 24.12.2008. Another portion of the share of respondent no.4 ad-measuring 1298.74 sq.ft. was sold in favour of the petitioner vide registered deed dated 13.10.2011 and third sale deed was executed from the share of respondent no.4 ad-mesuring 3701.6 sq.ft. vide registered deed dated 13.02.2012 and thereafter, the names of the petitioner and his wife were duly mutated in the revenue records.

5. In the light of the said, a defence was taken that after purchasing the property from respondent no.4, the petitioner had become the co-owner of the property and as such, the release application was not maintainable against him. It has been pleaded in the petition that no partition by metes and bounds took place in between respondent no.3 and respondent no.4 or

after purchasing the share of respondent no.4 with the respondent no.3 and thus, he had become a co-sharer in the property.

6. In the light of the said pleadings, the release application was heard and decided in favour of respondent no.3 releasing the portion of the property which fell into the share of respondent no.3 after recording finding in respect of bonafide need and comparative hardship.

7. It is essential to notice that the petitioner has pleaded that a suit for cancellation of the registered sale deed dated 24.12.2008 is pending in the Court of Civil Judge (Junior Division), Bahraich being Regular Suit No.142 of 2011.

8. As already noticed above, the release application was allowed in favour of respondent no.3, aggrieved against the said release order passed on 15.04.2023, an appeal was preferred under Section 22 of the Act, however, the same came to be dismissed by means of the judgment dated 29.03.2024. The said judgments are under challenge in the present writ petition.

9. Submission of learned counsel for the petitioner is that as the petitioner had purchased part of the entire property from respondent no.4, there was no relation of landlord and tenant in between the petitioner and respondent no.3. He draws my attention to Section 3(j) of Rent Control Act which defines 'landlord'. He next argues that the petitioner was admittedly the tenant of the entire premises, part of which was sold to him by respondent no.4, and thus, there cannot be any split of tenancy. He argues that once the tenancy cannot be split, the release application filed at the instance of respondent no.3 was not maintainable. He further argues that after

purchasing a part of the property from respondent no.4, he became the co-owner of the property and thus, his status of a tenant changed to a co-owner, against whom a release application is not maintainable.

10. Learned counsel for the respondent strongly opposed the arguments as raised by the petitioner. He argues that the property in question came to the share of respondent no.3 by virtue of a family settlement in between respondent no.3 and respondent no.4 and thus, the release application at the instance of the respondent no.3 against the petitioner was maintainable in respect of the portion which fell in his share by virtue of the said family settlement. It is argued that the said settlement was an oral family settlement and after the said oral family settlement, respondent no.4 had sold a part of the portion of his share to the petitioner and thus, the argument that the petitioner became the co-sharer of the entire property is wholly unjustified. He argues that after the family settlement in respect of the share which fell in the share of respondent no.3, the status of the petitioner as a tenant continued and thus, to that extent, the submission of the counsel for the petitioner merits rejection. He further argues that the petitioner has stopped paying any rent whatsoever either to respondent no.3 or to respondent no.4 and thus, the equities are also against the petitioner. He further argues that the argument with regard to splitting of tenancy merits rejection inasmuch as the petitioner continued to be the tenant of the portion of the property which fell in the share of respondent no.3 and became the owner of the property in respect of the share purchased by him which came in the share of respondent no.4 by virtue of the family settlement and thus,

the petitioner never became the co-owner of the property which fell in the share of respondent no.3.

11. In respect of the suit filed for cancellation of the sale deed, it is argued that the said suit was filed on the ground that the boundaries shown in the sale deed were incorrect.

12. Learned counsel for the parties have relied upon the judgments which I shall refer later on.

13. In the light of the pleadings, it is essential to notice the appellate Court's judgment wherein the appellate Court after recording the pleadings held that the property in question was taken on rent by the father of the petitioner during his lifetime on which a sawmill and business relating to wood was being done run. The Court also noticed that there was a family settlement that took place and in the said family settlement in between respondent no.3 and respondent no.4, a part of the property, as per the family settlement, fell in the share of respondent no.3. The Court also noticed the facts with regard to Revision No.883 filed under Section 333 of U.P.Z.A. & L.R. Act and the order passed therein on 18.09.2003 wherein it was noticed that in the said proceedings it was admitted by P.W. 3 that the family settlement had taken place and the property in question was divided. The Court also noticed that there was no material to suggest that the family partition did not take place. The Court also noticed that the petitioner had purchased a part of the property from respondent no.4 in which definite boundaries were indicated which itself indicates that the petitioner was also aware of the partition of the property and thus, had purchased definite shares of

which the boundaries were earmarked from the share which fell in the share of respondent no.4. The Court also noticed the suit that was filed being Regular Suit No.142 of 2011 in which a sale deed dated 24.12.2008 was sought to be set aside only on the ground that the boundaries indicated in the sale deed were improper and in the light of the said evidences, it held that a family partition had taken place in between respondent no.3 and respondent no.4 and thus, the relationship of landlord and tenant stood established in between the petitioner and respondent no.3 holding him to be the owner of the share which fell as per the family settlement/partition. The Court also noticed the submission that the mutation entries were not affected and recorded that it is well settled that the mutation entries are only taxation entries. The Court also noticed that an issue was framed in SCC Suit No.11 of 2009 which was decided in favour of the plaintiff to the said suit holding that the SCC Suit was maintainable at his instance. The Court also noticed the contention of the petitioner that he had raised construction and was co-owner of a part of the property. The Court in that context noticed the sale deeds wherein only the lands were shown to have been sold by respondent no.4 in favour of the petitioner, and after analyzing the evidences recorded a conclusion that the petition at the instance of respondent no.3 was maintainable under Section 21(1)(a) of the Rent Control Act. The Court thereafter noticed and recorded finding on the bonafide need and also took into consideration that one of the sons of the landlord was a practicing lawyer and wanted to set up his chamber in residence over the property. The Court noticed and recorded the argument of petitioner that the son of the landlord who was a practicing lawyer was practicing at Lucknow and not at Bahraich. The Court recorded that

merely because he was practicing at Lucknow does not mean that he could not have the desire to start practicing at Bahraich where the property was situated. The Court also noticed the argument of the petitioner in respect of comparative hardship and also recorded that the sawmill which was being run stands closed in view of the orders passed by the Supreme Court. The Court also noticed that no effort was made by the petitioner to seek any other tenanted premises during the pendency of petition which fact was construed against the petitioner.

14. In respect of the other property owned by the petitioner/tenant, the Court noticed that a pleading was taken that the son of the tenant was running his business from the said property. The Court held the same against the petitioner by holding that no evidence in the form of the deposition of the wife of the petitioner or the son was brought on record to dismiss the said argument of landlord. In the context of the said, the appeal came to be dismissed.

15. In the entire petition filed before this Court and as per the arguments recorded above, the claim of the petitioner is that he had purchased a part of the property from respondent no.4 and thus, he became the co-owner. The said argument merits rejection for the sole reason that the appellate Court had recorded that properties with specified boundaries were purchased by virtue of the sale deeds, and in the entire petition, there is no averment/pleading that the said finding recorded by the appellate Court is erroneous or perverse. Thus, the argument is contrary to pleadings.

16. As regards the argument of the petitioner that the relationship of landlord and tenant does not exist merits rejection

inasmuch as in terms of the provisions contained under the Rent Control Act, the words used are '*that the landlord is a person to whom the rent is payable and not actually paid*'.

17. In terms of the findings recorded that there was a family settlement/partition, clearly, in respect of the portion of which respondent no.3 had become the owner, the rent was payable to him and thus, the argument that the relationship of landlord and tenant was not established also merits rejection and is rejected.

18. As regards the third argument with regard to splitting of tenancy, the same further merits rejection for the reason that there was no splitting of tenancy. After the family settlement, the share which fell in the share of respondent no.4 was purchased by the petitioner of which the petitioner become the owner and the tenancy continued in respect of the share which fell in the share of respondent no.3, which was under the occupation of the petitioner, as such, the contention to that extent is rejected.

19. It is essential to notice that there was no contention in the entire petition that the rent was paid either to respondent no.3 or to respondent no.4 at any point of time, which fact demonstrates that in exercise of equitable jurisdiction also, the petitioner is not entitled to any relief from this Court.

20. Now coming to the judgments cited by the parties.

21. Learned counsel for the petitioner relies upon the judgment in the case of ***Abdul Alim v. Sheikh Jamal Uddin Ansari; AIR ONLINE 1997 SC 185***. The said judgment would have no applicability

to the facts of the present case inasmuch as the share sold by respondent no.4 to the petitioner was not as a co-owner after the partition through family settlement in between respondent no.3 and respondent no.4, and was as a sole owner of his share.

22. The second judgment cited by counsel for the petitioner is in the case of **Kewal Singh v. Mt. Lajwanti; AIR 1980 SC 161**. He relies upon Para 21 of the said judgment to argue that it was incumbent upon the respondent to have filed a suit under the Transfer of Property Act for vacating of the premises. The said argument merits rejection inasmuch as the petitioner after the family settlement continued to be the tenant of respondent no.3.

23. The next judgment relied is in the case of **Pramod Kumar Jaiswal and Ors. v. Bibi Husn Bano and Ors.; 2005 AIR SCW 3240** founded on the provision of Section 111(d) of the Transfer of Property Act. He argues that the Rent Control Act is a special legislation eclipsing the provision of Transfer of Property Act in respect of the premises which are governed under the Rent Control Act.

24. The said argument also merits rejection inasmuch as by virtue of U.P. Act No.13 of 1972, the common rights flowing in favour of the lessor and lessee under the Transfer of Property Act stood eclipsed only in respect of rate of rent, selection of tenant and for vacation of the premises. The Rent Control Act does not entirely eclipse the Transfer of Property Act. However, this issue would not arise in the present case as the reasoning has been recorded after appreciation of the evidences that the property in question fell in the

share of respondent no.3 after a family settlement.

25. The other judgment cited in the case of **Shabbir Ahmed v. Syed Mohammad Ali Ahmed Kabir; 2016 (2) ALJ 1**, has no relevance in the present case in view of the findings that the property after mutual settlement fell in the share of respondent no.3.

26. Similarly, the judgment of this Court in the case of **Gulab Chand Verma v. Badri Narain Mishr; AIR 2005 Allahabad 133** also would have no applicability to the facts of the present case.

27. The other judgment cited by counsel for the petitioner in the case of **Nazar Mohammad and Ors. v. Pushpa Devi and Ors.; 2014 Law Suit (All) 983** has no applicability to the facts of the present case as the property in question was never sold by the co-owner and was sold by an individual owner i.e. respondent no.4 in respect of the property which fell in his share by virtue of a family settlement.

28. In view of the findings recorded by the appellate Court and there being no averment in the writ petition with regard to the findings of fact being either arbitrary or perverse specifically in respect to the family settlement/partition, no interference is required in exercise of powers under Art. 226 of the Constitution.

29. Present petition lacks merit and is accordingly **dismissed**.

30. The execution of the decree passed by the appellate Court shall be concluded expeditiously within six months in the light of the directions issued by the Supreme Court in the case of **Periyammal (Dead)**

Through L.Rs. & Ors. v. Rajamani & Anr. Etc., (Civil Appeal Nos.3640-3642 of 2025) decided on 06.03.2025.

(2025) 4 ILRA 406
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.04.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ A No. 14482 of 2023

Pradip Pal **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Counsel for the Petitioner:
Kauntey Singh, Siddharth Khare

Counsel for the Respondents:
C.S.C., Satyam Singh, Udayan Nandan

Service Law – Compassionate appointment – Permanent status of deceased employee – Deficiency in service record – Employer's duty to maintain service book – Appointment refused solely due to lack of entry of confirmation – Non-application of mind – Nature of service ascertainable from benefits and continuity – Failure of employer to maintain accurate service records cannot prejudice the employee's dependents – Attributes of permanency such as uninterrupted long service and service benefits must be considered – Denial of appointment based solely on incomplete records is arbitrary- Remand for fresh consideration-Petition partly allowed. (Paras 6 to 11)

HELD:

Entries in the service book and service records are made by the employer. The said documents remain in the exclusively custody of the employer. It is the duty of the employer

maintain and update the service records of employees. Discrepancies or deficiencies in the service book or records are liable to be enquired into before penalizing or faulting an employee. In absence of such enquiry the said deficiencies in the service records alone cannot be made the basis of disputing the nature of appointment of the petitioner's deceased-father without proper enquiry. (Para 7)

All relevant attributes of a permanent appointment are also liable to be examined to determine the nature of the appointment of the petitioner's father. (Para 8)

The respondents-authorities while considering the claim of the petitioner neglected to evaluate the aforesaid aspects which are germane to the controversy. Non application of mind to the aforesaid relevant considerations vitiates the impugned order dated 17.05.2023. (Para 9)

Petition allowed. (E-14)

(Delivered by Hon'ble Ajay Bhanot, J.)

I. Introduction:

1. By the impugned order dated 17.05.2023 passed by the Deputy Cane Commissioner/Chairman, Regional Cane Service Authority, Bareilly Region, Bareilly, the claim of the petitioner for grant of appointment on compassionate ground has been declined.

2. The impugned order dated 17.05.2023 invalidates the claim of the petitioner on the footing that the service records available with the department do not disclose the date on which the petitioner's deceased-father was made permanent. The impugned order also discloses that the petitioner's father was initially appointed as a server on 09.03.1983. Thereafter, he worked as peon but the date of joining as permanent

employee is not disclosed in the service book or records.

II. Submissions from the Bar:

3. Shri Siddharth Khare, learned counsel for the petitioner has made the following submissions:

(i). The petitioner's father was a permanent employee in the respondent-corporation.

(ii). The petitioner or his father is not responsible for the discrepancies in the service records being maintained by the respondent-corporation.

(iii). The petitioner's father was always treated as a permanent employee. The impugned order dated 17.05.2023 has been passed only to defeat the right of the petitioner to compassionate grounds appointment.

4. Shri Udayan Nandan, learned counsel assisted by Shri Kauntey Singh, learned counsel for the respondents No.5 have made the following submissions:

(i). The petitioner's father is not depicted as the permanent employee in the service book being maintained by the respondent-corporation.

(ii). The petitioner is not entitled to be appointed as compassionate ground appointment.

III. Discussions and Findings:

5. Heard learned counsel for the parties.

6. Various attributes of permanent appointment of the petitioner's father are prima facie disclosed from the facts of this case. The petitioner's father continued in service for almost 29 years without break. A service book was created in the name of his father. The said service book is maintained by the respondents only for permanent employees. The petitioner's family was paid GPF, gratuity, and leave encashment. Again all these service benefits are admissible to permanent employees alone.

7. Entries in the service book and service records are made by the employer. The said documents remain in the exclusively custody of the employer. It is the duty of the employer maintain and update the service records of employees. Discrepancies or deficiencies in the service book or records are liable to be enquired into before penalizing or faulting an employee. In absence of such enquiry the said deficiencies in the service records alone cannot be made the basis of disputing the nature of appointment of the petitioner's deceased-father without proper enquiry.

8. All relevant attributes of a permanent appointment are also liable to be examined to determine the nature of the appointment of the petitioner's father.

9. The respondents-authorities while considering the claim of the petitioner neglected to evaluate the aforesaid aspects which are germane to the controversy. Non application of mind to the aforesaid relevant considerations vitiates the impugned order dated 17.05.2023.

IV. Conclusions and Directions:

10. The impugned order dated 17.05.2023 is unsustainable in law. The impugned order dated 17.05.2023 is liable to be set aside and is set aside.

11. The matter is remitted to the respondents-authorities with the following directions:

I). The application of the petitioner for appointment on compassionate grounds shall be decided by the respondents-authorities as per law within a period of three months from the date of receipt of a certified copy of this order.

II). While taking the decision on the appointment of the petitioner, the nature of the appointment of his deceased-father shall be determined in light of the observations made above.

III). The financial condition of the petitioner's family at the time of the death of the petitioner's father, and dependency on the deceased and all other relevant facts as per law are liable to be determined by the authority.

12. The writ petition is allowed to the extent indicated above.

(2025) 4 ILRA 408
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.04.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 15804 of 2024

Smt. Puja Yadav @ Pooja Yadav

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Counsel for the Petitioner:

Om Prakash Yadava, Suresh Chandra Kushwaha

Counsel for the Respondents:

C.S.C.

Service Law – Compassionate appointment – Married daughter – Delay of 16 years – U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 – Rule 2 (c) (iii) struck down- Amendment of Rule 2(c) in 2021 – Effect of earlier court ruling declaring exclusion of married daughters unconstitutional –question of retrospective applicability does not arise- Dependency not assessed – Rejection order based on presumptions – Delay condonable where litigation explains cause – Amendment held declaratory in nature – Impugned order quashed – Remand for fresh consideration.

HELD:

In so far as first point is concerned, I find that petitioner had already moved an application seeking compassionate appointment and the said application was not considered and matter continued to be lingered on and hence she was forced to file writ petition being Writ A No. 52986 of 2016. The Court in that case refused to grant writ of mandamus on the ground that petitioner was not able to establish dependency and reason assigned was that she was married daughter and married daughters normally move out of their house of the parents, and therefore, they cannot be taken to have remained dependent financially upon the parents. The Court held that maintenance of wife rests upon her husband. The said judgment stood superseded by the judgment of division bench, which I have quoted hereinabove and in which petitioner was directed to move application afresh and authority was directed to consider the same. Thus there arose no point to hold that petitioner moved an application belatedly in the year 2016 to dis-entitled her for claim of

compassionate appointment. Whatever application petitioner had previously moved remained undisposed of and since division bench ordered petitioner to move application afresh in 2016, petitioner came to move the said application in 2016 and hence respondents were not justified in rejecting her claim on the ground that she could move application for compassionate appointment in the year 2016 only whereas earning member of the family had died in the year 2008. Petitioner's application, therefore, was liable to be considered on merits instead of rejecting the same on the point of delay.

Thus, authority was required to enquire into the facts as to status of the applicant and then to arrive at a finding whether petitioner did not deserve compassion any more as family survived and hence there was no financial crisis any more existing. The order, therefore, on this count cannot be sustained and point no. 1 stands decided in favour of the petitioner.

In so far as second point is concerned regarding retrospective effect of the amendment, I find that division bench of this Court in the case of Smt. Vimla Srivastava Vs St. of U.P & anr. being Writ C No. 6081 of 2013 and connected matter, had in a very categorical terms held that exclusion of married daughters from the ambit of expression family in Rule 2(c) of Dying-in-Harness Rules, 1974, was illegal and unconstitutional being violative of Article 14-15 of the Constitution and accordingly it struck down the word married in Rule 2(c) of the Rules....

From perusal of the above, it is clear that the Court struck down the word 'unmarried'. Striking down a particular provision or the word and expression in statute or statutory rule and holding it to be unconstitutional means that such words and expression never existed on statute and therefore, it can be safely concluded that there was no issue of attaching retrospectivity to the amendment in its application rather, this was taken by the Court to be always there and by amendment brought in the year 2021, the St. only statutorily recognized it. Against the aforesaid judgment of division bench special leave petition

was filed before Supreme Court in the matter of St. of U.P. & anr. Vs Neha Srivastava being Special Leave to Appeal (C)No. 22646 of 2016, which came to be dismissed on 23rd July, 2019. A common law judgment has the same force as any statutory Act or Rule.

Petition allowed. (E-14)

List of Cases cited:

- 1.Udham Singh Nagar District Cooperative Bank Ltd. & anr. Vs Anjula Singh Others, 2019 0 Supreme (UK) 153
- 2.Government Department of Education (Primary) & ors. Vs Beemesh @ Bheemappa, 2022 AIR (SC) 402
- 3.Madhya Pradesh & ors. Vs Ashish Awasthi being Civil Appeal No. 6903 of 2021 decided on 18th November, 2021
- 4.Smt. Vimla Srivastava Vs St. of U.P & anr. being Writ C No. 6081 of 2013

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard Sri Pankaj Kushwaha, learned Advocate holding brief of Sri S.C.Kushwaha, learned counsel for the petitioner and learned Additional Chief Standing Counsel.

2. Petitioner before this Court is aggrieved by decision taken by the Secretary, Madhyamik Shiksha Parishad/ respondent no. 2 dated 25th July, 2024 rejecting application of the petitioner for compassionate appointment only on the ground that after sixteen years of death of deceased employee, compassionate appointment cannot be offered as the emergent situation and financial crisis that had arisen on the death of employee no more existed due to lapse of time.

3. Submission advanced by learned counsel for the petitioner is that petitioner

was not responsible for any delay in the matter of claim to be set up for compassionate appointment as she pursued the matter and when no progress took place, she approached this Court by filing a writ petition being Writ A No. 59286 of 2016, which came to be dismissed vide order dated 23rd December, 2016 holding that dependency of applicant upon deceased employee could not be established for the reason petitioner was a married women.

4. Upon appeal being preferred vide Special Appeal No. 61 of 2017 against the judgment of learned Single Judge, the Court directed for disposal of pending application if the petitioner filed a fresh before Deputy Director of Education, Prayagraj, Region Prayagraj, the authority shall be passing order in accordance with law after considering all the aspects of the case within three months. The operative portion of the order of the division bench dated 14th February, 2023 is reproduced hereunder:

“Hon'ble Pritinker
Diwaker, Acting Chief Justice
Hon'ble Saumitra Dayal
Singh, J.

Sri S.C. Kushwaha, counsel for the appellant and learned Standing Counsel for the State.

The appellant, Smt. Puja Yadav, is a married daughter of late Ranjit Yadav, who died in harness on 01.01.2008. From the pleadings, it appears that when the appellant was not given compassionate appointment, she made representation to the competent authority but nothing was done and ultimately, she was compelled to file writ

petition before this Court. In the writ court, no counter was filed by the State. However, vide impugned judgement dated 23.12.2016, the writ petition was dismissed on the ground that the appellant is a married daughter and does not fall in any of the category as provided by the Government in its notification.

In this appeal, the order of learned Single Judge has been challenged on the ground that even married daughters are entitled to compassionate appointment.

Counsel for the State fairly submits that till date the case of the appellant has not been considered on merits and the same would be considered if the appellant files appropriate application within three weeks from today.

In view of the fair statement made by State counsel, without further entering into the merits of the case, the appeal is disposed off directing the appellant to file fresh application before the Deputy Director of Education, Prayagraj Region, Prayagraj and the said authority shall pass appropriate orders in accordance with law after considering all the aspects of the case as expeditiously as possible preferably within a period of three months.

It is made clear that this Court has observed nothing on the merits of the case and the competent authority is at liberty to pass order in accordance with law. “

5. The said order came to be corrected and though permitted the petitioner to make

fresh compliance within a period of two weeks. The order of this Court dated 13.3.2024 is reproduced hereunder:

“Hon'ble Saumitra Dayal Singh, J.
Hon'ble Surendra Singh-I, J.

Re: C.M. Application
(Correction) No. 7 of 2023

1. In view of the facts stated in affidavit in support of the Correction Application including the communication dated 8.8.2023 issued by Deputy Director of Education (Intermediate), Prayagraj Mandal, Prayagraj, let the description of the authority - "Deputy Director of Education, Prayagraj Region, Prayagraj" appearing in third line of the fifth paragraph of the order dated 14.2.2023 is treated to be deleted and replaced with Secretary, Board of High School and Intermediate, Uttar Pradesh, Prayagraj.

2. Correction application stands allowed.

3. In view of the correction made today, petitioner may make fresh compliance of the order dated 14.2.2023 within a period of two weeks from today. Subject to such compliance made by the petitioner, the order dated 14.2.2023 may be complied with by the said authority. “

6. Now respondents passed the order this time holding that the application for compassionate appointment could not be granted after 16 years of the date of death of deceased employee.

7. Learned Additional Chief Standing Counsel sought to defend the order on the ground that petitioner's dependency was to

be determined in the light of fact that she was already married on the date of death of the employee and in the event married daughter was unmarried on the date of death of the employee, the claim was not liable to be considered at par with other dependents of the family. Learned Standing Counsel has further submitted that amendment in the Dying in Harness Rules, 1974 having been brought in the year 2021, the same would not be applicable retrospectively and hence petitioner's claim was rightly rejected.

*8. In support of above submission, learned Chief Standing Counsel has relied upon the judgment in the case of **Udham Singh Nagar District Cooperative Bank Ltd. & Another v. Anjula Singh Others, 2019 0 Supreme (UK) 153** and has relied upon paragraph 65 of the judgment, which is reproduced hereunder:*

“65. Any person, who is a part of the "family" of the deceased Government servant, would also be included within the said definition. Consequently, a "married daughter" would also fall within the definition of a "family" both in Rule 2(c) of the 1974 Rules, and under the note below Regulation 104 of the 1975 Regulations. Needless to state that the members of the "family" of the deceased Government servant in Clauses (i) to (iii) of Rule 2(c) of the 1974 Rules, and the note below Regulation 104 of the 1975 Regulations, which would include a "married daughter", would be entitled to be considered for compassionate appointment only if they were dependent on the Government servant at the time of his death, and satisfy all the other conditions stipulated in the 1974 Rules and the 1975 Regulations.”

9. Learned Additional Chief Standing Counsel has further relied upon the judgment in the case of **Secretary to Government Department of Education (Primary) & Others v. Beemesh @ Bheemappa, 2022 AIR (SC) 402** and has relied upon paragraph 19 of the judgment which is reproduced hereunder:

“19. The important aspect about the conflict of opinion is that it revolves around two dates, namely, (i) date of death of the employee; and (ii) date of consideration of the application of the dependant. Out of these two dates, only one, namely, the date of death alone is a fixed factor that does not change. The next date namely the date of consideration of the claim, is something that depends upon many variables such as the date of filing of application, the date of attaining of majority of the claimant and the date on which the file is put up to the competent authority. There is no principle of statutory interpretation which permits a decision on the applicability of a rule, to be based upon an indeterminate or variable factor. Let us take for instance a hypothetical case where 2 Government servants die in harness on January 01, 2020. Let us assume that the dependants of these 2 deceased Government servants make applications for appointment on 2 different dates say 29.05.2020 and 02.06.2020 and a modified Scheme comes into force on June 01, 2020. If the date of consideration of the claim is taken to be the criteria for determining whether the modified Scheme applies or not, it will lead to two different results, one in respect of the person who made the application before June 1, 2020 and another in respect of the person who applied after June 01, 2020. In other words, if two employees die on the same date and the dependants of those employees

apply on two different dates, one before the modified Scheme comes into force and another thereafter, they will come in for differential treatment if the date of application and the date of consideration of the same are taken to be the deciding factor. A rule of interpretation which produces different results, depending upon what the individuals do or do not do, is inconceivable. This is why, the managements of a few banks, in the cases tabulated above, have introduced a rule in the modified scheme itself, which provides for all pending applications to be decided under the new/modified scheme. Therefore, we are of the considered view that the interpretation as to the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor. “

10. Learned Additional Chief Standing Counsel has also relied upon the judgment in the case of **State of Madhya Pradesh and Others v. Ashish Awasthi being Civil Appeal No. 6903 of 2021** decided on 18th November, 2021. He has placed reliance upon paragraph 4 of the judgment, which runs as under:

“4. The deceased employee died on 08.10.2015. At the time of death, he was working as a work charge employee, who was paid the salary from the contingency fund. As per the policy/circular prevalent at the time of the death of the deceased employee, i.e., policy/circular No.C-3-12/2013/1-3 dated 29.09.2014 in case of death of the employee working on work charge, his dependents/heirs were not entitled to the appointment on compassionate ground and were entitled to Rs. 2 lakhs as compensatory amount. Subsequently, the policy came to be

amended vide circular dated 31.08.2016, under which even in the case of death of the work charge employee, his heirs/dependents will be entitled to the appointment on compassionate ground. Relying upon the subsequent circular/policy dated 31.08.2016, the Division Bench of the High Court has directed the appellants to consider the case of the respondent for appointment on compassionate ground. As per the settled preposition of law laid down by this Court for appointment on compassionate ground, the policy prevalent at the time of death of the deceased employee only is required to be considered and not the subsequent policy. “

11. Having heard learned counsel for the respective parties and having perused the records, in order to appreciate the legal principles argued before me by learned counsel for the respective parties, it is necessary to go into the reasons assigned in order impugned first: operative portion of the impugned order, in which five reasons have come to be assigned are reproduced hereunder:

”उक्त वर्णित स्थिति के आलोक में माननीय उच्च न्यायालय, इलाहाबाद के विशेष अपील संख्या-61/2017 में पारित निर्णय दिनांक 14.02.2023 यथा संशोधित 13.02.2024 के अनुपालन में प्रकरण का अभिलेखीय परीक्षण किया गया जिसमें निम्नवत स्थिति पायी गयी:-

1. याची श्रीमती पूजा यादव के पिता स्व० रणजीत सिंह माध्यमिक शिक्षा परिषद्, उत्तर प्रदेश के मुख्य कार्यालय, प्रयागराज में वरिष्ठ सहायक के पद पर कार्यरत थे जिनका सेवाकाल में आकस्मिक निधन दिनांक 01.01.2008 को हुआ था।

2. स्व० रणजीत सिंह, वरिष्ठ सहायक के निधन के उपरान्त उनके आश्रितों द्वारा उत्तर प्रदेश शासन की अधिसूचना संख्या:- 6/12/1973 नियुक्ति-4 दिनांक 07.10.1974 द्वारा प्रख्यापित "उत्तर प्रदेश सेवाकाल में मृत सरकारी सेवकों के आश्रितों की भर्ती नियमावली-1974" यथा अद्यतन संशोधित के अधीन अनुकम्पा नियुक्ति प्रदान किये जाने के आशय से समयान्तर्गत प्रार्थना पत्र प्रस्तुत नहीं किया गया।

3. वर्ष 2008 में विवाहित पुत्रियों को मृतक आश्रित के अन्तर्गत अनुकम्पा नियुक्ति प्रदान किये जाने का कोई प्राविधान संगत नियमावलियों में नहीं था, अपितु उत्तर प्रदेश शासन द्वारा निर्गत अधिसूचना संख्या:-6/12/73-का-2/2021 टी० सी० IV दिनांक 12 नवम्बर, 2021 में विवाहित पुत्रियों को मृतक सरकारी कर्मचारी के कुटुम्ब के अन्तर्गत माना गया है। उक्त नियमावली निर्गमन की तिथि 12 नवम्बर, 2021 से प्रभावी है न कि पूर्ववर्ती तिथि से प्रभावी है।

4. उत्तर प्रदेश शासन की अधिसूचना संख्या:- 6/12/1973/ नियुक्ति-4 दिनांक 07.10.1974 द्वारा प्रख्यापित "उत्तर प्रदेश सेवाकाल में मृत सरकारी सेवकों के आश्रितों की भर्ती नियमावली- 1974" में मृत कर्मचारी के परिवार को तात्कालिक राहत देने के आशय से अनुकम्पा नियुक्ति दिये जाने के प्राविधान है।

5. याची श्रीमती पूजा यादव द्वारा अपने पिता स्व० रणजीत सिंह के दिनांक 01.01.2008 को निधन होने के लगभग 16 वर्षों के उपरान्त अनुकम्पा नियुक्ति प्रदान किये जाने हेतु प्रार्थना पत्र प्रस्तुत किया गया है।

सूच्य है कि मृतक आश्रित सेवायोजन की व्यवस्था मृतक कर्मिक की मृत्यु के बाद, परिवार पर अचानक उत्पन्न आर्थिक संकट को दूर करने हेतु की गयी है, ताकि वे अपनी बुनियादी आवश्यकता की पूर्ति कर सकें तथा सामाजिक सम्मान व सुरक्षा बनी रही। प्रस्तुत प्रकरण में 16 वर्ष बाद दिये गये आवेदन केवल रोजगार पाने के उद्देश्य से दिया गया प्रतीत होता है जो औचित्यपूर्ण नहीं है।”

12. From a bare reading of the aforesaid quoted part of the impugned order, I find that first reason for rejecting application assigned is that the provision to

include married daughter within the definition of family was not available in the year order 2008 and since it has been brought by way of amendment on 12th November, 2021, it cannot be given retrospect effect.

13. The second reason assigned is that Dying-in-Harness Rules have been framed to offer appointment to the dependents of the deceased to immediately provide succour to the family, which was not case of the petitioner which petitioner.

14. The third reason assigned is that petitioner moved an application for compassionate appointment after sixteen years and hence application deserved to be rejected.

15. Now two points arise for consideration of this Court:

(a). whether petitioner's application seeking compassionate appointment deserved to be rejected as time bared under 1974 Rules and whether petitioner herself to be blamed for such delayed application for compassionate appointment; and

(b). whether amendments made in the definition of family vide notification dated 12th November, 2021 under 1974 Rules would invalidate claim of such applicants who had already moved application prayer to said notification made by the State Government on the principle of prospective operation of law.

16. In so far as first point is concerned, I find that petitioner had already moved an application seeking compassionate appointment and the said application was not considered and matter continued to be

lingered on and hence she was forced to file writ petition being Writ A No. 52986 of 2016. The Court in that case refused to grant writ of mandamus on the ground that petitioner was not able to establish dependency and reason assigned was that she was married daughter and married daughters normally move out of their house of the parents, and therefore, they cannot be taken to have remained dependent financially upon the parents. The Court held that maintenance of wife rests upon her husband. The said judgment stood superseded by the judgment of division bench, which I have quoted hereinabove and in which petitioner was directed to move application afresh and authority was directed to consider the same. Thus there arose no point to hold that petitioner moved an application belatedly in the year 2016 to dis-entitled her for claim of compassionate appointment. Whatever application petitioner had previously moved remained undisposed of and since division bench ordered petitioner to move application afresh in 2016, petitioner came to move the said application in 2016 and hence respondents were not justified in rejecting her claim on the ground that she could move application for compassionate appointment in the year 2016 only whereas earning member of the family had died in the year 2008. Petitioner's application, therefore, was liable to be considered on merits instead of rejecting the same on the point of delay.

17. In so far as dependency part is concerned, I find that in the impugned order, there is no discussion as to what led that authority to arrive at a conclusion that financial need for survival did not exist any more. The findings returned to the effect that an application after sixteen years would mean that there was no need for the

family to offer compassionate appointment is absolutely based on surmises and conjectures. The question whether offer of appointment was given after 16 years as application was not moved as per Rule 1974 cannot itself be ground to reject a claim in the light of directions issued by the division bench of this Court, which had made it binding for the authority to pass order on merits. Thus, authority was required to enquire into the facts as to status of the applicant and then to arrive at a finding whether petitioner did not deserve compassion any more as family survived and hence there was no financial crisis any more existing. The order, therefore, on this count cannot be sustained and point no. 1 stands decided in favour of the petitioner.

18. In so far as second point is concerned regarding retrospective effect of the amendment, I find that division bench of this Court in the case of Smt. Vimla Srivastava v. State of U.P. and Another being Writ C No. 6081 of 2013 and connected matter, had in a very categorical terms held that exclusion of married daughters from the ambit of expression family in Rule 2(c) of Dying-in-Harness Rules, 1974, was illegal and unconstitutional being violative of Article 14-15 of the Constitution and accordingly it struck down the word married in Rule 2(c) of the Rules. The relevant portion of the order of the division bench is reproduced hereunder:

“In conclusion, we hold that the exclusion of married daughters from the ambit of the expression “family” in Rule (c) of the Dying-in-Harness Rules is illegal and unconstitutional, being violative of Articles 14 and 15 of the Constitution. We, accordingly, strike down the word

‘unmarried’ in Rule 2 (c) (iii) of the Dying-in-Harness Rules.”

19. From perusal of the above, it is clear that the Court struck down the word ‘unmarried’. Striking down a particular provision or the word and expression in statute or statutory rule and holding it to be unconstitutional means that such words and expression never existed on statute and therefore, it can be safely concluded that there was no issue of attaching retrospectivity to the amendment in its application rather, this was taken by the Court to be always there and by amendment brought in the year 2021, the State only statutorily recognized it. Against the aforesaid judgment of division bench special leave petition was filed before Supreme Court in the matter of State of U.P. and Another v. Neha Srivastava being Special Leave to Appeal (C)No. 22646 of 2016, which came to be dismissed on 23rd July, 2019. A common law judgment has the same force as any statutory Act or Rule.

20. In view of above therefore, the order impugned can not be sustained in law. Thus, judgment cited by the learned Additional Chief Standing Counsel in the matter of application of rule are held to be distinguishable on facts and hence not attracted. It is by an act of Court that provision was held to be unconstitutional and hence it is not a case where statutory amendment was brought by State legislature on its own introducing a new legal right. Thus second point also stands answered in favour of the petitioner.

21. Thus, impugned order passed by Secretary, State of U.P. dated 25th July, 2024 is held unsustainable and is accordingly quashed. The matter is remitted to the authority to decide afresh.

However, this time, when the matter is remitted to the authority to decide a fresh, the authority will look into afresh the claim of the petitioner and decide the same after getting the petitioner's status being dependent upon deceased employee duly verified. The authority will also examine and will also get the petitioner filed requisite papers about financial status of her husband and other documents in the event petitioner's husband is having revenue sources and the same shall be also examined accordingly. The authority before arriving at any conclusion must decide whether financial crisis in the family does continue as on date so that she may be offered compassionate appointment. It is made clear that application of the petitioner this time will not be rejected on the ground that it was belatedly filed. The bar of 5 years as prescribed under Rules will not be applicable in the instant case in its special facts and circumstances. The appropriate decision shall be taken by the authority within a period of three months from the date of presentation of certified copy of this order.

22. With the aforesaid observations and directions, this petition stands allowed with no order as to cost.

(2025) 4 ILRA 416
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 07.04.2025

BEFORE

THE HON'BLE SAURABH LAVANIA, J.

Writ- B No. 285 of 2025

Kailash

Versus

...Petitioner

Dy. Director of Consolidation, Sitapur & Anr. ...Respondents

Counsel for the Petitioner:

Ram Asarey Verma

Counsel for the Respondents:

C.S.C.

U.P. Consolidation of Holdings Act, 1953, S. 48 – Revision and Reference – Order of remand passed by Deputy Director of Consolidation under challenge – Scope of S. 48 - Section 48 of the Act, 1953 provides ample power to the Director of Consolidation to examine the correctness/legality/propriety of any order, which includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority, as well as the power to re-appreciate any oral or documentary evidence. Held: For the purposes of remanding the case to the Consolidation Officer, the D.D.C. pointed out some errors in the order(s) impugned before him, which, in the view of the High Court, ought to have been looked into in exercise of power under Section 48 of the Act, 1953 by the D.D.C. himself, as the entire material was available before him. (Para 34) (E-5)

Allowed

(Delivered by Hon'ble Saurabh Lavania, J.)

1. Heard Shri Ram Asarey Verma, learned counsel for the petitioner, Shri Hemant Kumar Pandey, learned Standing Counsel for the State/opposite party No.1 and perused the record.

2. Issuance of notice to opposite party No.2 is hereby dispensed with liberty to the opposite party No.2 to file an appropriate recall application of this order, if aggrieved by this order. It is for the following reason (s) :-

(a) without entering into the merits of the case, in the light of settled principle related to power of Deputy Director of Consolidation (in short "D.D.C.") under Section 48 of the U.P. Consolidation of Holdings Act, 1953 (in short "Act of 1953"), this Court is remanding the matter to D.D.C. for deciding the same on merits;

(b) issuance of notice would unnecessary delay the proceedings in issue; and

(c) the settled principle related to power of D.D.C. under Section 48 of the Act of 1953 could not be refuted by the present opposite parties.

3. The instant petition has been preferred seeking following main relief:-

"(i) issue a writ, order or direction in the nature of Certiorari thereby quashing the order passed by the opposite Party No.1 dated 14.02.2025 in Revision No. 308/2023 Computer No.202354106400000308 under section 48(1) of U.P. C.H. Act "Nirmala Devi Versus Kailash" contained as Annexure No. 1 to this writ petition.

(ii) issue a writ, order or direction in the nature of Mandamus thereby commending the opposite Parties not to disturbed the peaceful possession of the petitioner over the land in question."

4. By means of this petition, the petitioner has assailed the order dated 14.02.2025, passed in Revision No.308/2023 (Nirmala Devi Vs. Kailash), under Section 48 (1) of the Act, 1953, whereby the opposite party No.1/Deputy Director of Consolidation/Additional District Magistrate (F/R), Sitapur,

remanded the matter back to the Consolidation Officer concerned for deciding the case afresh after providing opportunity of hearing to the parties to the litigation. The relevant portion of the order dated 14.02.2025 is quoted hereunder for ready reference:-

"मैंने उभयपक्षों के विद्वान अधिवक्ता की बहस सुनी तथा निगरानी एवं अधीनस्थ न्यायालय की पत्रावलियों का अवलोकन किया, जिससे विदित होता है कि ग्राम हरनी परगना व तहसील व जिला सीतापुर के आधार वर्ष खतौनी खाता संख्या - 69 पर वंशगोपाल, श्रीपाल, शिवराम, रामरतन पुत्रगण रघुवर दयाल के नाम अंकित है। वंशगोपाल पुत्र रघुवर मृतक हो गये, विवाद मृतक वंशगोपाल के वारिसों को लेकर है। निगरानीकर्ता श्रीमती निर्मला देवी पत्नी स्व० रामरतन द्वारा अपने पक्ष में निष्पादित अपंजीकृत वसीयत दिनांकित 26.12.1998 के आधार पर मृतक वंशगोपाल के स्थान पर नाम दर्ज करने की मांग की गयी है तथा प्रतिवादी कैलाश पुत्र श्रीपाल द्वारा अपने पक्ष में निष्पादित पंजीकृत वसीयत दिनांकित 14.08.1997 के आधार पर मृतक वंशगोपाल के स्थान पर नाम दर्ज करने की मांग की गयी है। चकबन्दी अधिकारी द्वारा पारित आदेश दिनांक 13.01.2023 द्वारा मृतक वंशगोपाल के स्थान पर पंजीकृत वसीयत दिनांक 14.08.1997 के आधार पर विवादित भूमि पर कैलाश पुत्र श्रीपाल का नाम दर्ज करते हुए आपत्ति निर्मला देवी निरस्त की गयी है, जिससे क्षुब्ध होकर निर्मला देवी द्वारा अपीलीय न्यायालय पर अपील योजित की गयी, जो अपीलीय न्यायालय द्वारा दिनांक 25.08.2023 को अपील निरस्त कर दी गयी। अपीलीय न्यायालय द्वारा पारित आदेश दिनांक 25.08.2023 से क्षुब्ध होकर निगरानीकर्ता निर्मला देवी द्वारा उक्त निगरानी योजित करके अपने स्वत्व के आधार पर मांग की गयी है। इस प्रकार इस प्रकरण में दो वसीयतें हैं, उनके आधार पर निगरानीकर्ता एवं प्रतिवादी द्वारा वाद प्रतिवाद किया जा रहा है। उल्लेखनीय है कि विवादित भूमि खाता संख्या 69 पर दर्ज खातेदार वंशगोपाल, श्रीपाल, शिवराम, रामरतन आपस में सगे भाई है तथा निगरानीकर्ता श्रीमती निर्मला देवी, रामरतन की पत्नी है और प्रतिवादी कैलाश श्रीपाल पुत्र रघुवर दयाल का पुत्र है। प्रतिवादी कैलाश पुत्र श्रीपाल के पक्ष में वंशगोपाल पुत्र रघुवर दयाल द्वारा निष्पादित पंजीकृत वसीयत दिनांक 14.08.1997 के हासिया गवाह छत्रपाल सिंह पुत्र बल्देव सिंह तथा दूसरे हासिया गवाह प्रतिवादी कैलाश के सगे चाचा शिवराम पुत्र रघुवर दयाल निवासी हरनी है, परन्तु अवर न्यायालय में दूसरे गवाह शिवराम द्वारा कैलाश के पक्ष में निष्पादित वसीयत के सम्बन्ध में पक्षद्रोही हो जाने के

कारण प्रतिवादी कैलाश द्वारा पंजीकृत वसीयत 14.08.1997 को गवाह छत्रपाल सिंह के बयान द्वारा प्रमाणित कराया है और वसीयत का अभिप्रमाणण होने पर अवर न्यायालय द्वारा आदेश पारित किया गया है।

जहाँ तक निगरानीकर्ता निर्मला देवी द्वारा प्रस्तुत अपंजीकृत वसीयत दिनांक 26.12.1998 के आधार पर विवादित भूमि पर अपना नाम दर्ज किए जाने की मांग है। यह वसीयत कैलाश द्वारा प्रस्तुत वसीयत के बाद की है, परन्तु अवर न्यायालय में प्रतिवादी कैलाश पुत्र श्रीपाल द्वारा जिला चिकित्सालय सीतापुर के चिकित्साधिकारी द्वारा दिनांक 26.02.1999 को जारी मृत्यु प्रमाण पत्र प्रस्तुत किया गया है, जिससे विदित है कि निगरानीकर्ता के पक्ष में निष्पादित अपंजीकृत वसीयत दिनांक 26.12.1998 से लगभग 9 दिन पूर्व दिनांक 16.12.1998 को वंशगोपाल पुत्र रघुवर दयाल को जिला अस्पताल सीतापुर में भर्ती कराया गया था, जिनका देहान्त दिनांक 01.01.1999 को हो गया। इस प्रकार इससे स्पष्ट होता है कि वसीयत के दिन, दिनांकित 26.12.1998 को वंशगोपाल अस्पताल में भर्ती थे, जिनका देहान्त दिनांक 01.01.1999 को हो गया। इस प्रकार वंशगोपाल पुत्र रघुवर को प्रसन्न चित, स्वस्थ बुद्धि की अवस्था में वसीयत दिनांक 16.12.1998 को उल्लेखित है, सन्देहात्मक और विश्वसनीय प्रतीत नहीं होता है।

इस वाद में एक आपत्ति श्रीमती रानी पत्नी शिवराम द्वारा अवर न्यायालय में दिनांक 17.01.2019 को प्रस्तुत करके मांग की है कि वंशगोपाल मृतक हो गये हैं, उन्होंने अपने जीवनकाल में कोई वसीयत नहीं लिखी है, कैलाश पुत्र श्रीपाल तथा श्रीमती निर्मला देवी पत्नी रामरतन द्वारा प्रस्तुत वसीयतें वंशगोपाल की मृत्यु के बाद फर्जी तैयार की गयी है। वंशगोपाल की मृत्यु के समय वंशगोपाल के भाई श्रीपाल, शिवराम व रामरतन जीवित थे, इस कारण वरासत के आधार पर वंशगोपाल की सम्पत्ति के जायज वारिस श्रीपाल, शिवराम व रामरतन हुए और श्रीपाल की मृत्यु के बाद उनकी सम्पत्ति के उत्तराधिकारी शिवसागर, कैलाश, शिवराम की मृत्यु के उपरान्त उत्तराधिकारी रानी व रामरतन की मृत्यु के बाद उनकी पत्नी निर्मला देवी हैं। इस प्रार्थना - पत्र का विरोध कैलाश व श्रीमती निर्मला देवी द्वारा किया गया, परन्तु आगे श्रीमती रानी द्वारा इस पर कोई पैरवी नहीं की गयी। यहां पर उल्लेखनीय यह है कि शिवराम पुत्र रघुवर दयाल की पत्नी रानी देवी व सगे भाई रामरतन की पत्नी निगरानीकर्ता निर्मला देवी आपस में सगी बहनें हैं और इसी रिश्ते के चलते ऐसा प्रतीत होता है कि मृतक खातेदार वंशगोपाल पुत्र रघुवर दयाल की भूमि को प्राप्त करने की नीयत से निर्मला देवी

के साथ मिलकर एक अन्य वसीयत बनवाई गयी और कैलाश के पक्ष में निष्पादित पंजीकृत वसीयत जिसमें शिवराम हासिया गवाह हैं तथा कैलाश के सगे चाचा हैं, के द्वारा कैलाश के पक्ष में निष्पादित वसीयत का विरोध किया जाने लगा। गवाह शिवराम का वसीयत दिनांक 14.08.1997 पर लगे निशानी अंगूठे का अंगुष्ठ विशेषज्ञ द्वारा दो बार परीक्षित कराया गया है, जिसमें शिवराम के सम्बन्ध में दोनों अंगुष्ठ विशेषज्ञ द्वारा आख्याएं भी विरोधाभासी हैं।

उपरोक्त विवेचना के आधार पर यह सिद्ध होता है कि मृतक वंशगोपाल पुत्र रघुवर दयाल की भूमि के सम्बन्ध में दो वसीयतें हैं, दोनों ही वसीयतें संदिग्धता लिए हुए हैं। यद्यपि वसीयत दिनांक 14.08.1997 को दूसरे गवाह छत्रपाल सिंह के द्वारा अवर न्यायालय में अभिप्रमाणण कराते हुए वसीयत के आधार पर कैलाश पुत्र श्रीपाल का नाम अंकित किया गया है, परन्तु दोनों वसीयतें संदिग्ध की परिधि में हैं। प्रस्तुत प्रकरण में साक्ष्यों की आवश्यकता है। अतः वाद के न्यायहित में वाद चकबन्दी अधिकारी अन्तिम अभिलेख - प्रथम के न्यायालय पर प्रत्यावर्तित किया जाना उचित प्रतीत होता है कि वह दोनों वसीयतों के सम्बन्ध में गहन परीक्षण करते हुए तथा उभयपक्षों द्वारा साक्ष्य आदि प्राप्त कर वाद का निर्णय गुणदोष के आधार पर करें। तदनुसार निगरानीकर्ता द्वारा प्रस्तुत निगरानी स्वीकार किये जाने योग्य है। अतः आदेश हुआ कि -

आदेश

उपरोक्त विवेचना के आधार पर निगरानीकर्ता निर्मला देवी पत्नी स्व रामरतन निवासी ग्राम हरनी परगना सीतापुर तहसील सीतापुर वर्तमान तहसील महोली जिला सीतापुर द्वारा प्रस्तुत निगरानी स्वीकार की जाती है। अपीलीय न्यायालय द्वारा पारित आदेश दिनांक 25.08.2023 तथा चकबन्दी अधिकारी द्वारा पारित आदेश दिनांक 13.01.2023 निरस्त किया जाता है। वाद चकबन्दी अधिकारी अन्तिम अभिलेख - प्रथम के न्यायालय में इस निर्देश के साथ प्रत्यावर्तित किया जाता है कि वह वाद में प्रस्तुत वसीयत दिनांक 14.08.1997 व 26.12.1998 के सम्बन्ध में गहन परीक्षण करते हुए तथा साक्ष्य आदि लेकर वाद का निस्तारण नियमानुसार / विधि अनुकूल गुणदोष के आधार पर करें। पक्ष चकबन्दी अधिकारी अन्तिम अभिलेख - प्रथम के न्यायालय पर दिनांक 28.02.2025 को उपस्थित हों। आदेश की एक प्रति चकबन्दी अधिकारी अन्तिम अभिलेख - प्रथम के न्यायालय को भेजी जाय । पत्रावली बाद आवश्यक कार्यवाही संचित अभिलेखागार हो।

ह० अपठनीय

(नीतीस कुमार सिंह)

अपर जिलाधिकारी (वि० / रा०) / उप संचालक
चकबन्दी
सीतापुर "

5. From the order impugned dated 14.02.2025, including the above quoted portion of the same it is apparent that the D.D.C. has to provide only proper opportunity of hearing to the parties to the litigation and thereafter he has to pass a reasoned order on each issue.

6. While assailing the impugned order dated 14.02.2025, learned counsel for the petitioner stated that the order of remand, under challenge, dated 14.02.2025 is unsustainable in the eye of law, in view of the various pronouncements/judgments and language considered under Section 48 of the Act of 1953. As such, indulgence of this Court is required in the matter.

7. In continuation, it is further stated that all the material was available before the Deputy Director of Consolidation and the Act, 1953 itself provides wide power to the Deputy Director of Consolidation, as appears from the language considered under Section 48 of the Act of 1953, including the explanation (s) therein and he ought to have decided the case of the parties on merits after providing proper opportunity of hearing to them. Thus, the opposite party No.1 erred in law and fact while passing the order impugned dated 14.02.2025.

8. Sri Hemant Kumar Pandey, learned Standing Counsel for the State/opposite party No.1 assisted this Court on the issue involved in the present petition. He also could not dispute the power of opposite party No.1 under Section 48 of the Act of 1953.

9. Considered the submissions advanced by the learned counsel for the parties and perused the record.

10. In order to decide the present petition, this Court feels it appropriate to reproduce Section 48 of the Act of 1953, which is as under :-

"[48. Revision and reference. - (1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order] [other than an interlocutory order] passed by such authority in the case or proceedings, may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.

(2) Powers under sub-section (1) may be exercised by the Director of Consolidation also on a reference under sub-section (3).

(3) Any authority subordinate to the Director of Consolidation may, after allowing the parties concerned an opportunity of being heard, refer the record of any case or proceedings to the Director of Consolidation for action under sub-section (1).

[Explanation. -] [(1)] For the purposes of this section, Settlement Officers, Consolidation, Consolidation Officers, Assistant Consolidation Officers, Consolidator and Consolidation Lekhpals shall be subordinate to the Director of Consolidation.

Explanation (2) - For the purposes of this section the expression 'interlocutory order' in relation to a case or proceeding, means such order deciding any matter arising in such case or proceeding or collateral thereto as does not have the effect to finally disposing of such case or proceeding.

[Explanation (3). - The power under this section to examine the correctness, legality or propriety of any order includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority, and also includes the power to re-appreciate any oral or documentary evidence.]

11. At this stage, it is also appropriate to refer various pronouncements on the scope/power of Deputy Director of Consolidation under Section 48 of the Act of 1953.

12. In the judgment dated 24.09.2014 passed by this Court in the case of **Ram Udit v. D.D.C.** reported in MANU/UP/1768/2014, this Court considering the Scheme of the Act of 1953 and Section 48 observed as under:-

"10. The Scheme of the statute contemplates a tentative plan, inviting objection from stake-holder, i.e. tenure holder, and, after considering the same, finalization of plan, i.e., allotment of Chaks. There against appellate power has been conferred upon SOC under Section 21(2) of Act 1953. The power which is exercised by DDC, is termed "Revision and reference" under Section 48 of Act, 1953.

11. The original Section 48, as enacted initially, read as under:

"48. Revision.-Director of Consolidation may call for the record of any case if the Officer (other than the Arbitrator) by whom the case was decided appears to have exercised a jurisdiction not vested in him by law or to have failed to exercise jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with substantial irregularity and may pass such orders in the case as it thinks fit."

12. It was amended by substitution by U.P. Act No. 24 of 1956 as under:

"48. Powers of Director of Consolidation to call for records and to revise orders.-The Director of Consolidation may call for the record of any case or proceeding if the Officer (other than the Arbitrator) by whom the case was decided or proceeding taken appears to have exercised jurisdiction not vested in him by law or to have failed to exercise jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with substantial irregularity and may pass such orders in the case as it thinks fit."

(amendment in bold)

13. Within a short period, it was again amended by U.P. Amendment Act No. 38 of 1958 as under:

"48. Revision.-The Director of Consolidation may call for the record of any case decided or proceedings taken, where he is of opinion that a Deputy Director, Consolidation has –

(i) exercised jurisdiction not vested in him in law, or

(ii) failed to exercise jurisdiction vested in him, or

(iii) acted in the exercise of his jurisdiction illegally or with substantial irregularity, and as a result of which, substantial injustice appears to have been caused to a tenure-holder and he may 4, after affording reasonable opportunity of hearing to the parties concerned, pass such order in the case or proceeding as he thinks fit."

(amendment in bold)

14. Section 48 underwent a minor amendment vide Section 39 of U.P. (Amendment) Act No. VIII of 1963. An Explanation was added by Act No. 4 of 1969 with retrospective effect. Major amendment came to be made by U.P. Act No. 20 of 1982 inasmuch as, in sub section(1) the words "other than an interlocutory order" were inserted w.e.f. 10.11.1980. The explanation inserted in 1969 was re-numbered as Explanation- (1) by Act No. 20 of 1982 w.e.f. 10.11.1980 and then Explanation(2) was added w.e.f. 10.11.1980.

15. Presently, Section 48 reads as under:

"48. Revision and reference.-(1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order [other than interlocutory order] passed by such authority in the case of proceedings and may, after allowing the parties concerned an opportunity of being heard, make such

order in the case of proceedings as he thinks fit.

(2) Powers under Sub-section (1) may be exercised by the Director of Consolidation also on a reference under Sub-section (3).

(3) Any authority subordinate to the Director of Consolidation may, after allowing the parties concerned an opportunity of being heard, refer the record of any case or proceedings to the Director of Consolidation for action under subsection (1).

Explanation (1)-For the purposes of this section, Settlement Officer, Consolidation, Consolidation Officers, Assistant Consolidation Officers, Consolidator and Consolidation Lekhpals shall be subordinate to the Director of Consolidation.

Explanation (2). For the purpose of this section the expression 'interlocutory order' in relation to a case or proceedings, means such order deciding any matter arising in such case or proceeding or collateral thereto as does not have the effect of finally disposing of such case or proceeding.

Explanation (3).-The power under this section to examine the correctness, legality or propriety of any order includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority, and also includes the power to re-appreciate any oral or documentary evidence."

(emphasis added)

16. Section 48 as it was initially enacted came to be considered in Sher Singh (dead) Vs. Joint Director of Consolidation and others

MANU/SC/0514/1978 : (1978) 3 SCC 172. The Court observed that a bare reading show that it is pari materia with Section 115 CPC which confines revisional jurisdiction of High Court to cases of illegal or irregular exercise or non exercise or illegal assumption of jurisdiction by subordinate Courts. If a subordinate court is found to possess the jurisdiction to decide a matter, it cannot be said to exercise it illegally or with' material irregularity even it decides the matter wrongly. Relying on the cases interpreting Section 115 CPC, the Court held that whatever revisional jurisdiction was available to High Court under Section 115, the same was the scope of revisional jurisdiction of DDC under Section 48 and it has no jurisdiction to go into errors of facts. The Court said that an erroneous decision on a question of fact or of law reached by subordinate court which has no relation to question of jurisdiction of that court, cannot be corrected by High Court under Section 115 CPC and same would apply to DDC under Section 48. The Court further observed that consolidation authorities subordinate to Joint Director possess plenary jurisdiction and competence to go into the question of correctness or otherwise of entries in revenue records. If there are concurrent findings of fact of two Courts, which do not leave any ground, as observed above, in revisional jurisdiction, interference by Joint Director of Consolidation would not be competent. In para 16 of the judgment, the Court said:

"Thus the subordinate Consolidation authorities not having acted illegally in exercising their jurisdiction, the Joint Director of Consolidation was not competent to interfere with their decisions."

17. Section 48 as amended in 1963 then came to be considered in Ramakant Singh Vs. Deputy Director of Consolidation, U.P. and others MANU/UP/0026/1975 : AIR 1975 All 126 but therein the Court while considering Section 48(1), to the question, whether Deputy Director of Consolidation, once has called for record, is it incumbent on him to decide the matter on merit or it can decline and dismiss the revision on any technical ground like lack of impleadment of proper party etc.

18. Amended section 48 in 1963, then came to be considered in Shanti Prakash Gupta Vs. DDC 1981 SCC (Suppl) 73. Therein the Court observed that Section 48 as then stood, vide amendment of 1963, was wider than Section 115 CPC. However, it proceeded to hold that Director should not lightly interfere with discretion of C.O. unless the order sought to be reversed is palpably erroneous or likely to cause miscarriage of justice. To the same effect and imposing similar restriction, observations were made in Ram Dular Vs. Dy. Director of Consolidation MANU/SC/1004/1994 : (1994) Supp(2) SCC 198 as under:

"It is clear that the Director had power to satisfy himself as to the legality of the proceedings or as to the correctness of the proceedings or correctness, legality or propriety of any order other than interlocutory order passed by the authorities under the Act. But in considering the correctness, legality or propriety of the order or correctness of the proceedings or regularity thereof it cannot assume to itself the jurisdiction of the original authority as a fact-finding authority by appreciating for itself of those facts de novo. It has to consider whether

the legally admissible evidence had not been considered by the authorities in recording a finding of fact or law or the conclusion reached by it is based on no evidence, any patent illegality or impropriety had been committed or there was any procedural irregularity, which goes to the root of the matter, had been committed in recording the order or finding."

19. A slight different observation came to be made in *Preetam Singh Vs. Assistant Director of Consolidation and others* MANU/SC/0742/1996 : (1996) 2 SCC 270 where the Court said:

"When the matter was in revision before the Assistant director (Consolidation), he had the entire matter before him and his jurisdiction was unfettered. While in seisin of the matter in his revisional jurisdiction, he was in complete control and in position to test the correctness of the order made by the Settlement Officer (Consolidation) effecting remand. In other words, in exercise of revisional jurisdiction the Assistant Director (Consolidation) could examine the finding recorded by the Settlement Officer as to the abandonment of the land in dispute by those tenants who had been recorded at the crucial time in the Khasra of 1359 Fasli. That power as a superior court the Assistant Director (Consolidation) had, even if the remand order of the Settlement Officer had not been specifically put to challenge in separate and independent proceedings. It is noteworthy that the Court of the Assistant Director (Consolidation) is a court of revisional jurisdiction otherwise having suo moto power to correct any order of the subordinate officer. In this situation the Assistant Director (Consolidation) should

not have felt fettered in doing complete justice between the parties when the entire matter was before him. The war of legalistics fought in the High Court was of no material benefit to the appellants. A decision on merit covering the entire controversy was due from the Assistant Director (Consolidation). (para-6)

(emphasis added)

20. Yet in *Ram Avtar Vs. Ram Dhani*, MANU/SC/0034/1997 : AIR 1997 SC 107, the Court, in para 8, observed:

"This Court has repeatedly pointed out that howsoever wide the power under statutory revision may be in contrast to Section 115 of the Code of Civil Procedure, still while exercising that power the authority concerned cannot act as a Court of appeal so as to appreciate the evidence on record for recording findings on question of fact."

21. These observations again put the things in the shape bringing the scope of jurisdiction under Section 48 nearer to jurisdiction as contained in Section 115 CPC.

22. Section 48(1) as it stood before its amendment in 1963 and subsequent thereto, both came to be noticed in *Sheshmani and another vs. The Deputy Director of Consolidation, District Basti, U.P. and others* MANU/SC/0079/2000 : 2000(2) SCC 523. Referring to earlier decision in *Sher Singh Vs. Joint Director of Consolidation (supra)* and *Ram Dular Vs. DDC (supra)* and the intervening amendment, the Court followed the observations made in *Ram Dular*, as noticed above and then upheld the order passed by DDC holding that orders of CO.

and Additional Settlement Consolidation Officer were against settled principles of law, therefore, DDC was justified in exercise of revisional power, for coming to a different conclusion.

23. It is in these circumstances, Legislature intervened by inserting Explanation-3, by U.P. Act No. 3 of 2002, giving effect from 10.11.1980 but in *Karan Singh Vs. DDC* 2003(94) RD 382 this Court said that even after addition of Explanation-3, DDC cannot substitute its own finding in place of subordinate authorities.

24. Recent decision in *Jagdamba Prasad Vs. Kripa Shankar* MANU/SC/0274/2014 : (2014) 5 SCC 707 which has also considered Section 48 as amended in 1963, in para 15, following the earlier decision in *Sher Singh Vs. Joint Director of Consolidation* (supra) it has said:

"15. According to the legal principle laid down by this Court in the case mentioned above, the power of the Revisional Authority under Section 48 of the Act only extends to ascertaining whether the subordinate courts have exceeded their jurisdiction in coming to the conclusion. Therefore, if the Original and Appellate Authorities are within their jurisdiction, the Revisional Authority cannot exceed its jurisdiction to come to a contrary conclusion by admitting new facts either in the form of documents or otherwise, to come to the conclusion. Therefore, we answer point no. 1 in favour of the appellants by holding that the Revisional Authority exceeded its jurisdiction under Section 48 of the Act by admitting documents at

revision stage and altering the decision of the subordinate courts."

25. It is thus difficult to observe that Explanation III to Section 48 has brought the scope of revision at par with the appellate jurisdiction so as to assess the evidence on pure issue of fact and recording findings *de novo*. Revisional power is not a power of first or second appellate Court which are final Courts of fact and findings recorded therein would be possible to be interfered under Section 48 on the ground discussed in *Ram Dular* (Supra), *Sheshmani* (Supra) and *Jagdamba Prasad* (supra).

26. Impugned orders in these matters are all subsequent to 1980 and, therefore, could be governed by aforesaid provision as it is. Sub Section (1) of Section 48 in effect deals revisional power while sub sections (2) and (3) relate to reference made by an authority subordinate to Director of Consolidation. From a bare and plain reading of Section 48(1) it is evident that Director of Consolidation has been given power to call for and examine any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself (i) to the regularity of the proceedings and (ii) to the correctness, legality or propriety of any order."

13. In the judgment dated 18.06.2015 passed in ***Writ Petition No. 436 (Consolidation) of 2015 (Prem Nath and others vs. D.D.C., Barabanki and others)***, this Court observed as under:-

"Appeal under Section 11 and Revision under Section 48 of Act 1953 are two distinct statutory remedies. The scope of the two remedies is also

different. Powers of revision under Section 48 and appeal under Section 11 are distinct. The appellate powers are of wider amplitude. Howsoever wide the power under Section 48 may be, even after amendment made in the year 2002, it does not permit the revisional authority to summon the records and decide the merits of an appeal pending before the SOC under Section 11 without the appellate authority having passed any order deciding the appeal or an order deciding any matter which has the effect of disposing of the appeal. Such action is destructive of the statutory remedy of appeal under the Act 1953. No doubt, the DDC has suo moto powers under Section 48 but it does not mean that he can call for the record of appeal pending before the SOC and decide the same on merits without the appellate authority having decided the same. Reference may be had in this regard to a decision of this Court in the case of Ranjeet and others Vs. Dy. Director of Consolidation Ballia and others reported in 1999(90) RD 363 wherein during pendency of appeal against an order of subordinate authority a revision was filed before the DDC under Section 48 against the same order. Reliance was placed by the respondents therein upon various decision including a Full Bench decision of this Court in the case of Ramakant Singh Vs. Deputy Director of Consolidation, reported in 1974 (suppl.) RD 262. This Court, after considering the said Full Bench and other decisions, held as under:--

"6. The facts of these three cases relied upon by the learned counsel for the respondent no. 2 are different, in all these three cases the appeal before the Settlement Officer was not pending, in the instant case, as seen above the appeal and cross-appeals were pending before the

Settlement Officer (Consolidation), the petitioners specifically urged before the Deputy Director of Consolidation that in view of the pendency of the appeal, the revision was not maintainable. The present case is a case where the jurisdiction exercised by the Deputy Director of Consolidation is destructive of the statutory remedy of appeal and it is a fit case which calls for interference in petitions under Articles 226/227 of the Constitution of India."

In another case reported in [2007 (102) RD 250] Chhakku Ram and others Vs. Deputy Director of Consolidation, Varanasi and others a revision was filed under Section 48 challenging the order of SOC dismissing the appeal on the ground of limitation. The issue was as to whether while considering validity of the order passed by the SOC the revisional authority could have considered and decided the merits of the controversy also. This Court again after considering the Full Bench decision in Ramakant Singh's case (supra) held as under:--

"3. Counsel for the respondents Sri Sankatha Rai assisted by Sri Pradip Rai made two submissions on the point of maintainability. First that even if the Deputy Director of Consolidation has not given any specific finding regarding the condonation of delay the delay would be deemed to have been condoned by him when he entered into the merits of the case. On this point he relied a decision in M. B. Shah V. B. N. Agarwal (AIR 2002 SC 451). This decision has no application to the present case. It is not in dispute that the revision, which was filed by respondent No. 2 was within time against the order of the Settlement Officer Consolidation. It was the appeal before the Settlement Officer

Consolidation, which had been dismissed on the ground of limitation. It is also submitted that the record of the case was before the Deputy Director of Consolidation and he could, therefore, decide the case on merits. In support reliance is placed upon the Full Bench decision of this Court in Ramakant Singh V. Deputy Director of Consolidation (AIR 1975 Alld. 126). In that case the question referred was whether after the record is called for under section 48 the Deputy Director of Consolidation can dismiss the revision for non-impleadment of a necessary party in the memorandum of revision or he can decide the case after hearing the party not impleaded. It was held that after the record has been examined the Deputy Director of Consolidation can exercise the revisional jurisdiction suo moto and take appropriate decision after hearing the affected parties. The Full Bench further holds that if the revision application is not defective the exercise of the revisional jurisdiction shall be at the instance of the parties and not suo moto. In the present case the revision was not defective. The exercise of jurisdiction was therefore at the instance of the petitioner and not suo moto. The Deputy Director of Consolidation was therefore required to examine the correctness of the order of the Settlement Officer Consolidation dismissing the appeal on the ground of limitation, which was the order challenged and not the merits of the chak allotment. Counsel for the petitioners relied upon a decision of this Court in Bashir Ahmad Khan V. Deputy Director of Consolidation, Ghazipur and others (2005(98) RD 378) in which this Court in similar circumstances has taken the view that the proper course for the Deputy Director of Consolidation in a revision against an order of Settlement Officer

Consolidation dismissing the appeal on the question of limitation is to examine the correctness of that order. It appears from the facts and circumstances of this case too the proper course to be adopted by the Deputy Director of Consolidation was to examine the correctness of the order of the Settlement Officer Consolidation, which he failed to do. As regards the merits also I find that the order of the Deputy Director of Consolidation cannot be sustained. The contention of the learned counsel for the petitioners is that the loss, which would be occasioned to the petitioners by the modification in the chaks made by the Deputy Director of Consolidation has not been considered. Reliance is placed upon the averments made in paragraph 6 of the writ petition in which it is stated that there is a house of the petitioner No. 2 adjoining plot No. 368. If it be true that the petitioner No. 2 does have his house adjoining plot No. 368 it would be a circumstance in favour of the petitioner No. 2 for allotment of a chak near his abadi. No opinion, however, is being expressed by this Court upon this point as it is proposed to remand the case to the Deputy Director of Consolidation for fresh decision."

In the case at hand there has been no adjudication by the SOC either of the appeal in entirety or of any matter/issue. Even after amendment in the year 2002 and addition of explanation 3 to Section 48 the revisional authority is not empowered to adopt the course of action as done by him in this case. Explanation 3 only empowers him to enter into the question of fact to examine any finding recorded by the subordinate authority whether on fact or law and in this context it includes the power to re-appreciate the evidence for the purpose of examination of correctness, legality or propriety of any

such finding. It does not mean that the revisional authority can call for the records of the appellate authority and decide the appeal himself in exercise of his revisional powers without any finding having been recorded by the appellate authority or appeal itself having been decided. Reference may be made in this regard to the pronouncement made by this Court in the case of Karan Singh (Dead) Through L. Rs. Vs. Deputy Director of Consolidation, Aligarh and others, reported in [2003(94) RD 382 wherein after noticing the decision of the apex court in Gaya Deen (D) through L.Rs and others Vs. Hanuman Prasad (D) through L. Rs and others reported in [2001 (92) RD 79 (SC) as also the amendment of 2002 the Court held in para 6 as under:--

"..... The amendment of Section 48 of the Act has widened the scope of the powers of the Deputy Director of Consolidation. It has given power to him to reappraise the evidence but it nowhere provided that the Deputy Director of Consolidation will have jurisdiction to reverse the findings recorded by the authorities below and can substitute his own findings. The Apex Court in Gaya Din (D) through L.Rs. and others Vs. Hanuman Prasad (D) through L.Rs. and others [(2001(92) RD 79 (SC)] specifically laid down that the Deputy Director of Consolidation has got no jurisdiction to act as the Consolidation Officer or the Settlement Officer Consolidation, otherwise there will remain no difference in the powers of the Consolidation Officer, the Settlement Officer Consolidation and the Deputy Director of Consolidation while dealing with the cases originally, in appeal and revision. In case the Deputy Director of Consolidation was of the opinion that the findings recorded were bad in law, he

could set aside the same after reappraisal of the evidence and could remand the case for decision afresh."

Reference may also be made to another decision of this Court in the case of Bashir Ahmad Khan (D) through L. Rs. V. Deputy Director of Consolidation and others reported in 2005(1) AWC 924 (Alld) wherein the question which arose for consideration was regarding jurisdiction of the revisional authority to decide a revision challenging the order of the appellate authority dismissing the appeal on the ground of limitation, on merits. A learned single Judge of this Court referring to a Division Bench judgment of this Court in the case of Tirath V. Joint Director of Consolidation reported in 1985 RD 276 held as under:--

"10. A Division Bench of this Court vide judgment in the case of Tirath V. Deputy Director of Consolidation (supra), answered the question in negative. While repealing the contention that authority exercising the power under Section 48 of the Act have very wide power including suo moto power and can look into the record and if there is any defect it can be corrected by him, it was observed by the Division Bench as follows:

"In this view of the matter, the revisional authority was called upon to examine the record of the case as it pertains to the appeal before appellate authority. The principal reason given by the appellate authority for dismissing the appeal was that it was barred by time. The revisional authority had to see whether the order was justified in law or not. It had to examine whether any application has been made for condonation of delay and whether any adequate reason has been given for the

same or not, and whether the order dismissing the appeal as time barred was justified in the circumstances of the case and we would observe here that in a revision under Section 48 (1) of the Act where there is no defect in the revision itself to merit its rejection in limine, the revisional authority has to confine itself to the decision in the appeal and the ground given for the decision in that order. We are further of the opinion that it was not open to the revisional authority to go into the question of merits while exercising the powers conferred under Section 48 (1) in the above circumstances."

The law laid down by the Division Bench in the case of *Tirath V. Deputy Director of Consolidation* (supra) is squarely applicable to the facts of this case.

11. In the present case also the order passed by Settlement Officer Consolidation was not an adjudication of the claim of the parties on merits, but an order dismissing the appeal as barred by limitation. The Deputy Director of Consolidation without considering the legality or otherwise, of the order passed by the Settlement Officer Consolidation and without setting aside his findings straightway proceeded to decide the revision on merits. It was incumbent upon the Deputy Director of Consolidation to have considered the order of Settlement Officer Consolidation refusing to condone the delay in filing the appeal on its own merit and if satisfied about the sufficiency of the ground for delay ought to have set aside the order of the Settlement Officer Consolidation dismissing the appeal as time barred and remand the case back to him to be decided on merits. It was not

open to him to proceed and decide the revision on merits."

Thus clearly the scope of revision under Section 48 and that of appeal under Section 11 being different and two separate statutory remedies having been provided, there being no adjudication of the appeal nor of any substantial issue involved therein by the appellate authority, it was not open for the Deputy Director of Consolidation to decide the merits of the pending appeal in exercise of his powers under Section 48. It was clearly not the scope of revision except to the limited extent pointed out hereinabove. The entire dispute was not available for adjudication before the revisional authority. The revision itself was not maintainable as the orders impugned were purely interlocutory."

14. This Court in the judgment dated 30.04.2019 passed in the case of ***Gulab Chand v. D.D.C. reported in 2019 SCC OnLine All 4756*** has observed as under:-

"14. This Court has given a thoughtful consideration to rival submissions advanced on both sides. It is true, no doubt, that powers of the Deputy Director of Consolidation under Section 48 of the Act have always been regarded as wide, though inhibited in some regard, being a Court of Revision. The import of the powers of the Deputy Director of Consolidation under Section 48 of the Act as they have been always understood has been succinctly laid down by the Supreme Court in *Sheo Nand v. Deputy Director of Consolidation, Allahabad*, (2000) 3 SCC 103, where in para graphs 20 & 21 of the report, it has been held:

"20. The section gives very wide powers to the Deputy Director. It enables him either suo motu on his own motion or on the application of any person to consider the propriety, legality, regularity and correctness of all the proceedings held under the Act and to pass appropriate orders. These powers have been conferred on the Deputy Director in the widest terms so that the claims of the parties under the Act may be effectively adjudicated upon and determined so as to confer finality to the rights of the parties and the revenue records may be prepared accordingly.

21. Normally, the Deputy Director, in exercise of his powers, is not expected to disturb the findings of fact recorded concurrently by the Consolidation Officer and the Settlement Officer (Consolidation), but where the findings are perverse, in the sense that they are not supported by the evidence brought on record by the parties or that they are against the weight of evidence, it would be the duty of the Deputy Director to scrutinise the whole case again so as to determine the correctness, legality or propriety of the orders passed by the authorities subordinate to him. In a case, like the present, where the entries in the revenue records are fictitious or forged or they were recorded in contravention of the statutory provisions contained in the U.P. Land Records Manual or other allied statutory provisions, the Deputy Director would have full power under Section 48 to reappraise or re-evaluate the evidence-on-record so as to finally determine the rights of the parties by excluding forged and fictitious revenue entries or entries not made in accordance with law."

15. The Supreme Court in the case of **Sheo Nand vs. D.D.C., Allahabad,**

(2000) 3 SCC 103 also said that, "it would be the duty of the Deputy Director to scrutinise the whole case so as to determine the correctness, legality or propriety of the orders passed by the authorities subordinate to him." Paragraphs 20 to 22 of the aforesaid judgment are extracted herein below :-

"20. The section gives very wide powers to the Deputy Director. It enables him either suo motu on his own motion or on the application of any person to consider the propriety, legality, regularity and correctness of all the proceedings held under the Act and to pass appropriate orders. These powers have been conferred on the Deputy Director in the widest terms so that the claims of the parties under the Act may be effectively adjudicated upon and determined so as to confer finality to the rights of the parties and the revenue records may be prepared accordingly.

21. Normally, the Deputy Director, in exercise of his powers, is not expected to disturb the findings of fact recorded concurrently by the Consolidation Officer and the Settlement Officer (Consolidation), but where the findings are perverse, in the sense that they are not supported by the evidence brought on record by the parties or that they are against the weight of evidence, it would be the duty of the Deputy Director to scrutinise the whole case again so as to determine the correctness, legality or propriety of the orders passed by the authorities subordinate to him. In a case, like the present, where the entries in the revenue records are fictitious or forged or they were recorded in contravention of the statutory provisions contained in the U.P. Land Records Manual or other allied statutory provisions, the Deputy Director

would have full power under Section 48 to reappraise or re-evaluate the evidence-on-record so as to finally determine the rights of the parties by excluding forged and fictitious revenue entries or entries not made in accordance with law

22. If, therefore, during the course of the hearing of the revision filed by the appellant under Section 48 of the Act, the Deputy Director reopened the whole case and scrutinised the claim of the appellants in respect of two other villages, it could not be said that the Deputy Director exceeded his jurisdiction in any manner. It will be noticed that while scrutinising the evidence-on-record, the Deputy Director had noticed that the entries were fictitious and in recording some of the entries in the revenue records in favour of the appellants, statutory provisions including those contained in the U.P. Land Records Manual were not followed. In that situation, the Deputy Director was wholly justified in looking into the legality of the entire proceedings and disposing of the revision in the manner in which he has done."

16. Regarding the scope of the revisional powers of the Deputy Director of Consolidation under Section 48 of the Act, 1953 this Court in **Ram Jeet v. Deputy Director of Consolidation, Jaunpur and others, Writ - B No. 42465 of 1999**, decided on 31.05.2013, observed as under:-

"17. Supreme Court in *Ram Dular v. DDC*, 1994 Supp (2) SCC 198, *Preetam Singh v. DDC*, (1996) 2 SCC 270, *Sheo Nand v. DDC*, (2000) 3 SCC 103, *Gulzar Singh v. DDC*, (2009) 12 SCC 590 has consistently held that Deputy Director of Consolidation has very wide power to decide issue relating to fact and

law both under Section 48 of the Act after re-appreciating the evidence on record. Apart from it Explanation III has been added in Section 48 of the Act with retrospective effect from 10.11.1980 which provides that the power under this Section to examine the correctness, legality or propriety of any order includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority and also includes the power to re-appreciate any oral or documentary evidence. The case law relied upon by the counsel for the petitioner does not hold a good law and contrary to the decision of the Supreme Court."

17. As in this case, the remand order passed by Deputy Director of Consolidation is in issue, this Court also feels it appropriate to refer some judgments on this aspect.

18. In the case of **Bashir Ahmad Vs. DDC reported in 1986 RD 164**, it has been held that an order remanding the case to the Consolidation Officer when the entire evidence was before him was not proper and the DDC should have decided the matter himself as he was exercising very comprehensive power under section 48 of the Act.

19. In the judgment rendered in the case of *Ram Autar and others vs. Deputy Director of Consolidation and others*, 1991 Supp (1) SCC 552, the Supreme Court has observed that the High Court should have remanded the matter to the Deputy Director of Consolidation and not to the Consolidation Officer as that would have saved the parties from fighting at three stages and would have expedited the final disposal of the matter. The question before the Supreme Court was with regard

to the objections under Section 9-A of the U.P. Consolidation of Holdings Act being decided by the Consolidation Officer in favour of one party against which, the other party went in appeal. In the appeal, the objections that were rejected by the Consolidation Officer, were said to be valid objections and were allowed. The appellants after unsuccessfully moving the Deputy Director of Consolidation in revision filed a writ petition before the High Court, which was dismissed by the Writ Court and the appellants thereafter filed an appeal, which was also dismissed by the Division Bench. The Supreme Court observed that the case of the respondents was that no notice was ever sent to them at the final stage when the order was passed in favour of the appellants and without hearing the order being ex-parte, ought to have been set aside and the matter was rightly remanded. The Supreme Court, however, observed that the High Court should have remanded the matter to the Deputy Director of Consolidation and not to the Consolidation Officer as that would have saved the parties from fighting at three stages before the revenue officers and would have expedited the final disposal of the case.

20. Further, the Supreme Court in the judgment passed in the case of **Ashwin Kumar Patel vs. Upendra J. Patel, AIR 1999 SC 1125**, observed that exercising power of remand is a luxury exercise of jurisdiction. The Court should refrain from remanding the case and should make endeavour to decide the case finally instead of remanding the case.

21. This Court again in the case of **Bhagwat Prasad Vs. DDC reported in 2006 RD (101) 383** has held that the revisional court is fully empowered to

examine the findings on fact or on law and there is no need to remand the case. Under the circumstances, directions were issued to the revisional court to decide the revision itself. Same view has been taken in the case of **Pheku Vs. DDC reported in 2007 RD (103) 402**.

22. In the Case of **Sitaram Vs. DDC reported in 2007 RD (102) 113**, this Court set aside the order of remand and directed the DDC to decide the matter himself after taking additional evidence, if necessary.

23. In the case of **Babu Lal Vs. DDC reported in 2008 RD (104) 521**, this Court has held that order of remand is to be resorted to in very exceptional cases/ circumstances as it consumes precious time of the Court and causes monetary loss to both sides, besides unwarranted harassment.

24. In the case of **Sheikh Nathu Vs. DDC, (2009) 106 RD 96**, this Court has found that the Consolidation Officer and the Settlement Officer of Consolidation on the basis of the material available on record held the objection of the respondents to be meritless. The DDC remanded the matter without setting aside the findings of the subordinate authorities. This Court, therefore, held that this order of remand amounted to giving a fresh lease of life to the litigation and that remand order should not be passed in a routine manner.

25. In **Deena Nath and others vs. Deputy Director of Consolidation and others, 2010 (110) RD 584**, wherein it has been held that an order of remand cannot be treated as an interlocutory order within the meaning of Explanation-2 of Section 48 of the Act and a revision was maintainable

and also observed that since the entire record was available, instead of remanding the matter, it should have been decided on merits by the revisional court.

26. A coordinate Bench of this Court in ***Writ-B No.4377 of 2014 (Santosh Kumar vs. D.D.C. and others)***, decided on 29.1.2014, has observed that in case the order of the Settlement Officer of Consolidation suffered from errors, the Deputy Director of Consolidation could have considered the matter on his own and passed suitable orders instead of remanding the case. The remand of the case causes delay and prolongs litigation as well as harassment to the parties.

27. A coordinate Bench of this Court in ***Vijay Nath and others vs. Deputy Director of Consolidation and others, 2019 (9) ADJ 85***, has observed that after insertion of Explanation 3 to Section 48 of the Act, the Deputy Director of Consolidation is empowered to examine any finding whether of fact or law recorded by the subordinate authority and also to reappraise any oral or documentary evidence. This Court has observed that instead of remanding the matter to the Consolidation Officer, the Deputy Director of Consolidation should have exercised his jurisdiction under Section 48 (3) and should have decided the matter on merits.

28. In the judgment dated 06.05.2014 passed in ***Writ-B No. 23608 of 2014 (Ram Sewak and others vs. D.D.C. and others)***, this Court refused to interfere in the order of remand after observing as under:-

"It is admitted case that two separate wills were set up by the parties. The objection was decided by the Asstt.

Consolidation Officer (The ACO) on the basis of a compromise. It is settled legal position that the Asstt. Consolidation Officer is empowered to pass order only on the basis of conciliation and not on merits. Under these circumstances, it can be safely stated that the validity of the wills set up was not examined by the ACO when he passed the order on the basis of compromise. In this connection, it is also relevant to note that the compromise was not accepted as a whole

The order passed on the basis of compromise was challenged by means of a revision without any intermediate appeal having been preferred. The DDC remanded the matter for a decision afresh after affording opportunity to the parties to adduce evidence.

From the narration of the above facts, it is clear that no evidence was led by the parties. Even if, evidence, if any, was filed, no occasion arise for appreciation of the same. Moreover, in view of the fact that the parties were settling their dispute by means of an alleged compromise there was no occasion for them to have adduced evidence as regards their respective claims on merits.

Explanation-3 to section 48 of the Act empowers the DDC to reappraise the evidence on record and further empowers him to record a finding contrary to one that has been recorded by the Court below. However, in the instant case that there has been no previous appreciation of evidence. Therefore, the DDC cannot be said to have failed to exercise his jurisdiction to reappraise the evidence in the

absence of any appreciation of the same by the subordinate courts.

Under these circumstances, I am of the opinion that the order of remand is not liable to be interfered with.

In my considered opinion, there is another reason on account of which the order passed by the DDC requires no interference.

While deciding WP No. 42 (Cons) of 2007; Hari Lal & others Vs. DDC, Barabanki which involved a similar controversy, I have recorded as under:

"Even otherwise, it is evident from the scheme of the Act itself that the orders passed by the first court, namely, the Assistant Consolidation Officer or Consolidation Officer, whether in title proceedings or in allotment proceedings, are subject to appeal before the SOC and, thereafter, subject to the revisional jurisdiction of the DDC under section 48 of the Act. It is also well settled that the right of appeal is a statutory right and no appeal can be filed unless the statute provides for the same. However, once the statute provides for an appeal against any order passed in the proceedings under the Act, which is further subject to the revisional jurisdiction under section 48, in case the contention of the learned counsel for the respondent is accepted, the petitioners would stand deprived of their right to appeal or revision, as is provided under the Act. Since this statutory remedy of appeal is provided under the Act, allowing the order of the DDC to stand, in my opinion, it would deprive the petitioners not only of the statutory remedy of appeal but also a subsequent revision, which for all practical purposes is a second appeal available to a

party under the scheme of the Act. In any case, every party should be provided at least one appeal in the proceedings in view of the scheme of the Act itself, and this requirement would stand fulfilled if the matter is remanded to the SOC for a fresh decision. Against the order passed by the SOC, the aggrieved party will have the remedy of filing a revision, a second innings, which would be in accordance with the general scheme of the Act itself. In view of the same and also in view of the fact that the DDC has passed the order without considering the case of the petitioners and without adverting to the evidence filed by them, the impugned order is liable to be set aside".

Thus, is the facts and circumstances of this case, setting aside the order of remand and directing the DDC to decide the case himself would, in my considered opinion, amount to doing violence to the basic scheme of the Act itself."

29. In the case of **Sheo Puja Vs. Deputy Director of Consolidation and others, MANU/UP/0992/1992 : 1993 (91) ALJ 769**, it has been held as under :-

"7. This Court in its decision in the case of Manbhawati Devi v. Deputy Director of Consolidation U.P., 1969 RD 425 had clarified that the term 'opportunity of being heard' is capable of being interpreted liberally as including an opportunity to lead additional evidence where a party is able to make out a reasonable ground for permitting it. The question about the jurisdiction of the consolidation authority to admit additional evidence had come up for consideration before the court in the case of Bihari v. State, decided by the Division Bench

reported in 1973 Rev. Dec. 342 wherein the principles enunciated in the decision of the Apex court in the case of *Arbind Kumar Singh v. Nand Kishore Prasad* 1968 SC 1227 were held applicable to the proceedings under S. 48 of the U.P. Consolidation of Holdings Act. There can be no justification for not applying the said principles to the proceedings under S. 11 of the U.P. Consolidation of Holdings Act which contemplate vesting of a jurisdiction on the appellate authority which cannot be held to be lesser than the jurisdiction envisaged under S. 48 of the U.P. Consolidation of Holdings Act. I may, however, add in this connection that the salutary principles contained in Order XLI Rule 27 of the Code of Civil Procedure should be kept in mind while exercising the discretion to entertain the additional evidence at the appellate or revisional stage."

30. In the case of ***Bihari Vs. The State of U.P. and Ors.***, MANU/UP/0176/1973 : AIR 1973 All 507, it has been held as under :-

"2. The main contention of the appellant before us was that the documents which were sought to be filed before the Deputy Director Consolidation as additional evidence were very material for a correct and proper decision of the case and the Deputy Director, Consolidation committed a manifest error of law and in fact refused to exercise jurisdiction vested in him in rejecting the said application. A certified copy of the order dated July 27, 1963 passed by the Deputy Director, Consolidation dismissing the application for additional evidence was filed in the writ petition and from its perusal it appears that the said application was dismissed on two grounds:—

1. That the admission of the documents at such a late stage will materially change the case of the parties; and

2. That in Section 48 of the Consolidation of Holdings Act there was no provision for entertaining fresh evidence at the revisional stage.

The learned counsel for Rupai respondent urged that the Deputy Director, Consolidation was right in dismissing the application for additional evidence and that both the grounds given by him for dismissing it were justified. He raised certain other technical objections which we shall deal later. In so far as the first ground mentioned by the Deputy Director, Consolidation for dismissing the application aforesaid is concerned we are of the opinion that the Deputy Director, Consolidation committed a manifest error of law in taking the view that by filing the documents the appellant wanted to materially change his case. As already pointed out above the consistent case of the appellant throughout was that of the plots in dispute Badal was the exclusive tenant and he being the adopted son of Badal inherited these plots and his name was rightly recorded in the village papers. Copies of the documents sought to be filed as additional evidence before the Deputy Director, Consolidation have been filed along with the writ petition. We have perused these documents. Two of such documents are a compromise application in a suit and the decree passed on its basis. The other document is copy of an application made by Rupai respondent himself as guardian of the appellant who was then minor for mutating his name over the plots in dispute. The earlier two documents were sought to be filed to show

that on partition effected by compromise the plots in dispute were allotted exclusively in the share of Jasai father of Badal. The said compromise was filed in a suit under Section 37 of the Agra Tenancy Act 1926 for partition of holdings between Jasai father of Badal on the one hand and Ghure father of respondent Rupai on the other. The third document, namely, the application for mutation contains averments that the plots in dispute belonged to Badal, that the appellant was adopted son of Badal and was thus entitled to be mutated over these plots. These documents were apparently filed as evidence of the fact that of the plots in dispute Badal was exclusive tenant and the appellant being his adopted son rightly inherited these plots exclusively. This has been the case of the appellant from the inception and if in order to prove this case he wanted to file the documents aforesaid it cannot be said by any stretch of imagination that by filing these documents the appellant wanted to set up a new case at the revisional stage. The first ground on which these documents were rejected therefore clearly is not sustainable.

3. Now we propose to deal with the second ground on which the aforesaid application was dismissed, namely, additional evidence could not be admitted at the revisional stage. Learned Counsel for Rupai respondent on the authority of *State of Kerala v. K.M.C. Abdullah* MANU/SC/0265/1964 : [1965] 1 SCR 601 urged that before the Deputy Director, Consolidation could accept additional evidence he had first to consider the case without such evidence and to independently come to a finding that the requirements of Section 48 of the Consolidation of Holdings Act were made

out and it was only if he was satisfied that grounds for interference under Sec. 48 were made out that he could direct further inquiry by accepting additional evidence. We have perused that judgment with care but are unable to subscribe to the view enunciated by the learned counsel for the respondent. In the aforesaid case their Lordships were considering the scope of Sec. 12 of the Madras General Sales Tax Act (Act IX of 1939). Sub-clause (2) of Sec. 12 provided that the Deputy Commissioner may call for and examine the record of any order passed or proceeding recorded under the provisions of that Act by any officer subordinate to him for the purpose of satisfying himself as to the legality or the propriety of such order or as to the irregularity of such proceeding and may pass such order with respect thereto as he thinks fit. It was held that power to pass such order as the revisional authority thinks fit may in some cases include power to make or direct such further inquiry as the Deputy Commissioner may find necessary for rectifying the illegality or impropriety of the order or irregularity in the proceeding and that it was not right baldly to propound that in passing an order in the exercise of his revisional jurisdiction the Deputy Commissioner must in all cases be restricted to the record maintained by the officer subordinate to him and can never make inquiry outside that record. It was further held that it could not be said that a provision which confers upon the appellate or revising authority power to make such enquiry as such appellate or revising authority considers necessary in itself amounts to enlarging the revisional or appellate jurisdiction. What is the true import of the aforesaid decision is to be found from a subsequent decision of

the Supreme Court itself namely Swastic Oil Mills Ltd. v. H.B. Munshi MANU/SC/0317/1967 : [1968] 2 SCR 492, wherein it was held:—

“Whenever a power is conferred on authority to revise an order the authority is entitled to examine the correctness, legality and propriety of the order and to pass such suitable order as the authority may think fit in the circumstances of the particular case before it. When exercising such powers, there is no reason why the authority should not be entitled to hold an enquiry or direct an enquiry to be held and for that purpose, admit additional material.” Referring to the aforesaid case it was further held:—

“In fact in Sec. 12(2) of the Madras General Sales Tax Act the Deputy Commissioner when exercising his powers, was to call for the record of the order or proceeding before passing any order which he thought fit, so that there was an expression used which could have been interpreted as limiting his powers to the examination of the record only without holding any further enquiry, and, yet, this court held that the Deputy Commissioner could not be restricted to the record and was empowered to make an enquiry outside that record.”

4. The question in regard to the jurisdiction of a revising authority to accept additional evidence again came up for consideration before the Supreme Court in Arbind Kumar Singh v. Nand Kishore Prasad, MANU/SC/0129/1968 : [1968] 3 SCR 322. In the said case the scope of the powers contained in Sec. 64-A of the Motor Vehicles Act, 1939 as amended by Bihar Act XVII of 1950 came up for consideration. It was held:

“The expression ‘pass such orders as it thinks fit’ is not restricted to the passing of orders which are final in character. If for the purpose of doing complete justice between the parties the authority who hears the revision petition is satisfied that it is necessary to call for additional evidence, he may call for such evidence. There is no bar in the Act or the rules against an appellate or revising authority taking into consideration additional evidence brought on the record, if the authority requires additional evidence to be brought on the record or allows it to be brought on the record to do complete justice between the parties.”

5. The provisions of Section 48 of the U.P. Consolidation of Holdings Act are in pari materia with the various provisions which came up for consideration before the Supreme Court in the aforementioned cases. Interpreting the provisions of Sec. 48 itself this Court has held that the Deputy Director, Consolidation has jurisdiction to entertain additional evidence. See Manbhawati Devi v. Deputy Director, Consolidation [1969 A.L.J. 730.] , Mst. Mahri v. Deputy Director, Consolidation [1969 R.D. 260 (H.C.) (AH)]; Baij Nath Singh v. Deputy Director, Consolidation [1969 R.D. 397 (H.C.) (All)]; and Mir-chi v. Deputy Director, Consolidation [1971 R.D. 201 (H.C.) (All)] .

6. We are, therefore, of the opinion that the Deputy Director, Consolidation had power to admit additional evidence. He refused to exercise the jurisdiction vested in him on the erroneous view that he had no jurisdiction to entertain additional evidence.

7. Learned counsel for Rupai respondent then urged that in fact by filing

the compromise application and decree passed on its basis in the suit for partition of holdings under Sec. 37 of the Agra Tenancy Act the appellant was trying to set up the plea of res judicata and since that plea had not been raised by him at any earlier stage of the proceedings additional evidence could not be entertained to substantiate such a plea. In support of this he relied upon Ram Kinker Rai v. Tufani Ahir, MANU/UP/0238/1930: AIR 1931 All 35. It is true that additional evidence can be taken only in support of a point which has already been raised but in our opinion the aforesaid case is not applicable to the facts of the instant case. Here as already observed above it has been the consistent case of the appellant that of the plots in dispute Badal was the exclusive tenant and that he being the adopted son of Badal his name was rightly recorded in the village papers. It is in support of this case that the appellant sought to file additional evidence and he was not trying either to set up a new case or prove any new case by producing additional evidence."

31. In the case of **Abdul Junaid Vs. Dy. Director of Consolidation and Ors., MANU/UP/0330/1972**, it has been held as under :-

"2. Rule 111 of the Consolidation of Holdings Rules is framed Under Section 54 of the Consolidation of Holdings Act. Before March 25, 1964 it read: "An application Under Section 48 of the Act shall be drawn up and presented by the Applicant or his pleader to the Director or to such other officer as he may appoint on his behalf. It shall be accompanied by a copy of the decree or the order in respect of which the application is made and by a copy of judgment, if any, upon which the decree or the order is founded. Copies of

decrees or orders or judgments of other subordinate authorities shall not be required to be filed unless, for special reasons, filing of these documents is also considered necessary by the Director." That rule has stood for long. Presumably in the belief that that rule was still operating on May 16, 1964, the Petitioner filed along with the memorandum of revision only a copy of the judgment of the SO. He did not file a copy of the order of the CO. The filing of a copy of the order of the CO was, it appears, necessary on May 16, 1964 (we express no opinion on this point), for Rule 111 on that date assumed this shape: "An application Under Section 48 of the Act shall be presented by the Applicant or his duly authorised agent to the Distt. Dy. DC within 30 days of the order against which the application is directed. It shall be accompanied of the Judgment and order in respect of which the application is preferred. Copies of judgments and orders, if any, of other subordinate authorities in respect of the dispute shall also be filed with the application." Acting under this provision, the Dy. Director dismissed the revision of the Petitioner summarily on the ground that he had failed to file a copy of the order of the CO.

3. The petition came up for hearing before a learned single Judge. It was urged before him that the last part of the amended rule is directory and not mandatory. But the argument ran counter to a decision of another learned single Judge in *Smt. Shanti v Brij Lal* (CMW No. 1506 of 1968 Dt. May 16, 1969). Accordingly he referred the case to a larger Bench. Hence the case before us.

4. For reasons to be stated presently, we are of opinion that it is not necessary to express any opinion on the

question whether the last part of the amended Rule 111 is mandatory or directory. It is admitted by counsel for the parties before us that the record of the inferior authorities had been called for by the Dy. Director. It is further admitted that the record was before him and that he dismissed the revision in limine, as stated earlier after hearing the argument of counsel for the parties. In these circumstances we are of opinion that the Dy. Director should not have dismissed the revision in limine. Section 48(1) provides that the Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings or as to the correctness, legality or propriety of any order passed by such authority in the case or proceedings and may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit. Section 48 does not confer any right on a party to file an application in revision: it confers a power on the specified authority for the sake of keeping the inferior authorities within bounds. For that purpose he may call for the record of an inferior authority and examine it and pass an appropriate order. Having regard to the object underlying Section 48 it appears to us that once the record has been called for by the specified authority, he should not ordinarily refuse to examine the record and to check whether the inferior authority has gone wrong. So long as the record has not been called for, a person who makes an application under Section 48 may be said to be an actor on the scene. But when the record has been called for it appears to us that he ceased to be an actor on the scene. The specified authority who has called for the record becomes the actor

on the scene. Accordingly he should examine the record and pass such an order which will advance justice.

5. The view which we are taking finds support from *J.P. Ojha v. R.R. Tandon* MANU/UP/0120/1962:[A.I.R. 1962 All. 485.]. In that case a revision was dismissed at the stage of hearing by the District Judge on the ground that it was presented by a counsel without filing a vakalatnama. A learned single Judge said that after the record had been called for, the District Judge should not have dismissed the revision on a technical ground. In *Om Pragash v. Moti Lal* [1958 A.L.J. 210.] Chief Justice Mootham said: "The Court has called for the record of these cases for the sole purpose of enabling it to determine whether it shall exercise its revisional powers." This remark would suggest that the revising authority calls for the record of a case when he is *prima facie* satisfied that it is just and proper to examine the record of the case for the purpose of exercising the revisional powers and for doing justice. So after he has sent for the record, he should not, in our view, dismiss the revision on a mere technical ground. After all, he can and should interfere *suo motu* to do justice.

6. The revising authority should not ordinarily dismiss the revision for mere procedural defects for procedure "is but the machinery of the law after all -- the channel and means whereby law is administered and justice reached. It strangely departs from its proper office when, in place of facilitating, it is permitted to obstruct and even extinguish, legal rights, and is thus made to govern where it ought to subserve." (See *Henry J.B. Kendall v. Peter Hamilton* (1879) 4 AC 504. In *Ma Shwe Mya v. Maung Mo Hnaung* MANU/PR/0130/1921 : AIR 1922

PC 249 Lord Buckmaster said: "All rules of Courts are nothing but provisions intended to secure the proper administration of justice and it is therefore essential that they should be made to serve and be subordinate to that purpose." In Hanifunnisa v. Chunni Lal MANU/UP/0192/1921 : AIR 1921 All. 321 this Court said:

"The Courts do not sit as disciplinary bodies to punish parties for inept procedure when their right is clear and no misunderstanding, surprise or prejudice can occur to the other side." In the instant case the record had come. The order of the Consolidation Officer, which was not filed by the Petitioner, was before the revising authority. He could have read that order. The other party suffered no prejudice by the omission of the Petitioner to file a certified copy of the order of the Consolidation Officer."

32. In the case of **Preetam Singh (Dead) by LRS and others Vs. Assist. Director of Consolidation and others, (1996) 2 SCC 270**, it has been held as under :-

"6. When the matter was in revision before the Assistant Director (Consolidation), he had the entire matter before him and his jurisdiction was unfettered. While in seisin of the matter in his revisional jurisdiction, he was in complete control and in position to test the correctness of the order made by the Settlement Officer (Consolidation) effecting remand. In other words, in exercise of revisional jurisdiction the Assistant Director (Consolidation) could examine the finding recorded by the Settlement Officer as to the abandonment of the land in dispute by those tenants

who had been recorded at the crucial time in the Khasra of 1359 Fasli. That power as a superior court the Assistant Director (Consolidation) had, even if the remand order of the Settlement Officer had not been specifically put to challenge in separate and independent proceedings. It is noteworthy that the Court of the Assistant Director (Consolidation) is a court of revisional jurisdiction otherwise having suo motu power to correct any order of the subordinate officer. In this situation the Assistant Director (Consolidation) should not have felt fettered in doing complete justice between the parties when the entire matter was before him. The war of legalistic fought in the High Court was of no material benefit to the appellants. A decision on merit covering the entire controversy was due from the Assistant Director (Consolidation)."

33. Section 38 and 39 of the Act, 1953, being relevant, are extracted herein under :-

"38. Powers to enforce attendance of witnesses and in certain matters - (1) [The Director of Consolidation and Deputy Director Consolidation] [Inserted by U.P. Act No. 38 of 1958.], Settlement Officer Consolidation, Consolidation Officer and Assistant Consolidation Officer shall have all such powers and rights and privileges as are vested in a Civil Court on the occasion of any action, in respect of the following matters –

(a) The enforcing of the attendance of witnesses and examining them on oath, affirmation or otherwise and the issue of a commission or request to examine witnesses abroad;

(b) compelling anyone for the production of any document;

(c) the punishing of persons guilty of contempt, and a summon signed by such officer may be substituted for and shall be equivalent to any formal process capable of being issued in any action by a Civil Court for enforcing the attendance of witnesses and compelling the production of document.

(2)[* *] [Deleted by U.P. Act No. 38 of 1958.]*

39. Powers for production of documents, etc.- *(1) Subject to any conditions or restrictions that may be prescribed, the [Director of Consolidation, Deputy Director Consolidation], Settlement Officer Consolidation, Consolidation Officer or Assistant Consolidation Officer may, by written order, require any person to produce such documents, papers and registers or to furnish such information as he may deem necessary for the proper exercise of his powers or the proper discharge of his duties under this Act.*

(2) Every person required to produce any document, paper or register or to furnish an information under this section shall be deemed legally bound to do so within the meaning of Sections 175 and 176 of the Indian Penal Code."

34. In view of the law, referred above, on the issue of power of Deputy Director of Consolidation under Section 48 of the Act, 1953 as also regarding justification of remand of a case by Deputy Director of Consolidation, this Court considered the order impugned dated 14.02.2025 and a bare perusal thereof, reflects that for the purposes of

remanding the case to the Consolidation Officer, the opposite party No.1 has pointed out some errors in the order (s) impugned before him, which to the view of this Court, ought to have been looked into in exercise of power under Section 48 of the Act, 1953 by the opposite party No.1 himself, as entire material was available before him for which, as per law enunciated on the power of Deputy Director of Consolidation, he was empowered to look into. In nutshell, Section 48 of the Act, 1953 provides ample power to examine the correctness/legality/propriety of any order which includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority so as the power to re-appreciate any oral or documentary evidence.

35. For the reasons aforesaid, this Court is of the view that interference in the impugned order is required.

36. Accordingly, the writ petition is allowed. The order impugned dated 14.02.2025, passed by the opposite party No.1 is hereby quashed. The matter is remanded back to the opposite party No.1/Deputy Director of Consolidation/Additional District Magistrate, (F/R), Sitapur to decide the matter afresh after affording proper opportunity of hearing to the parties to the litigation, preferably within a period of six months from the date of production of certified copy of this order, if there is no other legal impediment in this regard.

37. While conducting the proceedings, the Authority concerned is directed to avoid unnecessary adjournments to either party.

(2025) 4 ILRA 441
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 04.04.2025

BEFORE

THE HON'BLE SAURABH LAVANIA, J.

Writ- B No. 287 of 2025

Jodhram **...Petitioner**
Versus
D.D.C., District Hardoi & Ors. **...Respondents**

Counsel for the Petitioner:
Devendra Pratap, Shashank Shekhar Singh

Counsel for the Respondents:
C.S.C., Dilip Kumar Pandey

Civil Law - Usar land - U.P. Zamindari Abolition and Land Reforms Act, 1950-Section 132 - Land in which bhumidhari rights not accrue - U.P. Consolidation of Holdings Act, 1953 - Section 3(2) - "Consolidation" means re-arrangement of holdings in a unit among several tenure-holders to make them more compact, excluding land covered u/s 132 of the U.P. Z. A. & L.A. R. Act - Held : No right could be provided to the petitioner over the land recorded as "Usar", which was provided to the petitioner for the purposes of plantation. (Para 9)

Dismissed. (E-5)

(Delivered by Hon'ble Saurabh Lavania, J.)

1. Heard learned counsel for the petitioner, Shri Hemant Kumar Pandey, learned Standing Counsel for the State and perused the record.

2. In view of order proposed to be passed, issuance of notice to the private-

respondent(s), if any, is hereby dispensed with.

3. The instant petition has been preferred seeking following main relief:-

"(i) ISSUE a writ order or direction in the nature of Certiorari to quash the impugned order dated 17.10.2024, passed by O.P. No. 1 in Revision No.83/2024, case no.0052/2018 (Kallu versus Jodharam and others) under Section 40(1) of the U.P. Consolidation Act, 1953, concerning Gata No. 814, Miljumla/area 0.2202 hectare; Gata No. 1135/2, area 0.1592 hectare; Gata No. 1135/3, area 0.0075 hectare; and Gata No. 1131/2, Miljumla/area 0.1548 hectare. The disputed land is situated at Village Musnakheda, Majra Kasimpur, Tehsil Sandila, District Hardoi. Annexed in annexure No.1 of this writ petition."

4. The impugned order dated 17.10.2024 is extracted herein below :-

"आदेश तिथि:- 17/10/2024

निगरानी संख्या- 83/2024

ग्राम- कासिमपुर परगना- सण्डीला, तहसील- सण्डीला, जिला
हरदोई
निर्णय

प्रस्तुत निगरानी कल्लू पुत्र नत्था निवासी ग्राम-
कासिमपुर, परगना व तहसील सण्डीला, जिला- हरदोई के द्वारा
जोधाराम पुत्र मंगलू निवासी ग्राम- मुसनाखेड़ा मजरा कासिमपुर
तहसील- सण्डीला जिला हरदोई एवं 02 अन्य को पक्षकार
बनाकर चकबन्दी अधिकारी द्वारा अपील संख्या-744 अंतर्गत
21(2) 302उ०प्र०जो०च०अधि० में पारित आदेश दिनांक
09.06.1994/05.08.1997 के विरुद्ध दिनांक

26.02.2018 को इस न्यायालय में योजित की गयी है। निगरानीकर्ता द्वारा विलम्ब मर्षण हेतु सपथ-पत्र सहित सम्यक कारण दर्शाते हुए प्रार्थना-पत्र प्रस्तुत किया गया है।

निगरानी में के माधम से निगरानीकर्ता का कथन है कि ब०अ०च० द्वारा पारित आदेश दिनांक 744/05 08.1997 चकबन्दी प्राविधानों एवं कानून से परे जाकर व्यक्ति विशेष को अनुचित लाभ पहुंचाने के उद्देश्य से पारित किया गया है। चकदार संख्या 180 जोधाराम पुत्र मंगलू बहुत ही चतुर चालाक व्यक्ति है जिसने च०अ० बेंहदर/सण्डीला के न्यायालय में दिनांक 11.02.1994 को धारा-20 उ०प्र०जो०च०अधि० के अन्तर्गत आपत्ति देकर चक में चकरोड व नाली की मांग के साथ पड़ोस के गा०सं० की 10 पैसे मालियत लगाकर चक बनाने की मांग की। तत्कालीन च०अ० सण्डीला/बेंहदर विजय कुमार थे जिन्होंने जोधाराम पुत्र मंगलू की मांग को निराधा पाते हुये गुण-दोष पर आपत्ति दिनांक 27.04.1994 को निरस्त कर दी। जोधाराम पुत्र मंगलू ने च०अ० के आदेश दिनांक 27.04.1994 के विरुद्ध ब०अ०च० न्यायालय में धारा-21 उ०प्र०जो०च०अधि० के अन्तर्गत अपील करके ऊष व वृक्षारोपण के गा०सं० 814 व 1135 की दर 10 पैसे लगाकर मांग करते हुये दिनांक 12.05.1994/17.05. 1994 को अपील योजित की। तत्कालीन ब०अ०च० पी०डी० वर्मा ने दिनांक 09.06.1994 को जोधाराम चकदार संख्या 180 की अपील मांग के विपरीत एवं निराधार होने के कारण दिनांक 09.06.1994 को गुण-दोष पर निरस्त कर दी। दिनांक 30.06. 1994 को तत्कालीन ब०अ०च० पी०डी० वर्मा सेवानिवृत्त हो गये। दिनांक 13.06.1997 को पी०डी० वर्मा तत्कालीन ब०अ०च० द्वारा गुण-दोष पर पारित आदेश दिनांक 09.06.1994 के विरुद्ध जोधाराम द्वारा रिकाल आवेदन प्रस्तुत किया गया। जोधाराम ने एक रणनीति के तहत तत्कालीन ब०अ०च० विजय कुमार से सांठ-गांठ के तहत वाददायर दिया गया, जिसे सरकार व ग्रामसभा को बिना सुने पी०डी० वर्मा के गुणदोष के आदेश दिनांक 09.06 1994 को दिनांक 15.07 1997 को रिकाल कर लिया गया। दिनांक 05.08.1997 को तत्कालीन ब०अ०च० द्वारा जोधाराम की अपील पुनः स्वीकार करते हुये व ऊसर वृक्षारोपण के गा०सं० 814 व 1135/2 1135/3 की दर 20 पैसे निर्धारित कर जोधाराम पुत्र मल्लू को आवंटित कर दिया तथा जोधाराम का चक गा०सं० 1131/2 रकबा 0.1548 एयर, दर 50 पैसे को वृक्षारोपण में दर्ज करके जोधाराम को 2.5 गुना लाभ गैरकानूनी दिया गया तथा ऊसर गाटे के बदले ऊसर का गाटा निल कर दिया गया। जबकि च०अ० स्तर पर विजय कुमार

सण्डीला/बेंहदर रहते हुये दिनांक 27.04.1994 की जोधाराम की आपत्ति बलहीन होने के कारण निरस्त की थी वही च०अ० प्रमोशन पाकर हरदोई मुख्यालय पर 1997 में बतौर ब०अ०च० न्यायिक हुये तथा जोधाराम द्वारा दाखिल चक अपील ब०अ०च० पी०डी० वर्मा दिनांक 09.06 1997 को निरस्त कर दी थी तब विजय कुमार को गुण-दोष पर पारित आदेश दिनांक 09.06.1994 को अपने आदेश दिनांक 15.07.1997 द्वारा रिकाल करने व पुनः गअपील को दिनांक 05.08.1997 स्वीकार कर ग्रामसभा व वृक्षारोपण की भूमि की मालियत 20 पैसे लगाकर लुटाना का क्षेत्राधिकार प्राप्त नहीं है। विजय कुमार ने प्रलोभन में पड़कर कानून के विपरीत जाकर ग्रामसभा के ऊसर व वृक्षारोपण के गा०सं० 814 व 1135/2 व 1135/3 जिसका नया गाटा क्रमशः 1452/0.2202 व 2004/0.1667 बना है 20 पैसा दर लगाकर 2.5 गुना जोधाराम पुत्र मंगलू चकदार 180 को लाभ दिया है। जोधाराम के नाम प्रस्तावित चक का नया गा०सं० 1452,2004 है। निगरानीकर्ता का भूमिधरी का गा०सं० 815 है, जिसके मिले ऊसर का गाटा संख्या 814 है। चूंकि निगरानीकर्ता हरिजन (चमार) है उसका बहुत पुराना अनाधिकार कब्जा चला आ रहा है। निगरानीकर्ता के पूर्वजों से कब्जा व दखल है। गा०सं० 814 में निगरानी कर्ता के पूर्वजों की कब्रें, मकान व पक्का कुंआ है तथा पेड़ पूर्वजों द्वारा लगाये गये खड़े हैं। अंत में याचना की है कि निगरानी स्वीकार की जाये। ब०अ०च० द्वारा पारित आदेश दिनांक 05.08.1997 निरस्त कर गा०सं० 814 व 1135/2, 1135/3 जिनका नया गा०सं० 1452 व 2004 बना है को ऊसर व वृक्षारोपण में पूर्ववत दर्ज किया जाये।

उभय पक्ष हाजिर आये, उनके द्वारा दिये गये तर्कों को ध्यानपूर्वक सुना गया। निगरानीकर्ता की ओर से तर्क दिया गया कि ग्राम सभा के ऊसर व वृक्षारोपण के गा०सं० 814 व 1135/2 व 1135/3 जिसका नया गाटा क्रमशः 1452/0.2202 व 2004/0.1667 बना है की दर 20 पैसा लगाकर 5 गुना जोधाराम पुत्र मंगलू चकदार 180 को लाभ दिया है। उक्त गाटों को यथावत ऊसर व वृक्षारोपण के मद में अंकित किया जाये। उत्तरवादी की ओर से तर्क दिया गया है कि कोई भी संशोधन न किया जाये।

मैंने पत्रावली का विधिवत अवलोकन किया। अवलोकन से स्पष्ट है कि ब०अ०च० द्वारा अपने आदेश दिनांक 05.08.1997 के द्वारा चकदार संख्या-180 जोधाराम पुत्र मंगलू को ऊसर व वृक्षारोपण को प्रभावित करते हुये चक दिया गया है। ब०अ०च० के आदेश के साथ संलग्न संशोधन तालिका के अवलोकन से स्पष्ट है कि ऊसर के गा०सं०

814मि०/0.2202हे० की कीमत 20 पैसे व वृक्षारोपण के गा०सं० 1135/2/0.1592 व गा०सं० 1135/3/0.0075 की कीमत 20 पैसा निर्धारित है।

चूंकि ग्रामसभा - 132 की भूमि पर किसी भी खातेदार को किसी भी दशा में संक्रमणीय भूमिधर के अधिकार नहीं दिये जा सकते हैं एवं ब०अ०च० द्वारा जोत चकबन्दी अधिनियम में निहित प्राविधानों के विपरीत जाकर ऊसर व बंजर के गाटों की कीमत 20 पैसे निर्धारित करते हुये जोधाराम को चक प्रदिष्ट किया है, जो किसी भी दशा में विधिसंगत नहीं।

उपरोक्त विवेचना के आधार पर ऊसर के गा०दसं० 814मि०/0.2202हे० की निर्धारित कीमत 20 पैसे निरस्त करके यथावत ऊसर में व वृक्षारोपण के गा०सं० 1135/2/0.1592 व गा०सं० 1135/3/0.0075 की निर्धारित कीमत 20 निरस्त करते हुये यथावत वृक्षारोपण में दर्ज करते हुये चकदार संख्या 180 जोधाराम पुत्र मंगलू का गा०सं० 1131/2मि० रकबा 0.1548 हे० दर 50 पैसे मू० 77.38 पैसे का चक पूर्ववत उनके नाम रखा जाना विधि संगत है। तद्वसार प्रस्तुत निगरानी स्वीकार किये जाने योग्य है। उपरोक्त विवेचना के आधार पर आदेश हुआ कि-निगरानी संख्या- 83/2024 कल्लू बनाम जोधाराम आदि स्वीकार की जाती है। ग्राम- कासिमपुर, परगना- सण्डीला, तहसील- सण्डीला, जिला-हरदोई के बावत ब०अ०च० द्वारा पारित आदेश दिनांक 05.08.1997 निरस्त किया जाता है। ऊसर के गा०सं० 814मि०/0.2202 हे० की निर्धारित कीमत 20 पैसे निरस्त करके यथावत ऊसर में व वृक्षारोपण के गा०सं० 1135/2/0.1592 व गा०सं० 1135/3/0.0075 की निर्धारित कीमत 20 निरस्त करते हुये यथावत वृक्षारोपण में दर्ज करते हुये चकदार संख्या 180 जोधाराम पुत्र मंगलू का गा०सं० 1131/2मि० रकबा 0.1548हे० दर 50 पैसे मू० 77.38पैसे का चक पूर्ववत उनके नाम दर्ज किया जाता है।

पत्रावली बाद अमलदरामद दाखिल-दफ्तर हो।

दिनांक:

(ज्ञानेश कुमार त्रिपाठी)
उप संचलक
चकबन्दी
हरदोई।"

5. From the impugned order, quoted above, it is apparent that in the present writ petition the issue relates to Section 132 of the U.P. Z.A. & L.R. Act, 1950 (in short "Act, 1950") as the land in relation to which the petitioner is claiming rights is the land covered under Section 132 of the Act, 1950, which is Gata No. 814M/0.2202 Hectare, Gata No.1135/2/0.1592 Hectare, Gata No.1135/3/0.0075 Hectatre and this fact has not been refuted.

6. Section 132 of the Act, 1950 is quoted herein below :-

"132. Land in which [bhumidhari] rights shall not accrue.- Notwithstanding anything contained in Section 131, but without prejudice to the provisions of Section 19, [bhumidhari] rights shall not accrue in –

(a) pasture lands or lands covered by water and used for the purpose of growing singhara or other produce or land in the bed of a river and used for casual or occasional cultivation;

(b) such tracts of shifting or unstable cultivation as the State Government may specify by notification in the Gazette; and

(c) lands declared by the State Government by notification in the Official Gazette, to be intended or set apart for taungya plantation or grove lands of a [Gaon Sabha] or a Local Authority or land acquired or held for a public purpose and in particular and without prejudice to the generality of this clause-

(i) lands set apart for military encamping grounds;

(ii) lands included within railway or canal boundaries;

(iii) lands situate within the limits of any cantonment;

(iv) lands included in sullage farms or trenching grounds belonging as such to a local authority;

(v) lands acquired by a town improvement trust in accordance with a scheme sanctioned under Section 42 of the U.P. Town Improvement Act, 1919 (U.P. Act VII of 1919) or by a municipality for a purpose mentioned in Clause (a) or Clause (c) of Section 8 of the U.P. Municipalities Act, 1916 (U.P. Act VII of 1916); and

(vi) lands set apart for public purposes under the U.P. Consolidation of Holdings Act, 1953 (U.P. Act V of 1954).]"

7. Sub Section 2 of Section 3 of the U.P. Consolidation of Holdings Act, 1953 (in short "Act, 1953"), being also relevant, is extracted herein under :-

"3. Definitions.- In this Act unless there is anything repugnant in the subject or context -

(1) X X X

(2) "Consolidation" means re-arrangement of holdings in a unit amongst several tenure-holders in such a way as to make their respective holdings more compact];

Explanation. - For the purpose of this clause, holding shall not include the following:

(i) Land which was grove in agricultural year immediately preceding the year in which the notification under Section 4 was issued;

(ii) land subject to fluvial action and intensive soil erosion;

(iii) land mentioned in Section 132 of the U.P. Zamindari Abolition and Land Reforms Act, 1950;

(iv) such compact areas as are normally subject to prolonged water-logging;

(v) usar, kallar and rihala plots forming a compact area including cultivated land within such area"

8. Section 29-C of the U.P. Consolidation of Holdings Act, 1953 (in short "Act, 1953") is also relevant and the same is also extracted herein under :-

"29-C. Vesting of land contributed for public purposes. - (1) The land contributed for public purposes under this Act shall, with effect from the date on which the tenure-holders became entitled to enter into possession of the chaks allotted to them under the provisions of this Act as amended from time to time, vest and be always deemed to have vested in the Gaon Sabha [in an area in which Section 117 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 applies and in the State Government in any other area] and shall be utilised for the purpose for which it was earmarked in the final Consolidation Scheme, or in case of failure of that purpose, for such other purposes as may be prescribed.

(2) *The provisions of Section 117 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act No.1 of 1951), shall mutatis mutandis apply to such land] [vested in the Gaon Sabha] as if the land had vested in the Gaon Sabha by virtue of a declaration made by the State Government under sub-section (1) of that section, and as if the declaration were made subject to the conditions respecting utilisation specified in sub-section (1) of this Section]*

(3) $[* * *]''$

9. Upon due consideration of the aforesaid statutory provision, this Court finds that no right could be provided to the petitioner over the land recorded as "Usar", which was provided to the petitioner for the purposes of plantation. Accordingly, this Court finds no illegality or infirmity in the order dated 17.10.2024, passed by O.P. No. 1 in Revision No.83/2024, case no.0052/2018 (Kallu versus Jodharam and others). The writ petition is hereby **dismissed**.

10. Cost made easy.

(2025) 4 ILRA 445
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 17.04.2025

BEFORE

THE HON'BLE SAURABH LAVANIA, J.

Writ- B No. 338 of 2025

Rama Kant ...Petitioner
Versus
Dy. Director of Consolidation & Anr. ..Respondents

Counsel for the Petitioner:

Ravindra Kumar Singh Raj, Amita Shukla,
Rajesh Kumar

Counsel for the Respondents:

C.S.C.

A. U.P Consolidation of Holdings Act, 1953 - "Usar" land - No right could be provided over the land recorded as "Usar". Consolidation Authorities can direct the name of Gaon Sabha or the State Government to be recorded when it is found that there is no valid title holder and that under the law the land had vested in the Government and then Gaon Sabha even though Government or Gaon Sabha had not filed an objection. (Para 10, 12)

B. U.P Consolidation of Holdings Act, 1953 - Remand Order - In the instant case D.D.C. in the order impugned observed that the land in issue was initially recorded as 'Usar' in the revenue record and that the interest of Gaon Sabha/State was not taken care of while deciding the dispute between the private opposite parties. D.D.C. remanded the matter back to the Consolidation Officer, for deciding the case afresh after providing opportunity of hearing to the parties to the litigation to decide the certain issues on merits. Court did not interfered in the impugned order of remand simplicitor for reason that the C.O., after taking evidence, would decide the case. (Para 13)

Dismissed. (E-5)

(Delivered by Hon'ble Saurabh Lavania,
J.)

1. Heard Shri Ravindra Kumar Singh, learned counsel for the petitioner, Sri Hemant Kumar Pandey, learned counsel for the State/opposite party No.1 and perused the record.

2. Issuance of notice to opposite party No.2 is hereby dispensed

3. By means of the present petition, petitioner has sought the following main relief:-

"Issue a writ order or direction in the nature of Certiorari quashing the impugned order dated 6.3.2025 passed Deputy by Director Consolidation Lucknow in revision No. 69 of 2025 Ram Bux vs Rama Kant under section 48 (1) of U.P.C.H.Act in the interest of justice. Contained as annexure no 1 to this writ petition.

4. By means of this petition, the petitioner has assailed the order dated 06.03.2025, passed in Revision No.69 of 2025 (Ram Bux Vs. Rama Kant) under Section 48 (1) of the Act, 1953, whereby the opposite party No.1/Deputy Director of Consolidation, Lucknow (in short 'D.D.C.'), remanded the matter back to the Consolidation Officer, Sarojini Nagar, Lucknow (in short "C.O.") for deciding the case afresh after providing opportunity of hearing to the parties to the litigation to decide the certain issues on merits. The relevant portion of the order impugned dated 06.03.2025, passed by the Deputy Director of Consolidation, Lucknow (in short "D.D.C.") is extracted herein under :-

"मेरे द्वारा उभयपक्षों द्वारा प्रस्तुत की गयी बहस को देखा गया एवं अवर न्यायालय की पत्रावली में उपलब्ध साक्ष्यों का परिशीलन किया गया। निगरानीकर्ता द्वारा आधार वर्ष खाता संख्या-67 के गाटा संख्या 83, 164, 167, 183, 209, 253, 383 में सहखातेदारी की मांग की गयी है। निगरानीकर्ता का कथन है कि विवादित आराजी पैतृक है जबकि प्रतिपक्षी रामबक्श पुत्र कुशाल का कहना है कि विवादित आराजी पैतृक नहीं है। उक्त आराजी पट्टे से प्राप्त हुई थी। यह पट्टा उसके पिता को मिला था और पिता के मरने के बाद रामबक्श पुत्र कुशाल के नाम यह आराजी दर्ज हुई। विपक्षी द्वारा मूल

पट्टा दिनांक 25.01.1955 का बताया गया है और खतौनी सन् 1369-1371 फसली तथा 1382-1384 फसली की नकल प्रस्तुत की गयी है। विपक्षी का यह भी कहना है कि प्रथम चक्र चकबन्दी में विवादित आराजी कुशाल पुत्र गोपाल के नाम अंकित थी। उस समय निगरानीकर्ता रामबक्श के पिता नन्हे जीवित थे उनके द्वारा कोई आपत्ति नहीं की गयी। दूसरी चकबन्दी में इनके द्वारा यह आपत्ति प्रस्तुत की गयी है जो उत्तर प्रदेश जोत चकबन्दी अधिनियम 1953 के धारा-11(ए) से बाधित है इसी बिन्दु पर चकबन्दी अधिकारी एवं अपीलीय न्यायालय द्वारा निगरानीकर्ता की आपत्ति और अपील निरस्त की दी गयी है। पत्रावली में निगरानीकर्ता द्वारा जो पारिवारिक सिजरा दिया गया है उसमें गोपाल के लड़के बदलू, कुशाल और नन्हे थे। कुशाल के लड़के प्रतिपक्षी रमाकान्त है। और नन्हे के लड़के रामबक्श है। पारिवारिक सिजरा दोनों पक्षों को स्वीकार है। बिन्दु यहां पर केवल यह है कि क्या जिस समय यह आराजी कुशाल को प्राप्त हुई थी उस समय कुशाल और नन्हे एक संयुक्त परिवार के सदस्य थे और क्या कुशाल की हैसियत कर्ता खानदान की थी और क्या पट्टा कुशाल और नन्हे के संयुक्त प्रयासों से प्राप्त किया गया था। यह बिन्दु विचारणीय है। इस सम्बन्ध में चकबन्दी अधिकारी सरोजनीनगर की मूल पत्रावली का अवलोकन किया गया। दिनांक 22.09.2014 को निगरानीकर्ता रामबक्श का बयान चकबन्दी अधिकारी की पत्रावली में हुआ है और उस समय उन्होंने अपनी उम्र 45 से 47 वर्ष बताया है और इससे स्पष्ट है कि जब क्या यह पट्टा बताया जा रहा है उस समय रामबक्श पैदा नहीं हुए थे और प्रथम चक्र चकबन्दी में भी रामबक्श पुत्र नन्हे पैदा नहीं हुए थे। पत्रावली में रामशंकर पुत्र हरी प्रसाद निवासी खानपुर मऊ का बयान चकबन्दी अधिकारी के यहां हुआ है। यह बयान 2015 में रामशंकर द्वारा दिया गया है। उस समय उनकी उम्र 64 वर्ष थी। इनके द्वारा यह बताया गया है कि कुशाल और नन्हे विवादित आराजी पर आधे-आधे भाग पर काबिज है। दूसरे गवाह मुन्ना सिंह द्वारा भी यही कथन किया गया है कि विवादित आराजी पर दोनो आधे-आधे भाग है। पत्रावली में रामलली पत्नी रणजीत सिंह पुत्री कुशाल का भी बयान हुआ है। इनके द्वारा कहा गया है कि 1955 में 6 बीघा भूमि का अकेले पट्टा हुआ था। रमाकान्त अपने पट्टे वाली भूमि पर काबिज है। पत्रावली में जो पूर्व रजिस्टर की नकल लगी है। उसके अनुसार मकान नम्बर 350 रमाकान्त का परिवार रमाकान्त के मुखिया के रूप में अंकित है तथा 398 पर भी रमाकान्त का नाम अंकित है। 350 पर रामबक्श का भी नाम अंकित है तथा एक पूर्व रजिस्टर की नकल और संलग्न है जिसमें कर्ता खानदान कुशाल है। उसमें रामबक्श पुत्र नन्हा का नाम भी अंकित है। पत्रावली में 1369-1371 फसली की खतौनी पर एक आदेश का अंकन है। यह आदेश दिनांक

05.10.1961 को पारित किया गया है। जिसमें कुशल पुत्र गोपाल का नाम गाटा संख्या-222 रकबा 10 विस्वा एवं दूसरा गाटा स्पष्ट नहीं है जिसपर आदेश बतौर सीरदार अंकित किया गया है। मूल रूप से यह खाता ऊसर खाता था पट्टे के रूप में दिनांक 25.01.1995 का जो पट्टा प्रस्तुत किया गया है पट्टा नियम 176 के अन्तर्गत प्रस्तुत किया गया है। उसमें गाटा संख्या-422 रकबा 5 बीघा अंकित किया गया है। गाटा संख्या 222 रकबा 10 विस्वा और 401 रकबा 2 बीघा अंकित किया गया है यह पट्टा भूमि प्रबन्धक समिति द्वारा दिनांक 25.01.1955 को दिया गया है लेकिन पत्रावली में जो खतौनी संलग्न है उसमें ऊसर खाते का गाटा संख्या-401 और 222 है। 422 गाटें पर ओवर राइटिंग है और जो फार्म 58 पत्रावली में संलग्न है उसमें भी गाटा संख्या 422 रकबा 5 बीघा भी भिन्न स्याही से अंकित है तथा एस0डी0ओ0 के आदेश दिनांक 05.10.1961 में भी गाटा संख्या-422 पर ओवर राइटिंग करके अंकन किया गया है। ऐसे में यह प्रकरण एक बार फर्जी अंकन का भी प्रतीत होता है। क्योंकि ऊसर खाते का 5 बीघा रकबा ओवर राइटिंग और भिन्न स्याही से अंकित करके किसी भी खातेदार का नाम अंकित नहीं किया जा सकता। इसमें गांवसभा का भी तथा सरकार का भी हित देखा जाना चाहिए। दोनों अवर न्यायालय द्वारा अपने आदेश में इन साक्ष्यों को नहीं देखा गया है तथा प्रतिपक्षी द्वारा जो कथन 1955 के पट्टे के सम्बन्ध में किया जा रहा है उसका अनुपालन 1961 में 1369-1371 फसली की खतौनी में किया जा रहा है। यह भी एक सिद्धि प्रकरण है। निगरानीकर्ता रामबक्श की निगरानी का प्रश्न सहखातेदारी का है लेकिन इससे भी बड़ा बिन्दु सरकार के हित का है। क्योंकि गाटा संख्या 422 पर ओवर राइटिंग करके 5 बीघा ऊसर खाते का रकबा खारिज करके कुशल पुत्र गोपाल के नाम अंकित किया गया और यही रकबा उनके वारिस प्रतिपक्षी रमाकान्त के नाम भी दर्ज हो गया। जिसके सम्बन्ध में दोनों अवर न्यायालयों द्वारा कोई भी विवेचना नहीं की गयी है। इस कारण अवर न्यायालय के आदेश को स्थापित नहीं किया जा सकता। रामबक्श की निगरानी स्वीकार किये जाने योग्य है।

आदेश

ग्राम-खानपुर मऊ परगना-काकोरी, तहसील व जिला-लखनऊ के खाता संख्या-67 के सम्बन्ध में निगरानीकर्ता रामबक्श पुत्र नन्हे की निगरानी स्वीकार की जाती है। चकबन्दी अधिकारी का आदेश दिनांक 31.05.2019 तथा अपीलीय न्यायालय का आदेश दिनांक 17.10.2022 निरस्त करके पत्रावली चकबन्दी अधिकारी सरोजनीनगर को इस निर्देश के साथ प्रत्यावर्तित की जाती है। निगरानी के सम्बन्ध में विधिक परीक्षण करें क्या 1955 में वह संयुक्त परिवार का सदस्य था तथा परिवार के कर्ता खानदान कुशल थे

और संयुक्त संग्रह से पट्टा प्राप्त किया गया था और उस पर रामबक्श का क्या हक बनता है? तथा मूल खातेदार कुशल पुत्र गोपाल के नाम गाटा संख्या-422 रकबा 5 बीघा ऊसर खाते में खारिज करके दर्ज किया गया है। इस सम्बन्ध में 1955 का फार्म 58 जो पट्टे के रूप में प्रस्तुत किया गया है। उसमें गाटा संख्या-422 का अंकन भिन्न स्याही से अंकित है तथा जो आदेश ऊसर खाते पर परगनाधिकारी द्वारा अंकित दिखाया जा रहा है उसमें भी आदेश में गाटा संख्या-422 को ओवर राइटिंग किया गया है। इन तथ्यों को विधिवत् परीक्षण गांव सभा को एवं सरकार को पक्षकार बनाते हुए परीक्षण करके तथा अन्य मूल बिन्दुओं पर भी दोनों पक्षों को सुन करके वाद को चार माह के अन्दर निर्णीत करें। पत्रावली चकबन्दी अधिकारी सरोजनीनगर न्यायालय पर दिनांक 20.03.2025 को प्रस्तुत हो।"

5. The brief facts for disposal of the case, as stated in the writ petition, are extracted as under :-

"4. Father of the petitioner being landless person was granted patta by the Land Management Committee of Khata No.67 Gata no 422, 222, 401 on dated 25.01.1955.

5. That it is relevant to mention here that as reveals from the records some proceeding for correction of paper/cancellation of patta was initiated by the Gram Samaj Khanpur Mau against the father of the petitioner khushala which was subsequently dropped vide order dated.05.10.1961 passed by Sub Divisional Officer Lucknow.

6. That during first consolidation scheme in the year 1962, in pursuance of the order dated 5.10.1961 passed by S.D.O Lucknow, the name of the father of the petitioner was entered in the records vide order dated. 13.1.1963 passed by Assistant Consolidation Officer in case no.143 Over Khata No. 67 Gata No. 422, 222, 401 and since then his father was recorded and since 1955 his father was in peaceful occupation and possession of the property in dispute and after his death the petitioner

is in peaceful possession and occupation of the same.

7. That it is relevant mention here that in the year 1976 the father of opposite party no.2 Nanhey being landless person had also been granted patta which had been recorded in revenue records vide order dated. 23.04.1976 passed by Supervisor kanoongo since 1976 his father was in peaceful occupation and possession of the property in dispute and after his death the respondent no.2 is in peaceful possession and occupation of the same and recorded in the revenue records.

8. That since 1955 till start of the first consolidation in the year 1962 which concluded in the year 1982 Nanhey the father of opposite party no.2 or the opposite party no.2 Ram Bux had never raised any objection/claim with regard to the property in question as being ancestral or being joint Hindu family property and the father of the petitioner was recorded as Karta Khandan.

9. That after the death of Nanhey the father of opposite party no.2, Ram Bux for the first time, has filed a suit U/S 229/176 of U.P.Z.A. & L.R Act on the false and frivolous grounds claiming declaration of co-tenancy right of 1/2 share and partition of the same bearing Case No.31/41/85/115 of 1985/86 Ram Bux versus Khushal and others.

10. That it is relevant to mention here that without any notice or information to the father of petitioner Khushal forged short written a statement was filed by putting forged signatures admitting the claim of opposite party no.2.

11. That only with intent to create an evidence in his favour this forged written statement was filed by making forged signatures and there after left pursuing the matter and get it dismissed in non-prosecution vide order dated

20.03.1990 passed by Sub Divisional Magistrate Lucknow.

12. That there after the opposite party no. 2 keep mum for several years and the village was again notified under the second consolidation vide notification dated 27.9.2008 and denotified vide notification dated 3.9.2014.

13. That just before the denotification of the village under section 52 of the U.P.C.H.Act the opposite party no. 2 filed a frivolous delayed objection under section 9A (2) of the U.P.C.H. Act claiming co-tenancy right of 1/2 share in the property in dispute on the basis of land being joint family property and the father of the petitioner was Karta Khandan and his name has individually recorded in the revenue records.

14. That after receiving the notice the petitioner has filed a detailed objection mentioning there in that the land in dispute is not ancestral rather being land less person Gata No. 422/5 Bigha, 222/10 Biswa, 401/2 Bigha of Khata No. 67 was allotted to the father of the petitioner in individual capacity and since then the name of his father was recorded as Sirdaar and there after he is recorded in the revenue records and coming in continuous possession of the property in question.

15. That the learned consolidation officer Sarojni Nagar Lucknow has passed an order condoning the delay in the interest of justice vide order dated 26.9.2013.

16. That it is further submitter that in support of his objection the petitioner has filed the copy of patta dated 25.1.1955, Copy of Khatauni of the year 1369 to 1371 fasli of Khata No. 67, copy of Aakar patra 23 Copy of Aakar patra 41 with regard to Gata No.83, 164, 167, 183, 209, 253, 383 copy of Aakarpatra 45 of first consolidation along with copy of 4land

45 of second consolidation with regard to khata no 140 in the name of Rama Kant son of Khushal, copy of Aakar patra 41 and 45 of khata no 180 in the name of Ram Bux son of Nanhay Copy of khatauni of the year 1382 to 1384 Copy of Pariwar Register of house no 350 belonging to Ram Bux and house no 398 belonging to Rama Kant Copy of order dated 20.3.1990 and evidence on affidavit of himself, Ram Chandra yadav, Alok Yadav, and Smt Ram lali.

17. That in support of his case opposite party no 2-Ram Bux has filed the copy of plaint of the suit filed under section 229/176 of U.P.Z.A & L.R Act, copy of written statement, copy of Pariwar Register and affidavit of Ram Bux himself and Kunwer Bahadur, Ram shanker, Munna singh.

18. That it is relevant to mention here that the petitioner has filed an objection denying the fact of filing and putting any signature on written statement and the written statement which has been filed as an evidence in support of his case is a forged and fabricated document.

19. That thereafter counsels of both the parties have cross examined the witnesses of each other.

20. That after hearing the parties at length and evaluating the evidence available on record the learned consolidation officer Sarojni Nagar Lucknow has rejected the objection of the opposite party No. 2 being baseless vide order dated 31.5.2019 with the observation that the opposite party No. 2 could not place any evidence with regard to ancestral property or joint Hindu Family property.

21. That feeling aggrieved with the order dated 31.5.2019 passed by Consolidation Officer Sarojni Nagar, Lucknow the opposite party No.2 has filed an appeal under section 11 of U.P. C.H.

Act before Settlement Officer Consolidation Lucknow which has been registered as Appeal No. 102 of 2022 (Ram Bux vs Rama kant).

22. That the petitioner has filed a detailed objection against the appeal and interim relief application supported with affidavit.

23. That the learned appellate court after summoning the lower court record perused the entire record, all evidences documentary and oral and providing opportunity of hearing to the parties concerned has dismissed the appeal vide order dated 17.10.2022 affirming the order dated 31.5.2019 passed by Consolidation Officer, Sarojni Nagar, Lucknow with the observation that the appellant could not place any reliable evidence to prove the property in question as ancestral property and proceeding initiated in the second consolidation proceeding is barred by section 11-A of the U.P.C.H.Act. The father of the petitioner and there after petitioner is continuously recorded since first consolidation proceedings.

24. That feeling aggrieved with the order dated 31.5.2019 passed by Consolidation Officer, Sarojni Nagar, Lucknow and the order dated 17.10.2022, passed by Settlement Officer Consolidation, Lucknow the opposite party No. 2 has filed a revision under section 48 (1) of U.P.C.H.Act bearing Revision No.69 of 2025 (Ram Bux vs. Rama Kant).

25. That after service, the petitioner appeared and filed a detailed objections against the revision and interim relief application supported with an affidavit.

26. That the learned revisional court examining the evidence, facts and circumstances of the case and also traveling beyond pleading, in a most

arbitrary manner has remanded the case before Consolidation Officer Sarojni Nagar Lucknow vide order dated 6.3.2025 for deciding afresh in the light of the observations made in the order whereas the observation itself is unjustified and not sustainable in the eye of law."

6. Based upon the aforesaid pleadings, the petitioner has approached this Court impeaching the order dated 06.03.2025, passed by the Deputy Director of Consolidation, Lucknow.

7. Opposing the present petition, Sri Hemant Kumar Pandey, learned Standing Counsel for the State has submitted that from the impugned order, it is apparent that in the present case the issue relates to Section 132 of the U.P. Z.A. & L.R. Act, 1950 (in short "Act, 1950") as the land in relation to which the petitioner is claiming rights is the land covered under Section 132 of the Act, 1950 and as such interest of State/Gaon Sabha who would plead and prove its case before the C.O. concerned be affected in impugned order is interfered by this Court.

8. Considered the aforesaid and perused the record including the impugned order dated 06.03.2025.

9. In order to conclude the matter this Court took note of relevant provisions, which are as under.

(a) Section 132 of the Act, 1950 is quoted herein below :-

"132. Land in which [bhumidhari] rights shall not accrue.- Notwithstanding anything contained in Section 131, but without prejudice to the provisions of Section 19, [bhumidhari] rights shall not accrue in -

(a) *pasture lands or lands covered by water and used for the purpose of growing singhara or other produce or land in the bed of a river and used for casual or occasional cultivation;*

(b) *such tracts of shifting or unstable cultivation as the State Government may specify by notification in the Gazette; and*

(c) *lands declared by the State Government by notification in the Official Gazette, to be intended or set apart for taungya plantation or grove lands of a [Gaon Sabha] or a Local Authority or land acquired or held for a public purpose and in particular and without prejudice to the generality of this clause-*

(i) *lands set apart for military encamping grounds;*

(ii) *lands included within railway or canal boundaries;*

(iii) *lands situate within the limits of any cantonment;*

(iv) *lands included in sullage farms or trenching grounds belonging as such to a local authority;*

(v) *lands acquired by a town improvement trust in accordance with a scheme sanctioned under Section 42 of the U.P. Town Improvement Act, 1919 (U.P. Act VII of 1919) or by a municipality for a purpose mentioned in Clause (a) or Clause (c) of Section 8 of the U.P. Municipalities Act, 1916 (U.P. Act VII of 1916); and*

(vi) *lands set apart for public purposes under the U.P. Consolidation of Holdings Act, 1953 (U.P. Act V of 1954).]"*

(b). Sub Section 2 of Section 3 of the U.P. Consolidation of Holdings Act, 1953 (in short "Act, 1953"), is extracted herein under :-

"3. Definitions.- In this Act unless there is anything repugnant in the subject or context -

(1) X X X

(2) "Consolidation" means re-arrangement of holdings in a unit amongst several tenure-holders in such a way as to make their respective holdings more compact];

Explanation. - For the purpose of this clause, holding shall not include the following:

(i) Land which was grove in agricultural year immediately preceding the year in which the notification under Section 4 was issued;

(ii) land subject to fluvial action and intensive soil erosion;

(iii) land mentioned in Section 132 of the U.P. Zamindari Abolition and Land Reforms Act, 1950;

(iv) such compact areas as are normally subject to prolonged water-logging;

(v) usar, kallar and rihala plots forming a compact area including cultivated land within such area"

(c). Section 29-C of the U.P. Consolidation of Holdings Act, 1953 (in short "Act, 1953") is extracted herein under :-

"29-C. Vesting of land contributed for public purposes. - (1) *The land contributed for public purposes under this Act shall, with effect from the date on which the tenure-holders became entitled to enter into possession of the chaks allotted to them under the provisions of this Act as amended from time to time, vest and be always deemed to have vested in the Gaon Sabha [in an area in which Section 117 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 applies and in the State Government in any other area] and shall be utilised for the purpose for which it was earmarked in the final Consolidation Scheme, or in case of failure of that purpose, for such other purposes as may be prescribed.*

(2) *The provisions of Section 117 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act No.1 of 1951), shall mutatis mutandis apply to such land] [vested in the Gaon Sabha] as if the land had vested in the Gaon Sabha by virtue of a declaration made by the State Government under sub-section (1) of that section, and as if the declaration were made subject to the conditions respecting utilisation specified in sub-section (1) of this Section]*

(3) [* * *]"

(d) Section 11 of the Act of 1953 says as under :-

11. Appeals. - (1) Any party to the proceedings under Section 9-A, aggrieved by an order of the Assistant Consolidation Officer or the Consolidation Officer under that section, may, within 21 days of the date of the order, file an appeal before the Settlement Officer, Consolidation, who shall after affording opportunity of being heard to the parties concerned, give his decision thereon which, except as otherwise provided by or under this Act, shall be final and not be questioned in any Court of law.

(2) *The Settlement Officer, Consolidation, hearing an appeal under sub-section (1) shall be deemed to be a Court of competent jurisdiction, anything to the contrary contained in any law for the time being in force notwithstanding."*

10. Upon due consideration of the aforesaid statutory provision, this Court finds that no right could be provided over the land recorded as "Usar".

11. On the subject, in the judgment passed in the case of **Ram Gopal Vs. Deputy Director of Consolidation, Bahraich & others [CONSOLIDATION NO.33557 OF 2018, decided on**

22.01.2019, following observation have been made :-

"I have given my anxious consideration to the competing arguments made by learned counsel representing the respective parties and have also perused the records which are available on this petition.

So far as the first submission made by learned counsel for the petitioner that the appeals before the Settlement Officer, Consolidation filed by certain individuals against the orders passed by the Consolidation Officer were not maintainable is concerned, it may only be observed at this juncture that consolidation authorities/courts have been cast with a heavy duty to protect the right and interest of the State and the Gaon Sabha if any matter is brought before them.

Section 11-C of the Act specifically provides that in the course of hearing of an objection under Section 9-A or an appeal under Section 11 or revision petition under Section 48, the consolidation authorities may direct that any land which vests in the State Government or Gaon Sabha may be recorded in its name, even though no objection, appeal or revision has been filed by such Government or Gaon Sabha or the local authorities is concerned. Section 11-C is reproduced herein below:-

11C. In the course of hearing of an objection under Section 9-A or an appeal under Section 11, or in proceedings under Section 48, the Consolidation Officer, the Settlement Officer (Consolidation) or the Director of Consolidation, as the case may be, may direct that any land which vests in the State Government or the Gaon Sabha or any other local body or authority may be recorded in its name, even though no objection, appeal or revision has been filed

by such Government, Gaon Sabha, body or authority.

Considering the nature of disputes raised during the consolidation operations, the legislature while enacting Section 11-C of the Act was conscious of the functions to be performed by the consolidation courts. Section 11-C was inserted by the legislature in the Act with a purpose and the purpose is apparent.

There may be a situation where many a times, on account of certain misgivings and for certain other reasons, the Land Management Committee or the Gram Pradhan for certain reasons may ignore to protect the interest of Gaon Sabha or the property vested in State Government.

It is for the aforesaid purpose of securing and protecting the land vested in Gaon Sabha or State Government that the legislature has consciously enacted Section 11-C of the Act and has thus cast a duty on the Consolidation Officer, Settlement Officer, Consolidation and the Deputy Director of Consolidation to pass orders recording such land in the name of State or Gaon Sabha even though no objection or appeal or revision under Section 9-A, Section 11 or Section 48 is preferred by the State Government or Gaon Sabha or the local authority concerned.

It is settled law that right to appeal is a statutory right which operates within the four corners of the statute which confers such right in a person or a party, however, so far as the jurisdiction of revisional court is concerned, specifically in the case of revisional court created under U.P. Consolidation of Holdings Act which exercises the revisional jurisdiction under Section 48 of the said Act, it is not a right vested in the party concerned to invoke the revisional jurisdiction; rather Section 48 vests a jurisdiction in the

Deputy Director of Consolidation to call for or examine the record of any case decided or proceedings drawn. Thus for exercising of revisional jurisdiction, a party aggrieved may or may not invoke Section 48 and in an appropriate case, the Deputy Director of Consolidation can suo motu exercise his powers of revisional jurisdiction."

12. According to the observations made by the Full Bench of this Court in the case of *Amir Husain and Ors. Vs. The Deputy Director of Consolidation and Ors.*, MANU/UP/0417/1976 : 1977 AWC 1 All : 1978 RD 204, the Consolidation Authorities can direct the name of Gaon Sabha or the State Government to be recorded when it is found that there is no valid title holder and that under the law the land had vested in the Government and then Gaon Sabha even though Government or Gaon Sabha had not filed an objection.

13. Upon due consideration of the facts of the instant case and the relevant established provisions as also the observations made by this Court in the judgment(s) referred above, this Court is not inclined to interfere in the impugned order of remand simplicitor for reason that the C.O., after taking evidence, would decide the following aspects of the case :-

(i). The D.D.C. in the order impugned has observed that the land in issue i.e. Gata No.422 was initially recorded as 'Usar' in the revenue record.

(ii) In the impugned it has also been observed that there is overwriting in the order dated 05.10.1961, passed by the S.D.O.

(iii) It appears from the record that the interest of Gaon Sabha/State was

not taken care of while deciding the dispute between the private opposite parties.

(iv) The D.D.C. in the impugned order also observed that at the time of providing Patta, Ram Bux was not even born.

(v) The D.D.C. in the impugned order of remand simplicitor dated 6.3.2025 has also observed that some entries in the Form-58 have been made in different ink.

14. Accordingly, for the aforesaid reasons, the writ petition is **dismissed**.

(2025) 4 ILRA 453
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.04.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ- B No. 4903 of 1993

Sumer Singh ...Petitioner
Versus
Board of Revenue & Ors. ...Respondents

Counsel for the Petitioner:

Mr. Aditya Prasad Tewari, Mr. S.K. Tiwari

Counsel for the Respondents:

Mr. Indrasen Singh Tomar, Addl. C.S.C.,
 Mr. Deepak Gaur

A. Patta Cancellation – Limitation for cancellation of lease – U.P.Z.A. and L.R. Act – U.P.Z.A. and L.R. Rules – Schedule 3, prepared under Rule 338 of the U.P.Z.A. and L.R. Rules, provides limitation for cancellation of lease on the basis of suo motu proceedings within a period of three years from the date when the Collector knew about the allotment of land - U.P.Z.A. and L.R. Act, Section 337 – As per Section 337, for the purposes of computing the area fixed under any provision of the Act, two acres shall be

counted as one acre in the Bundelkhand areas – U.P.Z.A. and L.R. Act, Explanation A of Section 198 – In view of the provisions contained under Explanation A of Section 198 of the U.P.Z.A. and L.R. Act, holding in the name of the father will not be treated to be the holding of the son. Held – Exercising suo motu power after several years and not within a reasonable period, even in proceedings where no limitation is provided for cancellation, cannot be permitted. (Para 14)

B. In the instant case, petitioner nos. 1, 2, 3, 4, and the father of respondent no. 5/6 were allotted plot measuring about 34.95 acres in the year 1959 (1366 Fasli). Suo motu cancellation proceedings were initiated after about 20 years from the date of execution of the lease in favour of the petitioners. Collector, vide order dated 16.10.1982, cancelled the petitioners' lease. Held : Allotted area measuring 34.95 acres would come to about 17.45 acres. Petitioners were five in number and claimed that they were residing separately from their father; as such, 17.45 acres would be divided into five parts, accordingly, each petitioner was allotted 3.49 acres, while the maximum limit for allotment as provided under Section 198 of the U.P.Z.A. & L.R. Act was 6¼ acres; as such, the allotment was within the permissible limit. Lease was executed in the year 1959 in favour of the petitioners; therefore, the cancellation proceedings initiated in the year 1979–80 in respect of the petitioners' lease cannot be said to be within a reasonable period. Impugned orders set aside. (Paras 19, 20)

Allowed (E-5)

(Delivered by Hon'ble Chandra Kumar Rai, J.)

1. Heard Sri Adya Prasad Tewari and Sri S.K. Tiwari, learned counsel for the petitioner, Sri Indrasen Singh Tomar, learned Addl. C.S.C. for the state-respondents and Sri Deepak Gaur, learned

counsel for the respondent-Land Management Committee.

2. Brief facts of the case are that petitioner nos.1, 2, 3, 4 and father of respondent no. 5/6 were allotted plot in dispute, situated in village- Khiriya Chhatara, Tehasil & District- Lalitpur, area measuring about 34.95 acres in the year 1959 (1366 fasli). During C.L.R.D. Scheme, leases were executed to the occupants of the land by the Sub Divisional Officer. According to the petitioners, after execution of the lease deed, petitioners remained in possession. No complaint or proceeding of any nature were initiated against the petitioners till the year 1978. A suo moto proceeding was initiated by the State of U.P. against the petitioners in the year 1979 on the ground that the lease holders already had enough land, as such, lease executed in favour of the petitioners should be cancelled. Another ground was taken that brother of one of the petitioners, was member of the Land Management Committee, as such, lease cannot be granted in favour of the petitioners coupled with the fact that petitioners did not come in the category of landless agricultural labourer, therefore, the lease should be cancelled. Petitioners appeared before the trial court and filed their objection, stating that the petitioners were granted lease under the CLRD Scheme and after that they are in peaceful possession of the allotted land since 1959 and their lease remained unchallenged for a period of about 20 years, as such, lease of the petitioners cannot be cancelled. The trial court/Collector vide order dated 16.10.1982 cancelled the petitioners' lease. Against the order dated 16.10.1982, petitioners filed revision before the Commissioner which was registered as Revision No.96/1982-83. The Commissioner vide order dated

8.8.1983 sent the reference before the Board of Revenue to allow the revision, set aside the order of the Collector and remand the matter before the Collector to decide the proceeding afresh. The aforementioned reference was registered as Reference Case No.113/1983-84 before the Board of Revenue, U.P. at Allahabad. The Board of Revenue vide order dated 12.11.1992 has not accepted the reference sent by the Commissioner and dismissed the revision. Hence, this writ petition for the following reliefs:-

“(i) To issue with direction or order in the nature of certiorari to call for the record of the case and quash the judgement and order dated 12.11.1992 passed by the respondent no.1 and that of the order dated 16.10.1982 passed by respondent no.2 contained in Annexure Nos. 3 and 1 respectively.

(ii) To issue with direction or order in the nature of mandamus directing the respondents not to dispossess the petitioners or re-allot this land to any other person during the pendency of this writ petition.”

3. This Court admitted the writ petition on 18.2.1993 and stayed the operation of the impugned orders. In pursuance of the orders of this Court dated 18.2.1993, counter affidavit has been filed by the Land Management Committee only. On behalf of the petitioners, a supplementary affidavit has been filed, stating that petitioners are still recorded in the revenue records and continuing in possession over the plot in question since 1959.

4. Counsel for the petitioners submitted that respondent nos. 1 & 2 have illegally passed the impugned orders,

cancelling the lease executed in favour of the petitioners in the year 1959 as well as dismissing the revision of the petitioners. He further submitted that suo moto cancellation proceeding has been initiated after about 20 years from the date of execution of lease in favour of the petitioners, as such, same cannot be entertained. He further submitted that the petitioners are in possession of the plot in question since 1959 and this Court while entertaining the writ petition, has also granted interim order, staying the operation of the impugned orders, as such, the impugned orders should be set aside. He also submitted that the procedure prescribed under The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the “U.P. Z.A. & L.R. Act”) and the Rules framed thereunder, are to be followed in proper manner. He also submitted that even the suo moto proceeding cannot be initiated at any time in respect to the lease executed in favour of the person concerned. He placed reliance upon the following judgments of this Court in order to demonstrate that time-barred proceeding cannot be entertained and allowed after the period prescribed under the Act and the Rules framed thereunder:-

“(i) Prabhu Dayal and Another in Civil Misc. Writ No.3367 of 1978, decided on May 11, 1984;

(ii) Suresh Giri and Others vs. Board of Revenue, U.P. Allahabad and Others, 2010 (2) ADJ 514;

(iii) Shanti Devi and Others vs. Board of Revenue and Others in Writ B No.14704 of 2013, decided on 10.2.2025;

(iv) Rishi Pal and Others vs. State of U.P. and Others, 2017 (7) ADJ 391;

(v) **Yadram and Others vs. State of U.P. and Others, 2020 (146) RD 780;**

(vi) **Jitendra Kumar @ Gopal vs. State of U.P. and Others, 2018 (8) ADJ 503;**

(vii) **Chhidda and Others vs. State of U.P. and Others, 2019 (8) ADJ 122;**

(viii) **Dev Sharma and Another vs. Board of Revenue and Others, 2011 (9) ADJ 716;**

(ix) **Jiyachhi vs. State of U.P. and Others, 2014 (124) RD 805.”**

He further placed the provisions contained under Section 198 of the U.P. Z.A. & L.R. Act as well as Section 337 of the U.P. Z.A. & L.R. Act in support of their arguments.

5. On the other hand, learned counsel for the respondent-gaon sabha submitted that petitioners were not entitled for the lease as petitioners have sufficient land in their name at the relevant point of time, as such, they cannot be treated as landless agricultural labourer. He further submitted that father of the lease holders were *Zamindar*, as such, they cannot be allotted lease of the plot in question. He submitted that the Board of Revenue has further held that the petitioners can file a suit for declaration for their right and title as the petitioners are also claiming that the land was allotted to them under CLRD Scheme. He submitted that no interference is required in the matter and the writ petition is liable to be dismissed.

6. On the other hand, Mr. Indrasen Singh Tomar, learned Additional Chief Standing Counsel for the State respondents submitted that petitioners were not entitled for the agriculture lease of the plot in question as they have already had sufficient

land at the relevant point of time. He further submitted that petitioners were not landless agriculture labourer, as such, the agriculture lease cannot be executed in their favour. He submitted that finding has been recorded by the Divisional District Magistrate that petitioners' father was zamindar and had sufficient land in his name, as such, the allotment of 34.95 acre of land in the name of five petitioners was wholly illegal. He further placed reliance upon the 8th amendment made in the year 1975 in Section 198 of U.P.Z.A. and L.R. Act in order to demonstrate that cancellation proceeding initiated in the year 1979/1980 was within limitation. He further submitted that in the instant matter, the suo motto proceeding was initiated according to the provisions of the U.P. Z.A. & L.R. Act in view of the Full Bench Judgement of Board of Revenue reported in **1994 RD 540 Virendra Singh Vs. State of U.P. and Others**. He further submitted that land was not vacant on the date of allotment, as such, the allotment made in favour of the petitioners was wholly illegal. He further submitted that the Schedule 3 prepared under Rule 338 of the U.P.Z.A. and L.R. Rules provides limitation for cancellation of lease on the basis of suo motu proceeding within period of three years from the date when the Collector knew about the allotment of land. He further submitted that limit for grant of agriculture lease was 3.125 acre, as such, the allotment made for about 34.95 acre = 17.47 acres for Bundelkhand region cannot be made to the five petitioners who were residing together along with his father. He further submitted that one of the family member of the petitioners was member of the Land Management Committee, as such, the allotment cannot be made in favour of petitioners in respect to the land recorded as banjar in the revenue records. He

submitted that Additional District Magistrate has rightly cancelled the agriculture lease executed in the favour of petitioners. He further submitted that Commissioner has illegally made the reference for allowing the revision to Board of Revenue but Board of Revenue has rightly dismissed the petitioners' revision and rejected the reference with finding that petitioners can avail proper remedy for declaration of their right on the basis of proceeding taken place under C.L.R.D. Scheme. He further submitted that there is no pleading in the writ petition to the effect that petitioners' family member was not member of the Land Management Committee at the relevant point of time, as such, the argument advanced by counsel for the petitioners cannot be accepted. He submitted that in view of the finding of fact recorded by Board of Revenue, no interference is required in the matter and writ petition is liable to be dismissed.

7. I have considered the arguments advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that proceeding for cancellation of petitioners' lease under Section 198 (4) of the U.P.Z.A. and L.R. Act was initiated in the year 1979-80 and Additional District Magistrate vide order dated 16.10.1982 cancelled the petitioner's lease. There is also no dispute about the fact that in revision, Commissioner Jhansi Division Jhansi sent the reference before Board of Revenue to allow the revision, setting aside the order of Additional District Magistrate. There is also no dispute about the fact that Board of Revenue has dismissed the revision and rejected the reference sent by the Commissioner.

9. In order to appreciate the controversy involved in the matter, the perusal of Section 198 of U.P.Z.A. and L.R. Act at the relevant point of time, will be relevant which is as under:-

S. 198. Order of preference in admitting persons to land under sections 195 and 197- (1) In admitting any person as sirdar or asami under section 195 or 197, the [Land Management Committee] shall subject to the rules framed or order made by the court under section 178 observe the following order of preference-

(I.a) a recognised educational institution for a purpose connected with instruction in agriculture, horticulture or animal husbandry;

(a) a landless agricultural labourer or an asami, residing in the circle, who does not hold any land whether as bhumidhar, sirdar, or adhvasi,

(b) a bhumidhar, sirdar or adhvasi who is holding land less than 6¼ acres in area in the circle,

(c) a co-operative farm established under this Act holding land within the jurisdiction of the [Land Management Committee] to enable it to possess a suitable area of land, and

(d) any other person:

Provided that the land allotted to a co-operative farm under clause (c) shall, if the registration of such farm is cancelled within two years of the allotment, revert upon such cancellation to the Gaon Samaj, and any person holding or retaining possession of such land shall be deemed to be a person occupying it without title liable to ejectment under clause (b) of section 209:

Provided further that in the cases to which clause (b) applies only so much land shall be allotted to such tenure-holder as shall be sufficient to bring the total area held by him to be six and a quarter acres.

Provided also that no person mentioned in clause (a) shall be admitted to less than $31/8$ acres of land, if available, but in no case to more than $6\frac{1}{4}$ acres.

Explanation.- A person shall be deemed to be a landless agricultural labourer if he holds land not exceeding such maximum as may be prescribed in that behalf by the State Government either generally or for any particular area].

[2] The [Assistant Collector Incharge of the sub-division] may on his own motion and shall on the application of any person aggrieved by an order of the Land Management Committee passed under sub-section (1) enquire in the manner prescribed into an allotment made under sub-section (1) and if he is satisfied that the [Land Management Committee] has acted with substantial irregularity or otherwise than in accordance with the provisions of this Act, he may pass thereon such order as he thinks fit]

[(3) Where am Assistant Collector Incharge of the sub- division cancels an allotment, the right title and interest of the provisions of sub- section (4), cease in the land allotted thereunder which shall revert to the Goan Samaj and any person holding or retaining possession of such land shall be deemed to be a person who has encroached upon such land and shall be liable to ejectment in the manner prescribed.

(4) Any person aggrieved by the order of cancellation passed under sub-

section (2) may institute a suit to establish the right claimed by him but subject to the results of such suit the order of cancellation shall be final.]

10. The perusal of Section 337 of the U.P.Z.A. and L.R. Act at the relevant point of time, will also be relevant which is as under:-

[S. 337. Computation of the area fixed in certain districts – For the purposes of computing the area fixed under any of the provisions of this Act, 2 acres shall count as 1 acre in the following areas:-

(a) Bundelkhand;

[(aa) the Tarai and Kashipur sub-divisions of Nainital District.]

(b) Trans Jamuna portions of the Allahabad, Etawah, Agra and Mathura districts;

(c) the portion of the Mirzapur district south of Kaimur Range;

(d) Tappa Upraudh and Tappa Chaurasi (Balai Pahar) of tahsil Sadar in district Mirzapur;

(e) portion of tahsil Robertsganj, district Mirzapur which lies north of Kaimur Range; and

(f) pargana Sakteshgarh and the villages mentioned in lists 'A' and 'B' of Schedule VI in hilly patties of parganas Ahraura and Bhagwat of tahsil Chunar of district Mirzapur];

11. Perusal of Appendix-III prepared under Rule 338 of the U.P. Z.A. & L.R. Rules

APPENDIX III

(See rule 338)

Secti on of the	Descripti on of suit	Period of limitat	Time from which	Pro per cour

petitioners could be termed as landless and this aspect of the matter has escaped the notice of the revisional Court. The only limitation prescribed for a person being 'landless' is that he or she or their spouse and their minor children should not hold land as bhumidhar, sirdar or asami. Father of a person has not been included in the definition, hence the revisional Court has patently erred in holding the judgement of the first Appellate Court without addressing itself to the Explanation. As revisional Court has based its judgement only on the ground that the petitioners' father had sufficient land, I have no option but to quash the impugned judgement and ask the revisional Court to re-examine the claim of the petitioners in the light of the relevant law.

Had the revisional Court confirmed the judgement of the first Appellate Court also on the ground that the mandatory R. 173 and 174 of the U.P.Z.A. and L.R. Act were not complied with, the result might have been different, but the revisional Court has confined its judgement only on one ground to the effect that petitioner's father had sufficient land, I think that the ends of justice demand that the revisional Court should be asked to decide the claim of the petitioners strictly in accordance with law. "

14. Hon'ble Apex Court in the case reported in 2024 (164) 206, **Shyamo Devi and Others vs. State of U.P. and Others** has held that exercising suo motu power after several year and not within reasonable period, even in the proceeding where no limitation is provided for cancellation, cannot be permitted. Paragraph Nos.15 & 18 of the judgment rendered in **Shyamo**

Devi (supra) will be relevant for perusal which is as under:-

"15. In **Ibrahimpatnam's** case (supra) wherein sub-section (4) of Section 50-B was pressed into service discloses that the expression 'the collector may, suo moto at any time; is occurring while such expression is conspicuously absent in sub-section (6) of Section 122-(C) of UPZALR Act. In the aforesaid case, it came to be held by the Apex Court that suo moto power should be exercised within a reasonable period even in case of fraud and within a reasonable time from the date of discovery of fraud and it depends on facts and circumstances of each case. It came to be further held:

"12. The learned Single Judge has referred to and relied on various decisions including the decisions of this Court as to how the use of the words "at any time" in sub-section (4) of Section 50-B of the Act should be understood. In the impugned order the Division Bench of the High Court approves and affirms the decision of the learned Single Judge. Where a statute provides any suo motu power of revision without prescribing any period of limitation, the power must be exercised within a reasonable time and what is "reasonable time" has to be determined on the facts of each case.

13. In the light of what is stated above, we are of the view that the Division Bench of the High Court was right in affirming the view of the learned Single Judge of the High Court that the suo motu power under subsection (4) of Section 50-B of the Act is to be exercised within a reasonable time.

18. Yet another factor which has swayed in our mind to quash the impugned order is the fact pursuant to

the allotment made on 27.06.1994 the allottees who are poor rustic villagers have constructed there houses and the allotment was made based on the approval granted by the then sub-district magistrate and they have been residing in the residential building so constructed by them for the last several year and to unsettle the same would result in heaping injustice to those poor hapless persons and particularly when the subject land has been utilized for allotment to the poor and house-less persons.”

15. The perusal of the judgement rendered by this Court in **Prabhu Dayal** (supra) as well as judgment rendered by Hon’ble Apex Court in **Shyamo Devi** (supra), the impugned judgment passed by Board of Revenue, cannot be sustained in the eye of law.

16. In the instant matter, the petitioners are claiming on the basis of allotment for agriculture purpose made in the year 1959 and the cancellation proceeding has been initiated in the year 1979-80, as such, the cancellation proceeding initiated in the instant matter is abuse of process of law.

17. This Court in the case of **Jitendra Kumar @ Gopal (Supra)** has held that even in the suo motu proceeding, the Collector cannot cancel the lease in respect to the plot which was allotted to the tenure holder and due to the operation of law, he became bhumidhar with transferable rights. The paragraph Nos. 7 and 8 of the judgement rendered by this Court in **Jitendra Kumar @ Gopal (Supra)** will be relevant which are as under:-

"(7) Having heard the learned counsel for the parties, I am of the view that the impugned orders cannot be sustained. First of all, the notice was barred by limitation. Secondly, the petitioner by an order of the State had been declared a bhumidhar with transferable rights and the cancellation of the patta was of no consequence and thirdly the ground taken for the cancellation of the patta was also not in existence. If the period of limitation as is prescribed under the Act of 1950 expires then no notice can be issued even if there are irregularities in the patta. Further even if a suo motu notice is to be issued by the Collector then also the question of limitation would arise and notices have to be issued well within the time prescribed by the 1950 Act.

(8). What is more, once when a tenure holder who was earlier granted a patta becomes a bhumidhar with transferable rights, then howsoever much the patta which was granted earlier is cancelled it would not affect his right as a bhumidhar and he shall continue to remain a bhumidhar over the land in question."

18. The argument advanced by Mr. Indrasen Singh Tomar, learned Addl. Chief Standing Counsel that land in dispute was not vacant on the date of execution of lease deed and cancellation proceeding initiated in respect to petitioner’s lease was within limitation according to 8th amendment made in the year 1975 in Section 198 of the U.P. Z.A. & L.R. Act, cannot be accepted considering the fact that lease was executed or arrangement was made under the C.L.R.D. scheme in the year 1959 in favour of petitioners, as such, the cancellation proceeding initiated in the year 1979-80 in

respect to petitioners' lease cannot be said to be within reasonable period.

19. Considering the entire facts and circumstances as well as the judgement rendered by this Court in *Prabhu Dayal (Supra)* where it has been held that holding of the father will not be included in the holding of their sons as well as the situation of the plot in question in the Bundelkhand area, the impugned order dated 12.11.1992 passed by respondent no.1/Board of Revenue and order dated 16.10.1982 passed by respondent no.2/Additional District Magistrate cannot be sustained in the eye of law and the same are hereby set aside.

20. Writ petition stands allowed and the authorities are directed to record the name of petitioners over the plot in question forthwith.

21. No order as to costs.

(2025) 4 ILRA 462
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.04.2025

BEFORE

THE HON'BLE DINESH PATHAK, J.

Writ- B No. 13075 of 2012

Rajkumar Dubey ...Petitioner
Versus
Board of Revenue & Ors. ...Respondents

Counsel for the Petitioner:

Anurag Singh, Ashutosh Srivastava, Govind Krishna, Satyendra Nath Srivastava, Shreyas Srivastava

Counsel for the Respondents:

D.D. Chauhan, Madhur Prakash, Satya Prakash

A. U.P. Consolidation of Holdings Act, 1953 - Section 49 - Bar to civil Courts jurisdiction - Fraud - fraud cannot be inferred on mere allegation - Fraud must be proved and not merely alleged and inferred. Mere assertion of fraud is not sufficient to render the judicial proceeding concluded by the court competent illegal unless it is proved by credible and unimpeachable evidence. As per plaintiff's case, he has executed a power of attorney in favour of Nanhu Singh to get the land revenue entry corrected in his name during the consolidation operation. Pleading in the plaint in that regard was specifically denied by defendants-respondents in written statement. In support of the aforesaid pleading no documentary evidence was filed before any of the three revenue courts. However, for the first time, petitioner filed the photostat copy of alleged power of attorney dated 22.08.1966 as Annexure to the writ petition. It was an unregistered document bearing signature of the present petitioner and two witnesses. Court held that document filed for the first time before High Court is not admissible in evidence if the same is a photostat copy of unregistered document (Para 27, 28)

B. In the instant case , petitioner case was that he has executed a power of attorney in favour of Nanhu Singh (brother of defendant no.2) to look after the property and get the name of the plaintiff-petitioner in the consolidation record, however, he got the name of the plaintiff-petitioner expunged from the record. By playing fraud on the plaintiff-petitioner, he got his name and defendants' name recorded in the consolidation record. Name of defendants was fraudulently recorded in the revenue record which came to the knowledge of the plaintiff-petitioner for the first time on 27.1.1987 and, consequently, he filed suit for declaration. All the three revenue

courts held the suit barred under Section 49 of the U.P.C.H. Act. Held : Plaintiff-petitioner claimed his right and title over the property in question being mortgagee. However, in pursuance of the judgment passed in Suit No. 4/5 under Section 99 of U.P. Act No. 3 of 1926 possession of the property was handed over to the mortgagor (defendant-respondent). Thus, right of the mortgagee came to an end. Mortgagee (plaintiff-petitioner or his predecessor in his interest) were never recorded in the land revenue record in their individual capacity. On the date of advent of consolidation operation, his name was not recorded in the basic consolidation record. Court held that plea of fraud as raised on behalf of the plaintiff-petitioner cannot be substantiated. No illegality in the order under challenge. Writ petition dismissed (Para 3, 30, 32)

Dismissed. (E-5)

(Delivered by Hon'ble Dinesh Pathak, J.)

1. Heard learned counsel for the petitioner, learned counsel for the contesting private respondents as well as learned Standing Counsel for the State-respondents.

2. The petitioner is aggrieved with the orders passed by the revenue courts under the U.P. Zamindari Abolition and Land Reforms Act, 1950 (in brevity 'Act, 1950') whereby suit filed on his behalf for declaration of his rights and title under Section 229-B of Act, 1950 has concurrently been discarded by all the three revenue courts on the point of maintainability of suit being barred under Section 49 of U.P. Consolidation of Holdings Act, 1953 (in brevity 'U.P.C.H. Act'), while deciding the issue no.7 framed by the learned trial court.

3. As per plaint case, the plaintiff-petitioner is claiming his right, title and interest over the property in question on the basis of mortgage deed dated 27.2.1901, registered on 04.3.1901, said to have been executed by Khuman Singh s/o Preetam Singh (predecessor-in-interest of the defendants-respondants) in favour of Radha Kishan s/o Bhola Nath (predecessor-in-interest of the plaintiff-petitioner). Through the aforesaid mortgage deed, the land in question was mortgaged for thirty years against the loan amounting to Rs.290/-. Mortgage money was paid from the Hindu Undivided Family Fund. Subsequently, predecessors-in-interest of the petitioner had filed a suit for possession against Khuman Singh (father of defendant no.1) being Civil Suit No.418 of 1911 (Pitambar Lal & Others vs. Khuman Singh & Others). Aforesaid suit was decreed on 24.2.1912 and based on the said decree, possession was delivered on 29.3.1912. Since 1348 fasli, name of Smt. Ram Dulari (grand-mother of the plaintiff-petitioner) was recorded and thereafter name of the plaintiff-petitioner is recorded in Khatauni being mortgagee. The plaintiff-petitioner was initially Seerदार of the property in question. Subsequently, by operation of law, became Bhumidhar with transferable rights. On the advent of consolidation operation, he has executed a power of attorney in favour of Nanhu Singh (brother of defendant no.2 namely Rajendra) to look after the property and get the name of the plaintiff-petitioner in the consolidation record, however, he did nothing and got the name of the plaintiff-petitioner expunged from the record. By playing fraud on the plaintiff-petitioner, he got his name and defendants' name recorded in the consolidation record. Thus, name of defendants are fraudulently and illegally recorded in the revenue record which came

to the knowledge of the plaintiff-petitioner for the first time on 27.1.1987 and, consequently, he filed suit for declaration.

4. On the contrary, defendants have filed written statement denying the pleadings made in the plaint with the contention that mortgage deed dated 27.2.1901, registered on 4.3.1901, was redeemed by judgment dated 29.2.1936 and decree dated 3.3.1946 passed by the Assistant Collector (Ist Class) in a Suit No.4/5. Nanhu Singh was never appointed as power of attorney by the plaintiff-petitioner to look after the property in question. The plaintiff-petitioner does not belong to the family of the original mortgagee and he is never recorded in the revenue record, therefore, suit on his behalf is not maintainable being barred under Section 49 of the U.P.C.H. Act.

5. Learned trial court, after exchange of pleadings, has framed as many as ten issues to decide the suit. Out of them, issue no.7 was framed regarding bar of suit under Section 49 of U.P.C.H. Act which is quoted herein below:-

"Whether plaintiff's suit is barred under Section 49 of the Act ?"

6. The Assistant Collector (Ist Class)/Sub Divisional Officer, Bilhaur, Kanpur Nagar, vide judgment dated 7.11.2007, has decided the aforesaid issue in affirmative in favour of the defendants and held that the suit is barred under Section 49 of the U.P.C.H. Act. Having been aggrieved with the judgment dated 7.11.2007, the plaintiff has filed first appeal being Appeal No.46 of 2008 under Section 331(3) of Act, 1950. Learned Additional Commissioner, Kanpur Division, Kanpur, vide order dated 3.11.2008, has dismissed

the appeal affirming the order passed by the trial court. Being dissatisfied with the order passed by the first appellate court, the plaintiff-petitioner has filed Second Appeal No.14 of 2008/09 before the Board of Revenue, U.P. at Allahabad which has been dismissed as well by the judgment dated 20.1.2011, which is under challenge before this Court.

7. Learned counsel for the plaintiff-petitioner, while assailing the concurrent finding of fact returned by all the three revenue courts in a proceeding arisen out of suit under Section 229-B of Act, 1950, has advanced fourfold following submission:-

7.1- The bar under Section 49 of U.P.C.H. Act is applicable only for the certain period i.e. from the date of promulgation of notification under Section 4 of U.P.C.H. Act up to the de-notification under Section 52 of the U.P.C.H. Act. As per his submission, Section 4 of the U.P.C.H. Act was promulgated on 16.9.1965 and the village was de-notified under Section 52 of U.P.C.H. Act by notification promulgated on 14.5.1977, however, suit was filed on 23.5.1988, therefore, provisions as enunciated under Section 49 of U.P.C.H. Act are not attracted in the instant matter. In support of his submission, learned counsel for the plaintiff-petitioner placed reliance on the case of Prashant Singh & Others vs. Meena & Others reported in 2024 (9) ADJ 187.

7.2- He has tried to point out the forgery committed against the plaintiff-petitioner and came with the plea that fraud vitiates everything even solemn proceedings. He has laid emphasis on the pleadings of the plaint that the plaintiff-petitioner has executed a power of attorney in favour of Nanhu Singh (brother of the

defendants-respondents) to get his name recorded in the land revenue record during consolidation proceeding, however, by playing fraud Nanhu Singh got his and his brother's name recorded over the property in question and managed to expunge the name of plaintiff-petitioner. Plea of fraud has not appropriately been considered by all the three revenue courts and illegally held the suit barred under Section 49 of the U.P.C.H. Act. In support of his submission, learned counsel for the petitioner has placed reliance upon the case of Ram Briksha & Another vs. Deputy Director of Consolidation & 3 Others reported in 2017 (6) ADJ 356 (DB); Sagir Ahmad & Others vs. Deputy Director of Consolidation & Others reported in 2019 (6) ADJ 336 and Amar Singh vs. State of U.P. & Others reported in 2008 (2) ADJ 688.

7.3- It is next submitted that name of Smt. Ram Dulari (predecessor-in-interest of the plaintiff-petitioner) was recorded in 1348 fasli and 1366 fasli to 1369 fasli being a mortgagee. Predecessors-in-interest of the plaintiff-petitioner and, thereafter, he himself is in continuous possession over the property in question.

7.4- He has also laid emphasis on the condition no.6 of the mortgage deed, whereby mortgage would be foreclosed after thirty years, and the judgment passed in Suit No.418 of 1911 whereby possession has been delivered in favour of the mortgagee (predecessor-in-interest of the plaintiff-petitioner). After the judgment passed in Original Suit No.418 of 2011 and foreclosure of the mortgage deed as per condition no.6 of the mortgage deed, defendants have no right, title and possession over the property in question. Thus, the present writ petition be allowed

and the orders impugned passed by the revenue courts be quashed, being illegal and unwarranted under the law.

8. Per contract, learned counsel for contesting respondents has vehemently opposed the submissions advanced by learned counsel for the petitioner and contended that:-

8.1- The suit for redemption and possession of collateral property filed on behalf of the mortgagor against the mortgagee under Section 99 of Agra Tenancy Act (Act No. 3 of 2026) had been decreed on 29.2.1936 and got executed on 3.3.1946. Thus, the mortgagee (predecessors-in-interest of petitioner) has no right, title and possession over the property in question.

8.2- He vehemently opposed the execution of any power of attorney (unregistered) in favour of Nanhu Singh, as averred in paragraph number 13 of the plaint, and contended that copy of such power of attorney had never been filed before any of the three revenue courts. However, for the first time, the alleged document has been filed before this court which is a forged document.

8.3- Learned counsel for the respondents has emphasized that the name of the petitioner was never recorded in the Record of Rights, i.e., Khatoni 1356 fasli, 1348 fasli, and 1359 fasli. Even his name was not recorded in the Basic Consolidation Record, to wit, at the advent of the consolidation operation by way of notification under Section 4(2) of the U.P.C.H. Act.

8.4- It is next contended that no foul play or fraud has been committed

against the plaintiff-petitioner, who was reluctant towards his right during the consolidation operation. Mere assertion of fact with regard to fraud is not sufficient to avert the bar under section 49 of the U.P.C.H. Act. In paragraph 13 of the plaint, the plaintiff has taken a contradictory plea that he himself was taking care of the property in question at the relevant time.

8.5- It is next contended that orders under challenge, holding the suit barred under Section 49 of the U.P.C.H. Act, do not warrant any interference in the writ jurisdiction, thus, the same may be dismissed being misconceived and devoid of merits. In support of his contention, learned counsel for the contesting respondents has relied upon the case of Kushar Vs. Ahmed Khan, 1962 R.D. 172 decided by division bench of this court, Madan Mohan Mishra v. Chandrika Pandey (dead) by L.Rs., 2009 (107) R.D. 2 SC and the case of Ram Briksha and another (supra) and the case of Sagir Ahmed and others (supra).

9. Having considered the rival submissions advanced by learned counsel for the parties and upon perusal of the record, it is manifest that the question for consideration in the instant matter lies in a narrow compass as to whether the suit for declaration filed on behalf of the plaintiff under Section 229 B of the Act, 1950 is barred and not maintainable under Section 49 of the U.P.C.H. Act. Thus, nature and scope of Section 49 U.P.C.H. Act is required to be discussed, which is quoted herein below:

"49. Bar to civil Courts jurisdiction. *Notwithstanding anything contained in any other law for the time being in force, the declaration and*

adjudication of right of tenure-holder in respect of land lying in an area, for which a (notification) has been issued under sub-section (2) of Section 4) or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act, and no Civil or Revenue Court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could be ought to have been taken under this Act:]

[Provided that nothing in this section shall preclude the Assistant Collector from initiating proceedings under Section 122-B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 in respect of any land, possession over which has been delivered or deemed to be delivered to a Gaon Sabha under or in accordance with the provisions of this Act."

10. Needless to say that object of the U.P.C.H. Act is to provide for consolidation of agricultural holding for the development of agriculture. It is a complete code which contains provisions for redressal of grievance of tenure holders relating to their right, title and interest over the holding as well as grievances in relation to the chak allotment, its valuation and area, etc. While enforcing the object of U.P.C.H. Act to consolidate the holding and avoid fragmentation or scattered holding, consolidation authorities are also authorised to examine the revenue entries made in favour of the tenure holders. For this purpose, Section 8A provides preparation of statement of principles, stating forthwith the principle to be

followed in carrying out consolidation operation in the unit. In Section 9, provision is made for issuing notice to the statement of principle prepared under Sections 8 and 8 A of the U.P.C.H. Act to tenure holders concerned and to persons interested calling upon them to file objection before him, if any, disputing the correctness or nature of entry in the extract and pointing out of any omission therefrom. Section 10 provides that annual register shall be revised on the basis of the order passed by the Consolidation Officer. Section 19 onwards, Sections 20 and 21 are relating to the Provisional Consolidation Scheme (Chak allotment proceedings). Thus, there is a provision under the U.P.C.H. Act to examine the right, title and interest of the tenure holders, while examining the correctness of entries. However, intending to discourage the multiplicity of proceedings, legislation has forbidden the jurisdiction of Civil and Revenue Court, under Section 49 of the U.P.C.H. Act from entertaining any of the following matters :-

(i) Declaration and adjudication of right of tenure holders qua land covered by notification under Section 4(2) of the U.P.C.H. Act,

or

(ii) Adjudication or any other right arising out of consolidation proceedings,

And

(iii) in regard to these matters (as mentioned above), proceedings could or ought to have been taken under the U.P.C.H. Act,

(iv) shall be done in accordance with the provisions of the U.P.C.H. Act.

11. Non-obstante clause used at the commencement of the Section 49 of U.P.C.H. Act coupled with the latter part of the Section, to wit, "proceedings could or ought to have been taken under this Act", imposes an absolute bar on civil or revenue courts from entertaining any proceedings in respect of the declaration and adjudication of right of a tenure holder or adjudication of any other rights arising out of consolidation operations, for which person concerned ought to have or could have taken proceedings at the time when the village was brought under the consolidation operations by promulgation of notification under Section 4(2) of the U.P.C.H. Act. Meaning thereby, final record of rights prepared under the provisions of the U.P.C.H. Act attaches finality concerning the declaration and adjudication of right of tenure holders, therefore, after denotification under Section 52 of the U.P.C.H. Act, civil or revenue courts have got no jurisdiction to reopen such adjudication or declaration of rights. Hon'ble Supreme Court, in the case of **Sita Ram vs. Chhota Bhondey and others**, AIR 1991 Supreme Court 249, while discussing the scope of Section 49 of U.P.C.H. Act has held that it is wide and comprehensive. Facts giving rise to the aforesaid cited case are that Chhota and Nanha are real brothers. In basic consolidation record, name of Nanha was recorded in the representative capacity on behalf of himself and his brothers. Son of Chhota has filed objection claiming his co-tenancy right over the property in question. Consolidation Officer has granted co-tenancy right, however, the appeal having been filed, order of Consolidation Officer

was reversed. Having been aggrieved, revision was preferred and the Deputy Director of Consolidation has upheld the order passed by the Consolidation Officer. In writ petition, order of the Consolidation Officer had been affirmed. At subsequent stage, civil suit had been filed for the declaration that order of Deputy Director of Consolidation was without jurisdiction. Contesting the suit, other side has raised preliminary objection that the suit is barred under Section 49 of the U.P.C.H. Act. Learned trial court has allowed the preliminary objection which has been upheld up to the stage of second appeal before Hon'ble High Court. Learned counsel for the appellant before Hon'ble Supreme Court came with the plea that the bar under Section 49 of the U.P.C.H. Act is not applicable to the suit on two grounds; that consolidation authorities could not decide question as to title to the land, and question relating to the parentage of the respondent, which the civil court alone could decide.

12. In this backdrop of the fact, Hon'ble Supreme Court has upheld that:

“From a perusal of Section 49 it is evident that declaration and adjudication of rights of tenure-holders in respect of land lying in an area for which a notification has been issued under Section 4(2) and adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under the Act, had to be done in accordance with the provisions of the Act only and the jurisdiction of the civil or revenue courts to entertain any suit or proceeding with respect to rights in such land or with respect to any other matter for which a proceeding could or ought to have been

taken under the Act, has been taken away. The language used in Section 49 is wide and comprehensive. Declaration and adjudication of rights of tenure-holders in respect of land lying in the area covered by the notification under Section 4(2) of the Act and adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under the Act, would cover adjudication of questions as to title in respect of the said lands. This view also finds support from the other provisions of the Act and the amendments that have been introduced therein.”

13. Section 49 of the U.P.C.H. Act, which bars the jurisdiction of the civil court and the revenue court, gives affect to the provisions enunciated under Section 5(2) of the U.P.C.H. Act, thus, to better understand the provisions of Section 49 of the U.P.C.H. Act, the provisions enunciated under Section 5(2) of the U.P.C.H. Act are also referable which denotes the effect of notification under Section 4(2) of U.P.C.H. Act that, at the advent of consolidation operation by way of notification under Section 4 (2) of the U.P.C.H. Act in the official gazette, until the publication of denotification under Section 52 of the U.P.C.H. Act or cancellation of such notification under Section 6 of the U.P.C.H. Act, as the case may be, every proceeding for correction of record and every suit and proceeding in respect of declaration of right or interest in any land lying in the area of notification, or of declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any court or authority, whether of the first instance or of appeal, reference or revision, shall on an order been passed on behalf of the court or authority before

whom such suit or proceeding is pending, stand abated. Thus, the bar under Section 5(2) of the U.P.C.H. Act and the bar under Section 49 of the U.P.C.H. Act are operating in different dimensions, however, Section 49 is adjuvant to preserve the legal sanctity of declaration and adjudication of any right during the consolidation operation. Section 5 of the U.P.C.H. Act operates when the unit/area is notified for consolidation operation under Section 4 (2) of the U.P.C.H. Act, to wit, during the consolidation operation, before its cessation under Section 6 or completion by denotification under Section 52. However, in furtherance of Section 5, the bar under Section 49 of the U.P.C.H. Act operates after de-notification under Section 52 of the U.P.C.H. Act, when the right, title and interest of the parties and other rights arising out of consolidation operation has attained finality. While enforcing the bar under Section 49 of the U.P.C.H. Act, legislation is intended to cut short the multiple litigations and do not encourage the litigants to indulge in unended litigation process to get their right, title and interest adjudicate upon qua property in question. The phrase employed under Section 49 of the U.P.C.H. Act in the last part of the Section i.e. "for which a proceeding could or ought to have been taken under this Act" is quite meaningful and significant to preclude the jurisdiction of Civil Courts and Revenue Courts from entertaining any such litigation to adjudicate and declare the right, title and interest of the parties with respect to land which has already passed through consolidation operation and record of rights are finalized with respect thereto after de-notification under section 52 of the U.P.C.H. Act. Any tenure holder who ought to have vigilant and could have raised his voice by way of filing an appropriate objections under the U.P.C.H.

Act during consolidation operation, if so reluctant and not filed an appropriate objection, would be stopped from raising such objection at subsequent stage before any civil or revenue court. In the matter of **Sita Ram (supra)** Hon'ble Supreme Court has observed that :

“As a result of the said amendment which has been introduced in Section 5 the right of the Courts to adjudicate in respect of declaration of rights or interest in any land lying in the area for which the notification has been issued under Section 4(2) or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under the Act has been completely taken away and the adjudication of these rights is to be done by the consolidation authorities under and in accordance with the provisions of the Act and the Rules made thereunder. Section 49 of the Act which bars the jurisdiction of the civil and revenue Courts gives effect to the aforesaid provisions contained in Section 5(2) of the Act. As a result of these amendments civil and revenue Courts have no role in the matter of determination of rights or interests in any land lying in the area for which notice has been issued under Section 4(2) of the Act or for the declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under the Act.

xx xx xx

In the instant case respondent No. 1 was claiming an interest in the land lying in the area covered by notification issued under section 4(2) on the basis that he is the son of Chhota, brother of Nanha and that the lands were recorded in the name of Nanha in a representative capacity on

behalf of himself and his other brothers. This claim which fell within the ambit of Section 5(2) had to be adjudicated by the consolidation authorities. Since it was a matter falling within the scope of adjudicatory functions assigned to the consolidation authorities under the Act the jurisdiction of the Civil Court to entertain the suit in respect of the said matter was expressly barred by Section 49 of the Act and the suit of the appellant was rightly dismissed on that ground."

(emphasis supplied)

14. However, through judicial proclamation, an exception on the ground of fraud has been carved out under the legal presumption that fraud vitiates everything, even solemn acts of judicial proceedings. The learned counsel for the petitioner has emphasized on this point and submitted that fraud has been played upon plaintiff/petitioner and his name has been got expunged from the revenue record. The defendants got their names recorded during consolidation operation, despite the fact that plaintiff/petitioner has executed a power of attorney in favour of Nanhu Singh to get the entry corrected during the consolidation operation. In all the cited cases relied upon by the learned counsel for the petitioner, one thing is common which has been taken into account by the Hon'ble High Court and the Hon'ble Supreme Court that aggrieved persons have their pre-existing co-tenancy over the holding in question and having considered the pre-existing right, it has been summarised by Hon'ble Courts concerned that by playing fraud upon the party his name was left to be recorded during the consolidation operation, to wit, after notification promulgated under Section 4(2) and before de-notification promulgated under Section 52 of U.P.C.H. Act. Thus, in the

eventuality of fraud, it would not be justifiable to hold the suit filed on behalf of the aggrieved person at subsequent stage barred under Section 49 of U.P.C.H. Act.

15. To elucidate this proposition, I would like to discuss all the cited cases relied upon by the learned counsel for the petitioner. In the matter of Ram Briksha and another (supra), decided by Division Bench of this Court, the facts giving rise to the said writ petition are that Ram Briksha (petitioner) was recorded in the basic consolidation record. In the previous consolidation operation, no objection was filed by Ram Vilas, however, in subsequent consolidation operation, he has filed an objection under Section 9A-2 of U.P.C.H. Act claiming himself as the real brother of the petitioner whose name got expunged by playing fraud. The petitioner (Ram Briksha) has contested the case with the plea that while the objection was not filed in the previous consolidation operation and finality is attached with the final consolidation record, the objection filed in the subsequent consolidation operation is barred under Section 49 of U.P.C.H. Act. In this backdrop of the facts, co-ordinate bench of this court has formulated three questions and referred the matter before Division Bench for consideration, which are quoted herein below:-

"(i) Whether use of words "could or ought to have been taken" in latter part of Section 49 of the Act, compulsorily forces the co-sharers, who are living jointly, peacefully and have no grievance against their father/brother/co-sharer, whose name is recorded in representative capacity, or they were willing to live jointly, due to situation of their family, i.e. (father and minor son), (mother and minor son), (brother and minor brother) and

(some co-sharer was student and had gone abroad for study and fully depends upon other co-sharers) etc., to file an objection under Section 9 of the Act for separation of his share?

(ii) Whether by operation of law, the parties can be thrown into litigation against their will/need and by not raising claim to land or partition and separation of the chak their right to property can be taken away in spite of protection available under Article 19 (1) (f) and now Article 300-A of the Constitution?

(iii) Whether, in spite of well settled legal principle in respect of joint property, right of a co-sharer will come to an end under Section 49 of the Act, on the notification under Section 52, due to not claiming partition of his share and separate chak in his name, although, there had been no ouster from joint property?"

16. Replying all the three questions, Hon'ble Division Bench has held that right of the parties in the holdings cannot be directed to be defeated merely because they have not at all participated in the consolidation proceedings and as to whether the bar under Section 49 of U.P.C.H. Act would be attracted or not, would essentially be a question of fact that can be answered on the basis of evidence adduced and to said bar in question, exceptions have to be carved out wherein suit in question would not be barred and Section 49 of U.P.C.H. Act would not come into play where from the series of documents and circumstances it is reflected that planned fraud has been made to delete the plaintiff's name from the revenue record. From the record of the consolidations, it is clearly reflected that neither the incumbent, who has proceeded

to get his name recorded, nor consolidation authorities have proceeded to discharge their duties faithfully in consonance with the provisions of U.P.C.H. Act wherein consolidation authorities are empowered to ascertain the share of each owner if there be more owners than one and if such an exercise has not been undertaken, then it would be a case of legal malice and it cannot be ipso facto presumed that there has been ouster from the property in question and in such situation any incumbent, who claims his right in the property in question, has got every right to regain his property based on title for the reason that right has been sought to be defeated based on fraud and manipulation.

(emphasis supplied)

17. Answers given by Hon'ble Division Bench for all the three referred questions are quoted hereinbelow:

Issue No. I:- Because of the words "could or ought to have been taken" in latter part of Section 49 of the Act, same does not compulsorily forces the co-sharers, who are living jointly, peacefully and have no grievance against their father/brother/co-sharer whose name is recorded in representative capacity or they were willing to live jointly due to situation of their family and who have not filed an objection under Section 49 of the Act for separation of their share inasmuch as under the provisions of U.P. Consolidation of Holdings Act, 1953, it is the statutory obligation cast upon the authorities and the incumbent, who has been holding the property in question in the representative capacity to get the records corrected and in case in designed manner the obligation in question has not been discharged by Consolidation Authorities as well as by the

incumbent holding the property in the representative capacity, then in such a situation Section 49 of the Act would not at all be attracted and such situation would be covered under the contingency of planned fraud to drop the name of other co-sharers from the revenue records.

Issue No. II:- The answer is that a party cannot be thrown in litigation against their will/need and by not raising claim to land of partition and separation of chak, their rights to property cannot be taken away under the protection provided for under Article 19(1)(f)/ Article 300-A of the Constitution of India.

Issue No. III:- The rights of the co-sharers will not at all come to an end under Section 49 of the Act, on the notification under Section 52 due to not claiming partition of his share and separate chak in his name and till there is no ouster from the joint property his right in the property will continue to exist.

18. Hon'ble Division Bench, as mentioned above, has acknowledged the pre-existing co-tenancy right of Ram Vilas being a co-sharer along with his brother, whose name was left to be recorded in the first consolidation operation due to some inadvertent mistake or fraud. Thus, in this backdrop, Hon'ble Division Bench came to the conclusion that his pre-existing right cannot be curtailed on the ground of bar under Section 49 of UPOCH Act.

19. Almost similar facts were examined by Co-ordinate Bench of this Court in the case of **Sagir Ahmad and others** (supra) wherein pedigree was admitted to both the parties. Mr. Bechai Shah and Bhaggu Shah S/O Wazid Shah were real brothers. In the first consolidation

operation, the name of Bechai Shah was exclusively recorded, however, name of Bhaggu Shah was left to be recorded despite the fact that in Khatauni pertaining to 1359 F. name of both the brothers were jointly recorded. On the advent of second consolidation operation, Bhaggu Shah has filed objection under Section 9A-2 of UPOCH Act claiming co-tenancy rights along with his brother, after his death along with his heirs, to the land in question. The co-ordinate Bench of this Court, relying upon the verdict of Division Bench of this Court in the matter of Ram Briksha (supra), came to the conclusion that the bar of Section 49 of UPOCH Act would not operate where it is reflected from the record and circumstances that name of the recorded tenure holder has been removed by playing fraud. Accordingly, if it is found that name of recorded tenure holder or co-sharer has been expunged from the revenue record by playing planned fraud, it would be a case of legal malice and in such situation, the person whose name has been expunged will have right to claim the property in question based on title for reason that such a right has been established to be defeated on manipulated.

20. Case of Amar Singh (supra), relied upon by learned counsel for the petitioner, is sailing on the same boat so far as it relates to the facts of the case wherein plot in dispute was purchased through registered sale deed dated 17.03.1969 by plaintiff (Saru) and defendant (Amar Singh-petitioner). The case of the plaintiff was that the defendant/petitioner used to look after the cases in different courts and plaintiff used to live in a forest being gadariya, looking after his goats. However, he has been duped by defendant in removing his name from the revenue record. Plaintiff has also claimed that after

the registered sale deed dated 17.03.1969, both the parties came in possession over the subject matter of the sale deed (suit property). Thus, in this backdrop of the facts, it has been held that a co-sharer, who claimed to be in the possession over the property in question and his name being not recorded in the consolidation proceeding, is not debarred from bringing a suit under 229 B of Act, 1950 for correcting the land revenue entries and recording his name also if allegation is that his name was removed by practising fraud on him. In support of his observation learned coordinate Bench of this Court has relied upon the case of **Karbalai Begum vs. Mohd. Sayeed and another, AIR 1981 SC 77.**

21. Hon'ble Supreme Court in the matter of Karbalai Begum (supra) had an occasion to consider the scope of bar under Section 49 of U.P.C.H. Act. In the peculiar facts and circumstance, Karbalai Begum (appellant before Hon'ble Supreme Court) had been denied her co-tenancy right over the property in question on the ground of bar under Section 49 of U.P.C.H. Act. The facts giving rise to the aforesaid case was that Karbalai Begum (widow) was co-tenant with the defendants no.1 and 2 who were cousins of her husband. They were in joint possession of the plot in dispute being co-bhumidhars. They had a joint khata upto 1959 fasli. During consolidation proceeding, name of defendants were exclusively recorded over the plot in question. At later stage, Karbalai Begum had filed a suit for co-tenancy to the extent of her share. The defendants came with the plea that the suit is barred under Section 49 of U.P.C.H. Act inasmuch as right and title of the parties became final during consolidation operation. The trial court has dismissed the suit, however, the District Judge, on appeal being filed, has allowed

the same with specific finding of fact that clear fraud was committed during consolidation operation either by the defendants or by somebody else as a result whereof rights of the plaintiff was said to be extinguished. Hon'ble High Court, in second appeal, has reversed the judgment passed by the District Judge for want of evidence to prove the fraud committed by the consolidation authorities. Hon'ble Supreme Court has affirmed the finding returned by the District Judge and held that fraud was practised upon Karbalai Begum which resulted in extinguishing her name during consolidation operation. In this backdrop of facts, the Hon'ble Supreme Court has held that bar under Section 49 of U.P.C.H. Act will not apply in the matter of fraud where co-tenancy has been denied. It has further been observed that it is well settled that mere non-participation in the rent and profit of the land of the co-sharer, does not amount to an ouster so as to give title by adverse possession to the co-sharer in possession. Indeed, even if this fact be admitted, the legal position would be that defendant no.1 (Mohd. Bashir) and defendant no.2 (Mohd. Rashid), being co-sharers of plaintiff, would become constructive trustees on behalf of the plaintiff and the right of plaintiff would be deemed to be protected by the trustees.

(Emphasis added)

22. However, in the case of **Narendra Singh and others vs. Jai Bhagwan AIR 2005 SC 582**, relied upon by the Hon'ble Division Bench in the matter of **Ram Briksha** and another (supra), Hon'ble Supreme Court has held that the High Court was right in invoking the plea of bar under Section 49 of U.P.C.H. Act. In the cited case, Hon'ble Supreme Court has observed that the argument that relevant entry in the name of

father should have been treated in the representative capacity for sons is misleading. Whether the father was Karta or manager of family and as such, could have recorded in the representative capacity for all corners in the family was also a question of title which fell within the exclusive jurisdiction of the authorities under the Act.

23. In view of the discussion made in preceding paragraph, this Court is sceptical of the submission advanced by learned counsel for the petitioner that bar under Section 49 applies only for certain period which starts from the promulgation of notification under Section 4(2) of U.P.C.H. Act till the notification promulgated under Section 52 of U.P.C.H. Act. In support of this submission, learned counsel for the petitioner has placed reliance upon the latest judgment of Hon'ble Supreme Court in the matter of **Prashant Singh and Others Vs. Meena and Others 2024(9) ADJ 187**. Paragraph no.9 relied upon by learned counsel for the petitioner is quoted herein below:

“ 9. On a plain reading, we find that Section 49 of the 1953 Act contemplates bar to the jurisdiction of the Civil or Revenue Court for the grant of declaration or adjudication of rights of tenure holders in respect of land lying in an area for which consolidation proceedings have commenced. Section 49 of the 1953 Act is a provision of transitory suspension of jurisdiction of Civil or Revenue Court only during the period when consolidation proceedings are pending. Notably, such suspension of jurisdiction of these Courts through the non obstante provision is only with respect to the declaration and adjudication of rights of tenure holders. In other words, unless a person is a pre-

existing tenure holder, Section 49 does not come into operation.”

24. Facts giving rise to the cited case is similar to the facts of the case, as discussed above, wherein co-tenancy right of aggrieved person has been denied by the recorded tenure holders. In the cited case subject matter of the suit is an ancestral property originally owned by one Angat who died leaving behind his three sons namely Ramji Lal, Khushi Ram and Pyara. Subsequently, Pyara died issueless and his share devolved equally upon his two brothers. Khushi Ram died as well leaving behind his son namely Kalyan Singh. During consolidation operation, record had been manipulated to delete the name of Kalyan Singh and he had been shown missing. Having been aggrieved, Kalyan Singh has instituted a suit for declaration to the extent of his half share over the property in question. Learned trial court has decreed the suit giving co-tenancy right to Kalyan Singh. The first appellate court has affirmed the order passed by the trial court. The Board of Revenue, on second appeal being filed, remitted the matter before the trial court to decide afresh after framing an issue with respect to applicability of Section 34 of Specific Relief Act. Writ Petition filed by Kalyan Singh assailing the order passed by the Board of Revenue was allowed. Plea was raised before the Hon'ble Supreme Court that suit filed by Kalyan Singh was barred under Section 49 of U.P.C.H. Act. In this backdrop of the facts, Hon'ble Supreme Court has held that the provisions under the U.P.C.H. Act does not enable the Consolidation Officer to grant ownership to Ramji Lal (uncle of Kalyan Singh) in respect of a property, which, before consolidation proceeding, never vested in him. Vice versa, the Consolidation Officer could not take away

the ownership right of Kalyan Singh which he had already inherited much before commencement of the consolidation proceeding. There is no doubt that the power to declare the ownership in an immovable property can be exercised by a civil court, however, same can be interpreted in light of the provisions under Section 5 of C.P.C. whereby local law has been given priority. Thus, declaration of right and title of the parties pertains to agriculture land can only be examined in the revenue courts, to wit, either under the Act No.50 (now substituted by U.P. Revenue Code, 2016) or U.P.C.H. Act. Hon'ble Supreme Court, in the cited case, having considered the non obstante clause enunciated under Section 49 of U.P.C.H. Act, has clarified in the later part of the paragraph no.9 that suspension of jurisdiction of Civil Court and the Revenue Court through non obstante provisions is only with respect to the declaration and adjudication of rights of tenure holders. It has further been clarified that unless a person is pre existing tenure holder, section 49 does not come into operation, thus, aggrieved person has to prove his pre existing legal right and title over the property in question in case he wants bypass the bar under Section 49 of U.P.C.H. Act. In the given circumstances of the present case, petitioner is claiming his alleged pre existing right through mortgage deed dated 04.03.1901 and subsequent order passed in Original Suit No. 418 of 1911. However, subsequent decree dated 03.03.1946 passed in suit for redemption/possession has not been denied by the plaintiff except questioning its legality on the ground of previous decree passed in Suit No. 418 of 1911. In my considered opinion, once the suit for redemption/recovery of possession filed on behalf of the mortgagor has been decreed

and possession has been delivered to him, plea raised on behalf of the petitioner (alleged descendent from mortgagee) qua foreclosure of the mortgage and previous judgment in Suit No. 418 of 1911 has got no substance in the eye of law. It would be apposite to mention that mortgagor has filed a suit under Section 99 of Agra Tenancy Act 1926 (U.P. Act No. 3 of 1926) which is quoted herein below:

“ 99. Resolution of wrongful ejectment.—*(1) Any tenant or rent-free grantee ejected from or prevented from obtaining possession of his holding or any part thereof, otherwise than in accordance with the provisions of this Act, by -*

(a) his landlord or any person claiming as land-holder to have a right to eject him, or

(b) any net of oaring through such land-holder or person, whether as a tenant or otherwise,

may sue the person person so ejecting him or keeping him out of possession—

(i) for possession of the holding ;

(ii) for compensation for wrongful dispossession; and

(iii) for compensation for any improvement he may have made :Provided that no decree for possession shall be passed where the tenant, at the time of the passing of the decree, is liable to ejectment in accordance with the provisions of this Act within the current agricultural year.

(2) If the decree is for possession no compensation for an improvement shall be awarded.

(3) When a decree is given for compensation for wrongful dispossession but not for possession, the compensation awarded shall be for the whole period during which the tenant was entitled to remain in possession.

(4) A tenant who has sued for possession only shall not be entitled to instituted a separate suit for compensation for wrongful dispossession, or for an improvement, in respect of the same cause of action."

25. Section 99 of the Agra Tenancy Act 1926 (U.P. Act No. 3 of 1926), as quoted above, denotes that suit for recovery of possession can be filed against the wrongful ejectment. Aforesaid suit being O.S. No. 4/5, filed on 09.09.1935, was allowed on 29.02.1936 with a direction to deliver the possession to the plaintiff over the property in question with the cost amounting Rs. 133/-. Copies of the judgment dated 29.02.1936 and decree dated 03.03.1946 are annexed as Annexure no. CA-1 and CA-2 to the counter affidavit. Existence of the aforesaid judgment and decree has not specifically been denied in paragraph no.5 of the rejoinder affidavit except an averment that subsequent suit alleged in the para under reply has no significance and material bearing on the controversy involved between the parties on account of existence of previous decree dated 26.02.1912 passed in Suit No. 418 of 1911.

26. So far as the entry in the land revenue record is concerned, learned trial court in its order dated 07.11.2007 has unequivocally observed that in 1356 *fasali*,

1348 *fasali* and 1359 *fasali*, name of the petitioner is not recorded in the revenue record. Petitioner has filed the extract of khatauni 1348 *fasali* and khatauni 1366 - 1369 *fasali* to demonstrate that name of Ram Dulari wife of Urmakhan Lal Dubey is recorded as the mortgagee. Perusal of aforesaid document as annexed in the writ petition evince that in the column of tenure holder, name of predecessors-in-interest of defendants/respondents is recorded and below their name, name of Ram Dulari is recorded as mortgagee. It would be apposite to mention that in the judgment dated 29.02.1936 passed in Suit No. 4/5, Ram Dulari was directed to deliver the possession of property in question in favour of Daulat Singh (predecessor-in-interest of contesting respondents). There is no credible evidence on the record to prove that name of plaintiff or his predecessors were ever recorded in the land revenue record being a co-tenure holder of land in question. Under the old Acts viz. N.W.P. Tenancy Act 1901, U.P. Act no. 3 of 1926 and U.P. Tenancy Act 1939, mere entry of mortgagee, prima facie, would not confer any type of tenurial right in favour of the plaintiff-petitioner over the property in question, that too, qua land which was recorded as "Asamiyan Dakheekar" under class 6(1). At this juncture, it would not be befitting to make any comment qua entries in the khatauni as mentioned above which has not been discussed by the courts below. Therefore, in the light of the subsequent judgment passed by court competent under Section 99 of U.P. Act No. 3 of 1926, plaintiff/petitioner cannot be considered to be a co-tenure holder or co-sharer/bhoomidhar or bhoomidhar with transferable right in his exclusive ownership. Thus, case of **Prashant Singh** (supra) decided by Hon'ble Supreme Court is not applicable in the instant matter.

27. Last submission advanced by learned counsel for the petitioner qua fraud committed on plaintiff/petitioner by Nanhu Singh has got no substance in the eye of law, as well. Mere assertion of fraud is not sufficient to render the judicial proceeding concluded by the court competent illegal unless it is proved by credible and unimpeachable evidence. As per plaintiff's case, he has executed a power of attorney in favour of Nanhu Singh to get the land revenue entry corrected in his name during the consolidation operation. Pleading in the plaint in this regard has specifically been denied by defendants-respondents in written statement. In support of the aforesaid pleading no documentary evidence has been filed before any of the three revenue courts. However, for the first time, petitioner has filed the photostat copy of alleged power of attorney dated 22.08.1966 as Annexure no. 5 to the writ petition. Bare perusal of aforesaid power of attorney evince that it is an unregistered document bearing signature of the present petitioner and two witnesses. Respondents have specifically denied this document in para 12 of counter affidavit and contended that under the garb of fabricated Power of Attorney, petitioner has played fraud.

28. In my considered opinion, document filed for the first time before this Court is not admissible in evidence, that too, same is a photostat copy of unregistered document. Coordinate bench of this Court in the matter of Mangaroo (dead) Through LRs. And Others Vs. Deputy Director of Consolidation, Deoria and Others, (2011) 113 RD 300 has made an observation that fraud cannot be inferred on mere allegation.

Relevant paragraph no.9 of the aforesaid judgment is quoted herein below:

"9. The respondents further alleged that fraud had been practised on them. In the opinion of the Court, fraud cannot be inferred on mere allegations. It has to be established on facts or on the basis of proven facts. The connotation of fraud has been explained in the case of State of Andhra Pradesh v. T. Suryachandra Rao, paragraphs 4 to 14. Fraud therefore has to be proved. A mere allegation would not sufficient to establish fraud. This aspect has also been dealt with by the Apex Court in the case of Indian Bank v. Satyam Fibres (India) Pvt. Ltd., The said decision relies on a Privy Council decision in the case of Satish Chandra Chatterji v. Kumar Satish Kantha Roy, and the relevant paragraph for the said proposition as extracted in the Apex Court judgment is quoted below:

"Charges of fraud and collusion like those contained in the plaint in this case must, no doubt, be proved by those who make them - proved by established facts or inferences legitimately drawn from those facts taken together as a whole. Suspensions and surmises and conjecture are not permissible substitutes for those facts or those inferences, but that by no means requires that every puzzling artifice or contrivance restored to by one accused of fraud must necessarily be completely unravelled and cleared up and made plain before a verdict can be properly found against him. If this were not so, many a clever and dextrous knave would escape."

29. Hon'ble Supreme Court has elucidated the scope of fraud in the matter of Harjas Rai Makhija (D) Through LRS. Vs. Pushparani Jain and Another, decided on January 2, 2017 reported in 2017 (134)

RD 811 and held that fraud has a definite meaning in the law and it must be proved and not merely alleged and inferred. Relevant paragraph no.21 of the aforesaid judgment is quoted herein below:

“ 21. We agree that when there is an allegation of fraud by non-disclosure of necessary and relevant facts or concealment of material facts, it must be inquired into. It is only after evidence is led coupled with intent to deceive that a conclusion of fraud could be arrived at. A mere concealment or non-disclosure without intent to deceive or a bald allegation of fraud without proof and intent to deceive would not render a decree obtained by a party as fraudulent. To conclude in a blanket manner that in every case where relevant facts are not disclosed, the decree obtained would be fraudulent, is stretching the principle to a vanishing point.”

30. Having considered the aforesaid judgments in the given circumstances of the present case and discussion as made by this Court in preceding paragraphs, it is evident that no case of fraud could be made out in the instant matter, inasmuch as plaintiff-petitioner is throughout claiming his right and title over the property in question being mortgagee. However, in pursuance of the judgment passed in Suit No. 4/5 under Section 99 of U.P. Act No. 3 of 1926 possession of the property has been handed over to the mortgagor (defendant-respondent). Thus, right of the mortgagee, if any, comes to an end. Mortgagee (plaintiff-petitioner or his predecessor in his interest) were never recorded in the land revenue record in their individual capacity being a co-tenure holder with

the defendants (mortgagor). Facts and circumstances of all the cited cases relied upon by learned counsel for the petitioner is distinguishable in the given circumstances of the present case. Right and title of the plaintiff/petitioner in the property in question cannot be said to be a pre existing co-tenancy right. Assuming arguendo that he was in the possession over the property in question in pursuance of the decree passed in the year 1912, his possession came to an end in year 1946 in compliance of judgement and decree passed in Suit No. 4/5, to wit, before zamindari abolition and enforcement of the U.P.C.H. Act. On the date of advent of consolidation operation, his name was not recorded in the basic consolidation record, thus, plea of fraud as raised on behalf of the plaintiff-petitioner cannot be substantiated in the facts and circumstances of the present case. The alleged power of attorney relied upon by the plaintiff is itself under cloud, as discussed above.

31. In this conspectus, as above, I do not find any justifiable and convincing ground to warrant the indulgence of this court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. There is nothing on record to demonstrate as to how the petitioner is prejudiced, or is there any likelihood of causing miscarriage of justice to him, owing to the order impugned passed by all the three revenue courts. There is no illegality, perversity, ambiguity or infirmity in the order under challenge.

32. Resultantly, instant writ petition, being devoid on merits and

misconceived, is **dismissed** with no order as to costs.

(2025) 4 ILRA 479

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 09.04.2025

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ- B No. 26270 of 1997

Raj Kumar & Ors. ...Petitioners
Versus
Board of Revenue & Ors. ...Respondents

Counsel for the Petitioners:

Anil Kumar Mishra, Nagendra Kumar Srivastava, Neeraj Tripathi, Pradeep Kumar Rai, Prajyot Rai, Pratima Srivastava, Rajendra Kumar, Ramendra Asthana, Sandeep Kumar Srivastava, Shravan Kumar Mishra, Udai Chandani

Counsel for the Respondents:

Aa Khan, Abhinava Krishna Srivastava, Pradeep Kumar

A. Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 229-B -

Scope of suit under Section 229-B, 209 of U.P.Z.A. and L.R. Act as well as the limitation provided for suit under the aforementioned section - Limitation - *No limitation is provided* for suit under Section 229-B of U.P.Z.A. and L.R. Act - In respect to suit under Section 209 of U.P.Z.A. and L.R. Act limitation of Three years is provided under Appendix III prepared under Rule 338 of U.P.Z.A. and L.R. Rules- Suit under Section 229-B of the U.P. Z.A. & L.R. Act cannot be decided without framing issues and without affording opportunity to lead evidence to the parties. (Para 11, 12)

B. Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 331 (4) -

Scope of second appellate jurisdiction of Board of Reveune - Second-appeal under Section 331

(4) of U.P.Z.A & L.R. Act, before the Board of Revenue would lie on a question of law rather on substantial question of law (Para 15)

C. In the instant matter, suit under Section 229-B/209 of the U.P. Z.A. & L.R. Act filed in the 1983 by Kanpur Development Authority was dismissed by the trial court and the decree of the trial court has been maintained in appeal by the 1st Appellate Court/Additional Commissioner but in second appellate jurisdiction, the Board of Revenue has allowed the second appeal and decreed the plaintiff's suit without considering the fact that defendants petitioners have been found in possession of the disputed plot since before the date of vesting. Bhumidhari sanad was issued in favour of defendant- petitioners and defendant petitioners were accordingly remained in possession over the plot in question since before the date of vesting. No proceeding for cancellation of bhumidhari sanad was initiated by State Government as provided under Section 137-A of the U.P.Z.A. and L.R. Act, as such, the filing of suit in 1983 under Section 229-B/ 209 of U.P.Z.A. and L.R. Act is abuse of process of law. Judgement passed by Board of Revenue in exercise of second appellate jurisdiction decreeing the plaintiff- suit and expunging the longstanding entry of the plot in question cannot be sustained in the eye of law. Impugned judgement aside.(Para 14, 17, 22)

Allowed. (E-5)

(Delivered by Hon'ble Chandra Kumar Rai, J.)

1. Heard Mr. Ramendra Asthana, Mr. Pradeep Kumar Rai, Mr. Prajyot Rai, learned counsels for the petitioners, Mr. Anshul Nigam, learned Standing Counsel for the State respondents and Mr. M.C. Chaturvedi, learned Senior Counsel assisted by Mr. Abhinava Krishna Srivastava, learned counsel for respondent no.3/ Kanpur Development Authority.

2. Brief facts of the case are that respondent no.3/ Kanpur Development Authority filed a suit under Section 229-B/

209 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 hereinafter referred to as U.P.Z.A. and L.R. Act in respect to plot Nos. 196, 197, 199 total area 15 bigha 19 biswa situated in Village Chakeri Tehsil and District Kanpur Nagar for declaration that entries of defendant nos. 1 to 9 over the plot in question be expunged and if defendants are found in possession over the same, they may be ejected from the plot in question. The aforementioned suit was registered as suit No. 52/85/46/87 and State of U.P. was impleaded as defendant no.10. Defendants have put in appearance in the aforementioned suit and filed their written statement. Nine issues were framed before the Trial Court in the aforementioned suit and parties have adduced oral and documentary evidences in support of their cases. Trial Court while deciding the issue Nos. 1 to 4 and 6 has recording finding of fact that defendants are in possession over the plot in question since before the date of vesting accordingly they became adivasi and later on bhumidhar, as such, the entry in respect to the plot in question in the name of defendants cannot be expunged. The Trial Court ultimately dismissed the aforementioned suit vide judgement and decree dated 5.12.1987. Against the judgement and decree of Trial Court dated 5.12.1987, appeal under Section 331 of the U.P.Z.A. and L.R. Act was filed on behalf of respondent no.3/ Kanpur Development Authority before the Commissioner which was registered as appeal No. 8/1987. The aforementioned appeal was heard and dismissed by Additional Commissioner vide judgement and decree dated 1.8.1988. Against the judgement and decree of Additional Commissioner dated 1.8.1988, respondent no.3/ Kanpur Development Authority filed a second appeal before Board of Revenue which was registered as

second appeal No. 13 of 1988-89. The Board of Revenue vide judgement dated 23.4.1997 allowed the second appeal setting aside the judgement of Trial Court as well as the First Appellate Court and decreed the plaintiff suit. Hence this writ petition filed for the following relief:-

"Issue a writ, order or direction in the nature of certiorari to quash the order dated 23.4.1997 of opposite party No.1 and restore that of the Courts below."

3. This Court entertained the matter on 12.8.1997 and stayed the operation of the order dated 24.3.1997 passed by Board of Revenue.

4. In pursuance of the order dated 12.8.1997 passed by this Court, the parties have exchanged their pleadings.

5. Mr. Ramendra Asthana, Mr. Pradeep Kumar Rai and Mr. Prajyot Rai, learned counsels for the petitioners submitted that lease deed was executed by Zamindar on 30.6.1949 in favour of Dwarika Prasad, wife of Dwarika Prasad, Vishwa Nath in respect to disputed plot along with certain other plots. They further submitted that in a suit under Section 59 of the U.P. Tenancy Act a decree was passed on 22.11.1952 in favour of defendants in respect to the plot in question. They further submitted that by operation of law, defendants acquired right of adivasi, sirdars and bhumidhar after issuance of bhoomidhar sanad in their favour. They further submitted that in the suit under Section 229-B/209 of U.P.Z.A. and L.R. Act, Kanpur Development Authority was the sole plaintiff and State of U.P. was arrayed as defendant no. 10. They submitted that Trial Court vide judgement/

decree dated 5.12.1987 dismissed the plaintiff suit holding that defendants are in possession of the plot in question since before the date of vesting and the decree of Trial Court was challenged by Kanpur Development Authority only and there was no challenge by the State Government before any Court of law. They submitted that plot Nos. 196,197,199 were recorded as usar and banjar in the revenue record. They submitted that bhumidhari- sanad was issued in favour of defendants accordingly the right which has been created in favour of all the defendants cannot be annulled on the basis of suit under Section 229-B/ 209 of the U.P.Z.A. and L.R. Act filed by Kanpur Development Authority. They submitted that appeal filed by Kanpur Development Authority was dismissed by Additional Commissioner affirming the judgement and decree of the Trial Court. They submitted that second appeal was filed before the Board of Revenue again by Kanpur Development Authority only. They submitted that in view of the provisions contained under Section 4 of the Urban Planning and Development Act, 1973, the suit under Section 229-B/ 209 of the U.P.Z.A. and L.R. Act at the instance of Kanpur Development Authority cannot be entertained. They further submitted that in view of the provisions contained under Section 53 of U.P. Revenue Code, 2006 corresponding to Section 57 of U.P. Land Revenue Act, 1901, there will be presumption of correctness of the entries in revenue record as there was no challenge by the Kanpur Development Authority or the State regarding the longstanding entry of the plot in question. They submitted that aforementioned suit under Section 229-B/ 209 of the U.P.Z.A. and L.R. Act was filed for the first time in the year 1983 which cannot be entertained in view of the ratio of law laid down in accordance with law.

own by Hon'ble Apex Court in the case reported in **1996 (7) SCC 767 Mohd. Noorul Hoda Vs. Bibi Raifunnisa and Others**. They further submitted that in view of the provisions contained under Section 20 of the U.P.Z.A. and L.R. Act, the right and title accrued in favour of defendants cannot be negated in any manner. They submitted that judgement and decree passed by Board of Revenue while allowing the second appeal as well as decreeing the plaintiff suit cannot be sustained in the eye of law in view of the ratio of law laid down by this Court in the case reported in **2004 (1997) RD 119 Ved Prakash Vs. Board of Revenue, U.P. Lucknow**. They submitted that judgement of reversal cannot be passed by Appellate Court unless the finding of fact recorded by Trial Court is reversed in proper manner in view of the ratio of law laid down in the case reported in **2024 (3) ARC 641 Ram Chandran and Others Vs. State of U.P. and Others**. They submitted that in any case, the Board of Revenue cannot decree the plaintiff suit in exercise of second appellate jurisdiction rather they should follow the procedure prescribed under Order 41 Rule 23, 23-A, 24, 25, 27 of Code of Civil Procedure. They submitted that due to operation of law, the defendants have been recorded as bhumidhar of the plot in question, as such, the entry of the plot in question cannot be expunged after such a long period on the basis of suit filed under Section 229-B/ 209 of U.P.Z.A. and L.R. Act in view of the ratio of law laid down by this Court in the case reported in **2018 ACJ 1181 Jitendra Kumar Vs. State of U.P. and Others**. They further submitted that in view of the continuous and uninterrupted possession of the defendants over the plot in question, the suit under Section 229-B/ 209 of the U.P.Z.A. and L.R. Act filed by Kanpur Development Authority cannot be

decreed in view of the ratio of law laid down by Hon'ble Apex Court in the case reported in *AIR 1970 (SC) 1778 State of West Bengal Vs. Dalhousie Institute Society*. They submitted that in view of the ratio of law laid down by Hon'ble Apex Court in the case reported in *2019 (5) ADJ 302 Rakesh and Others Vs. Board of Revenue and others*, the right and title created in favour of defendants cannot be taken away on the basis of suit filed by Kanpur Development Authority under Section 229-B/ 209 of U.P.Z.A. and L.R. Act. They further submitted that this Court in the case reported in *2022 (7) ADJ 16 Bhagwati Deen Vs. Sheetal Din and Others* has considered the controversy relating to accrual of sirdari/ adivasi/ bhoomidhari right on the basis of entry of 1359 fasli which will be applicable in the instant matter. They submitted that judgement and decree passed by Board of Revenue should be set aside and the plaintiff suit should be dismissed accordingly.

6. On the other hand, Mr. M.C. Chaturvedi, learned Senior Counsel assisted by Mr. Abhinava Krishna Srivastava, learned counsel for respondent no.3/ Kanpur Development Authority submitted that plot in question was vacant land before the date of vesting and after abolition of zamindari, the plot in question was initially vested in State and later on in favour of Gram Sabha. He further submitted that vide notification dated 6.9.1978, the plot in question came under Nagar Maha Palika and later on the same has been vested in Kanpur Development Authority. He further submitted that plot in question was remained recorded up to 1362 fasli in the name of Gram Sabha but after 1962 fasli, the name of defendants were

recorded in fraudulent manner in collusion of revenue officials. He submitted that no sirdari or bhumidhari can be accrued in favour of defendants in view of the provisions contained under Section 20 (b) of the U.P.Z.A. and L.R. Act. He further submitted that in view of the provisions contained under Section 24 of U.P.Z.A. and L.R. Act, the case of lease set up by the defendants cannot be entertained and allowed by any Court of law. He further submitted that the judgement passed under Section 59 of U.P. Tenancy Act between two private parties will not be binding upon the respondent no.3/ Kanpur Development Authority. He further submitted that in view of the provisions contained under Section 56 of the U.P. Tenancy Act, there is no illegality in the impugned judgement passed by Board of Revenue decreeing the plaintiff suit under Section 229-B/209 of U.P.Z.A. and L.R. Act. He submitted that there is no requirement for framing substantial question of law by the Board of Revenue while exercising the second appellate jurisdiction under Section 331 (4) of the U.P.Z.A. and L.R. Act as held by Hon'ble Apex Court in the case of *State of Uttarakhand (Prev. U.P.) Vs. Mohan Singh 2012 (13) SCC 281*. He further submitted that Board of Revenue has rightly exercised the second appellate jurisdiction in view of the provisions contained under Code of Civil Procedure. He further submitted that second Appellate Court can decide the matter finally rather to remand the matter before the Trial Court. He further submitted that no interference is required against the impugned order passed by Board of Revenue and writ petition is liable to be dismissed. He further placed reliance upon

the following judgements of Hon'ble Apex Court as well of this Court in support of his argument:-

"1. 2018 0 Supreme(All) 2484 Amrit Lal & Ors vs. State of U.P. Thru Collector, Lucknow & Ors

2. 2013 0 AIR (SC) 38 State of Uttarakhand (Previously State of Uttar Pradesh) vs. Mohan Singh & Ors

3. 2005 0 AIR(SC) 3110 the State of Andhra Pradesh & Anr vs. T. Suryachandra Rao

4. 2010(2) ADJ 514 Suresh Giri and Others vs. Board of Revenue, U.P. Allahabad and Others

5. 2003 8 SCC 319 Ram Chandra Singh vs. Savitri Devi & Ors

6. 2012 0 AIR(SC) 3285 Bhartiya Seva Samaj Trust Tr. Pres. & Another vs. Yevidence in accordance with law. ogeshbhai Ambala Patel & Another

7. 2023(9) ADJ 208 Basdev vs. State of U.P. and Others

8. 1964 (7) SCR 800 Amba Prasad Vs. Abdul Noor Khan and Ors.

9. 2015 (128) RD 24 Raj Kishore (dead) Through LRs and Ors Vs. Heera (dead) Through LRs and Ors

10. SPL (Civil) No. 15774/ 2022 M/S Paul Rubber Industries Private Ltd. Vs. Amit Chand Mitra and Ors

11. Consolidation No. 168 of 1985 Hanuman And Ors Vs. Bansraj and Ors."

7. Mr. Anshul Nigam, learned Standing Counsel for the State respondents submitted that in view of the provisions contained under Section 4 of U.P. Urban Planning and Development Act, there were no illegality in the judgement and decree passed by Board of Revenue while deciding the second appeal decreeing the suit filed by Kanpur Development

Authority. He further submitted that in the aforementioned suit under Section 229-B/ 209 of U.P.Z.A. and L.R. Act, State has admitted the plaint allegations of the suit filed by Kanpur Development Authority, as such, there was no illegality in filing of suit by Kanpur Development Authority without associating the State as plaintiff in the suit. He submitted that writ petition filed by petitioners should be dismissed.

8. I have considered the arguments advanced by learned counsel for the parties and perused the records.

9. There is no dispute about the fact that suit under Section 229-B of U.P.Z.A. and L.R. Act filed by respondent no.3/ Kanpur Development Authority was dismissed by Trial Court and judgement and decree of Trial Court was maintained in appeal by Additional Commissioner. There is also no dispute about the fact that second appeal filed by respondent no.3/ Kanpur Development Authority was allowed setting aside the judgement and decree of the Trial Court as well as first Appellate Court and the suit of plaintiff was decreed accordingly.

10. The point of determination which are involved in the writ petition is about the scope of suit under Section 229-B, 209 of U.P.Z.A. and L.R. Act as well as the limitation provided for suit under the aforementioned section as well as scope of second appellate jurisdiction of Board of Reveune under Section 331 (4) of the U.P.Z.A. and L.R. Act. The scope of proceeding regarding grant and cancellation of bhumidhari sanad are also to be considered in the instant petition coupled with the fact regarding acquisition of part of the area of the plot in dispute by the authorities and payment of

compensation to the recorded owner of the plot in dispute.

11. So far as the suit under Section 229-B of the U.P. Z.A. & L.R. Act, is concerned, this Court in the case reported in **2005 (99) RD 529 Pan Kumari Vs. Board of Revenue and Others** has held that the suit of aforementioned category, is treated to be a suit of special character and no limitation is provided for suit under Section 229-B of U.P.Z.A. and L.R. Act however in respect to suit under Section 209 of U.P.Z.A. and L.R. Act is concern, the limitation was provided under Appendix III. Paragraph No. 6 of the judgement rendered in Pan Kumari (Supra) will be relevant for perusal which is as under:-

"6. Sri R.C. Singh submits that the suit under Section 229-B was barred by limitation. In support of this contention he relies upon Section 341 of the U.P. Zamindari Abolition and Land Reforms Act, which provides that the Limitation Act would be applicable to proceedings under the U.P. Zamindari Abolition and Land Reforms Act and limitation in a suit for declaration would be governed by Article 137 of Schedule 1 of the Limitation Act as there is no period prescribed for such a suit under the U.P.Z.A. & L.R. Act. Section 341 itself provides that the provisions of certain Acts including the Limitation Act shall apply to the proceedings under the U.P. Z.A. & L. R. Act unless otherwise provided in the U.P.Z.A. & L.R. Act. Rule 338 of the U.P.Z.A. and L.R. Rules provides that the suits, applications and Ors. proceedings specified in Appendix III shall be instituted within the time specified therein for them respectively. Recourse to the provisions of the Limitation Act would be

available only if there is no provision under Rules in respect of the period of limitation for the different classes of suits or proceedings mentioned therein. In Appendix III the period of limitation provided for different classes of suits has been given. As regards suits under Section 229-B column 4, which prescribes the period of limitation for different classes of suit says "none". It would therefore be treated that there is no limitation for filing a suit under Section 229-B. Section 9 of the Civil Procedure Code provides that all suits of civil nature shall be instituted in the civil court except those, which have been accepted. A suit under Section 229-B falls within the excepted category and such suits even though they involve declaration are suits of a special character. Article 137 of the Limitation Act relied upon by Sri Singh in any case is applicable only to applications and not to suits and therefore has no play. When the rule making authority has provided different periods of limitation for different classes of suits it would be treated that provisions prescribing period of limitation in the Limitation Act would not be applicable to suits under the U.P.Z.A. & L.R. Act. Section 189 U.P.Z.A. & L. R. Act sets out the circumstances in which the interest of a bhumidar is extinguished. Clauses (a) (aa) and (b) relate to cases where the bhumidar dies leaving no heir, or where he has let out his holding in contravention of the provisions of the Act or where the land is acquired. Sub-section (C) of Section 189 provides that where a bhumidar has lost possession the bhumidari right would extinguish when the right to recover possession is lost. In Ram Naresh v. Board of Revenue 1985 R.D. 444 relied upon by Sri R. C. Singh it was held that the provisions of Section 27 of the Limitation Act would be attracted to

suits instituted under Section 229-B. Section 27 provides that on the determination of the period limited for instituting a suit for possession the right to such property shall be extinguished. The rule is an exception to the general rule that limitation bars the remedy but does not extinguish the right. If however a person is in possession his right can not be extinguished unless the case is covered by Clauses (a) (aa) and (b) of Section 189. He can therefore seek a declaration of his right at any point of time. If a person has been dispossessed he would have to institute a suit under Section 209 U.P.Z.A. & L.R. Act. Appendix III provides the period for limitation for filing a suit under Section 209. It would follow therefore that a suit under Section 229-B would be barred by limitation the bhumidar is out of possession and his right to file a suit under Section 209 is barred by limitation. The finding of fact recorded on the question of possession is that the plaintiffs have established their continuous possession over the disputed land. The finding is not shown to be vitiated by any error. As the rights of the plaintiff were never extinguished no question of limitation arises. For the reasons given above the writ petition lacks merit and is dismissed. "

12. This Court in the case reported in **2020 (146) RD 186 Babu vs. Mahavir and Others** has held that the suit under Section 229-B of the U.P. Z.A. & L.R. Act cannot be decided without framing issues and without affording opportunity to lead evidence to the parties. Paragraph nos. 2, 3 & 4 will be relevant for perusal which are as under:-

"2. The manner in which the suit instituted by the respondent no.1

under Section 229-B of U.P. Z.A. & L.R. Act has been decided by the impugned order dated 28.01.2019 cannot be appreciated. The trial court has neither framed issues nor has provided any opportunity of leading evidence to the parties to prove their respective cases. The provisions contained in Code of Civil Procedure has been given a go bye.

3. As already observed above by the Court in its order dated 21.02.2019, the proceedings under Section 229-B of U.P.Z.A & L.R Act are regular proceedings where declaration of rights in a holding is decided on the basis of evidence.

4. Learned counsel for respondent no.1 has also not been able to defend the impugned order; rather he appears to agree that the matter ought to have been remanded to the Sub-Divisional Officer concerned."

13. The limitation provided under Appendix III prepared under Rule 338 of U.P.Z.A. and L.R. Rules is as under:-

Sl No.	Section of the Act	Description of suit, application and other proceedings	Period of limitation	Time from which period begins to run	Proper Court fees
1	2	3	4	5	6
	209	Suit for ejectment of a person taking or retaining possession of the land unlawfully and			

	for damages :					have been extended from time to time (including 85 settled Bhabar Villages of Tarai and Bhabar Government Estates).			
	(I) If the person was in possession of the land on the date of vesting of and the period of limitation for his ejectment specified in the U.P. Tenancy Act, 1939 had not expired.	Three years	From the date of vesting	As in the Court Fees Act, 1870, on one year's rent calculated at hereditary rates.		(iv) In case of occupants of any other land held by bhumidhar or asami where possession of such land is taken or retained unlawfully.	Twelve years	Ditto	Ditto
	(ii) In case of occupant referred to in Section 144.	Three years	From the date of declaration under Section 144	Ditto					
	(iii) In case of occupants of land held by a bhumidhar in the Government Estates in which the provisions of the Act	Six years	From 1st of July following the date of occupation	Ditto					

14. In the instant matter, suit under Section 229-B/209 of the U.P. Z.A. & L.R. Act filed in the 1983 by Kanpur Development Authority was dismissed by the trial court and the decree of the trial court has been maintained in appeal by the 1st Appellate Court/Additional Commissioner but in second appellate jurisdiction, the Board of Revenue has allowed the second appeal and decreed the plaintiff's suit without considering the fact that defendants petitioners have been found in possession of the disputed plot since before the date of vesting.

15. So far as the second appellate jurisdiction under Section 331(4) of the U.P. Z.A. & L.R. Act exercised by the Board of Revenue is concerned, the Hon'ble Apex Court in the case of *State of Uttarakhand (Supra)* has held that the second-appeal under Section-331 (4) of U.P.Z.A & L.R. Act, before the Board of Revenue would lie on a question of law rather on substantial question of law. Paragraph Nos. 26, 27 & 28 of the judgment of Hon'ble Apex Court rendered in *State of Uttarakhand (supra)* will be relevant for perusal which are as under:-

“26. We are of the view that the principle laid down in Mahindra and Mahindra and the judgments referred to earlier clearly apply when we interpret sub-section (4) of Section 331 of the U.P. Act. Sub-section (4), as we have already indicated, has used the expression “on any of the grounds” specified in Section 100 of the C.P.C. Consequently, the then existing Section 100 (i.e. section 100, as it existed in 1908 unamended) was incorporated in sub-section (4) of Section 331 and substitution of the new Section 100 does not affect or restrict the grounds as incorporated. The right of appeal to the Board of Revenue under sub-section (4) of Section 331 clearly intended to be limited to the grounds set out in the then existing Section 100, since those were the grounds which were before the Legislature and to which the Legislature could have applied its mind and it is reasonable to assume that it was with reference to those specific and known grounds that the Legislature intended to limit the right of appeal.

27. The appeal before the Board of Revenue would, therefore, lie on a question of law. This legal aspect was not considered properly either by the Board of Revenue or by the High

Court. Further, we also notice that the Board of Revenue has not examined the provisions of the land record and Lekhpal Diary No., date and P.A. 10. The Additional Commissioner had specifically noticed that P.A.10 which had been filed pertaining to year 1976 did not bear any signature and the same was found to be doubtful, as to whether the original ‘Kashtkar’ (tillers) of the land in dispute belonged to Tharu tribe, was also not properly examined. Further, the Board of Revenue also should have examined whether the land belonged to Tharu tribe and the plaintiff could claim the benefit of Section 210 of the U.P. Act. All these aspects are very vital for a proper and just adjudication of the dispute, which has not been done.

28. In such circumstances, we are inclined to allow the appeals and set aside the order passed by the High Court as well as that of the Board of Revenue and the matter is remanded to the Board of Revenue for fresh consideration, in accordance with law. However, we are not expressing any opinion on the merits of the case, since we are remitting the matter to the Board of Revenue. The Board of Revenue will pass the final orders within a period of three months from the date of receipt of this order.”

16. This Court in the case reported in 2018 All C.J. 1181 *Jitendra Kumar Urf Gopal Vs. State of U.P. and Others* as cited by learned counsel for the petitioners has held that when tenure holder who was earlier granted patta becomes bhumidhar with transferable rights then howsoever much the patta which was granted earlier has cancelled it would not effect his right as bhumidhar. Paragraph Nos. 8 and 9 of the judgement rendered by this Court in *Jitendra Kumar*

Urf Gopal (Supra) will be relevant for perusal which are as under:-

"(8) Having heard the learned counsel for the parties, I am of the view that the impugned orders cannot be sustained. First of all, the notice was barred by limitation. Secondly, the petitioner by an order of the State had been declared a bhumidhar with transferable rights and the cancellation of the patta was of no consequence and thirdly the ground taken for the cancellation of the patta was also not in existence. If the period of limitation as is prescribed under the Act of 1950 expires then no notice can be issued even if there are irregularities in the patta. Further even if a suo motu notice is to be issued by the Collector then also the question of limitation would arise and notices have to be issued well within the time prescribed by the 1950 Act.

(9). What is more, once when a tenure holder who was earlier granted a patta becomes a bhumidhar with transferable rights, then howsoever much the patta which was granted earlier is cancelled it would not affect his right as a bhumidhar and he shall continue to remain a bhumidhar over the land in question."

17. It is material to mention that in the instant case, the defendant petitioners are in possession of the plot in question since before the date of vesting and part of the disputed land has been acquired by the authorities as well as award has been made in favour of recorded tenure holders and the amount of compensation has been received by the recorded tenure holders, as such, suit filed by the Kanpur Development Authority for the remaining area which was not acquired was rightly dismissed by the Trial

Court as well as the First Appellate Court. It is also material to mention that bhumidhari sanad was issued in favour of defendant- petitioners in accordance with the provisions contained under the U.P.Z.A. and L.R. Act and defendant petitioners were accordingly remained in possession over the plot in question since before the date of vesting. It is material to mention that no proceeding for cancellation of bhumidhari sanad was initiated by State Government as provided under Section 137-A of the U.P.Z.A. and L.R. Act, as such, the filing of suit in 1983 under Section 229-B/ 209 of U.P.Z.A. and L.R. Act is abuse of process of law.

18. The provision relating to grant of bhumidhari sanad as contained under Section 134 to 137-A of U.P.Z.A. and L.R. Act will be also relevant for perusal which were as under:-

"S. 134. Acquisition of bhumidhari rights by a sirdar.-(1) If a sirdar belonging to the class mentioned in clause (a) of section 131 pays or offers to pay to the credit of the State Government an amount equal to ten times the land revenue payable or deemed to be payable on the date of application for the land of which he is the sirdar, he shall, upon an application duly made in that behalf to an Assistant Collector, be entitled, with effect from the date on which the amount has been deposited, to a declaration that he has acquired the rights mentioned in section 137 in respect of such land :

Provided that the right to pay or offer to pay the amount aforementioned shall cease on the expiry of three months from the date to be notified by the State Government.

Explanation I.-In this sub-section 'land' includes share in land.

Explanation II-For the purpose of this section the land revenue payable shall-

(a) in respect of land referred to in the proviso to clause (a) of sub-section (1) of section 246 be an amount arrived at after all the increases have been given effect to; and

(b) in respect of land to which the proviso to section 247 applies, be an amount determined at hereditary rates under that section.

(2) The amount referred to in sub-section (1) may be paid in cash or, if the State Government so prescribes in form of bonds or otherwise.

S. 135. Treasury chalan to accompany the application under section 134-The application referred to in section 134 shall be accompanied where the amount is paid in cash, by a treasury chalan and in any other case, by such document or evidence as may be prescribed showing that the amount aforesaid has been deposited and shall briefly describe the right in which the application claims the land.

S. 136. Amount to be deposited under section 134.-Where a sirdar or his predecessor-in-interest was, on the date immediately preceding the date of vesting, a hereditary tenant of the holding, the amount to be deposited under section 134 shall, notwithstanding anything contained in this Act, be equal to, ["ten times the land revenue payable by him or, if the said land revenue exceeds an amount double that computed at the applicable hereditary rates, ten times such amount].

S. 137. Grant of certificate - (1) If the application has been duly made and the Assistant Collector is satisfied that the applicant is entitled to the declaration mentioned in section 134, he shall grant a certificate to that effect.

(2) Upon the grant of the certificate, under sub-section (1) the sirdar shall, from the date thereof-

(a) become and be deemed to be a bhumidhar of the holding or the share in respect of which the certificate has been granted, and

(b) be liable for payment of such reduced amount on account of land revenue for the holding or his share therein, as the case may be, as shall be one-half of the amount of land revenue payable or deemed to be payable by him therefor on the date of application.

Provided further that in the cases referred to in Explanation II of section 134 the sirdar shall, during the period a reduced amount is payable in accordance with section 246 or 247, be liable for payment of one-half of the amount payable from time to time.

Explanation- For purposes of clause (b) the land revenue payable by a sirdar on the date aforesaid shall, where it exceeds an amount double that computed at the hereditary rates applicable, be deemed to be equal to such amount."

(2-A) Where the certificate is granted on a date other than the first day of the agricultural year, the land revenue payable by the bhumidhar under clause (b) of sub-section (2) for the remainder of the agricultural year in which it is granted shall be determined in such manner as may be prescribed.

S. 137-A. Cancellation of a certificate.-*(1) A certificate granted under section 137 may, on the application of the State Government or any person interested, be cancelled or modified by the Assistant Collector for any of the following reasons, namely-*

(a) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment

from the Assistant Collector of something material to the case;

(b) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;

(c) that a decree or order passed by a competent court in a suit or other proceeding with respect to the holding for which certificate has been granted shows that the applicant was not entitled to the certificate.

(2) Where the certificate is cancelled under sub-section (1), the person who deposited the amount referred to in section 134 shall be entitled to its refund :

Provided that an amount which shall be equal to the reduced amount of land revenue payable under clause (b) of sub-section (2) of section 137 shall be deducted from it."

19. The provision of Section 134, 135, 136 of U.P.Z.A. and L.R. Act was omitted by U.P. Act No. 8 of 1977 (w.e.f. 28.1.1977) and provision contained under Section 137-A of U.P.Z.A. and L.R. Act was omitted by U.P. Act No. 35 of 1976 but Section 136 of U.P.Z.A. and L.R. Act was substituted by U.P. Act No. 35 of 1976 which was as under:-

"section.136 of U.P.Z.A. and L.R. Act- Amount to be deposited under section 134---- where a sirdari or his predecessor-in-interest was, on the date immediately preceding the date of vesting, a hereditary tenant of the holding, the amount to be deposited under section 134 shall, notwithstanding anything contained in this Act, be equal to, ["ten times the land revenue payable by him or, if the said land revenue

exceeds an amount double that computed at the applicable hereditary rates, ten times such amount]."

20. The Full Bench of this Court in the case reported in *1971 RD 371 Banshidhar Vs. Smt. Dhirajadhari and Others* as well as Hon'ble Apex Court in the case reported in *2000 (91) RD 277 Deo Narain and another Vs. Ram Saran and Others* has considered the provision regarding grant of bhumidhari sanad. Paragraph Nos. 6 to 9 of the judgement rendered by Hon'ble Apex Court in the case of *Deo Narain (Supra)* will be relevant for perusal which is as under:-

"6. As we have already indicated, the decision in this appeal depends upon the interpretation of Sections 134 and 137 of the U.P. Zamindari Abolition and Land Reforms Act. These Sections read as follows :

"S. 134. Acquisition of bhumidhari rights by a sirdar. -(1) If a sirdar belonging to the class mentioned in clause (a) of Sec. 131 pays or offers to pay to the credit of the State Government an amount equal to ten times the land revenue payable or deemed to be payable on the date of application for the land for which he is the sirdar, he shall, upon an application duly made in that behalf to an Assistant Collector, be entitled, with effect from the date on which the amount has been deposited, to a declaration that he has acquired the rights mentioned in Sec. 137 in respect of such land.

Provided that the rights to pay or offer to pay the amount aforementioned shall cease on the expiry of three months from the date to be notified by the State Government.

Explanation I - In this sub-section 'land' includes shares in land.

Explanation II - For the purpose of this section the land revenue payable shall -

(a) in respect of land referred to in the proviso to clause (a) of sub-section (1) of Sec. 246 be an amount arrived at after all the increases have been given effect to; and

(b) in respect of land to which the proviso to Sec. 247 applies, be an amount determined at hereditary rates under that section.

(2) The amount referred to in sub-section (1) may be paid in case or, if the State Government so prescribes, in form of bonds or otherwise."

S. 137. Grant of certificate. - (1) If the application has been duly made and the Assistant Collector is satisfied that the applicant is entitled to the declaration mentioned in section 134, he shall grant a certificate to that effect.

(2) Upon the grant of the certificate, under sub-section (1), the sirdar shall, from the date on which the amount referred to in sub-section (1) of Section 134 has been deposited-

(a) become and be deemed to be a bhumidhar of the holding or the share in respect of which the certificate has been granted; and

(b) be liable for payment of such reduced amount on account of land revenue for the holding or his share therein, as the case may be, one-half of the amount of land revenue payable or deemed to be payable by him therefor on the date of application.

Provided further that in the cases referred to in Explanation II of section 134 the sirdar shall, during the period a reduced amount is payable in accordance with section 246 or 247, be

liable for payment of one-half of the amount payable from time to time.

Explanation.- For the purposes of clause (b) the land revenue payable by a sirdar on the date aforesaid shall, where it exceeds an amount double that computed at the hereditary rates applicable, be deemed to be equal to such amount.

(2A) Where the amount referred to in sub-section (1) of section 134 is deposited on a date other than the first day of the agricultural year, the land revenue payable by the bhumidhar under clause (b) of sub-section (2) for the remainder of the agricultural year in which the amount is deposited shall be determined in such manner as may be prescribed."

7. Section 134, from its plain language, indicates and shows that on the application being made and 10 times the land revenue being paid, the sirdar becomes entitled 'with effect from the date on which the amount had been deposited' to a declaration that he has acquired the rights mentioned in Section 137 of the Act. The Section clearly specifies the date with effect from which the rights would stand acquired: The date is the one on which the amount contemplated by Section 134 is deposited. This clearly obviates the uncertainty of the point of time when the title is transferred by fixing the dateas being the one when the amount is deposited. It would be immaterial as to when the declaration under Section 137 is made because that declaration must necessarily take effect from the date when the amount is deposited.

8. Whatever little doubt there may be in this construction of section 134 is eliminated by the perusal of sub-section (2) of Section 137. It is to be noticed that, as observed by the lower appellate court, that before amendment in 1962, sub-

section (2) of Section 137 of the Act provided that it is only upon the grant of certificate under sub-section (1) of Section 137 that the sirdar shall from the date thereof become or be deemed to be a bhumidar of the holding or the share in respect of which the certificate has been granted. The amendment of sub-section (2) of section 137 by the Amendment Act 21 of 1962 with effect from 13th December, 1962 brought Section 137(2) in line with Section 134. The two provisions read together clearly provide that as and when the certificate under Section 137 is granted, it must relate back and be effective from the date on which the amount referred to in sub-section (1) of Section 134 has been deposited.

9. It is no doubt true that in the Full bench decision in Banshidhar Vs. Smt. Dhirajadhari and Others (supra), in the Single Judge decision in Mobin Khan Vs. Chunnu Khan and Others (supra) and in the decision in Raghunandan Singh and another Vs. Vashwant Singh, 1978 Revenue Decisions 183, a different view has been expressed by the Allahabad High Court. In the Full Bench decision, the view taken is that it is from the date when the order is passed under Section 137 that the sirdar becomes a bhumidar. In the latter two cases, it has been held that if after filing of the application and making payment of the land revenue the applicant dies, then certificate in his name cannot be granted. In our opinion, the said decisions run counter to the plain language and meaning of Sections 134 and 137 as they stood at the relevant point of time. When a certificate is issued under Section 137, it in fact recognises the position as on the date when the application was made and the payment contemplated under Section 134(1) was deposited. The certificate, in other words,

will have a retrospective effect and would relate back to the date of the application. There was nothing to prevent the revenue authorities from allowing the application filed under Section 134(1) on the day when it was presented. The underlying intention of the legislature, therefore, clearly is that as and when the said application is accepted and order is passed under Section 137, it must relate back to the date when the application was filed. Such a situation is not unknown to law. Mr. Prem Prasad Juneja, Learned counsel for the appellants, as an analogy, has drawn our attention to order 22 Rule 6, C.P.C. which provides that if any of the parties to a suit dies after the hearing has been completed and before the judgment is pronounced, the suit would not abate. The doctrine of relation back has been incorporated in Sections 134 and 137 of the U.P. Zamindari Abolition and Land Reforms Act."

21. So far as the case law cited by learned Senior Counsel for the Kanpur Development Authority is concerned that fraud vitiates every solemn proceeding as well as in exercise of second appellate jurisdiction suit can be decreed will not be applicable in the facts and circumstances of the instant case where the Kanpur Development Authority has himself paid the compensation to the predecessor of the defendant petitioners in lieu of acquisition made in respect of the part of the area of the plot in question on the basis of award passed under the Land Acquisition Act by the competent authority.

22. Considering the entire facts and circumstances of the case the judgement and decree passed by Board of Revenue in exercise of second appellate jurisdiction decreeing the plaintiff- suit and expunging

the longstanding entry of the plot in question cannot be sustained in the eye of law, as such, the impugned judgement dated 23.4.1997 passed by respondent no.1, Board of Revenue, U.P. Allahabad is liable to be set aside and the same is hereby set aside. Writ petition stands **allowed** and the judgment/ decree of Trial Court dated 5.12.1987 dismissing the plaintiff's suit is hereby affirmed. The entry of the plot in question shall be corrected accordingly.

23. No order as to costs.

(2025) 4 ILRA 493
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 17.04.2025

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE OM PRAKASH SHUKLA, J.

Writ C No. 386 of 2025

M/S Classic Enterprises ...Petitioner
Versus
N.H.A.I. Ministry of Road Transport &
Highways & Ors
...Respondents

Counsel for the Petitioner:
Chandra Shekhar Sinha, Akshat Sinha,
Gaurav Verma

Counsel for the Respondents:
Sarvesh Kumar Dubey, A.S.G.I., Abhishek
Pathak

**Civil Law -Constitution of India,1950-
Article 226-M/s Classic Enterprises
participated in a tender floated by NHAI
for construction of FOB-The petitioner
was declared the lowest bidder and was
issued a Letter of Acceptance(LOA) on
20.08.2024, requiring submission of
Performance security within 10 days-
While the performance Security was**

**submitted on time, there was an 8-day
delay in submitting the Additional
Performance security due to illness of
the firm's partner and festival-related
bank disruptions-The Regional officer
had orally allowed a 10 day extension-
Later, the petitioner was served a
backdated letter cancelling the LOA and
forfeiting the bid security on grounds
that the competent authority did not
approve the delay-The court held that
NHAI's conduct-demanding and
accepting penalty, calling the petitioner
for signing the agreement, and later
cancelling the LOA was arbitrary and
unreasonable-The cancellation was not
in public interest and contradicted
earlier communications suggesting
condonation of delay- Even in
contractual matters involving statutory
authorities like NHAI, fairness,
transparency and reasonableness are
imperative-The court quashed the
cancellation of LOA and directed NHAI to
reconsider the petitioner's case within
15 days.(Para 1 to 42)**

The writ petition is allowed. (E-6)

List of Cases cited:

1. South Eastern Coal Fields Ltd & ors. Vs Ms S. Kumars Associates (Appeal No. 4358/2016)
2. Raj. Coop. Dairy Fedn. Ltd. Vs Maha Laxmi Mingrate Mktg. Services (P) Ltd (1996) 10 SCC 405
3. Global Energy Ltd. Vs Adani Exports Ltd(2005) 4 SCC 435

(Delivered by Hon'ble Om Prakash Shukla,
J.)

(1) Heard Shri Chandra Shekhar Sinha, learned Counsel for the petitioner, Shri Abhishek Pathak, learned Counsel for the opposite parties no.1 to 3 and learned Counsel for the Union of India/opposite party no.4.

(2) By means of the present writ petition, the petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, praying inter alia for the following reliefs :-

“(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 20.12.2024 vide letter No. 23001 / 1 / RP-W-UP / A-K / Pkg-IV / NH-34 / FOB / 25292 passed by the O.P. No.1 through the Regional Officer (O.P. No.2), contained in Annexure No.1 to the writ petition;

(ii) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to reinstate the tender process of the petitioner firm from the stage it was cancelled and proceed with transparency and fairness;

(iii) Issue writ, order or direction in the nature of mandamus to stay on any further tender process or decision-making related to the project pending final adjudication....”

(3) The factual matrix of the present writ petition would reveal that the National Highways Authority of India (NHAI) had invited bids through e-tendering process for construction of Foot Over Bridge (FOB) on Aligarh Kanpur Section of National Highway-34 (91) in the State of Uttar Pradesh having its tender ID:2024_NHAI_194363_1, wherein the petitioner firm had participated. The technical bid was opened on 14.6.2024 and although initially vide office order dated 9.7.2024, the petitioner firm was declared “Non-Responsive” and the bid was rejected, however, on an explanation and

representation dated 10.07.2024 of the said firm, the competent authority of NHAI i.e. DGM (Tech) RO-UP (West) with the approval of Regional Officer declared the bid of the firm as ‘Responsive’. The financial bid of the petitioner firm was opened by NHAI on 9.8.2024 along with other bidders and NHAI declared the petitioner firm as the lowest bidder i.e ‘L1’. Thus, the Regional Officer UP (West) of NHAI issued letter of Acceptance (LOA) dated 20.8.2024 and notified the petitioner firm that their bid for Construction of Foot Over Bridge (FOB) for the quoted bid price amounting to Rs.5,30,06,222.71 (Rupees Five Crore Thirty Lakh Six Thousand Two Hundred Twenty Two and Seventy One Paisa) has been found to be the lowest evaluated bid.

(4) As per the aforesaid Letter of Acceptance (LOA), the petitioner firm was required to furnish a Bank guarantee of Rs. 53,00,622/- (Fifty Three Lakhs Six Hundred Twenty Two), which was 10% of bid price, towards performance security for a period of three years and as per the terms of Request for Proposal (RFP) since the bid amount was 26.97% below the estimated cost, the petitioner firm was also required to deposit an Additional Performance Security of Rs.36,95,121/- as per Clause 33.1 of RFP valid up to completion of the work, within 10 days of receipt of the Letter of Acceptance. In case of failure, the award was to be deemed to be cancelled and the bid security would be forfeited as per Clause 33.3 of RFP and the petitioner firm would be debarred for a period as specified in Clause 16.7 of RFP. The petitioner firm was also asked to return duplicate of the LOA as an acknowledgment and sign the Contract Agreement within the period prescribed in the bid document.

(5) According to the petitioner, there was some discrepancy in Clause 33.1 and Clause 47.1 of the RFP, therefore, partner of the petitioner firm Shri Amit Khatri approached the Regional Head Office at Lucknow and pointed out the same, whereupon the Regional Head asked the petitioner firm to deposit ten per cent and not three per cent of the bid amount. From the document annexed as Annexure-6, it appears that this happened on 27.08.2024/28.08.2024 and on the same day as asserted in para-11 of the writ petition, as Additional Performance Guarantee amounting to Rs.36,95,121/- (Rupees Thirty Six Lakhs Ninety Five Thousand One Hundred Twenty One) was required to be deposited, but due to disruption in banking services on account of ongoing festival break and illness of the signing authority, ten days further time was prayed for depositing the additional security, which, according to the petitioner firm, was allowed by the Regional Head orally. Thereafter, on the very next day i.e. on 29.08.2024, the petitioner firm submitted the bank guarantee dated 29.08.2024 towards performance security of Rs.53,00,622/- (Rupees Fifty Three Lakhs Six Hundred Twenty Two) and subsequently deposited the original bank guarantee in the office of NHAI at Lucknow. The petitioner firm sent a letter dated 30.08.2024 by e-mail to the Regional Office of NHAI narrating the entire incident including the meeting which took place with the Regional Officer in his office on 28.08.2024 when he allowed the petitioner to deposit the Additional Performance Security within ten days. Copy of the said letter dated 30.08.2024 sent through e-mail is annexed as Annexure-6 to the writ petition. On 07.09.2024, a communication was sent to the Chairman, National Highways

Authority of India, submitting the original bank guarantee for the Additional Performance Security to the tune of Rs.3695121/-, copy of which has been annexed as Annexure-7 to the writ petition.

(6) As the petitioner firm did not receive any communication for signing of the agreement, therefore, it sent a letter dated 26.09.2024 to the Regional Office of NHAI, mentioning the bank guarantee submitted by the petitioner firm and also detailing the events which took place prior to such deposits including the meeting held on 28.08.2024 in which as claimed ten days further time was granted orally for submission of Additional Performance Security.

(7) On 01.10.2024, for the first time, the D.G.M. (Technical) refuted the claim in the letter dated 26.9.2024 regarding acceptance of any such claim of the petitioner for deposit of Additional Performance Security within an extended period as claimed clearly stating that proposal of consideration of eight days' delay in submission of Additional Performance Security having been sent to the competent authority NHAI Headquarter and on receipt of the same, the petitioner would be intimated accordingly.

(8) Thereafter, the petitioner submitted a letter dated 19.11.2024 addressed to the Regional Office, NHAI mentioning therein about the hospitalization of the partner of the petitioner firm from 26.08.2024 to 05.09.2024 with medical certificate annexed in support thereof and that after discharge from hospital, the Additional Performance Guarantee was submitted on 07.09.2024 and accordingly a request was made for condoning the delay in

submission of the Additional Performance Guarantee with a further recital that the petitioner was ready to accept and furnish the financial penalty for the delay.

(9) On 26.11.2024, the D.G.M. (Technical) Regional Office U.P. (West) sent a letter to the petitioner firm requesting it to deposit Rs.42,405/- (Rupees Forty Two Thousand Four Hundred and Five) as damages for eight days' delay in submission of Additional Performance Security in the bank account mentioned therein. Further, the petitioner was requested to submit original bid document and to attend the office for signing of the agreement after deposition of the damages mentioned above. In this letter dated 26.11.2024, there was no such mention that the delay was not liable to be condoned or that the matter was still pending, instead the petitioner was asked to act upon the said letter dated 26.11.2024 and deposit damages for the delay of eight days to the tune of Rs.42,405/- (Rupees Forty Two Thousand Four Hundred Five) and also to submit the original bid document and to attend the office for signing of agreement after depositing the damages mentioned therein.

(10) Acting upon the said letter, the petitioner deposited the aforesaid damages on 26.11.2024 itself as is mentioned in paragraph-20 of the writ petition.

(11) On 12.12.2024, the D.G.M. (Technical) Regional Office U.P. (West) again wrote to the petitioner firm referring to the LAO dated 20.08.2024 and requesting the petitioner to submit original bid and to attend the office for signing of the agreement on 24.12.2024.

(12) Pursuant to the aforesaid letter dated 12.12.2024 of the NHAI, the signing

authority of the petitioner firm reached the office of NHAI on 24.12.2024, whereupon for the first time they were verbally informed that the tender granted to them was cancelled. On being confronted that no such cancellation was received by the petitioner firm, the Officer asked the petitioner's representative to wait and thereafter the petitioner firm received an email on 24.12.2024 at 3:50 PM in which letter No. 23001/1/RO-W-UP/A-K/Pkg-IV/NH-34/FOB/25292 dated 20.12.2024 signed by the Regional Officer UP (west) stated that the 8 days' delay in submission of the additional performance security with damage amounting to Rs. 42,405/- (Rupees Forty Two Thousand Four Hundred Five) was sent to competent authority for approval of delay period but the same has not been agreed. The letter stated that LOA issued vide office letter No. 23820 dated 20.8.2024 has been cancelled due to delay in submission of additional performance security and further that the bid security amounting to Rs.14,51,629 (Rupees Fourteen Lakhs Fifty One Thousand Six Hundred Twenty Nine) submitted with the bid has been forfeited in terms of RFP Clause 33.3.

(13) It is this letter dated 20.12.2024, which has been sought to be challenged by the petitioner before this Court in the present proceedings.

(14) The contention of the petitioner's Counsel was that the bank guarantee pertaining to performance security was deposited within time and as in a meeting with the Regional Officer, ten days further time had been granted to the petitioner orally for depositing the Additional Performance Security on the request of the petitioner, therefore, the same was also subsequently deposited and

the entire scenario was intimated to the concerned opposite parties vide letter dated 30.08.2024 sent by e-mail including the factum of the oral permission granted on 28.08.2024 by the Regional Officer and the opposite parties themselves asked the petitioner to deposit damages to the tune of Rs.42,000/- (Rupees Forty Two Thousand) and odd for the eight days' delay vide letter dated 26.11.2024, which was also deposited and vide another letter dated 12.12.2024, the petitioner was also asked to appear for signing of the agreement and completion of other formalities on 24.12.2024, therefore, the impugned action of cancellation of LOA and forfeiture of security money on the ground that approval was not granted by the competent authority for condoning the delay of eight days of the aforesaid deposit, is absolutely unreasonable and unfair. He also submitted that in another case, the delay had been condoned, therefore, there was a precedent for the same and the petitioner acted on the permission granted by the Regional Officer vide letter dated 26.11.2024 and 12.12.2024, therefore, merely on account of delay of eight days in submitting the Additional Performance Security, cancellation of LOA is absolutely unjustified.

(15) Learned Counsel for the petitioner also submitted that the delay was not inordinate and the petitioner furnished the Additional Performance Guarantee as allowed by the Regional Officer vide letter dated 26.11.2024. In any case, according to him, there was no damage or loss incurred by the respondent authority for the said delay as penalty for the delay, as calculated and demanded by NHAI being an amount of Rs. 42,405/- (Rupees Forty Two Thousand Four Hundred Five), was paid to them immediately on the same day and

there was no occasion for them for cancellation of the said bid and forfeiture of the guarantee furnished to them. As per RFP, the only competent authority is the Regional Officer, who had approved the delay and got deposited the penalty for the same, however, the Bid was subsequently sought to be rejected on the plea that the competent authority has not given approval and NHAI did not even bother to annex the order of the said competent authority. Learned Counsel also highlighted the timing and manner in which the LOA has been sought to be cancelled inasmuch as, according to him, although the petitioner was called for signing of the contract on 24.12.2024, however, the same very day, they were communicated the impugned letter predated 20.12.2024, which cancelled the LOA vide e-mail dated 24.12.2024. He further submitted that cancellation of the tender would disrupt the procurement process, potentially delaying the public project for which the tender was issued, which would be detrimental to public interest and as such calls for judicial intervention.

(16) On the other hand, learned Counsel appearing for NHAI submitted that admittedly there had been a delay in providing Bank Guarantee in lieu of additional performance security within the stipulated time and there had been a delay of 8 days. According to him, the reasons appended by the petitioner's firm of ill-health of one of the partner was highly unprofessional owing to the gravity of work proposed to be undertaken by them. He submitted that the proposal to condone the delay was conveyed to the competent Authority in good faith by the RO (West), Uttar Pradesh. According to him, the competent authority as per the policy decision of NHAI dated 21.08.2017 for

condoning delay was the CGM (HG), NHAI and in any case, the petitioner firm was duly conveyed of the said aspect vide letter dated 01.10.2024. He has further submitted that letter dated 26.11.2024 relating to deposit of damages to the tune of Rs. 42,405/- (Rupees Forty Two Thousand Four Hundred Five) was sent by NHAI on the request of the petitioner's firm and nowhere meant acceptance of the delay and even the letter dated 12.12.2024, whereby the petitioner was directed to be ready with the formalities on 24.12.2024 was merely tentative in nature and the same was subject to the orders of competent authority. He, thus, submits that these communications were issued in the nature of pre-emptive letters only, that too, in good faith.

(17) Learned Counsel has submitted that pursuant to the instruction/clarification dated 13.12.2024 received from the competent authority, the issue was sent to the evaluation committee, which proposed for cancellation of LOA and forfeiture of additional performance security amount of Rs. 36,95,121/- (Rupees Thirty Six Lakhs Ninety Five Thousand One Hundred Twenty One) and return the balance Bank guarantee and refund the deposited damages of Rs. 42,405/- (Rupees Forty Two Thousand Four Hundred Five). Additionally, learned Counsel has questioned the financial capability of the petitioner in executing the work as allegedly the delay in depositing the additional performance security had been due to delay in availing short-term loan by the petitioner. He submitted that the order of cancellation of LOA is passed for violation of mandatory terms and conditions of LOA and RFP and there was not a concluded contract between the parties. It is also submitted that no right is

created by mere issuance of letter of acceptance as there is no binding relationship between the parties. In this regard, he has relied on the judgement of Apex Court in ***South Eastern Coal Fields Limited and other Vs Ms S. Kumars Associates*** (Civil Appeal No. 4358/2016 decided on 23.07.2021) and ***Rajasthan Cooperative Dairy Federation Ltd. Vs Maha Laxmi Mingrate Marketing Services (P) Ltd. : (1996) 10 SCC 405.***

(18) Learned Counsel has also submitted that the order of cancellation of LOA is passed on account of violation of mandatory terms and conditions of the RFP as mentioned in clause 33.3 of the RFP and that NHAI has performed its statutory duty in utmost fairness and have no personal interest in the matter in dispute. He also submitted that the cancellation is as per the terms of RFP and that the terms of RFP are not amenable to Judicial scrutiny and relies on the judgment of the Apex court in the case of ***Global Energy Ltd. Vs. Adani Exports Ltd : (2005) 4 SCC 435.*** He, thus, submitted that cancellation of LOA was permissible before signing of agreement between the parties and the same has been rightly done by NHAI and, as such, the present matter does not call for any interference by this Court.

(19) Having heard the learned counsel for the parties and after perusing the material on records, the first thing, which crops up is as to whether in the facts of this case the impugned action cancelling the LOA is a fair and reasonable exercise of power. Even in contractual matters, especially where contract has not been concluded, statutory authority such as NHAI is obliged to act fairly and reasonably keeping in mind the object sought to be achieved by the contract and

such matters are amenable to judicial review under Article 226 of the Constitution of India on the ground of being apparently unreasonable and unfair.

(20) Clause 33 of the RFP relating to performance security based on which LOA has been cancelled reads as under :-

“33. Performance Security

33.1 Within 10 (ten) days after receipt of the letter of Acceptance the successful bidder shall deliver to the Employer a Performance Security of Ten percent of the Contract Price, valid for the period of 28 days after expiry of defect liability of 3 year plus additional security for unbalanced bids in accordance with Clause 28.3 of ITB and sign the contract. The validity shall account for additional 3 months’ time to account for BG verification, signing of contract and start date.

33.2 The Performance Security/additional security shall be in the form of a Bank Guarantee, in the name of the Employer, from a Bank as specified in case of bid security.

33.3 Failure of the successful bidder to comply with the requirement of sub-clause 33.1 shall constitute sufficient ground for cancellation of the award and for feature of the bid security and debarment for a period as specified in Clause 16.7. “

(21) The letter of acceptance dated 20.08.2024 was received by the petitioner on 21.08.2024 as is evident from Annexure-8 to the petition. The letter of acceptance dated 20.08.2024 required the petitioner to deposit Performance Security

plus Additional Security within ten days of its receipt. According to the petitioner, there was some discrepancy in the requirement as contained in Clause 33.1 of the RFP vis-a-vis Clause 47.1 of the same document. While the former referred to ten percent of the contract price to be deposited, the later referred to only three per cent of the contract price and additional security for unbalanced bids to be deposited. Accordingly, on 28.08.2024, a partner of the petitioner firm approached the Regional Head Office at Lucknow and pointed out the aforesaid discrepancy and enquired whether three per cent or ten per cent of the contract price was to be deposited, whereupon the Regional Head asked the petitioner firm to deposit ten per cent and not three per cent of the bid amount. On the same day, partner of the petitioner firm requested the Regional Officer at Lucknow that since an Additional Performance Guarantee amounting to Rs.36,95,121/- (Rupees Thirty Six Lakhs Ninety Five Thousand One Hundred Twenty One) had been imposed, which was an additional requirement and for which application had been submitted to a bank but due to disruption in banking services on account of ongoing festival break and illness of the signing authority, additional ten days time be granted for depositing the said additional security of Rs.36,95,121/- (Rupees Thirty Six Lakhs Ninety Five Thousand One Hundred Twenty One). The Regional Head, according to the petitioner, orally allowed the petitioner firm to deposit the additional security amount within further ten days.

(22) On the very next day i.e. on 29.8.2024, the petitioner firm got a bank guarantee prepared amounting to Rs.53,00,622/- (Rupees Fifty Three Lakhs

Six Hundred Twenty Two) i.e. towards the performance security and deposited it on the same day in original in the office of NHAI at Lucknow.

(23) Further, the petitioner sent an e-mail on 30.08.2024 referring to the meeting held with the Regional Officer in his office on 28.08.2024, wherein it is said that he acceded to the request of the petitioner for additional ten days to deposit the Additional Performance Security. Copy of the mail is annexed as Annexure-6 to the writ petition. Thereafter, as per the commitment, bank guarantee towards Additional Performance Security amounting to Rs.36,95,121/- (Rupees Thirty Six Lakhs Ninety Five Thousand One Hundred Twenty One) was deposited on 07.09.2024 i.e. within the ten days granted by the said officer. This fact was communicated to NHAI vide an e-mail sent to it on 07.09.2024 itself. Thus, according to the petitioner, there was no delay in furnishing the Additional Performance Security in view of the facts noticed hereinabove. Till then there was no rebuttal of the facts as stated in the communication dated 30.08.2024.

(24) As no response was received even after sufficient time having lapsed for signing of agreement by the petitioner, the competent authority was contacted, who conveyed it to the petitioner that it had not deposited the Additional Performance Security within the stipulated time, therefore, additional penalty will have to be imposed. The petitioner firm agreed to deposit the penalty as desired but even this was not communicated to it and, as such, the petitioner firm sent a letter dated 26.09.2024 to the Regional Office, NHAI mentioning the events which had occurred right from the beginning. Copy

of it is annexed as Annexure-8 to the petition.

(25) In response, a communique dated 01.10.2024 was received from the D.G.M. (Technical) with approval of Regional Officer UP (West) that the proposal for considering eight days' delay in submission of Additional Performance Security had been sent to the competent authority at NHAI Headquarter for approval and also denying any acceptance of the claim of the petitioner in its letter datd 26.09.2024 regarding acceptance of agreement and performance security etc. The said document is Annexure-9 to the petition.

(26) Thereafter, on 19.11.2024, the petitioner firm sent a letter to the Regional Head enclosings the Medical Certificate of the signing authority/ partner of the petitioner firm certifying that he was hospitalized from 26.08.2024 to 05.09.2024 and prayed for condoning the delay in submission of additional performance guarantee and an undertaking that the petitioner would furnish financial penalty, if any, for the delay, was also given. This document is annexed as Annexure-10 to the writ petition.

(27) In response to the aforesaid, the D.G.M. (Technical) with approval of Regional Officer (West), U.P., sent an e-mail containing a letter dated 26.11.2024 asking the petitioner firm to deposit Rs.42,405/- (Rupees Forty Two Thousand Four Hundred Five) as damages/penalty for eight days' delay in submission of Additional Performance Security and to submit original bid documents and to attend the office for signing of agreement after depositing the damages as demanded.

This document is Annexure-11 to the writ petition. The letter dated 26.11.2024 sent by NHAI to the petitioner reads as under :-

IFSC Code	CNRB0018481

“To,
The Authorized Signatory
M/s. Classic Enterprises,
9/82, Arya Nagar, Kanpur-
200002
Email :
classickanpur982@gmail.com

Sub.: Construction of Foot Over
Bridge (FOB) on Aligarh-Kanpur section
of NH-34 (91) in the State of Uttar Pradesh,
FOB at Km. 358.650 & FOB at Km.
368.320.

Ref : 1. Tender ID :
2024_NHAI_194363_1
2. This Office LOA N. 23820
dated 20.08.2024
3. Your letter dated 29.08.2024
4. Your letter dated 07.09.2024.

Sir,

In reference to subject Bid
and LOA issued vide this office letter dated
20.08.2024, you are hereby requested to
deposit Rs.42,405/- as damages for 8 days
delay in submission of Additional
Performance Security in the following
Bank Account :-

Particulars	Details
Account Holder Name	NHAI Regional Office
Account Number	84811010002035
Bank Name	Canara Bank

Further you are requested to
submit Original Bid Document and attend
the office for signing of the agreement after
deposition of the damages mentioned
above.

This issue with the approval of
RO-UP (West).

Sd/-
(N.P. Singh)
DGM (Tech)
Regional Office-UP (West)”

(28) In this letter dated 26.11.2024,
there is no reference to the delay in
submission of the Additional Performance
Security or that this was subject to any
decision to be taken by the competent
authority in this regard. The petitioner firm
immediately complied the letter dated
26.11.2024 and deposited Rs.42,405/-
(Rupees Forty Two Thousand Four
Hundred Five) on 26.11.2024 itself. A copy
of the NEFT Transaction Slip is annexed as
Annexure-12 to the writ petition.

(29) On 12.12.2024, the petitioner
received a letter from the D.G.M.
(Technical) with approval of Regional
Office, U.P. (West) through e-mail
requesting the petitioner firm to submit the
original bid document and to attend the
office for signing of the agreement on
24.12.2024. This letter dated 12.12.2024
also did not express any reservations
regarding delay in submission of
Additional Performance Security by
petitioner rather it gave reasonable basis for
the petitioner to believe that the same had
been waived.

(30) Thus, apparently, the issue relating to right of NHAI under Clause 33.3 of RFP document regarding delayed furnishing of Additional Performance Security had been waived of with the demand of penalty amount of Rs.42,405/- (Rupees Forty Two Thousand Four Hundred Five) from the petitioner. The said fact is fortified from the subsequent letter of NHAI dated 12.12.2024, wherein the petitioner was called upon to submit the original Bid document and attend the office for signing of the agreement on 24.12.2024 which was also issued with approval of Regional Office-UP (West).

(31) In response, the signing authority of the petitioner firm and an another partner reached the office of N.H.A.I. at Gomti Nagar, Lucknow in the afternoon at 03:30 p.m. on 24.12.2024 and met the Regional Head but to their utter surprise, they were informed that LOA issued to the petitioner firm had been cancelled and security money had been forfeited. A letter dated 20.12.2024 was served on 24.12.2024 by e-mail, as already discussed which *inter alia* stated as follows :-

“2. Bidder has submitted Performance Security of Rs.53,00,677/- vide banker letter dated 29.08.2024 BG bearing No.00417241PG014967 dated 07.09.2024 which is 08 days’ delay after the schedule date of 30.08.2024.

3. But bidder vide letter dated 07.09.2024 submitted Additional Performance amounting to Rs.36,95,121/- BG Bearing No. 00417241PG014 967 dated 07.09.2024 which is 08 days delay after the schedule date of 30.08.2024.

4. As the bidder has submitted additional performance security with 08 days delay, the proposal for consideration of 08 days delay with damages – $5,30,06,222 \times 0.01\% \times 8 = 42,405/-$ was sent to Competent Authority for approval of delay period. But same has not been agreed.

5. Therefore, LOA issued vide this office letter no.23820 dated 20.08.2024 is hereby cancelled due to delay in submission of Additional Performance Security and bid security amounting to Rs.14,51,629/- submitted with the bid hereby forfeited in terms of RFP Clause 33.3.”

(32) This action is apparently contrary to the communication dated 26.11.2024 and 12.12.2024 by the Regional Officer NHAI, as already discussed.

(33) The opposite parties have not denied the fact that the petitioner was asked to deposit a penalty amount of Rs.42405/- (Rupees Forty Two Thousand Four Hundred Five) vide letter dated 26.11.2024, which it did on the asking of the concerned opposite parties nor that the petitioner was asked vide letter dated 12.12.2024 to come for signing of the agreement all of which indicated that the eight days’ delay referred, had been waived.

(34) It is the case of the opposite parties in para-11 of the counter affidavit that as per N.H.A.I. Policy/Guidelines dated 21.08.2017, issues pertaining to such condonation of delay were to be dealt with by C.G.M. (Headquarter), N.H.A.I., who was the competent authority, however, in para-14 and 15 of the counter affidavit, the opposite parties categorically admit that considering the request made by the

petitioner firm, a letter dated 26.11.2024 was issued by the N.H.A.I. asking the petitioner firm to deposit damages amounting to Rs.42405/-(Rupees Forty Two Thousand Four Hundred Five) for the eight days' delay. However, the explanation offered for it is that the said amount was demanded only to substantiate the bona fide intention and willingness of the petitioner firm and it nowhere meant acceptance of the way. We fail to understand as to what this averment means. This is nothing but an attempt by the opposite parties to wriggle out of the quagmire in which they find themselves on account of their own conduct where they themselves asked the petitioner to deposit the damages which it did and then subsequently cancelled the LOA as alleged arbitrarily.

(35) In para-14, it is also admitted that the damages were calculated in a synonymous manner i.e. the calculation/formulation of the said amount was done as the same is done in likewise RFPs, wherein the clause of condonation of delay in its calculation exist. In paragraph 15 of the counter affidavit, they also admit to have given a tentative date to the petitioner i.e. 24.12.2024 to be ready with the formalities by the said date. However, it has been further stated that after much deliberation as delay could not be condoned, the same was intimated vide letter dated 20.12.2024 to the petitioner firm, which is impugned in the writ petition. It is said that the communication regarding disapproval of delay was received from the competent authority on 13.12.2024. Copy of the internal correspondence is annexed as Annexure-CA-3. Thereafter, the matter was considered by a Committee which decided to propose cancellation of LA etc. as mentioned in para-17 of the counter

affidavit and ultimately, after approval of the said recommendations by the Regional Officer, the same was communicated to the petitioner on 20.12.2024.

(36) The tender process in question was floated in June, 2024. It was in respect of construction of a foot over bridge on Aligarh-Kanpur section of NH-34 (91) in the State of U.P., meaning thereby it was to sub-serve a greater public cause, but on account of the aforesaid action, merely on account of alleged delay of eight days and nothing else, the said cause obviously remains frustrated even after lapse of more than seven months and how far the impugned action has furthered the cause of the opposite parties or that of the public at large, who would have benefitted by construction of the foot over bridge, is any body's guess, as, there is nothing on record to show that any fresh tender process had been initiated.

(37) Looking into the facts as noticed hereinabove, we fail to understand as to what purpose is served by cancellation of the LOA purely in the facts in this case and how far the greater public cause with the tender process sought to serve is furthered. In fact, it appears that it has been frustrated. It is not the case that the petitioner firm was not qualified or was technically deficient in any manner. It is also not the case of the opposite parties that the performance security of Rs.52 Lakhs and odd was not deposited within the stipulated period in terms of the RFP clause. The only issue is regarding eight days' delay in depositing the additional performance security regarding which the petitioner has some explanation to offer, as already discussed. But even without it, there are instances of condonation of such delay in other matters, for whatever reason.

Most important, the Regional Office itself asked the petitioner to deposit penalty amounting to Rs.42405/- (Rupees Forty Two Thousand Four Hundred Five) which was duly deposited by the petitioner, obviously in anticipation of condonation of mere eight days delay in submission of Additional Performance Security but thereafter the competent authority disapproved the condonation of delay, consequently, LOA has been cancelled and the security money deposited by the petitioner has been forfeited. In the counter affidavit, there is no denial of the fact that the Additional Performance Security had also been deposited as claimed by the petitioner within the ten days further time as desired.

(38) Although in their counter affidavit, the opposite parties have denied any meeting and oral permission to the petitioner on 20.08.2024 to deposit the Additional Performance Security within the next ten days but neither the receipt of the e-mail dated 30.08.2024 nor any specific denial of the said meeting and permission in response thereto, has been made, except for refuting the claim raised on 28.09.2024 vide letter dated 01.10.2024 vaguely. Even thereafter vide letter dated 26.11.2024 petitioner was asked to deposit damages for the delay. It is also not denied that in fact the Additional Performance Security was deposited and communicated to the opposite parties and at that point of time, the concerned opposite parties of the Regional Office never informed the petitioner that the same was absolutely illegal and that no such time had been granted rather the Regional Office forwarded the request for condonation of delay and thereafter asked the petitioner vide letter dated 26.11.2024 to deposit the damages to the tune of Rs.42405/- (Forty

Two Thousand Four Hundred Five), which was done by the petitioner on the same day.

(39) Annexure-CA3 sent by D.G.M., U.P. (West), which mentions about similar delay of seven days in submission of performance security having been condoned and approved in a similar case during 309th meeting and the agreement was entered into by the N.H.A.I. these were prior precedents in this regard as such, and even otherwise, purely on the facts of this case, there was no justification for cancelling the LOA and forfeiting the security amount as referred hearinabove.

(40) Looking into the overall facts and circumstances of the case, the reason for cancellation of LOA appears to be unreasonable. It appears that the opposite parties could not muster courage to take a pragmatic decision which would have furthered the object for which the tender was issued and the larger public interest which was implied on it, without causing any prejudice financial or otherwise to them but choose to tread a safer route by following the letter of the RFP clause ignoring the spirit and the cause which the tender process sought to achieve.

(41) We, therefore, quash the impugned action of cancellation of LOA and direct the opposite parties to reconsider the matter in the light of the aforesaid, specially the larger public good which is sought to be served by the proposed construction of foot over bridge which in any case stands delayed and also taking into consideration the fact that any fresh tender may result in further delay and possibly increased cost. Let the competent authority of the National Highway Authority of India take a considered decision as aforesaid in the matter

positively within fifteen days from the date of receipt of a certified copy of this order.

(42) The writ petition is allowed. However, there shall be no order as to cost.

(2025) 4 ILRA 505
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.04.2025

BEFORE

THE HON'BLE PIYUSH AGARWAL, J.

Writ C No. 1920 of 2018
 With
 Writ C No. 30283 of 2018

M/S SDS Infracon Pvt. Ltd. & Anr.
...Petitioners
Versus
State of U.P. & Ors. **...Respondents**

Counsel for the Petitioners:
 Sri Nisheeth Yadav

Counsel for the Respondents:
 Sri Aditya Bhushan Singhal, C.S.C., Sri
 Pramod Jain (Sr. Adv.)

**Civil Law -Constitution of India,1950-
 Article 226-Indian Stamp Act,1899-
 Section 23-The petitioner company was
 allotted a plot by the Yamuna Expressway
 Industrial Development Authority for
 developing a residential township-The
 allotment included payment of a total
 premium, part of which was payable in 20
 equal instalments along with interest-The
 lease deed was executed accordingly after
 paying 5% stamp duty on the total
 premium-Later, the Sub-Registrar referred
 the matter under the U.P. Stamp Act,
 claiming a deficiency in stamp duty on the
 ground that interest paid in instalments
 should have been included in stamp duty**

**calculation-This led to the initiation of
 proceedings under Stamp suit
 no.119/2012-13, and subsequent orders
 were passed demanding additional duty-
 The court held that stamp duty cannot be
 levied on interest payable in instalments
 under a lease deed, as such interest does
 not form part of the consideration for
 calculating stamp duty u/s 23 of the
 Indian Stamp Act-Reliance was placed on
 Supreme court ruling in Bihar State
 Housing Board vs. Atma Shah which
 upheld that interest on deferred payment
 does not attract additional stamp duty-
 Impugned reference and recovery
 proceedings quashed-Direction to refund
 amount with interest.(Para 1 to 23)**

The writ petition is allowed. (E-6)

List of Cases cited:

1. Bih. St. Housing Board & ors.Vs Atma Ram
 Shah, Manu/SC/ 2185/1995, Civil Appeal No.
 1713 of 1993

(Delivered by Hon'ble Piyush Agarwal, J.)

1. Heard Mr. C.B. Yadav, learned
 Senior Counsel assisted by Mr. Nisheeth
 Yadav for the petitioner and Mr. Siddharth
 Singh, learned Standing Counsel for the
 respondents.

2. Writ C No. 1920 of 2018 has
 been filed for quashing the reference dated
 18.10.2012 in Stamp Suit No. 119/2012-13
 and Writ C No. 30283 of 2018 has been
 filed for quashing the order dated
 30.5.2018 and 21.7.2018 as well as
 recovery citation dated 28.8.2018.

3. Learned Senior counsel for the
 petitioner submits that the impugned
 reference dated 18.10.2012 as well as
 consequential notices are without
 jurisdiction and during pendency of
 present Writ C No. 1920 of 2018, the
 impugned orders have been passed, which

are under challenge in the subsequent Writ C No. 30283 of 2018. He submits that when the reference itself is without authority of law as per Section 23 of Stamp Act and the present writ petition may be allowed, then all consequential action and orders automatically goes.

4. Brief facts of the case as stated in the writ petitions are that the petitioner is private limited company incorporated under the provisions of 'The Indian Companies Act, 1956' having its business of infrastructure development. Yamuna Express Way Development Authority has been constituted under Section 3 of the UP Industrial Development Act, 1976 in District Gautam Buddha Nagar. The State Government in exercise of its power under the Land Acquisition Act has acquired the land of village Jaganpur and handed over the same to the authorities for planned development and in pursuance thereof a scheme was floated for allotment of Residential Township bearing YEA-RT-01 to which the petitioner's company has applied. After scrutiny a letter dated 14.6.2010 was issued whereby Plot No. TS-01 in Sector 26 A was allotted to the petitioner. As per Clause 6 of the authority letter dated 20.7.2010, the payment of stamp duty @ 5 % of the total premium has been computed by the development authority and in pursuance thereof the petitioner paid the premium amount. Thereafter the lease deed was executed on 31.7.2010 but subsequent thereto a reference was made by Sub Registrar to the Collector Stamp on 18.10.2012, wherein it has been stated that the petitioner has paid the stamp duty upon actual total premium of the land and not over the interest, which has been paid to the authority in 20 equal installments. On the said reference, Stamp Suit No. 119 /2012-13 was registered and

notices were issued to the petitioner alleging deficiency of stamp duty, on the ground that amount of interest were not included while paying stamp duty. Thereafter the petitioner has challenged the said reference before this Court by means of Writ C No. 1920 of 2018.

5. Learned Senior counsel for the petitioner submits that the reference dated 18.10.2012 itself is bad and without authority of law, which is in the teeth of Section 23 of UP Stamp Act. He submits that the Development Authority as per scheme has contemplated for payment of 5 % of stamp duty on the total premium fixed, while allotting the land. The said fact has been mentioned in Annexure No. 5 of the writ petition. Further, the proceedings have been initiated on the alleged ground that apart from the total premium, the petitioner has paid interest to which the amount of premium has been enhanced against which no stamp duty has been paid. He submits that any payment of interest cannot be calculated and added to the premium amount for payment of stamp duty.

6. He further raises alternative argument that it is a lease of the property, which may not be treated as sale of the property, therefore, the proceedings itself is bad on this ground alone.

7. Per contra, learned Standing Counsel supports the impugned proceedings as well as the impugned orders and submits that land has been given on lease for more than 30 years, therefore, the stamp duty is liable to be paid. He further submits that the plot in question has been given over and above the premium amount in which 20 equal instalments have been fixed to which the interest has been charged

by the development authority but the same has not been calculated towards the payment of stamp duty, therefore, the proceedings has rightly been initiated.

8. After hearing learned counsel for the parties, the Court has perused the records.

9. The record shows that the land in question was allotted to the petitioner for development of residential township vide letter dated 14.6.2010 and as per clause 6 of the letter dated 20.7.2010, the stamp duty @ 5 % as computed (on total premium) i.e. Rs. 9,86,00,715/- was required to be paid by the petitioner and on payment of stamp duty as well as 30 % (of total premium), i.e. Rs. 1,77,65,895/-, which was a condition precedent, the lease deed has been executed.

10. In exercise of powers conferred under Rule 4 UP Stamp (Valuation of Property) Rules 1997 the District Magistrate has floated minimum value of the land, over which the stamp duty was calculated keeping in view the provisions laid down under UP Stamp (Valuation of Property) Rules 1997 and minimum value has been fixed in respect of allotted land was @ Rs. 5000/-. The said provision as required under the Act has been complied with by the petitioner.

11. Thereafter the impugned reference has been made by the Sub Registrar to the Collector, Gautam Buddha Nagar alleging therein that the petitioner has only paid the stamp duty on actual premium amount in respect of the allotted land to it. However on payment of interest, no stamp duty has been paid on 20 equal instalments, as

mentioned in the instrument, therefore, the proceedings have been initiated against the petitioner.

12. It is admitted between the parties that the proceedings have only been initiated against the petitioner on the alleged ground that on the actual premium amount, the stamp duty was paid, but for payment in 20 equal instalments along with interest, the stamp duty was also required to be paid on interest, but the same has neither been calculated nor has been paid by the petitioner.

13. To decide the issue in hand, it is relevant to quote Section 23 of the Stamp Act :-

“23. Instruments reserving interest. —Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had not mention of interest been made therein.”

14. On perusal of aforesaid Section, the payment of interest in an instrument does not operate to make it chargeable with higher duty. The duty will only be chargeable on principal sum and not to be based on the principal sum plus interest. In other words, it specifically prohibits for charging stamp duty on interest mentioned in the instrument. But in the present case, the respondent authorities have chosen in their wisdom to proceed for charging deficit of stamp duty on the interest as mentioned in the lease deed, which were required to be paid in 20 equal instalments.

15. The issue in hand has already been decided by Patna High Court in the case of **Atma Ram Shah Vs. The Bihar State Housing Board and others, 1992 SCC Online Pat 13**. The relevant part of the judgement is quoted hereunder:-

“Originally in the writ petition the petitioner had prayed for a direction on the respondents to transfer House No. M/2 (double storied) under the Middle Income Group Housing Scheme situated at Argora Housing Colony, Ranchi, in the name of the petitioner by executing proper instrument. During the pendency of this application, the respondents issued Annexure 12 by which the petitioner was informed that as he has paid a total sum of Rs. 60,357/- which includes principal and interest, he should send to the Board typed copy of the sale deed on the stamp paper by valuing the same at Rs. 60,357/-. By Annexure 13, Annexure 12 was referred to and a request was made to the petitioner to send the sale deed drawn on stamp paper a draft of which was sent by Annexure 13 which has been marked as Annexure 14 to the writ petition. In view of this development, the petitioner filed an application for amendment of the writ petition for challenging that part of Annexures 12, 13 and 14 by which the petitioner was requested to value the sale deed at Rs.60,357/- and put stamp duty on the same.

2. The question which arises in this case is what should be the value of the sale deed to be executed by the respondents in favour of the petitioner with regard to the house in question.

3. The petitioner has filed a copy of the agreement as contained in Annexure 2 to the writ petition entered into by and

between the parties on 15th February, 1967 relating to the house in question. It was agreed between the parties that the total sale price of the house would be Rs. 34,500/-. Out of this, the petitioner had already paid Rs. 14,500/- and balance amount of Rs. 20,000/- would be payable by him with interest in 282 monthly instalments.

4. It is thus clear from Annexure 2 that the parties agreed that the value of the house is Rs. 34,500/- notwithstanding the fact that balance of the sale price would be paid by the petitioner with interest in 282 monthly instalments. The parties never agreed that the interest should also be added in the sale price of the house in question. That being the position, I am of the opinion that the value of the sale deed to be executed by the respondents in favour of the petitioner with regard to this house in question will be Rs. 34,500/-.

5. The petitioner will draw a sale deed on the requisite stamp paper, draft of which is Annexure 14 to the writ petition. The respondents-Board shall execute and register the sale deed within thirty days from the date of receipt of the sale deed drawn on the requisite stamp paper from the petitioner.

6. The application is disposed of with the aforesaid observation and direction.”

16. The aforesaid judgement was challenged by the Bihar State Housing Board and others before the Apex Court in **Civil Appeal No. 1713 of 1993, (Bihar State Housing Board and others Vs. Atma Ram Shah)**, (reported in **Manupatra** citation

Manu/SC/2185/1995) which was dismissed vide order dated 6.8.1995 passed by the Bench of Hon'ble Mr. Justice M.M. Punchhi and Hon'ble Mr. Justice J.K. Venkataswami. The relevant part of the judgement is quoted hereunder:-

“Mr. M.M. Punchhi, J. - The Appellant Bihar State Housing Board and its officers-required of the Respondent to pay a figure of stamp duty chargeable not only on the original price of Rs. 34,500/- as fixed but also on the interest paid from time to time on deferred payment of installments. Its attempt was scuttled by a Division Bench of the Patna High Court, forbidding it to charge stamp-duty relatable to the interest but only to charge stamp-duty on the sale price of Rs. 34,500/- .

2. The main obligation incurred by the Respondent subject is embodied in paragraph 2 of the deed executed before hand. It mentions that the total sale price of the house was Rs. 34,500/- the possession of the house having already been delivered to the Respondent. It was admitted that the Respondents had paid a sum of Rs. 14,500/- by that time and the balance of Rs. 20,000/- would be treated as loan amount in his hands, payable by him with interest in as many as 282 monthly instalments in the manner stipulated. Steps and action were envisaged in the event of failure to make timely payments with which we are not concerned for the present. All what needs emphasis is that a fiction apparently had been created, whereby the price, which was/otherwise payable had been left with the purchaser as a loan which would fetch interest at the rates stipulated. section 23 of the Indian Stamp Act, 1899 specifically states that where interest is expressly made payable by the terms of an instrument, such

instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein. The law envisaged the consideration for an instrument and the interest accruing thereon in a given situation to be treated separately Section 24 of the Act provides the method as to how stamp duty is chargeable in consideration of debt or subject to future payment, etc. The provision as pressed by learned Counsel for the Appellant would have no applicability to the present set of facts. Interest chargeable on loan cannot be put at par with encumbrances; it remaining a liability though. Thus, in our view, the High Court was right in Intervening In the matter and forbidding the Appellant to charge stamp duty beyond the consideration of Rs. 34,500/- and not on the sum total of interest paid by the transferee by adding it to the sale consideration.

3. *We therefore find no merit in this appeal and the same is dismissed. There shall be no costs, there being no opposition.”*

17. The record shows that the proceedings have been initiated on the premise of deficit of stamp duty on the interest paid by the petitioner. Section 23 of the Stamp Act specifically prohibits for charging stamp duty on payment of interest.

18. It is not in dispute that the petitioner has paid stamp duty on amount of actual premium on which the land has been allotted. The deficit of stamp duty by making reference is proposed to be charged on the interest paid in 20 equal instalments. Though Section 23 envisaged that if the

instrument categorically provides that interest needs to be paid on actual amount, the stamp duty for that instrument would not be more than it would have been if interest was not at all mentioned therein. The payment of interest on the instrument does not empower the authorities for charging higher stamp duty on the instrument. If the interest is paid on and above the amount payable by the purchaser, the same can be considered in accordance with law but higher rate of stamp duty cannot be charged as contemplated under Section 23 of the Indian Stamp Act.

19. Further Hon'ble the Apex Court in the case of **Bihar State Housing Board (supra)** had an occasion to consider the issue which is similar to the issue in hand and after detailed discussion, Hon'ble the Apex Court has held that the stamp duty cannot be charged on the amount of interest paid under the Indian Stamp Act.

20. Once Section 23 of the Indian Stamp Act prohibits for charging higher stamp duty on such instrument where interest is expressly made payable as well as the law is very clear on this subject as held by Hon'ble the Apex Court in the case of **Bihar State Housing Board (supra)**, the proceedings initiated against the petitioner by making impugned reference for charging deficit of stamp duty on the basis of interest paid by the petitioner, is not justified.

21. In view of aforesaid discussion as well as law laid down by Hon'ble the Apex Court, the impugned reference dated 18.10.2012 in Stamp Suit No. 119 /2012-13 cannot be justified in the eyes of law and same is hereby quashed.

22. As the impugned reference itself is quashed, all consequential proceedings as well as the impugned orders dated 30.5.2018, 21.7.2018 and recovery citation dated 28.8.2018 are also hereby quashed.

23. Accordingly, both the writ petitions are **allowed**.

24. The authority concerned is directed to refund any amount deposited by the petitioner along with interest @ 4% per annum from the date of its deposit till the date of refund, within a period of two months from the date of production of a certified copy of this order.

(2025) 4 ILRA 510
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 01.04.2025

BEFORE

THE HON'BLE MRS. SANGEETA CHANDRA, J.

Writ C No. 35050 of 2019

Sunita Nishad & Anr.
...Petitioner

Versus

Debt Recovery Appellate Tribunal & Ors.
..Respondents

Counsel for the Petitioner:

Sushil Kumar, Abhiuday Pratap Singh, Amrendra Nath Tripathi, Meenakshi Singh Parihar, Rakesh Chandra Tewari

Counsel for the Respondents:

Rakesh Pal, PC Chauhan, Prashant K. Srivastava, Ramesh Chandra, S.C. Tiwari, Shailendra Singh Rajawat, Vidya Kant Sharma

Civil Law – Constitution of India, 1950 – Article 226 - The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Sections 13, 13(2), 13(4), 1 & 17(1) - The Security Interest (Enforcement) Rules, 2002 – Rule – 3(1), 3(4), 8(1), 8(2), 8(6), 8(6)(a), 13, - The U.P. Agricultural Credit Act, 1973 - Sections - 6(1), 11, 12, 12-A, 12-B & 12-C - The General Clauses Act, 1897 - Section - 27 - The Indian Evidence Act, 1872 - Section - 114 - The Registration Act, 1908 - Sections 17(1)(b), 17(1)(c) & 17(2)(xii)- Writ Petition - challenge to the order of Appellate Tribunal (DRAT), which upheld the Bank's auction sale and possession of the petitioners' residential property - Brother of the petitioner no. 2 applied for a term loan of 5 years for Rs. 90 Lakh through the Bank of Baroda under the UP-St. Govt. sponsored scheme 'Kamdhenu Dairy Scheme' – wherein both petitioners being relative of borrower were shown as guarantors of the loan fraudulently by the bank by using original papers of the house in question which was already mortgaged to the bank in another house loan, as surety - Default on the loan account - led to issuance of demand notices - Objections were raised by the petitioners challenging the procedural propriety of notices issued under the SARFAESI Act for possession and auction sale – writ petition - dismissed, for statutory remedy – petitioners approached to DRT - DRT, declaring the Bank's actions void *ab initio* - Appeal filed by bank in DRAT – Appellate tribunal reversed the decision, holding that both petitioners had been duly served with statutory notices and had executed an extended mortgage agreement, thereby estopping them from denying their status as guarantors – writ petition – petitioners refuted the bank's claim, and alleged that the bank, in collusion with borrower, fraudulently extended their housing loan mortgage as a guarantee without their consent or signatures, and that the bank manager involved was later suspended – further, the petitioners sought to implead borrower as a respondent, but the bank opposed this as a delay tactic -

The Court ultimately rejected the impleadment request, noting that borrower was not a party in the original DRT or DRAT proceedings, and his inclusion was unnecessary in the current writ petition – Court finds that, - the petitioners had misrepresented facts and deliberately prolonged litigation to retain possession of the auctioned property, despite its sale to respondent no. 4 in 2017 - The Court also noticed that respondent no. 4 had suffered significant financial and emotional hardship, including paying rent and EMIs for seven years without enjoying the property, and was entitled to compensation – court held that, the petitioners are abused the judicial process and wasted the Court's time - hence, the writ petition is dismissed with cost of Rs. 25 Lakhs, to be paid within three months before the High Court's Senior Registrar, failure to pay would result in recovery as arrears of land revenue – further, direction issued that the amount, once deposited, would be released in favour of the respondent no. 4 on an appropriate application – order of the DRAT stands affirmed, therefore, petitioners were bound to vacate the property, within one month. (Para - 37, 42, 43, 45, 53, 54, 55, 57, 58, 59, 60)

Writ Petition Dismissed. (E-11)

List of referred Cases: -

1. St. of Orissa & ors. Vs Laxmi Narayan Das (2023) 15 SCC 273,
2. Hari Narayan Vs Badari AIR 1963 Supreme Court 1558,
3. G. Narayana Swamy Reddy Vs Govt. of Karnataka 1991 (3) SCC 261,
4. Krishna Kumar Gupta Vs Manoj K Sahu reported in (2022) SCC OnLine All. 528,
5. C.C. Alavi Haji Vs Palapetty Muhammed & anr reported in (2007) 6 SCC 555,
6. M/s Ajeet Seeds Ltd Vs K. Gopala Krishnaiah reported in (2014) 12 SCC 685,

7. B. Arvind Kumar Vs Government of India & ors.- (2007) 5 SCC 745,

8. Shakeena & ors.Vs Bank of India & ors.- (2021) 12 SCC 761,

9. Indian Overseas Bank Vs RCM Infrastructure Limited & ors.- (2022) 8 SCC 516,

10. Mardia Chemicals Ltd.d Vs U.O.I.- (2004) 4 SCC 311.

11. S. Karthik & ors.Vs N. Subhash Chand Jain & ors.- (2022) 10 SCC 641,

12. St. of Orissa Vs Laxmi Narayan Das (2023) 15 SCC 273,

13 K. Jayaram Vs BDA, (2022) 12 SCC 815,

14. Udyami Evam Khadi Gramodyog Welfare Sanstha v. St. of U.P. - (2008) 1 SCC 560,

15. A. Shanmugam Vs Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalani Sangam, (2012) 6 SCC 430: (2012) 3 SCC (Civ) 735: 2012 SCC OnLine SC 384

(Delivered by Hon'ble Mrs. Sangeeta Chandra, J.)

1. This writ petition has been filed by the petitioners Sunita Nishad and her husband Om Prakash, challenging the order dated 22.10.2019 passed by the Debt Recovery Appellate Tribunal Allahabad, (DRAT) in Appeal No.18 of 2018, filed by the Bank of Baroda through which the order dated 20.08.2018 passed by the Debt Recovery Tribunal, Lucknow (hereinafter referred to as "DRT") has been set aside and auction sale dated 11.12.2017 and possession notice dated 05.10.2016 has been affirmed and physical possession of House No. 13/88, Sector-13, Indira Nagar Vistar Yojna, Lucknow, has been directed to be delivered to Smt. Mamta Yadav, the respondent no.4 in this petition. The petitioners had earlier filed Writ Petition

No. 31115 (MB) of 2017 before this Court challenging the auction notice dated 11.12.2017, which petition was disposed off by this Court directing the petitioners to approach the DRT as the proceedings were under the SARFAESI Act.

2. The brief facts necessary for deciding the case, as mentioned in the Writ Petition No. 35050 of 2019 are that the State Government launched a scheme called "Kamdhenu Dairy Scheme" with intention to promote dairy farming in the State of U.P. to maintain its status as the highest milk producing state in the country. One Jai Prakash, the brother of petitioner no.2 and the brother-in-law of the petitioner no.1, applied for a term loan of five years and was sanctioned Rs.90 lakhs by the Bank of Baroda under the State Sponsored Scheme. The petitioner no.1 and the petitioner no.2 being relatives of the borrower Jai Prakash and already being customers of Bank of Baroda, Gomti Nagar Branch, were shown as guarantors of the loan fraudulently by the bank, which used the original papers relating to petitioner's jointly owned property at Indira Nagar, which was already mortgaged to the bank in a housing loan, as surety for the agricultural loan of the borrower. It has been stated in paragraph 10 to 13 that the petitioner no.1 was never consulted by the bank, nor did she sign any papers for extension of mortgage and she never stood as guarantor or surety for the loan taken by Jai Prakash. Petitioner no.1 and petitioner no.2 had taken a housing loan from HDFC Bank on 30.07.2011 of Rs.32 lakhs for buying the house situated at Indira Nagar and the loan had to be repaid with interest to HDFC initially, but due to lower rate of interest being offered by Bank of Baroda, the petitioners got their loan transferred on 23.01.2015 to the respondent no.3, Bank of

Baroda, which granted them a loan of Rs.29,50,000 and the papers relating to the house situated at Indira Nagar were submitted by the petitioners to the said bank in January, 2015 itself. In March 2015, when Jai Prakash applied for loan of Rs.90,00,000 under Kamdhenu Dairy Scheme, the papers relating to Indira Nagar House property had already been deposited in the bank as the house was mortgaged for repayment of housing loan, which had to be done in 217 monthly installments. The loan account of the borrower Jai Prakash Yadav was declared NPA by the bank on 30.06.2016 and a Demand Notice was issued under Section 13(2) of the SARFAESI Act on 21.07.2016.

3. It has been stated that the petitioner no.1 never received such Demand Notice under Section 13(2) of the SARFAESI Act. On 05.10.2016, possession notice was issued by the bank under Section 13(4) of the SARFAESI Act, 2002 and it took symbolic possession of the property, but no such notice was ever served upon petitioner no.1, and the petitioner had no knowledge of taking over of the property by the bank. On 27.01.2017, a letter of redemption was sent by the bank to the petitioners through speed post. Thereafter summons were issued by the District Magistrate, Lucknow under Section 14 of the SARFAESI Act, 2002, on 21.03.2017.

4. It has been stated that the petitioners filed their objections, but they were not considered and the house property at Indira Nagar was put up for auction. The bank failed to comply with Rule 8(6)(a) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the Rules of 2002), which specifically provides that publication of auction sale notice shall

include details of encumbrances on the property known to the secured creditor. The bank was well aware that there was a housing loan of Rs.29 lakhs pending against the said property, which was the primary charge and details of such encumbrance was not published.

5. The petitioners filed Writ Petition No. 31115 (MB) of 2017 at Lucknow challenging the Auction Sale Notice dated 11.12.2017, which was disposed of by this court, directing the petitioners to approach the DRT. The petitioners filed an application under Section 17 (1) of the Act of 2002 before the DRT Lucknow and after pleadings were exchanged, the Securitisation Application No.19 of 2018 was allowed by the DRT by its order dated 20.08.2018, a copy of which has been filed as annexure-12 to the petition.

6. It has been submitted on behalf of the petitioners that the Securitisation Application No. 19 of 2018 was allowed by the DRT after recording a specific finding that the Demand Notice issued under Section 13(2) of the Act of 2002 was not served upon petitioner no.1. The postal receipt submitted by the bank was issued in the name of one 'Savita' and not Sunita. The DRT observed that the bank should have gathered more proof of service, instead of placing reliance upon postal receipt dated 25.07.2016, which was in the name of 'Savita' and not Smt. Sunita Nishad. The DRT while placing reliance upon the Rule 3(4) of the Rules of 2002, which required that the Demand Notice should be served upon each borrower individually where there were more than one borrowers; was of the opinion that the Demand Notice was served only upon the husband of the petitioner no.1 Om Prakash,

and not on Sunita Nishad although the property was jointly owned by husband and wife. The DRT also observed that mere producing of postal receipt in support of having dispatched the notice under Section 13(2) is not sufficient to have established that the communication was actually delivered to the addressee. Due to non-compliance of of Rule 3(4) of the Rules of 2002, the entire action initiated by the respondent bank was void ab initio, and therefore, the possession notice dated 05.10.2016 and the E-auction sale notice published by the bank were also vitiated on the ground that the possession notice was dispatched to the petitioners through registered post on 05.10.2016 and symbolic possession was taken by the bank on 05.10.2016 itself. Such action was against the law settled by the High Court of Karnataka in the case of K.R. Krishna Gowda and Another Vs. Chief Manager/Authorised Officer, Kotak Mahindra Bank reported in Manu/KA/0689/2012, where the Karnataka High Court observed that in order to enable the borrower to know the date on which possession would be taken by the secured creditor Rules(1) and (2) of Rule 8 would have to be complied with by issuance of notices indicating the date on which possession would be taken. The DRT observed further that Special Leave Petition preferred by Kotak Mahindra Bank was dismissed by the Supreme Court hence the judgement rendered by Karnataka High Court stood affirmed about service of possession notice prior to actual taking of symbolic possession.

7. It was also observed by the DRT that auction sale notice published by the respondent bank did not mention the encumbrances already existing on the secured asset proposed to be sold in terms

Rule 8(6) of the Rules of 2002, Sunita Nishad being a joint owner of the secured asset along with her husband Om Prakash, had taken a housing loan on the property earlier from the bank, which was not mentioned in the sale notice. Consequently, since the bank had failed to prove service of demand notice dated 21.07.2016, on Sunita Nishad hence, the entire consequential action taken by the respondent bank under the SARFAESI Act of 2002 was vitiated and *void ab initio*.

8. It has further been stated that the bank being aggrieved filed an appeal before the DRAT, which was allowed mainly on three grounds. It was observed that even though notice was sent indicating a wrong name of 'Savita' instead of Sunita Nishad it can be considered to be a typographical error of the postal department and notice shall be treated to have been duly sent as it was not returned undelivered. Such notice will be deemed to have been served upon petitioner no.1 as it was addressed, not only to petitioner no.1, but also to her husband Om Prakash, who was living at the same address. The Securitisation Application was filed by both husband and wife. The pleading in the Securitisation Application was only for non-receipt of notice by the the applicant no.1, Smt. Sunita Nishad. It is sufficient to infer that the notices were served to both husband and wife as they were dispatched to one and the same address and her husband, Om Prakash did not allege that such notice was never served upon him, and even the notice sent to Sunita Nishad did not return unserved.

9. It has also been observed by the DRAT that non-service of prior notice of taking symbolic possession under Section 13(4) is also of no consequence once summons were issued under the provisions

of Section 14 of the Act by the District Magistrate. The DRAT also observed that in view of the judgment rendered by the Supreme Court in ***Standard Chartered Bank Vs. V. Noble Kumar, 2013 (9) SCC 620***; there was no necessity to serve any notice before taking over symbolic possession of the property. The DRAT placed reliance upon a judgement rendered by this court at Allahabad in Writ-C No. 9731 of 2019, 'M/s Mahesh Industries Private Limited and Others Vs. Karur Vyasa Bank Limited', on 08.08.2019, where relying upon Noble Kumar (supra), this Court had observed that there is no requirement for issuance of any notice to the borrower for the proposed date of taking possession. The secured creditor is under no obligation to intimate to the borrower/guarantor before taking symbolic possession of the property.

10. The DRAT has allowed the appeal of the bank also on the ground that the applicants had created an extended mortgage of property for securing the loan granted to their relative Jai Prakash, who was the Borrower. The extended mortgage letter dated 07.05.2015 was signed by both Sunita Nishad and her husband Om Prakash, and therefore, Sunita Nishad could not be permitted to say that she had not given any guarantee for securing the loan taken by Jai Prakash. As per Rule 8(6), the secured creditor is required to mention encumbrances in the sale notice, but in this case the properties were primarily mortgaged against the housing loan granted to Sunita Nishad and her husband by Bank of Baroda itself and since no mention regarding such housing loan was made in the demand notice, it was apparent that such housing loan was regular. Also, even if the encumbrance was in existence, the property was mortgaged with the self same

bank and encumbrance was not of any third party (institution), hence if at all it caused any prejudice to the rights of any party it was that of the bank alone. Non-mentioning of such encumbrance on the properties in the sale notice was of no consequence and it could not be said that the bank had committed such a grave irregularity as to vitiate the sale proceedings altogether.

11. Initially, when this petition was filed and taken up as fresh, the counsel for the petitioner had argued that the requirement of Rule 13 of the Rules of 2002 had not been met and the Appellate Tribunal had given a wrong finding regarding sufficiency of service of notice under Section 13. The Court issue notice to the respondent and directed that till the next date of listing, the parties shall maintain status quo. Such time interim order continued to be extended and counter affidavit was filed by the respondent bank on 26.03.2021, along with an application for vacation of interim order.

12. In the counter affidavit, the bank denied the claim of the petitioners in the writ petition and stated that the petitioners have resorted to material concealment and misrepresentation in stating on oath that they have not taken any guarantee in the term loan facility extended to Jai Prakash of Rs.90 lakhs under the Kamdhenu Scheme. It was stated that earlier Writ-C No.16546 of 2021 was filed by the borrower Jai Prakash before this court, praying for early disposal of his application for recall dismissing Securitisation Application No. 15 of 2017 for want of prosecution. The High Court disposed off Writ-C No. 16546 of 2021 on 07.04.2022 with direction to the DRT to decide the recall as well as delay condonation application filed by Jai

Prakash expeditiously, but before such order was passed, the DRT had already disposed off both the applications by its order dated 04.04.2022 and Securitisation Application No. 15 of 2017 filed by Jai Prakash stood revived.

13. It was also stated in the counter affidavit of the bank that the Demand Notice dated 21.07.2016, issued under Rule 13 (2) of the Act of 2002 was sent to the borrower and also to the guarantor through registered speed post on 25.07.2017, which notice has not returned undelivered, and therefore, service was deemed upon them. The bank took symbolic possession of the secured asset on 05.10.2016 and summons were issued by the District Magistrate under Section 14 of the Act which were affixed on a conspicuous place on the house property/secured asset as the borrower/guarantor had refused to accept personal service of the same.

14. It has also been stated that the petitioners have admitted in paragraphs 3 and 15 of writ petition that they had stood as guarantors for the loan facility extended to Jai Prakash. Kamdhenu Dairy Loan is a commercial loan, which is granted to the borrower against some security. The borrower Jai Prakash and the guarantors have executed the necessary documents in this regard by securing the said term loan by extending guarantee of house property no. 13/88, Indira Nagar Vistar Yojna and a plot situated at Sharda Nagar Raebareli Road Scheme, therefore, the bank could initiate recovery proceedings under SARFAESI Act which relates to recovery of NPAs from secured assets held by the creditor. Moreover, the Uttar Pradesh Agricultural Credit Act, 1973 prohibits sale of agricultural property, whereas the house property situated at Indira Nagar Vistar

Yojna and the plot situated at Sharda Nagar Raebareli Road Housing Scheme were not agricultural properties.

15. It has also been stated that after summons were issued under Section 14 of the Act of 2002 by the District Magistrate, Lucknow. The petitioners did not file objections when orders were passed under section 14 of the Act by the designated officer, the Bank had published auction notice on 18.11.2017, in two leading newspapers, namely, Times of India and Amar Ujala as is required under the Act and the Rules. The DRT had allowed the Securitisation Application of the petitioners on technical grounds stating the Demand Notice remained unserved due to wrong mention of the name of the petitioner no.1, the name of the petitioner no.1 was Sunita, but it was typed as 'Savita'. It has been stated that the postal receipt issued in the name of 'Savita' had been issued for the notice which showed the correct name and address of the guarantors. Both petitioner no.1 and petitioner no.2 were joint owners of the property. The Demand Notice sent through registered post has never been received back undelivered, and therefore, service is deemed upon the petitioners. With regards to taking over of symbolic possession, the bank has relied upon Standard Chartered Bank Vs. Noble Kumar (supra), where the Supreme Court has observed that application under Section 14 of the Act can be moved straight away after Demand Notice under Section 13(2) of the Act is issued.

16. The bank has also stated in its counter affidavit that there is no provision which requires the bank to cancel the sale proceedings in case only one bid is received. Since the reserved price set by the bank had been met by the bidder, the house

property could be sold to such bidder. It was an open bidding process and the petitioners were free to place a better offer in the auction.

17. In the rejoinder affidavit filed by the petitioners to the counter affidavit of the bank, it has been stated that Writ-C No. 16546 of 2021 was filed by the borrower Jai Prakash without knowledge of the petitioners. When the petitioners derived knowledge of the contents of the petition, they objected to the same. Since Jai Prakash, the borrower was petitioner no.1's brother-in-law, he admitted his mistake, but requested the petitioner no.1 not to deny the contents of the Writ Petition No. 16546 of 2021. To protect him, she had stated in her Writ Petition No. 31115 (MB) of 2017 that she was the guarantor in the loan extended to Jai Prakash. In fact, Writ Petition No. 31115 (MB) of 2017 was disposed of by this court by making no observations on merit, but with a direction to the petitioners to approach the DRT under the SARFAESI Act. In such writ petition the petitioners had made no admission of being guarantors for the term loan facility extended to Jai Prakash. The petitioners had taken a housing loan of Rs. 29 lakhs from the Bank of Baroda to buy a house property situated in Sector-13, Indira Nagar and mortgaged the said house to secure the loan. They had not signed any document extending the guarantee in favour of Jai Prakash for securing his term loan taken under Kamdhenu Dairy Scheme. However, the bank in collusion with the borrower Jai Prakash had extended the guarantee which was never executed by the petitioners. As a result of such fraudulent behaviour, the bank manager, who had processed the loan

given to Jai Prakash had been suspended and later demoted.

18. It was also stated in such rejoinder affidavit that the alleged letter issued on 27.11.2017 admitting the mortgage of house property situated at Indira Nagar for securing the loan given to the principal borrower was not signed by the petitioners and Jai Prakash may have forged the same. The house property at Indira Nagar was never mortgaged, and therefore, there could not have been an extension of the mortgage deed.

19. It was reiterated that the bank had failed to comply with Rule 8(1) and 8(2) by not issuing notices, specifying the possession date. The alleged notice of symbolic possession dated 05.10.2016 was published only on 07.10.2016 proceedings initiated thereafter ex parte.

20. After affidavits were exchanged and the petition was ripe for hearing an Impleadment Application no.9 of 2022 was filed by the petitioners on 25.04.2022 for impleading the principal borrower Jai Prakash as respondent no.5 in the writ alleging that Securitisation Application No.150 of 2017 was pending before the DRT and its outcome would impact the petitioners, and therefore, it was necessary to include Jai Prakash as respondent no.5 in the petition.

21. Objections were filed by the bank on 18.07.2022, against such application for impleadment by the bank saying that such impleadment application was collusive in nature and filed only to delay the decision in the writ petition where pleadings had been exchanged and the matter was ripe for final hearing. It was stated that initially one Securitisation

Application No. 150 of 2017 was filed by Jai Prakash, the petitioners were not impleaded therein as respondents. When Securitisation Application No.19 of 2018 was filed by petitioners Sunita Nishad and Om Prakash, they did not implead Jai Prakash as a respondent, although the same advocate was engaged by them and they had made pleadings on behalf of each other. Also, when Securitisation Application No.19 of 2018, was allowed by the DRT, the bank filed appeal before the DRAT Allahabad. Jai Prakash, the borrower was not a party to such proceedings and no objections regarding the non-joinder of the borrower was ever raised by the petitioners.

22. This court passed a detailed order on 14.03.2023, rejecting the impleadment application by noticing the objections as stated by the bank and finding that the securitisation application of Jai Prakash the borrower is pending before the DRT, where the guarantors have not been impleaded as parties. The securitisation application of the guarantors Sunita Nishad and Om Prakash having been allowed, the bank had filed appeal before the DRAT Allahabad, and during the pendency of the appeal, the petitioners did not raise any issue regarding non-impleadment of the principal borrower. Since Writ-C No. 35050 of 2019 had arisen out of proceedings in the Securitisation Application No. 19 of 2018 and challenged the order passed in appeal by the DRAT, Allahabad where Jai Prakash was not a party, there was no necessity of impleading the Jai Prakash in the instant petition.

23. An application for amendment in the petition was moved on 20.09.2023 by the petitioners stating that Writ Petition No. 31115 (MB) of 2017 had been disposed off

on 20.12.2017 and there were certain incorrect pleadings made therein and the petitioners had filed an amendment application which was pending in the finally disposed off petition.

24. This Court partly allowed such Amendment Application on 01.03.2024, the relevant extract of which is being quoted here in below:-

1. ***

2. *Learned counsel for the applicant has prayed, on the basis of the affidavit filed in support of such amendment application for permission to add paragraph 1A after paragraph 1 in Writ-C No.35050 of 2019, that initially a Writ Petition No.31115 (M/B) of 2017 was filed by the petitioners, which was disposed of by this court by an order dated 20.12.2017. In the said Writ Petition No.31115 (M/B) of 2017, certain incorrect statements were made in paragraphs-3 and 15, to substantiate the claim of the petitioners that loan ought to be recovered from the principal borrowers first and only if it is not feasible to recover from the principal borrowers, proceedings of recovery could be initiated against the guarantors that is the petitioners. Such pleadings was made in Writ Petition No.31115 (M/B) of 2017 by the petitioners only to convince this Court that the petitioners being guarantors cannot be fixed with liability of repayment of loan of the principal borrower before the bank proceeds against principal borrower. But from such pleadings, an inference has been drawn that the petitioners admitted the Bank's claim that they are guarantors of the loan taken by the principal borrower. In fact, the petitioners had wanted to assert that the bank was arbitrarily proceeding against the petitioners as guarantors.*

The petitioners pleading in the said Writ Petition No.31115 (M/B) of 2017 was made only because they could not understand the nuances of the english language used by the learned counsel appearing for them in Writ Petition No.31115 (M/B) of 2017 and even the document that has been relied upon by the petitioners showed that the petitioner no.1 Sunita Nishad never signed the terms and conditions of the loan document and the extension of equitable mortgage, nor did she extended her own house as security against the loan of Jai Prakash, who is the principal borrower. The petitioners were under tremendous pressure as their residential house, which was fraudulently shown by the Bank officials to have been extended as security for repayment of loan in time by the principal borrower, was under auction sale and they were being threatened to be dispossessed. Therefore, inadvertently mistake was committed in the said pleading in Writ Petition No.31115 (M/B) of 2017.

3. Learned counsel for the applicant has also stated before this Court that Writ Petition No.31115 (M/B) of 2017 having already disposed off by this Court by its order dated 20.12.2017, an application for amendment in the pleadings in the said Writ Petition No.31115 (M/B) of 2017 has also been filed, which is pending disposal before the Division Bench.

4. Additionally, learned counsel for the applicant has prayed for liberty to add paragraph-70 A in Writ-C No.35050 of 2019, raising the plea with regard to the bank proceeding under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) illegally, as a loan that had been given to the Principal borrower

was under "Kamdhenu Dairy Interest Subsidy Scheme" floated under the U.P. Agriculture Credit Act, 1973. In the said loan, subsidy was given by the State Government. As such recovery, if any, could be done only under the provisions Section 11, 12, 12A, 12B and 12C of the U.P. Agriculture Credit Act, 1973. The Bank could not be allowed to pursue the remedy under the SARFAESI Act before the Debt Recovery Tribunal.

5. Further, the learned counsel for the applicant prays for permission to be granted to the applicants to add paragraph 70-B to the pleadings in Writ-C No.35050 of 2019, wherein it has been stated that loan in question being under the Kamdhenu Dairy Interest Subsidy Scheme, under the U.P. Agriculture Credit Act, 1973, is an agricultural loan extended for agricultural purposes and, therefore, no proceedings under the SARFAESI Act could be initiated to effectuate recovery of agricultural loan.

*6.,7.,8.****

9. A strong objection has been taken to the pleadings proposed to be added as paragraph-1A saying that the petitioners knowingly signed all documents and they cannot resile from signatures made by them on such documents as guarantors and the annexure that have been filed along with Writ Petition No.31115 (M/B) of 2017 by the petitioners themselves belie their claim that they were not guarantors to the loan taken by the principal borrower and they did not offer their residential house as surety for the loan taken by the principal borrower.

10. It has been argued by Sri Prashant Kumar Srivastava, learned counsel for the respondent, that the

petitioners deliberately moved an amendment application with a prayer to add the pleadings as proposed in paragraph-1A only to detract from the inference made from the pleadings in the writ petition subsequently filed i.e. Writ-C No.35050 (M/S) of 2019, where they had stated that they had not signed as guarantors and have not offered the house as surety for the loan taken by the principal borrower. Through the application for amendment, the petitioners are trying to raise new grounds and are trying to change nature and character of the petition.

11. It has also been argued that application for amendment filed by the applicants is collusive for the reason that at the initial stage when securitization application No.150 of 2017 was filed by the principal borrower Jai Prakash, and securitization application no.19 of 2018 was filed by Mrs. Sunita Nishad and her husband, they had engaged the same Advocate and they had made pleadings on behalf of each other in the said Securitization Applications.

*12., 13., ****

14. This Court has gone through the counter affidavit that has been filed to the original writ petition Writ-C No.35050 of 2019 and also the writ petition no.31115 of 2017, a copy of which has been annexed to the counter affidavit filed in the instant petition. From the same, it is evident that documents have been filed by the Bank to show that the petitioners had signed the documents as guarantors for the principal borrower, annexed as annexure-5 to the counter affidavit. Therefore, the amendment as proposed by addition of paragraph 1A cannot be allowed. It would only permit the

petitioners to resile from their pleadings and set up a new case altogether before this Court.

15. In so far as the proposed amendments and addition of paragraphs-70A and 70B are concerned, such addition to the pleadings raise legal grounds, which can be taken at any stage.

16. Such pleadings are proposed to be made the basis of the legal grounds which could be raised at any stage even at the stage of final hearing as they do not require additional evidence to be led. Such proposed amendments by addition of paragraph-70A and 70B, the grounds (hh) and (ii) as well as the relief clause (v) are permissible in law to be added and are therefore allowed.

17. Consequently, the amendment application C.M. Application No. I.A.12/ 2023 is partly allowed."

25. In effect, this Court had allowed amendments relating to UP Agricultural Credit Act, 1973, by addition of paragraphs 70A and 70B and grounds relating to the same. It however, did not allow paragraph 1A to be added where the petitioners had stated that, although in Writ Petition No. 31115 (MB) of 2017, they had stated that recovery should first be sought to be made from the principal borrower before proceeding against the guarantor and had inadvertently suggested their acceptance as guarantors to the loan taken by Jai Prakash, the petitioners only meant that even if they are treated as guarantors, the recovery should first follow the proper legal procedure. It was also stated that they had unknowingly signed the pleadings

under pressure as their residential house was under auction.

26. After amendment of the petition by addition of paragraph 70A and 70B, the respondent bank filed another application for dismissal of the petition on 03.04.2024, along with a supplementary counter affidavit, saying that the petitioners have acknowledged their role as guarantors for the term loan of Rs.90 lakhs extended to Jai Prakash under Kamdhenu Dairy Scheme additionally through letter dated 27.11.2017, they admitted to providing the guarantee and requested the bank to auction the borrowers property first. They had further sought a deferment of auction of their house property situated in Sharda Nagar Yojna and Indira Nagar Vistar. Also, after rejection of interim relief application in Securitisation Application, the petitioners had filed Writ Petition No. 31115 (MB) of 2017 and had made various averments on behalf of the borrower and they had also engaged the same counsel and through this petition as well as repeated applications moved by the petitioners, they have indirectly benefited the borrower.

27. Moreover, the petitioners have filed false affidavits before this Court and the Supreme Court in the case of *State of Orissa and Others Vs. Laxmi Narayan Das (2023) 15 SCC 273*, has observed that if a petitioner does not disclose all material facts fairly and truly before the Court but stated them in a distorted manner and tried to mislead the Court, the Court has inherent power to protect itself and to prevent an abuse of its process and dismiss the petition. The respondent bank has also placed reliance upon *Hari Narayan Vs Badari AIR 1963 Supreme Court 1558, G. Narayana Swamy Reddy Vs. Govt. of Karnataka 1991 (3) SCC 261* and several

other cases where the High Court denied relief to the litigant on the ground that he had not approached the court with clean hands and writ jurisdiction was equitable jurisdiction, which could not be allowed to be abused. With regard to contents of paragraphs 70A and 70B, it has been submitted that securitisation proceedings can be initiated by a secured creditor for realisation of debt through transfer of security interest created on the secured asset by way of sale/lease, etc. under the Act of 2002. There is no provision in the Act of 2002, which bars the bank from initiating securitisation proceedings under the Kamdhenu Scheme.

28. A short counter affidavit has been filed by the respondent no.4 Mamta Yadav on 19.04.2024, stating that she had bought the property in question in auction sale held by the bank and completed all formalities and deposited the money by taking a home loan of Rs.75 lakhs from Indian bank sanctioned on 14.12.2017. The auction purchaser was paying the monthly installments for repayment of such loan to Indian bank, but had not been given actual physical possession of the property, sale certificate in regard to which had been issued by the respondent bank.

Sri Shailendra Singh Rajawat, Advocate appearing for the auction purchaser respondent no.4 has argued that the encumbrance or charge, if any, in respect of the property in question can only be challenged by the auction purchaser, and therefore, the petitioner as such being the guarantors and mortgagors, in the instant case have no locus to raise any objection against the alleged encumbrances or charge. For establishing a charge or encumbrance, the petitioner has to show three parties, one who created the

encumbrance, two, who has a superior or first charge under any statute and three, who has inferior or second charge.

It has been argued by the learned counsel appearing for the respondent no.4 that since a Sale Certificate has been issued by the bank, which held the first charge on the property in question, mentioning there in that such sale has been conducted in a public auction in proceedings under the SARFAESI Act, and transferred title, free from all encumbrances on the auction purchaser, such Sale Certificate gives absolute title and interest to the auction purchaser on the property in question.

29. It has been argued by Shri Amrendra Nath Tripathi, learned counsel for the petitioners that the Tribunal has failed to correctly appreciate the facts and law. The DRT had allowed the Securitisation Application on three grounds, namely, that the Demand Notice was not served on the Sunita Nishad; prior notice before taking symbolic possession was not issued to the guarantor; the encumbrance on the secured asset was not mentioned in the sale notice. The DRAT while allowing the appeal gave an erroneous finding that the mentioning of the name 'Savita' on the postal receipt was a typographical error and since Securitisation Application had been filed by both Sunita Nishad and her husband, Om Prakash and there was no pleading on record that Om Prakash, who lived in the same property on the same address as Sunita had not been served a copy of the demand notice, it could not be said that notice was not served upon Sunita Nishad. Notice having not returned undelivered, would be deemed to have been served.

30. It has been argued that the Appellate Tribunal also erroneously observed that non-service of notice of possession would be of no consequence as the bank had resorted to Section 14 of the SARFAESI Act proceedings and summons was issued by the District Magistrate which was served on the guarantor. It has been submitted that the Appellate Tribunal erred in interpreting the judgement of the Supreme Court in *Standard Chartered Bank Vs. Noble Kumar(supra)*.

31. It has further been argued that the Tribunal committed a gross error of law in holding that the petitioners have created extended mortgage of the property when the original mortgage was not made and signed, extended mortgage could not have been made at all.

32. It has also been argued on behalf of the petitioners that the Tribunal has wrongly held that non-mentioning of encumbrances on the property proposed to be sold is of no consequence as prior mortgage had been created by the petitioners in favour of the self same bank.

33. It has been further argued by the learned Counsel appearing on behalf of the petitioners that Kamdhenu Dairy Scheme had been launched by the Government of U.P. as an Agricultural Credit Scheme under the U.P. Agricultural Credit Act, 1973. If the loan had been extended under an Agricultural Credit Scheme to Jai Prakash, which could not be repaid by the borrower, then proceedings should have been initiated under Sections 11, 12, 12 A, 12B and 12C of the Uttar Pradesh Agricultural Credit Act of 1973. No proceedings could have

been initiated under the Act of 2002 to effectuate recovery of agricultural loan. Also, the properties which were allegedly mortgaged to the bank for securing the agricultural loan for a project to be set up by Jai Prakash were agricultural and situated at Barabanki and Principal Borrower was at Lucknow and the Bank of Baroda Branch at Gomti Nagar had no jurisdiction to sanction loan in District Barabanki. This irregularity when revealed to the higher management of the bank had prompted them to take disciplinary action against the staff involved in sanctioning of loan to Jai Prakash, the principal borrower.

34. On the basis of pleadings on record, the counsel for the petitioner has argued that firstly the petitioners did not create any mortgage and also never took any guarantee in the matter of loan availed by Jai Prakash under the Kamdhenu Dairy Scheme. Even if such mortgage is shown by the bank to have been created, the same is defective. Secondly, the bank did not follow the procedure prescribed under the SARFAESI Act and Rules to auction the property of the petitioner in so far as no demand notice under Section 13(2) was received by the petitioner no.1, no possession notice under Section 13(4) was given in time prior to taking over of symbolic possession, and the Auction Notice did not disclose the encumbrances on the property. Even the Sale Certificate which was issued to the respondent no. 4 was defective.

35. To substantiate such arguments, counsel for the petitioners has stated that service of demand notice on petitioner no.2, who is the husband of petitioner no.1, cannot be said to be sufficient service on petitioner no.1. The Appellate Tribunal findings are contrary to

the mandatory requirement under Rule 3(1) and Rule 3(4) of the Rules of 2002 which require that demand notice shall be served either by hand or by registered post acknowledgment due, or by speed post or by courier, or by any other means of transmission of documents like through fax or electronic mail service upon the borrower or his agent and the demand notice shall be served on each borrower. In case of the petitioners, the only mode of service of demand notice as shown by the bank is through registered post and a perusal of demand notice filed at page-413 of the counter affidavit of the bank shows that it mentions the same having been issued in pursuance of some 'General Form of Guarantee' dated 02.03.2015. No such form or guarantee dated 02.03.2015 has been brought on record by the bank either before the Tribunal or before this court. It is the case of the petitioners that Loan Sanction Letter dated 01.03.2015 of Jai Prakash had only one 'General Form of Guarantee' of Om Prakash petitioner no.2, and not petitioner no.1, as is evident from serial no.4 of the sureties mentioned at page-292 of the counter affidavit of the respondent no.3 Bank.

36. I have gone through page no.292, as pointed out by the learned counsel appearing for the petitioners, which is part of enclosures to Supplementary Affidavit SA 19 OF 2018 filed by Chief Manager of Bank of Baroda in Securitisation Application No.19 of 2018. S.A.-1 is the Loan Sanction Letter and it shows that Jai Prakash had taken a term loan of rupees 90 lakhs under Kamdhenu Dairy Scheme and offered as securities several properties, some of which also belonged to Om Prakash and Sunita Nishad. Prior to loan sanction to Jai Prakash on 01.03.2015, the petitioners had

taken a housing loan of rupees 29.50 lakhs on 28.01.2015. Copies of Loan Sanction Letter dated 28.01.2015 to Om Prakash and Sunita Nishad and Loan Sanction Letter dated 01.03.2015 in favour of Jai Prakash have been filed along with the said supplementary affidavit in Securitization Application No. 19 of 2018. The security documents mentioned in the Loan Sanction Letter dated 28.01.2015 in favour of the petitioners mentions primary mortgage of House No.13/88 situated at Indira Nagar, Lucknow belonging to Om Prakash and Sunita Nishad his wife, and plot no. 3/334 situated at Rajni Khand Sharda Nagar, Raebareli Road, Lucknow as collateral. Attendance Sheet for Creation of Mortgage, Declaration in the Matter of Mortgage by deposit of Title Deed of property, Stamped Undertaking for Creation of Equitable Mortgage soon after execution of Sale Deed, letter of Confirmation of Mortgage Creation/Extension; have all been mentioned as enclosures to the sanction letter. All such documents have signatures of Sunita Nishad as also of Om Prakash, her husband.

37. The Loan Sanction Letter dated 01.03.2015 in favour of Jai Prakash mentions sanction of term loan of rupees 90 lakhs under Kamdhenu Dairy Interest Subsidy Scheme and mentions as securities at serial no. 4 General Form of Guarantee signed by Om Prakash and at serial nos. 5, 6, 7 and 8 declaration under Section 6(1) of the Agricultural Credit Act, 1973 of Khasara plot nos. 71, 73, 72, 81 and parts thereof, situated at Gram Athri Pargana Bhetauli, Tehsil Ramnagar, District Barabanki. These four properties mention of which finds place as securities at serial numbers 5 to 8, have not been proceeded against under the SARFAESI Act and

Rules, being agricultural properties. At serial no.9 of the same document, mention has been made of Extension of property of Jai Prakash house no. 645B on plot no. 223, Abhishek Puram Mandiyaon, Jankipuram Vistar, Lucknow. At serial no. 10 mention has been made of Extension of property of House No. 13/88, Sector 13, Indira Nagar Vistar Yojna owned by Om Prakash and his wife, Sunita Nishad. At serial no.11, Extension of property of plot no. 3/334, Type-C Rajni Khand Sharda Nagar Yojna, Raebareli Road, Lucknow by Om Prakash and Sunita Nishad have been mentioned. Such document has also been signed by Sunita and her husband, Om Prakash along with Jaiprakash, the principal borrower.

38. In the same supplementary affidavit, copies of LDOC 90 (P), relating to letter of Confirmation of Creation/Extension of Mortgage dated 07.05.2015; LDOC 90 (C) Declaration in the matter of Mortgage by Deposit of Title Deeds in respect of immovables dated 06.05.2015, and Composite Memorandum for Extension of Title Deeds by two or more mortgagors, dated 06.05.2015; and Attendance Note of the Mortgagor dated 06.05.2015 has been filed as Exhibit-S.A.2.

39. This Court has carefully gone through S.A.-2 and finds both petitioner no.1 and petitioner no.2 had signed such document 90(P) for Creation/Extension of Mortgage and had undertaken to create charge in favour of the bank for due repayment of or redemption of credit facilities of Rs.90,00,000/- with interest and costs and charges payable thereon. Similarly, the Declaration Document 90(C) and the Schedule of Properties mentions Extension of Equitable Mortgage of plot no.3/33 4C Type situated in Rajini Khand Sharda Nagar, Yojna and also extension of

equitable mortgage of house no.13/88 situated at Indira Nagar Vistar Yojna, Lucknow. All such documents filed as exhibits in the Supplementary Affidavit filed by the Chief Manager of the bank before the D.R.T. in Securitization Application No.- 19 of 2018 have been signed by Sunita Nishad and her husband, and specific mention has been made at page-300 of the counter affidavit of the properties mentioned in Schedule 2A and 2B being mortgaged in housing loan of Rs.29.50 lakhs of Om Prakash and Sunita Nishad; papers for which had already been deposited in the bank, being extended as guarantee/security for loan of Rs.90 lakhs to Jai Prakash.

40. This Court has also gone through the Attendance Note of the mortgage which mentions the names and signatures of Om Prakash and Sunita Nishad as also of Jai Prakash and two officers of the bank.

It is these documents that have been relied upon by the D.R.T. Lucknow in giving a specific finding that both Sunita Nishad and her husband Om Prakash had signed documents relating to extension of equitable mortgage of house, property situated at Sector 13 Indira Nagar, Lucknow, as security for repayment of loan of Rs. 90 lakhs by Jai Prakash. Such specific finding given in the judgement of D.R.T. dated 20.08.2018 has not been challenged by the petitioners and being a finding of fact which has been corroborated by documents filed along with the counter affidavit of the bank and perused carefully by this Court, indicates that the petitioners have resorted to misrepresentation and deliberate falsehood before this Court

which is sitting in equitable and extraordinary writ jurisdiction.

41. In so far as the argument relating to non-service of demand notice under Section 13, Sub Clause 2 of the Act is concerned and reference to Rule 3 (4) having been made by the counsel for the petitioners, this court has carefully gone through documents enclosed with the counter affidavit of the respondent bank referred to the arguments of the counsel for the bank. The counter affidavit filed in Writ Petition No.35050/2019 has copy of entire Petition No.31115/2017 enclosed to it. In paragraph-3 and in subsequent paragraphs, the petitioners have clearly admitted to being guarantors to the loan taken by Jai Prakash and they have challenged the sale notice dated 18.10.2017 on the ground that the bank should have proceeded first against the principal borrower. A copy of letter dated 27.10.2017, written by Sunita Nishad and her husband, Om Prakash, has been filed Annexure 5 to the said Writ Petition No. 31115/2017, wherein it has been clearly stated by the petitioners that they are guarantors of loan taken by Jai Prakash and had offered House No. 88 situated at Sector 13, Indira Nagar, Lucknow as security to the loan taken by Jai Prakash and that notice has been sent by the bank, not only to the borrower but also to the petitioners who are guarantors for sale of property in question, whereas the property of the borrower should have been proceeded against first and then only auction of properties offered by the petitioners as securities should be proceeded against. In this petition, there is no mention of non-service of notice under Section 13(2) and Section 13(4) on the petitioners.

42. This Court has noticed that in paragraph 3 of the affidavit filed in support of Writ Petition No. 35050 of 2019, Sunita Nishad has solemnly affirmed on oath that Annexure no.4 of the petition, including other Annexures is a true copy of its original. The demand notice dated 21.07.2016 has been filed as an Annexure no.4 to the writ petition and it shows that it was properly served upon petitioner no.1 also. Along with the demand notice dated 21.07.2016, the bank had also sent a demand notice to the borrower and the house property situated at Indira Nagar was mentioned in paragraph-2 of the said demand notice as belonging to the petitioners. All details of secured asset were clearly mentioned in the demand notice dated 21.07.2016 issued under Section 13 (2) of the Act which was sent through registered post acknowledgment due, to the petitioner no.1 and also petitioner no.2 at their correct address that is House No.88, Sector-13, Indira Nagar, Lucknow. Such letter was never returned unserved. The demand notice/letter dated 21.07.2016, clearly mentions the name and address of the petitioner no.1 correctly. The postal receipt issued in the name of 'Savita' by the Post Office instead of showing the name, Sunita has no relevance in view of Section 27 of the General Clauses Act 1897, which defines service by post and service shall be deemed to be effected by properly, addressing, pre-paying and posting by registered post, a letter containing the document (demand notice), and unless the contrary is proved, it shall be treated to have been effected at the time at which the letter would be delivered in the ordinary course of post.

43. In *Krishna Kumar Gupta Vs. Manoj K Sahu* reported in (2022) SCC OnLine All. 528, this court considered

Section 27 of the General Clauses Act and judgment rendered by the Supreme Court in the case of *C.C. Alavi Haji Vs. Palapetty Muhammed & Anr* reported in (2007) 6 SCC 555, where the Supreme Court considered Section 114 of the Indian Evidence Act 1872, and observed that if a registered letter addressed to a person at his residential address does not get served in normal course, and is returned, it can only be attributed to addressee's own conduct. The dispatch of notice by registered post is sufficient compliance of service of notice by the landlord on the tenant. The Supreme Court had also observed that the presumption under Section 114 of the Act of 1872 would be that notice was served on the defendant unless he rebuts the said presumption by adducing evidence in rebuttal. Where a registered envelope with correct address is posted. The presumption is regarding its delivery unless the same is returned unclaimed. This Court also placed reliance upon judgment rendered by the Supreme Court in *M/s Ajeet Seeds Ltd Vs. K. Gopala Krishnaiah* reported in (2014) 12 SCC 685. The Supreme Court had observed that under Section 114 of the Evidence Act when it appears to the Court that the common course of business renders it probable that a thing would happen, the Court may draw a presumption that the thing would have happened, unless there are circumstances in a particular case to show that the common course of business was not followed. Thus, Section 114 enables the Court to presume the existence of any fact which it thinks, likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business in their relation to the facts of the particular case. Consequently, the Court can presume that the common course of business has been followed in particular case. When applied

to communications sent by post, Section 114, enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the General Clauses Act is a far stronger presumption. Further, Section 114 of the Evidence Act refers to a general presumption, Section 27 of the General Clauses Act refers to a specific presumption. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver that in spite of return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.

44. This court is of the considered opinion that the argument regarding non-disclosure of encumbrances in the sale notice is unacceptable as the petitioner being the guarantor and the mortgager cannot raise such objection. For establishing a charge as an encumbrance, the petitioners have to show three parties. One, who created the encumbrance, two, who has a superior or first charge under any Statute, and three, who has the inferior or second charge. It was also necessary that due to such encumbrance, the value of the property should diminish. In the case at hand however, there are only two parties. The bank which has the first charge also has the second charge. The second party in

this case being Respondent No.4, Mamta Yadav. The Sale Certificate has therefore been correctly issued free from all encumbrances. It is also registered in the office of the Sub-Registrar, Lucknow on 21.12.2017, as is evident from page-265 of the counter affidavit filed on 27.03.2021 by the bank. The Supreme Court has also held that after issuance of sale certificate on completion of SARFAESI proceedings, there is no provision for registration of sale certificate in the case of ***B. Arvind Kumar Vs. Government of India and Others*** reported in (2007) 5 SCC 745; ***Shakeena and Others Vs. Bank of India and Others*** reported in (2021) 12 SCC 761; ***Indian Overseas Bank Vs. RCM Infrastructure Limited and Others*** reported in (2022) 8 SCC 516.

45. In *B. Arvind Kumar (supra)*, the Supreme Court observed in paragraph-10 that the Sales Certificate is merely the evidence of title having been transferred in favour of the auction purchaser. It is well settled that when an auction purchaser derived title and confirmation of sale in his favour, and a Sale Certificate when issued, is evidence of such sale and title. No further deed of transfer from the Court is contemplated or required. Sale Certificate issued by an officer authorized by the Court does not need to be registered Section 17 (2) (xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a Civil or Revenue Officer does not fall under the category of non-testamentary documents which required registration under Sub-Section (b) and (c) of Section 17 (1) of the said Act.

46. In *Shakina Vs. Bank of India (Supra)*, the Supreme Court placed reliance

upon observations made by it in **Mardia Chemicals Limited Vs. Union of India** reported in (2004) 4 SCC 311. It was observed that the registration of Sale Certificate as per Section 17 (2) (xii) of the Registration Act is not mandatory for the completion of the sale, pursuant to the public auction and issuance of Sale Certificate under the scheme of SARFAESI Act. The Supreme Court held as follows:-

“Assuming, the right of redemption conferred under the Transfer of Property Act is protected under Section 37 of the SARFAESI Act, and independently available without reference to the registration of the Sale Certificate under Section 17 (2) (xiii) of the Registration Act, the sale already effected satisfying the conditions contemplated under Section 13 (8) of the SARFAESI Act, shall by virtue of Section 37 of the SARFAESI Act, prevail over such other rights, much less the right of redemption conferred under the Transfer of Property Act, which is protected under Section 37 of the SARFAESI Act, in view of the non obstante clause provided under Section 35 of the SARFAESI Act, because a non obstante clause provided under Section 35 of the SARFAESI Act, makes it clear that even though there are inconsistencies to such other rights conferred under any other law for the time being in force that are protected under Section 37 of the SARFAESI Act, the action initiated under the provisions of the SARFAESI Act shall have the overriding effect as per Section 35 of the SARFAESI Act, because SARFAESI Act is a special Act, which aims to accelerate the growth of the economy of our country empowering the lenders, namely nationalised banks, private sector banks and other financial institutions to realise the dues from the defaulting borrowers who are very lethargic in

repayment of the loans, borrowed by them, by exercising the right of expeditious attachment and foreclosure for the enforcement of security, and therefore, Section 35 and Section 37 of the SARFAESI Act have to be read conjointly to achieve the object of the SARFAESI Act, but not to defeat the same, and therefore, we do not see any conflict between them.”

47. In **Indian Overseas Bank Vs. R.C.M. Infrastructure Limited (Supra)**, the Supreme Court has observed that in **Shakina**, the Supreme Court had already held that Sale Certificate issued in favour of the respondent did not require registration and that the sale process was complete on issuance of Sale Certificate. Such observations were followed by the Supreme Court again in the case of **S. Karthik and Others Vs. N. Subhash Chand Jain and Others** reported in (2022) 10 SCC 641.

48. This Court after careful perusal of all affidavits and documents filed along with them is of the considered opinion that the Petitioners have not approached this Court with clean hands and the litigation has been protracted unnecessarily by them only to enjoy the interim order granted to them initially by this Court.

49. In **State of Orissa Vs. Laxmi Narayan Das (2023) 15 SCC 273**, the Supreme Court has made observations that on misrepresentation and concealment on the part of the litigant should be discouraged and viewed seriously. It has observed in Paragraphs 40, 41, 43, 44, 45, 47 and 49 as follows :-

40. As to how a litigant who conceals material facts from the court has to be dealt with, has been gone into by this

Court, time and again in plethora of cases and the consistent opinion is that, he is not entitled even to be heard on merits.

41. *In Abhyudya Sanstha v. Union of India* [Abhyudya Sanstha v. Union of India, (2011) 6 SCC 145 : (2011) 3 SCC (Civ) 241 : 4 SCEC 185], this Court, while declining relief to the petitioners therein, who did not approach the court with clean hands, opined as under :

“18. ... In our view, the appellants deserve to be non-suited because they have not approached the court with clean hands. The plea of inadvertent mistake put forward by the learned Senior Counsel for the appellants and their submission that the court may take lenient view and order regularisation of the admissions already made sounds attractive but does not merit acceptance. Each of the appellants consciously made a statement that it had been granted recognition by NCTE, which necessarily implies that recognition was granted in terms of Section 14 of the Act read with Regulations 7 and 8 of the 2007 Regulations. Those managing the affairs of the appellants do not belong to the category of innocent, illiterate/uneducated persons, who are not conversant with the relevant statutory provisions and the court process. The very fact that each of the appellants had submitted application in terms of Regulation 7 and made itself available for inspection by the team constituted by WRC, Bhopal shows that they were fully aware of the fact that they can get recognition only after fulfilling the conditions specified in the Act and the Regulations and that WRC, Bhopal had not granted recognition to them. Notwithstanding this, they made a bold

statement that they had been granted recognition by the competent authority and thereby succeeded in persuading this Court to entertain the special leave petitions and pass interim orders. The minimum which can be said about the appellants is that they have not approached the court with clean hands and succeeded in polluting the stream of justice by making a patently false statement. Therefore, they are not entitled to relief under Article 136 of the Constitution. This view finds support from a plethora of precedents.”

(emphasis supplied)

43. In *G. Narayanaswamy Reddy v. State of Karnataka* case [G. Narayanaswamy Reddy v. State of Karnataka, (1991) 3 SCC 261], this Court while noticing the fact regarding the stay order passed by the High Court which prevented passing of the award by the Land Acquisition Officer within the prescribed time period was concealed and in the aforesaid context, it observed that:

“2.....It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the special leave petitions.”

44. In *Dalip Singh v. State of U.P.* [Dalip Singh v. State of U.P., (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324], this Court noticed the progressive decline in the values of life and observed :

“1. For many centuries Indian society cherished two basic values of life

i.e. “satya” (truth) and “ahinsa” (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

(emphasis supplied)

45. In *Moti Lal Songara v. Prem Prakash* [Moti Lal Songara v. Prem Prakash, (2013) 9 SCC 199 : (2013) 3 SCC (Cri) 872], this Court, considering the issue regarding concealment of facts before the Court, observed that “court is not a laboratory where children come to play”, and opined as under :

“.....Anyone who takes recourse to method of suppression in a

court of law, is, in actuality, playing fraud upon the court, and the maxim suppressio veri, expressio falsi i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. We are compelled to say so as there has been a calculated concealment of the fact before the Revisional Court. It can be stated with certitude that the respondent-accused tried to gain advantage by such factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to play possum.

20. The High Court, as we have seen, applied the principle ‘when infrastructure collapses, the superstructure is bound to collapse’. However, as the order has been obtained by practising fraud and suppressing material fact before a court of law to gain advantage, the said order cannot be allowed to stand.”

(emphasis supplied)

47. It has also been laid down by this Court in *Chandra Shashi v. Anil Kumar Verma* [Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 421 : 1995 SCC (Cri) 239] that a person who makes an attempt to deceive the court, interferes with the administration of justice and can be held guilty of contempt of court. In this case, a husband who had filed a fabricated document to oppose the prayer of his wife seeking transfer of matrimonial proceedings was found guilty of contempt of court and was sentenced to two weeks’ imprisonment. It was observed as under :

“1. The stream of administration of justice has to remain unpolluted so that

purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.”

(emphasis supplied)

49. In **Dhananjay Sharma vs. State of Haryana [Dhananjay Sharma v. State of Haryana, (1995) 3 SCC 757 : 1995 SCC (Cri) 608]**, the filing of a false affidavit was the basis for initiation of action in contempt jurisdiction and the persons concerned were punished for the same.

50. In **K. Jayaram Vs. BDA, (2022) 12 SCC 815**, the Supreme Court observed:-

10. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the

litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.

11. This Court in **Prestige Lights Ltd. v. SBI [Prestige Lights Ltd. v. SBI, (2007) 8 SCC 449]** has held that a prerogative remedy is not available as a matter of course. In exercising extraordinary power, a writ court would indeed bear in mind the conduct of the party which is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. It was held thus:

“33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.”

(emphasis supplied)

13. In **K.D. Sharma v. SAIL [K.D. Sharma v. SAIL, (2008) 12 SCC 481]**, it was held in para 36 & 38 :-

36. *A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, 'We will not listen to your application because of what you have done.' The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.*

38. *The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".*

51. In **Udyami Evam Khadi Gramodyog Welfare Sanstha v. State of U.P.** [**Udyami Evam Khadi Gramodyog Welfare Sanstha v. State of U.P., (2008) 1 SCC 560 : (2008) 1 SCC (Civ) 359**] , the Supreme Court has reiterated that the writ remedy is an equitable one and a person approaching a superior court must come with a pair of clean hands. Such person should not suppress any material fact but also should not take recourse to legal proceedings over and over again which amounts to abuse of the process of law.

52. In **A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalani**

Sangam, (2012) 6 SCC 430 : (2012) 3 SCC (Civ) 735 : 2012 SCC OnLine SC 384 the Supreme Court has observed as under:-

"43.4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrongdoer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice."

(emphasis supplied)

53. The learned counsel for the respondent no.4 has argued that although the entire payment has been made by the auction purchaser and Sale Certificate has been issued in her favour, the actual physical possession of the property has not been given to her due to pending litigation filed by the petitioners on the basis of frivolous grounds.

54. The counsel for the respondent no. 4 in his written submissions has placed on record the fact that the respondent no. 4 has been living in rented premises and has not been able to enjoy the benefits of the property purchased by her, which makes her entitled to mesne profits as well. It has been stated that the auction purchaser has been paying continuous EMI to Indian Bank for loan taken to purchase the property for the last seven years and has incurred enormous monetary loss and deserves to be compensated for the actual damages so caused. The monetary loss has been mentioned in the form of a tabulation chart given in the written submissions,

wherein mesne profits, mental agony and harassment, legal expenses, rent paid by Respondent No.4 since January 2018 with 10% annual increments, interest paid for the Bank loan and House tax, water tax and electricity charges etc. have all been described in detail besides other expenses for depreciation of property. The total loss has been calculated of more than Rs. One Crore.

55. This Court having gone through the judicial precedents as aforesaid relating to writ jurisdiction being an equitable jurisdiction and the responsibility of the litigant to approach this Court with frank and full disclosure of facts, avoiding any active misrepresentation and suppression of material facts, finds that the petitioners have filed this writ petition in an attempt to deliberately pollute the stream of justice. Not only this Court has found misrepresentation from the pleadings on record and documentary evidence filed by the Bank in its affidavits, this Court has also found deliberate attempt at protracting of litigation to enable the petitioners to continue to occupy House No.88, Sector-13, Indira Nagar Vistar Yojana, Lucknow, despite the property having been auctioned way back on 21.12.2017.

56. Not only has the Court's precious time which may have been utilized for genuinely suffering litigants has been wasted; the Respondent no.4 has also suffered grievously.

57. This Court even on merits has not found the arguments raised by the counsel for the petitioners to be sustainable. Hence, the writ petition is liable to be **dismissed** and it is hereby dismissed with costs of Rs.25 lacs [Rupees Twenty Five Lacs only] which shall be payable within

three months before this Court by way of Demand Draft made out in favour of the **Senior Registrar High Court Lucknow Bench**

58. In case of failure to do so, the Senior Registrar of this Court shall issue a Recovery Certificate to the District Magistrate, Lucknow, who shall recover such costs as arrears of land revenue from the petitioners' movable and immovable properties and deposit the same in the High Court sitting at Lucknow.

59. Such costs when deposited shall be released in favour of the Respondent no.4, namely, Smt. Mamta Yadav by the Senior Registrar on an appropriate application being moved in this regard by the Respondent no.4.

60. Since this writ petition has been dismissed and order of the DRAT stands affirmed, the petitioners are bound to vacate the property in question within one month from today.

(2025) 4 ILRA 533

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 24.04.2025

BEFORE

THE HON'BLE KSHITIJ SHAILENDRA, J.

Writ C No. 41221 of 2024

Jayraj Singh

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Counsel for the Petitioner:

Sri Pulak Ganguly

Counsel for the Respondents:

C.S.C., Sri Sunil Kumar Singh

Civil Law – U.P. Revenue Code, 2006 - Section 144 – Declaratory suits by tenure holders – U.P. Revenue Code, 2006, S. 76 – Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Sections 131A & 131B – Conferment of the status of Bhumidhar with transferable rights upon a Bhumidhar with non-transferable rights – Notwithstanding that a person might have acquired the status of Bhumidhar with transferable rights, such an aspect needs adjudication by the Sub-Divisional Officer in appropriate suit proceedings under Section 144 of the Code, 2006, where the State as well as the Gram Panchayat shall be necessary parties and would have their say in the proceedings, and not on the administrative side on a bare application – Sub-Divisional Officer has no statutory competence to grant a declaration of Bhumidhari rights on the administrative side, as such, no writ of mandamus can be issued for the said relief – The party is always at liberty to institute statutory proceedings under Section 144 of the U.P. Revenue Code, 2006 (Paras 8, 11, 15)

Dismissed. (E-5)

(Delivered by Hon'ble Kshitij Shailendra, J.)

WHETHER BHUMIDHARI RIGHTS CAN BE CONFERRED OR DECLARED BY SUB DIVISIONAL OFFICER ON ADMINISTRATIVE SIDE

1. Heard Sri H.C. Dwivedi, learned counsel holding brief of Sri Pulak Ganguly for the petitioner, learned Standing Counsel for the State respondents and Sri Sunil Kumar Singh, learned counsel for the Gaon Sabha.

RELIEF CLAIMED:

2. Prayer made in the writ petition is to issue a writ of mandamus commanding the respondents to grant absolute Bhumidhari rights in favour of the petitioner in view of Sections 131A and 131B of the U.P.Z.A. & L.R. Act, 1950 (in short 'Act, 1950') read with Section 76 of U.P. Revenue Code, 2006 (in short 'Code, 2006'). Further prayer is to issue a direction for consideration of the petitioner's representations dated 07.05.2022 and 15.06.2024 moved before the Sub-Divisional Officer concerned.

CONTENTION OF PETITIONER

3. Learned counsel for the petitioner submits that on account of certain previous proceedings in relation to the lease granted in favour of the petitioner and with the passage of time, the petitioner has acquired status of Bhumidhar with transferable rights. Reference to Section 131A and 131B of the Act of 1950 has been made in this regard and, by referring to Section 76 of the Code-2006, it is urged that as per Sub-section (2) thereof, after expiry of a period of five years from acquiring the status as Bhumidhar with non-transferable rights before the commencement of Code, 2006, the tenure holder would acquire status as Bhumidhar with transferable rights, therefore such rights should be conferred upon him by Sub-Divisional Officer.

ANALYSIS:

4. The Court has considered the submissions and has also gone through the provisions of U.P.Z.A. & L.R. Act, 1950 and U.P. Revenue Code, 2006. For the purpose of case, Sections 131A and 131B of the Act, 1950 are reproduced as under:-

"131A. Bhumidhari rights in Gaon Sabha or State Government land in certain circumstances.- Subject to the provisions of Section 132 and Section 133-A, every person in cultivatory possession of any land, vested in a Gaon Sabha under Section 117 or belonging to the State Government, in the portion of District Mirzapur South of Kaimur Range, other than the land notified under Section 20 of the Indian Forest Act, 1927, before the 30th day of June, 1978, shall be deemed to have become a Bhumidhar with non-transferable rights of such land :

Provided that where the land in cultivatory possession of a person, together with any other land held by him in Uttar Pradesh exceeds the ceiling area determined under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, the rights of a Bhumidhar with non-transferable rights shall accrue in favour of such person in respect of so much area of the first-mentioned land, as together with such other land held by him, does not exceed the ceiling area applicable to him, and the said area shall be demarcated in the prescribed manner in accordance with the principles laid down in the aforesaid Act.

131B. Bhumidhar with non-transferable rights to become bhumidhar with transferable rights after ten years.- (1) Every person who was a bhumidhar with non-transferable rights immediately before the commencement of the Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1995 and had been such bhumidhar for a period of ten years or more, shall become a bhumidhar with transferable rights on such commencement

(2) Every person who is a bhumidhar with non-transferable rights on the commencement referred to in sub-section (1) or becomes a bhumidhar with non-transferable rights after such commencement, shall become bhumidhar with transferable rights on the expiry of period of ten years from his becoming a bhumidhar with non-transferable rights.

(3) ...?"

(emphasis by Court)

5. A bare perusal of the aforesaid provisions would reflect that the Act, 1950 contemplated conferment of status as Bhumidhar with transferable rights on those who had been Bhumidhar with non-transferable rights with reference to certain provisions which came into existence pursuant to amendments made in the Act, 1950 during the course of time.

6. As far as Section 76 of the Code, 2006 is concerned, the same is reproduced as under:-

"76. Bhumidhar with non-transferable rights. - (1) Every person belonging to any of the following classes shall be called a bhumidhar with non-transferable rights and shall have all the rights and be subject to all the liabilities conferred or imposed upon such bhumidhar by or under this Code, namely :-

(a) to (e) ..?

(2) Every person who was a Bhumidhar with non-transferable rights immediately before the commencement of this Code and had been such Bhumidhar for a period of [five years] or more, shall

become Bhumidhar with transferable rights on such commencement.

(3) Every person who was a Bhumidhar with non-transferable rights on the commencement referred to in [sub-sections (1) and (2)] or becomes Bhumidhar with non-transferable rights after such commencement shall become Bhumidhar with transferable rights after expiry of [five years] from his becoming Bhumidhar with non-transferable rights.

(4) ...?"

7. Sub-section (2) of Section 76 provides that every person who was a Bhumidhar with non-transferable rights, immediately before the commencement of this Code and had been such Bhumidhar for a period of five years or more, shall become Bhumidhar with transferable rights on such commencement.

8. A careful reading of the aforesaid provisions would reveal that all the three provisions; Sections 131A, 131B of Act, 1950 and 76 of Code, 2006 speak of conferment of status upon the concerned tenure holder as Bhumidhar with transferable rights, however, the **provisions do not provide for a forum for making conferment or such declaration. Certainly, the Sub-Divisional Officer or any other officer has not been held to be empowered, on administrative side, to grant such a declaration in favour of concerned tenure holder under the aforesaid provisions.**

9. The Court now proceeds to consider the statutory provisions granting declaration of rights and finds that Section 144 of the Code, 2006 deals with declaratory suit to be filed by the tenure

holder, who claims to be Bhumidhar of any holding or part thereof. The provision reads as under:-

"144. Declaratory suits by tenure holders.- (1) Any person claiming to be a bhumidhar or asami of any holding or part thereof, whether exclusively or jointly with any other person, may sue for a declaration of his rights in such holding or part.

(2) In every suit under sub-section (1) instituted by or on behalf of :-

(a) a bhumidhar, the State and the [Gram Panchayat] shall be necessary parties;

(b) an asami, the land-holder shall be a necessary party."

10. A plain and simple reading of Section 144 would reflect that a person claiming to be a Bhumidhari or Asami of any holding or part thereof, may sue for a declaration of his rights in such holding or part thereof and State of U.P. and Gram Panchayat shall be necessary parties to such proceedings, if instituted.

HELD:

11. In view of scheme of the Code, 2006, notwithstanding that the petitioner might have acquired status as that of Bhumidhar with transferable rights, such an aspect needs adjudication by the Sub-Divisional Officer in appropriate suit proceedings under Section 144 of the Code, 2006, where the State as well as Gram Panchayat shall be necessary parties and would have their say in the proceedings, and not an administrative side on a bare application.

12. In view of the above, without examining the merits of the claim of the petitioner as Bhumidhar with transferable rights, it is held that Sub Divisional Officer has no jurisdiction to grant such a declaration on administrative side, however, he is certainly competent to grant such a declaration in appropriate statutory proceedings under Section 144 of the Code, 2006.

MANDAMUS CANNOT BE ISSUED:-

13. As far as writ of mandamus is concerned, **In Oriental Bank of Commerce Vs. Sunder Lal Jain and another (2008) 2 SCC 280**, the Apex Court, after referring to its earlier judgments in **Bihar Eastern Gangetic Fisherman Cooperative Society Ltd. Vs. Sipahi Singh (1977) 4 SCC 145; Lekhraj Sathramdas Lalvani Vs. N.M. Shah, AIR 1966 SC 334 and Dr. Uma Kant Saran Vs. State of Bihar 1993(1) SCC 485**, observed that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation."

14. The above exposition of law makes it clear that writ of mandamus cannot be issued on mere asking unless the pre-conditions are satisfied. Such well-defined conditions are not satisfied in the present case.

15. Since it has been found that the Sub Divisional Officer has no statutory competence to grant a declaration of Bhumidhari rights on administrative side, no writ of mandamus, as prayed for, can be issued. However, the petitioner is always at

liberty to institute statutory proceedings under Section 144 of the U.P. Revenue Code, 2006.

16. The writ petition is, accordingly, **disposed of** with the aforesaid liberty.

(2025) 4 ILRA 537

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 28.04.2025

BEFORE

THE HON'BLE PIYUSH AGARWAL, J.

Writ C No. 41272 of 2024

Moradabad Bareilly Expressway Ltd.

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Counsel for the Petitioner:

Sri Prashant Mishra, Tarun Agrawal

Counsel for the Respondents:

C.S.C.

Civil Law – Constitution of India, 1950 – Article 226 – Indian Stamp Act, 1899 – Sections 3, 19(a), 33, 33(4) & 33(5) - Writ Petition – challenging the impugned order by which collector rejected the objection of limitation in a stamp deficiency case – a concession agreement (instrument) executed between the petitioner and the NHAI, in year 2010, for maintenance of NH-24 – Proceeding initiated by the St. authorities for deficiency of stamp duty - case was registered, in 2020 – order passed in 2022, determining deficiency in stamp duty payable by the petitioner – petitioner filed a recall application – rejected – writ petition – matter was remanded to the Collector for fresh adjudication, with liberty granted to the petitioner to raise plea of limitation and jurisdiction – impugned order passed - rejecting the petitioner's contention regarding limitation – present writ petition - court finds that, the legislature had not

extended limitation beyond 8 years from the date of execution of the instrument – agreement executed in 2010, - permission and issuance of notice done in 2020 which was beyond the statutory period of limitation – held, proceedings were without jurisdiction – writ petition allowed – direction issued to the St. authorities to refund the excess amount deposited by the petitioner along with interest @ 4% within four weeks.

Writ Petition Allowed. (E-11)

List of referred Cases: -

1. Som Dutt Builders Limited Vs The St. of UP & ors.– 2005 (3) ESC 1939 (All.),
2. Harbhajan Singh Vs Commissioner, Moradabad Division, Moradabad & ors.– 2022(5) ADJ 71,
3. M/S Rewa Tollway Pvt. Ltd. Vs The St. of M.P. & ors.-

(Delivered by Hon’ble Piyush Agarwal, J.)

1. Heard Shri Tarun Agrawal, learned counsel for the petitioner and Shri A.C. Mishra, learned ACSC for the State – respondents.

2. The instant writ petition has been filed against the impugned order dated 16.10.2024 passed by the Collector, Moradabad.

3. Learned counsel for the petitioner submits that a concession agreement was executed between the petitioner and the National Highway Authority of India (NHAI) on 19.02.2010 for design, build, finance, operate and transfer (DBFOT) for maintenance and management of NH – 24, from kms. 148 to kms. 262 (approximately 114 kms.) on Moradabad – Bareilly section. In the year, proceedings under section 33 of the Indian Stamp Act, 1899

(hereinafter referred to as, '**the Act**') were initiated against the petitioner after getting the permission from the State Government and a case was registered against the petitioner. Thereafter, on 17.08.2022, the respondent no. 3 passed the order determining the deficiency of stamp duty on the petitioner. He further submits that on 18.07.2023, the petitioner filed a recall application for recall of the order dated 17.08.2022 before the Collector, Moradabad, but the same was rejected vide order dated 27.07.2023. The said orders dated 17.08.2022 was assailed before this Court by filing Writ C No. 45484/2023, which was allowed by this Court vide order dated 08.05.2024 and the matter was remanded to the Collector to decide the issue afresh and giving liberty to the petitioner to raise the issue of limitation and jurisdiction before the Collector. He further submits that pursuant to the order dated 08.05.2024 passed by this Court, the impugned order dated 16.10.2024 has been passed by the respondent no. 3 rejecting the ground taken by the petitioner with regard to limitation.

4. Learned counsel for the petitioner further submits that admittedly, the concession agreement was entered on 19.02.2010 and the proceedings ought to have been completed within a period of 8 years from the date of execution, i.e., 18.02.2018. In support of his submission, he has relied on sub-sections (4) & (5) of section 33 of the Act and the proviso attached thereto. He further submits that the limitation prescribed under the Act contemplates the proceedings to be concluded within 8 years after getting the prior sanction from the State Government from the date of execution. He further submits that the permission itself was granted beyond the period of 8 years and

therefore, the proceedings are without jurisdiction. In support of his submissions, he has placed reliance on the judgements of this Court in ***Som Dutt Builders Limited Vs. The State of U.P. & Others*** [2005 (3) ESC 1939 (All.)] and ***Harbhajan Singh Vs. Commissioner, Moradabad Division, Moradabad & Others*** [2022 (5) ADJ 71].

5. Per contra, learned ACSC supports the impugned order and submits the issue in hand is covered by the judgement of the Apex Court in the case of ***M/S Rewa Tollway Private Limited Vs. The State Of Madhya Pradesh & Others*** and therefore, no equity is in favour of the petitioner. He further submits that it is admitted case of the petitioner that they are liable for payment of legitimate stamp duty, but with ulterior motives, the petitioner has not paid the same. He further relies upon section 19 (a) of the Act, which contemplates payment of duty on certain instrument liable to be increased duty in the U.P. under clause 66 of section 3. He further submits that the petitioner is duty-bound to pay the legitimate stamp duty to the State, but instead of paying the stamp duty, the petitioner is trying to avoid the same. He further submits that it is admitted that the agreement was executed outside the State of U.P. and therefore, from the date of knowledge of the said agreement, the limitation shall start from the said date, instead of from the date of execution of the instrument.

6. After hearing learned counsel for the parties, the Court has perused the record.

7. The only argument raised by the learned counsel for the petitioner is with regard to jurisdiction to initiate the proceedings as well as limitation for

initiating the proceedings. In the case in hand, admittedly, the concession agreement, which is the subject matter of the present proceeding, was executed on 19.02.2010. The permission was sought vide letter dated 05.03.2016 and admittedly, the permission was granted vide letter dated 31.12.2019 and thereafter, case was registered as Case No. 00563/2020 and notice was issued for the first time on 20.02.2020.

8. For better appreciation of the controversy involved in the instant case, sub-sections (4) & (5) of section 33, along with its proviso, are quoted below:-

“Section 33. Examination and impounding of instruments.:

(4) Where deficiency in stamp duty paid is noticed from the copy of any instrument, the Collector may suo motu or on a reference from any court or from the Commissioner of Stamps or an, Additional Commissioner of Stamp or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorized by the Board of Revenue in that behalf, call for the original instrument for the purpose of satisfying himself as to the adequacy of the duty paid thereon, and the instrument so produced before the Collector shall be deemed to have been produced or come before him in the performance of his functions.

(5) In case the instrument is not produced within the period specified by the Collector, he may require payment of deficit stamp duty, if any, together with penalty under section 40 on the copy of the instrument:

Provided that no action under sub-section (4) or sub-section (5) shall be taken after a period of four years from the date of execution of the instrument.

Provided further that with the prior permission of the State Government an action under sub-section (4) or sub-section (5) may be taken after a period of four years, but before a period of eight years from the date of execution of the instrument.”

9. Bare reading of sub-section (4) of section 33 of the Act contemplates that where deficiency in stamp duty paid is noticed from any instrument, the Collector may suo motu or on reference from any other authorities as contemplated under the Act on behalf of the State call for the original instrument for the purpose of satisfying as to the adequacy of the duty paid thereof. In the event of failure to produce the original document, sub-section (5) contemplates that the Collector may require payment of deficit stamp duty, if any, together with penalty under section 40 on the copy of the instrument. Further, a rider has been imposed that no action under sub-section (4) or sub-section (5) shall be taken after a period of four years from the date of execution of the instrument, but in the event for taking proceedings after four years, prior permission of the State Government is required, but before a period of eight years from the date of execution of the instrument.

10. In other words, the Legislature, in its wisdom, has put a rider of prior permission of the State Government to make the deficiency of stamp duty on any instrument within a period of 8 years from the date of its execution. The proviso attached to the said section contemplates

that with the prior permission of the State Government, an action under sub-section (4) or sub-section (5) may be taken after a period of four years, but before a period of eight years from the date of execution of the instrument.

11. In the case in hand, the permission was granted by the State Government on 31.12.2019 and thereafter, the proceedings were initiated for the first time by issuing notice to the petitioner on 20.02.2020.

12. Learned ACSC has tried to cover the limitation on the basis of the letter (Annexure No. CA – 1 to the counter affidavit) that the permission was sought within the time vide letter dated 05.03.2016, the limitation for grant of permission is within 8 years and therefore, the action is within the limitation and the order is within jurisdiction.

13. The said argument appears to be attractive, but on close scrutiny of sub-sections (4) & (5) of section 33 of the Act as well as the proviso attached thereto clearly shows that the proceedings can be initiated only with prior permission and the permission itself was granted after 8 years, i.e., on 31.12.2019.

14. Sub-sections (4) & (5) of section 33 of the Act as well as the proviso attached thereto are clear that no action beyond the period of 4 years or if the action is to be taken after 4 years from the date of execution of the instrument, prior permission has to be taken, but before 8 years. The intent of the Legislature is clear that after four years of limitation, if any action is required to be taken, the same can only be taken with the prior permission of the State Government, but before 8 years. The limitation, at best, can be said to be

initiated by issuance of notice within four or eight years and for any action beyond the said period, the limitation can not be extended and if taken, such action is to be treated as per se illegal and without jurisdiction.

15. Admittedly, in the case in hand, the permission was sought on 05.03.2016, but after getting permission from the State Government, at least, a notice has to be issued within the period prescribed from the date of execution of the instrument, i.e., 8 years, but in the case in hand, admittedly, both the permission dated 31.12.2019 as well as issuance of notice dated 20.02.2020 was beyond the prescribed period of 8 years.

16. Therefore, by any stretch of imagination, it can be said to be the intent of the Legislature extending the period beyond 8 years from the date of execution of the instrument in question as the concession agreement was executed on 19.02.2010.

17. The argument of learned ACSC that from the date of knowledge of the instrument, the limitation should be counted, cannot be accepted as such there is no provision under the Stamp Act. Further, if such an argument is accepted, that will lead to open a flood gate of litigations as well as uncertainty of proceeding, which is never the intention of the Government.

18. This Court, in **Som Dutt Builders Limited** (supra) has held as under:-

“6. As regards the first issue, although the agreement had been executed on 11.6.1987, action was first

sought to be initiated only on 31.10.1994, which was after a lapse of more than 7 years. Admittedly the said action was initiated on the basis of a photo copy of the document dated 11.6.1987, by summoning the original document. The first proviso to Section 33 of the Act makes it clear that no action can be taken under Section 33(4) of the Act (which deals with the cases where copy of the document is produced and the original instrument is called for) after a period of four years from the date of execution of the instrument. Since admittedly action was being taken on the basis of a document executed on 11.6.1987 and more than four years had elapsed, the provision of Section 33(4) of the Act could not be attracted. The second proviso to Section 33 of the Act having been inserted only w.e.f. 1.9.1998 would not be attracted in this case.”

19. The record shows that permission was granted on 31.12.2019 and thereafter, the case was registered and for the first time, notice dated 20.02.2020 was issued to the petitioner and as such, both grant of permission and notice were issued after the period of eight years as provided in 2nd Proviso to sub-section (5) of section 33, which are beyond the period of limitation. Therefore, the present proceeding is wholly without jurisdiction.

20. In view of the aforesaid facts & circumstances of the case, as also the law laid down by this Court in the cases cited above, the impugned order dated 16.10.2024 passed by the Collector, Moradabad cannot be sustained in the

22. The authority concerned is directed to refund any excess amount deposited by the petitioner along with interest @ 4% per annum from the date of its deposit till the date of refund, within a period of four weeks from the date of production of a certified copy of this order.

A. Service Law – UP Cooperative Societies Employees Service Regulations, 1975 – Reg. 85 (i) – Punishment – Disciplinary proceeding – Principle of natural justice – Enquiry was not completed by fixing date, time and place – Enquiry Officer did not prove the documents available on record after summoning the same from the office concerned – Effect – Held, the enquiry officer did not call upon the witnesses to prove the documents and at one place, he has mentioned that photocopy of the

11. <i>Nirmala J Jhala Vs St. of Gujarat and another;</i>	(2013)	4	SCC	301

12. Sarjoo Ram Vs U.P. Cooperative Institutional Service Board, Lucknow and another; (2004) 1 UPLBEC 761

13. Bhagirathi Jena Vs Board of Directors, O.S.F.C. & ors.; (1999) 3 SCC 666

(Delivered by Hon'ble Brij Raj Singh, J.)

1. This writ petition has been filed seeking following reliefs:-

“1) To issue a writ order or direction in the nature of Certiorari or likewise quashing the impugned order of punishment dated 10.01.2005 passed by the respondent no.2 contained in Annexure No.8.

11) To issue a writ order or direction in the nature of Mandamus or likewise commanding the respondent nos.1 and 2 to reinstate the petitioner in service with consequential benefits.”

2. The facts giving rise to the present writ petition are that petitioner was appointed on the post of Assistant in the year 1976 in the U.P. Cooperative Federation Limited (for short “Federation”) and after completion of probation period satisfactorily, he was confirmed on the said post in 1978. After completion of twelve years of continuous and satisfactory service, the petitioner was promoted to the post of Assistant Godown Keeper in 1988. Services of the petitioner and employees of Cooperative Societies are governed by the Regulations known as “U.P. Cooperative Societies Employees Service Regulations, 1975” (for short “Regulations, 1975”) and these guidelines were framed by the Uttar Pradesh Cooperative Institutional Service Board and approved by His excellency the Governor of the State. In 1996, the petitioner was transferred as Store In-

charge in the office of opposite party no.3 at Lakhimpur Kheri.

3. On 19.04.2003, charge sheet containing two charges, has been issued to the petitioner requiring him to file his reply/explanation within fifteen days. Since the petitioner failed to submit reply, enquiry report has been submitted by the enquiry officer on 16.10.2003 holding guilty of the charges levelled against him. It is mentioned that in September, 1998, a rack of fertilizer of IFFCO Urea was received, which was badly damaged due to rain at the railway siding and after weighment, delivery was taken and a shortage of 16.475 Metric Tonnes was reported and it was recorded in the record. Thereafter, in December, 2000, new bags were provided by the IFFCO for the purpose of re-bagging of the stock, which was kept in store in September, 1998 in a very bad condition. As per the direction of opposite party no.3, re-bagging was done in presence of local representative of the depositor from 28.12.2000 to 25.01.2001 and a difference of 26.681 Metric Tonnes was noticed. It is mentioned in charge sheet that for the aforesaid difference, an amount of Rs.1,55,498.50 has been deducted by the depositor from the bills of the Federation.

4. It is submitted by counsel for the petitioner that enquiry officer did not fix any date, time and place for holding the enquiry nor any witness was examined to prove the photocopies of certain papers referred/relied upon by the enquiry officer. On 12.05.2004, Managing Director, opposite party no.2, issued a show cause notice to the petitioner proposing two punishments. On 02.07.2004, three days further time was granted to the petitioner to file his reply. However, on 13.08.2004 to the utter surprise of the petitioner, another

show cause notice was issued by the Additional Managing Director and changed the proposed punishment illegally, arbitrarily and wholly without jurisdiction, that too on the basis of same evidence, material and without any new development. On 18.08.2004, petitioner was suspended and thereafter on 27.08.2004, he submitted a detailed reply to the show cause notice and denied the charges and also the findings of the enquiry officer. On 10.01.2005, opposite party no.2 passed the impugned order without application of mind and even without considering the reply submitted by the petitioner.

5. Learned counsel for the petitioner has submitted that Regulation 85 of the Regulations, 1975 provides the procedure for holding disciplinary proceedings, which reads as under:-

“85. *Disciplinary proceedings.*---(i) *The disciplinary proceedings against an employee shall be conducted by the Inquiring Officer [referred to in clause (iv) below] with due observance of the principles of natural justice for which it shall be necessary that –*

(a) The employee shall be served with a charge-sheet containing specific charges and mention of evidence in support of each charge and he shall be required to submit explanation in respect of the charges within reasonable time which shall not be less than fifteen days;

(b) Such an employee shall also be given an opportunity to produce at his own cost or to cross-examine witnesses in his defence and shall also

be given an opportunity of being heard in person, if he so desires;

(c) If no explanation in respect of charge sheet is received or the explanation submitted is unsatisfactory, the competent authority may award him appropriate punishment considered necessary.

(ii) (a) Where an employee is dismissed or removed from service on the ground of conduct which has led to his conviction on a criminal charge; or (b) Where the employee has absconded and his whereabouts are not known to the society for more than three months; or

(c) Where the employee refuses or fails without sufficient cause to appear before the Inquiring Officer when specifically called upon in writing to appear; or

(d) Where it is otherwise (for reasons to be recorded) not possible to communicate with him,

the competent authority may award appropriate punishment without taking or continuing disciplinary proceedings.

(iii) “

6. Learned counsel for the petitioner has vehemently argued that Regulation 85(i) of the Regulations, 1975 prescribes that enquiry officer has to complete the enquiry by observing principles of natural justice. Regulation 85(i)(c) of the Regulations, 1975 further indicates that if no explanation in respect of charge sheet is received or the explanation submitted is unsatisfactory, the competent

authority may award him appropriate punishment considered necessary, but while conducting the disciplinary proceedings, the enquiry officer has to adhere the procedure prescribed under Regulation 85(i) of the Regulations, 1975, whereas in the present case, it is apparent that the enquiry officer did not held the enquiry by affording opportunity of hearing to the petitioner.

7. Learned counsel for the petitioner has further submitted that the enquiry officer did not fix any date, time and place for holding the enquiry and even the presenting officer was also not appointed. No witness was examined by the enquiry officer. He has further submitted that in support of charge no.1, there are six letters and in respect of charge no.2, there are five letters mentioned in the charge sheet, but the enquiry officer did not prove the aforesaid letters by calling the originals from the concerned department. It has further submitted that the enquiry officer has relied upon the photocopy of the stock register, letter dated 04.10.2001 and other documents, which were never supplied nor disclosed to the petitioner. The enquiry officer has not acted impartially and while conducting the departmental proceedings, he became agent of the management and prepared the enquiry report with prejudicial mind. Counsel for the petitioner by relying upon the judgment of the Honble Supreme Court in the case of *State of Uttar Pradesh and others Vs. Saroj Kumar Sinha*, (2010) 2 SCC 772 has submitted that the enquiry proceedings held in the present case are in utter violation of the aforesaid judgement.

8. Learned counsel for the petitioner has also submitted that the

District Manager was also charged, but he was exonerated, whereas the petitioner has been held guilty and punishment has been awarded against him. It has further submitted that the disciplinary authority has predetermined to dismiss the petitioner from service while issuing show cause notice and on the basis of ex-parte report of the enquiry officer, which is in utter violation of the judgement of the Hon'ble Supreme Court in the case of *Chamoli Distt. Cooperative Bank Vs. Raghunath Singh Ram*, (2016) 12 SCC 204 and judgment of a Division Bench of this Court in the case of *Shiv Raj Singh Vs. State of U.P. and others*, 2018 (5) ADJ 679 (DB).

9. It has further submitted by the counsel for the petitioner that even if the employee refuses to participate in the enquiry, it has to be held ex-parte where evidence has to be led. Approach of the enquiry officer of automatic prove of charges on account of non-filing of reply is erroneous. In this regard, he has relied upon a judgement of a coordinate Bench of this Court in the case of *Roop Narain Pandey Vs. U.P. Cooperative Institutional Service Board and others*, 2019 (37) LCD 978. Counsel for the petitioner by relying upon the judgement of Hon'ble Supreme Court in the case of *Roop Singh Negi Vs. Punjab National Bank and others*, (2009) 2 SCC 570 has submitted that mere production of document or letter is not enough. Contents of documentary evidence has to be proved by examining the witnesses. It has further submitted that even if the delinquent employee neither submitted his reply to the charge sheet nor cooperated in the enquiry, it was incumbent upon the enquiry officer to hold ex-parte enquiry to fix date for defence and informed the

charged employee. In this regard, he relied upon the judgement of a coordinate Bench of this Court in the case of **Smt. Aamina Vs. Nagar Palika Parishad, Pratapgarh and others**, 2012 (30) LCD 1671.

10. Further submission of learned counsel for the petitioner is that during pendency of writ petition, the petitioner has attained the age of superannuation on 30.06.2013 and there is no provision in the Regulations, 1975 to continue the enquiry proceedings and in this regard, the law has been settled by the Hon'ble Supreme Court in the case of **Dev Prakash Tewari Vs. Uttar Pradesh Cooperative Institutional Service Board, Lucknow and others**, (2014) 7 SCC 260 and a judgement of this Court in the case of **Brahmanand Tyagi Vs. State of U.P. and others**, 2022 (8) ADJ 624. He has, therefore, submitted that in the aforesaid circumstances, the impugned punishment order cannot be sustained and is liable to be quashed.

11. On the other hand, Sri Shireesh Kumar, learned counsel for the Federation has submitted that petitioner did not file reply to the charge sheet, therefore, it has to be presumed that he has not rebutted the charges levelled against him. After receiving charge sheet dated 19.04.2003, the petitioner chose not to file any reply. Thus, he did not dispute the authenticity of the evidences cited in the charges and did not name any witness to cross-examine, therefore, the enquiry officer conducted the enquiry as per the procedure provided under the Rules and submitted the enquiry report after considering the documents available on record. Thereafter, petitioner was given a show cause notice and after

considering his reply, the impugned punishment order was passed.

12. Learned counsel for the Federation has further submitted that once the petitioner himself decided not to participate in the enquiry proceedings, he cannot be permitted to raise objection against the bona fide of the disciplinary proceedings. The petitioner is aware of the charges, which were mentioned in the charge sheet. He was allowed repeated opportunities to submit his reply and to participate in the enquiry, but he was absent and chose not to join the enquiry proceedings by leading evidence. He has also submitted that the enquiry was conducted according to the procedure prescribed under Regulation 85 of the Regulations, 1975, which provides that an opportunity of personal hearing is to be allowed to the delinquent employee if he desires for such an opportunity, but he did not appear before the enquiry officer, therefore, the action of the opposite parties is supported by the judgement of the Hon'ble supreme Court in the case of **State Bank of India and others Vs. Narendra Kumar Pandey**, 2013 (2) SCC 740 and **PEPSU Road Transport Corporation Vs. Rawel Singh**, 2008 (4) SCC 42.

13. Learned counsel for the Federation has also submitted that punishment order dated 10.01.2005 is a reasoned order and has been passed after considering the objections submitted by the petitioner against the show cause notice dated 13.08.2004. Therefore, the petitioner cannot be permitted to improve his case at this stage when he himself opted not to participate in the disciplinary proceedings. It has further been submitted that a delinquent employee is punished on the principle of preponderance of probability

and not on proving the charges beyond doubt. In the present case, involvement of the petitioner vis-a-vis the charges levelled against him is apparent on perusal of the charge sheet, evidences and objections submitted by the petitioner against the show cause notice dated 13.08.2004, as such punishment order dated 10.01.2005 is justified. In support of his contention, he has relied upon the judgement of the Hon'ble Supreme Court in the case of **Nirmala J Jhala Vs. State of Gujarat and another**, (2013) 4 SCC 301. He has further submitted that withdrawal of first show cause notice and thereafter issuance of second show cause notice along with copy of the enquiry report is permissible and there is no illegality in it as has been held by this Court in the case of **Sarjoo Ram Vs. U.P. Cooperative Institutional Service Board, Lucknow and another**, (2004) 1 UPLBEC 761. He has, therefore, submitted that the impugned punishment order has been passed after considering the evidence on record, therefore, no interference is required by this Court.

14. Heard Sri Virendra Mishra, learned counsel for the petitioner, Sri Shireesh Kumar, learned counsel appearing for the Federation and perused the record.

15. In the case of **Saroj Kumar Sinha** (supra), Hon'ble Supreme Court has observed that an enquiry officer is a quasi judicial authority and he has to apply his mind independently and not like agent of department and even in absence of delinquent employee, he has to see whether the un-rebutted evidences to hold that the charges are proved and in case no oral enquiry is done or documents are proved, then it cannot be said that the enquiry was concluded after following the due procedure. Paragraphs 28, 29 and 30 of the

aforesaid judgement are extracted herein-below:-

“28. An inquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/ Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.

30. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate

in imposition of punishment including dismissal/removal from service."

16. In the case of **Roop Singh Negi** (supra), Hon'ble Supreme Court in paragraph-14 has held that management witnesses merely tendered the documents and did not prove the contents thereof. The enquiry officer is duty bound to arrive at a finding upon taking into consideration the materials brought on record by the parties. Paragraph 14 of the aforesaid judgement is quoted below:-

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The enquiry officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

17. In the case of **Smt. Aamina** (supra), this Court has held that it is settled law that even in case of an ex-parte enquiry, intimation should be given to the delinquent employee about the date, time and place of oral enquiry and charges should be proved even if no response to the charge sheet is submitted by the employee concerned. In absence of the delinquent employee, charge should be proved after

following the procedure as indicated above. In the case of **Shiv Raj Singh** (supra), it has been held by a Division Bench of this Court that in case the disciplinary authority has made up his mind while issuing show cause notice, the dismissal order is bad in the eyes of law.

18. In the case of **Dev Prakash Tiwari** (supra), Hon'ble Supreme Court has held in paragraphs 7 and 8 that once the delinquent employee has retired from service and in absence of any Rule to proceed afresh, the departmental proceedings cannot be allowed even for the purpose of imposing any reduction in the retiral benefits payable to the employee. Paragraph-8 of the aforesaid judgement is quoted below:-

"8. Once the appellant had retired from service on 31.3.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits."

19. In the case of **Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and others**, (1999) 3 SCC 666, while dealing with the similar question, Hon'ble Supreme Court in paragraph-7 held as under:-

"7. In view of the absence of such provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the

appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95. there was no authority vested in the Corporation or continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

20. Similar view has been taken in the case of **Brahmanand Tyagi** (supra) and this Court in paragraph-8 of the judgement has held that the disciplinary proceedings cannot be continued after retirement. Admittedly, in the present case, the petitioner has attained the age of superannuation on 30.06.2013 and no Rule or Regulation is there, which provides that the departmental proceedings can be continued after retirement.

21. Sri Shireesh Kumar, learned counsel for the Federation has relied upon paragraph-22 of the judgement of the Hon'ble Supreme Court in the case of **Narendra Kumar Pandey** (supra), which reads as under:-

"22. We are of the view that the High Court also committed an error in holding that since no witness was examined in support of charges, it was a case of no evidence. In an ex-parte inquiry, in our view, if the charges are borne out from documents kept in the normal course of business, no oral evidence is necessary to prove those charges. When the charged officer does not attend the inquiry, then he cannot contend that the Inquiring Authority should not have relied upon the documents

which were not made available or disclosed to him. Of course, even in an ex-parte inquiry, some evidence is necessary to establish the charges, especially when the charged officer denies the charges, uncontroverted documentary evidence in such situation is sufficient to prove the charges."

22. The facts of the case of Narendra Kumar Pandey is very relevant to be seen in the perspective of the present case, wherein the date and time were fixed by the enquiry officer, but the delinquent employee remained absent and did not avail the opportunity. The presenting officer had produced the original documents before the enquiry officer and after elaborate consideration of the charges, statement of the allegations and supporting documents were considered by the enquiry officer. Thus, facts of the present case are entirely different from the case of Narendra Kumar Pandey, wherein it is worth to be mentioned that admittedly no date, time and place was ever fixed by the enquiry officer and neither the presenting officer was appointed nor the documents as mentioned in support of the charges were proved by calling the originals from the concerned department.

23. Reliance has also been placed by the counsel for the Federation upon paragraphs 3, 4 and 14 of the judgment of the Supreme Court in the case of **Rawel Singh** (supra), but since paragraph 14 is relevant, the same is quoted below:-

"14. Having heard the learned counsel for the parties and considering the facts and circumstances in their entirety, in our opinion, the appeal deserves to be partly allowed. As already observed by us, even at an earlier occasion, when

allegations were levelled against the respondent-workman, notice was issued and enquiry was instituted, he did not make himself available and the Enquiry Officer was constrained to proceed with the enquiry ex-parte and an order of termination of services was passed. True it is that the respondent-workman approached Civil Court and the suit filed by him came to be allowed and the decree was confirmed in appeal. But it is equally true that liberty was granted to the Corporation to initiate proceedings afresh on the same charges and hence initiation of proceedings could not be said to be illegal or contrary to law. From the record, it is clear that notice was issued to the respondent and it was received by him, he filed his reply, he also appeared before the Enquiry Officer but subsequently he did not remain present and absented himself. If, in the light of the above facts, Enquiry Officer was obliged to proceed with the enquiry ex-parte, it could not be said that by doing so, the Enquiry Officer had committed an error either of fact or of law and the enquiry proceedings were liable to be quashed."

24. A careful reading of paragraph-14 of the aforesaid judgement indicates that the delinquent employee-workman did not appear before the enquiry officer and thereafter the enquiry officer proceeded in the enquiry and ex-parte proceedings were drawn and concluded. The said case is pertaining to termination order passed under the provisions of the Industrial Disputes Act, 1947. Admittedly, in the present case, there is specific Service Regulations known as Regulations, 1975 and Regulation 85 provides that the disciplinary proceedings against an employee shall be conducted by the enquiry officer with due observance of the principles of natural justice. The documents

were not proved and the enquiry officer forwarded the enquiry report without following the principles of natural justice in utter violation of Regulation 85 of Regulations, 1975. Charge sheet dated 19.04.2003 indicates two charges and in support of charge no.1, there are six letters and in support of charge no.2, there are five letters, but the record reveals that enquiry officer did not prove the aforesaid letters by summoning the same from the concerned office. The said letters could have been proved by the concerned persons, who had sent the aforesaid letters. However, the enquiry report dated 16.10.2003 clearly indicates that the enquiry officer has mentioned while forwarding the enquiry report in support of charge no.1 mentioning that "इस संबंध में उपलब्ध अभिलेख, स्टॉक रजिस्टर की छायाप्रति आदि से यह स्पष्ट हुआ है कि जनपद खीरी में इपको यूरिया की रैक सितंबर 98 में प्राप्त हुई थी।"

25. In paragraphs-10 and 11 of the writ petition, the petitioner has stated that enquiry proceedings were completed ex-parte against the petitioner on 01.10.2003. In reply to paragraphs-10 and 11 of the writ petition, answering-opposite parties have stated in paragraph-9 of the counter affidavit that petitioner did not submit his explanation and the enquiry officer completed the enquiry on the basis of the documents available. It is nowhere denied that the enquiry proceedings were completed on 01.10.2003. The enquiry report does not indicate that the enquiry officer completed the enquiry by fixing date, time and place and he also did not prove the documents available on record after summoning the same from the office concerned along with oral statements of the witnesses, who had written the same.

26. The first part of Regulation 85(i) of the Regulations, 1975 postulates

that the disciplinary proceedings against an employee shall be conducted by the officer referred to in clause (iv) below with due observance of the principles of natural justice. Regulation 85(i)(c) of the Regulations, 1975 further provides that if no explanation in respect of charge-sheet is received or the explanation submitted is unsatisfactory, the competent authority may award him appropriate punishment considered necessary. Thus, the procedure as provided in Regulation 85(i)(c) will certainly be followed with Regulation 85(i) of the Regulations, 1975, wherein it stipulated that due observance of the principles of natural justice shall be followed while conducting the disciplinary proceedings against an employee. Admittedly, in the present case, the enquiry officer did not call upon the witnesses to prove the documents and at one place, he has mentioned that photocopy of the documents are available with him. Thus, the enquiry report cannot be made the basis for punishment because the enquiry officer did not follow the principles of natural justice by adducing evidence on record as per Regulation 85(i) of the Regulations, 1975.

27. After recording the findings on the basis of facts and law, the impugned punishment order cannot be sustained in the eyes of law as there is complete departure of procedure prescribed under Regulations 85(i) and 85(i)(c) of the Regulations, 1975 by the enquiry officer while conducting the enquiry proceedings, therefore, the same is liable to be quashed. Apart from it, in view of law as discussed above in the case of *Dev Prakash Tiwari* (supra) and *Bhagirathi Jena* (supra), the fresh proceedings to initiate the departmental proceedings cannot be allowed for the reason that petitioner had

attained the age of superannuation in the year 2013 and at this juncture he is 72 years old.

28. Writ petition is accordingly *allowed* and a Writ in the nature of Certiorari is issued quashing the impugned punishment order dated 10.01.2005 passed by opposite party no.2, contained in Annexure No.8 to the writ petition. The petitioner is entitled for 30% back wages and retiral benefits as permissible in law.

29. Since the petitioner has been litigating from 2005 and has retired in 2013, it would be expedient in the interest of justice to direct the opposite parties to complete the exercise for payment of 30% back wages and retiral benefits to the petitioner, positively, within a period of three months from the date a certified copy of this order is produced before the authority concerned.

(2025) 4 ILRA 551
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.04.2025

BEFORE

THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.

Writ - A No. 10478 of 2022 connected with other cases

Sunil Kumar Yadav & Ors. ...Petitioners
Versus
The State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Sri Rameshwar Prasad Mishra, Sri Abdulla Kalam, Sri Ashok Khare (Sr. Advocate)

Counsel for the Respondents:

C.S.C.

A. Civil Law - Constitution of India, 1950 – Article 226 – Writ – Maintainability – Supreme Court already settled the controversy in *Shiv Kumar Pathak's case* upholding the view that qualifications prescribed by the NCTE are binding, requirement of weightage to TET marks is not a mandatory requirement – However, again writ petition filed – Permissibility – Held, prayer of the petitioners being contrary to the observations and direction passed by Supreme Court in *Shiv Kumar Pathak's case*, are therefore, rejected. (Para 3 and 9)

B. Allahabad High Court Rules, 1952 – Chapter XXII, R. 9 – Costs – Luxury litigations wasting crucial time of the Court – How far imposition of costs is necessary – Held, these litigations appear to be luxury litigations since issues raised in present bunch of writ petitions have already been settled by Supreme Court in *Shiv Kumar Pathak and petitioners (6402 in numbers)* in all writ petitions were also conscious of these facts, and decision of *Shiv Kumar Pathak's case* still they have filed present writ petitions, therefore, all Writ petitioners shall pay Rs. 100/- each as cost since these litigations has wasted crucial time of this Court. (Para 12)

Writ petition dismissed. (E-1)

List of Cases cited:-

St. of U.P. & ors. Vs. Shiv Kumar Pathak & ors.;
2018 (12) SCC 595

(Delivered by Hon'ble Saurabh Shyam
Shamshery, J.)

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Abdulla Kalam, Sri Rameshwar Prasad Mishra, learned counsel for the petitioners in the leading Writ Petition No.10478 of 2022, Sri R.K.Ojha, learned Senior Counsel

assisted by Sri Abdulla Kalam and Sri Jamil Ahmad Ansari, learned counsel for the petitioners in Writ Petition No.4933 of 2024 and other learned counsel in connected writ petitions, Sri Abhishek Srivastava, learned Chief Standing Counsel assisted by Sri Ashish K.Nagwanshi, learned Additional Chief Standing Counsel and Ms. Shruti Malviya, (Brief Holder) for State.

2. This bunch of writ petitions is filed by the petitioners that they have passed Teachers Eligibility Test (Primary Level) Examination-2011 and their results were published on 25.11.2011, 30.11.2011 and 29.1.2015.

3. The issue as to whether marks obtained in TET Examination could be a sole criteria for filling up vacancies, was finally decided by Supreme Court in State of U.P. & Ors, ETC, ETC Vs. Shiv Kumar Pathak & Ors, ETC, ETC, 2018 (12) SCC 595 and its conclusions and directions given in its paragraphs 16,17,18,19 and 20 are reproduced hereinafter:

“ 16. There is no manner of doubt that the NCTE, acting as an ‘academic authority’ under Section 23 of the RTE Act, under the Notification dated 31st March, 2010 issued by the Central Government as well as under Section 12 and 12A of the NCTE Act, was competent to issue Notifications dated 23rd August, 2010 and 11th February, 2011 The State Government was under obligation to act as per the said notifications and not to give effect to any contrary rule. However, since NCTE itself has taken the stand that notification dated 11th February, 2011 with regard to the weightage to be given to the marks obtained in TET is not mandatory which is also a possible interpretation, the view of

the High Court in quashing the 15th Amendment to the 1981 Rules has to be interfered with Accordingly, while we uphold the view that qualifications prescribed by the NCTE are binding, requirement of weightage to TET marks is not a mandatory requirement.

17. As a result of above, in normal course the State would have been at liberty to proceed with the selection in terms of advertisement dated 7th December, 2012 in accordance with the amended rules by way of 15th amendment, in view of developments which have taken place during pendency of these appeals, the said advertisement cannot proceed and while upholding the said advertisement, relief has to be moulded in the light of developments that have taken place in the interregnum.

18. Vide interim order dated 25th March, 2014 this Court directed the State of Uttar Pradesh to fill up the vacancies of Assistant Teachers in terms of the impugned judgment. Thereafter, on 17th December, 2014, the said order was modified and the State was directed to appoint candidates whose names were not involved in malpractices in the TET test and who had obtained 70% marks (65% for SC, ST, OBC and physically handicapped or any other category covered by the Government policy for reservation). 54,464 posts have already been filled up in compliance of the orders of this Court. The said appointments were subject to result of these matters. It was also observed that if anyone without TET qualification is appointed his services will be terminated. Vide order dated 2nd November, 2015 it was noted that against 72,825 posts which were advertised, 43,077 candidates had completed training and were working while

15,058 candidates were undergoing training Around 14,690 posts were vacant. It was further observed that candidates who had the required percentage of marks in terms of order dated 27th July, 2015 were to file their applications and a Committee constituted for the said purpose could verify such percentage and if parity was found the same benefit could be extended.

19. We have been informed that 66,655 teachers have already been appointed in pursuance of the interim orders of this Court. Having regard to the entirety of circumstances, we are not inclined to disturb the same. We make it clear that the State is at liberty to fill up the remaining vacancies in accordance with law after issuing a fresh advertisement.

20. The matters will stand disposed of in above terms.”

4. Learned Senior Counsel appearing on behalf of petitioners has submitted various arguments in support of above prayers, though he has effectively pressed only prayer no.4 in WRIT-A No.-10478 of 2022, which is being reproduced hereinafter:

“iv. Issue a writ order or direction in the nature of mandamus directing the respondents/State Government that the selection process may be started in accordance with the Advertisement dated 07.12.2012 issued by the Department of Basic Education, State Government (Annexure No. 21) “

5. In present writ petition it was further prayed that results declared on 25.11.2011, 30.11.2011 and 29.1.2015 of Teachers Eligibility Test (Primary Level)-

Examination-2011 be quashed and to re-evaluate the OMR Sheets of Teachers Eligibility Test (Primary Level)-Examination-2011 as well as to cancel the candidature of candidates who have used whitener on OMR sheets and that selection process be commenced in pursuance of advertisement dated 7.12.2012 i.e. the subsequent advertisement.

6. Learned Senior Counsel further argued that judgment passed by Supreme Court in Shiv Kumar Pathak (supra) does not put a bar that selection process could not be commence in pursuance of subsequent advertisement dated 7.12.2012.

7. Per contra, learned counsel for the respondents by referring operative part of Shiv Kumar Pathak (supra) submitted that no relief could be granted to the petitioners beyond the directions given by Supreme Court as well as this Court is also bound by said directions.

8. In order to appreciate rival submissions, I have perused the above referred operative part of judgment passed in Shiv Kumar Pathak (supra) as well as the directions given therein.

9. In paragraph no.17 of Shiv Kumar Pathak (supra), the Supreme Court has taken note that in normal course the State would have been at liberty to proceed with the selection in terms of advertisement dated 7th December, 2012 in accordance with the amended rules. However, in pursuance of an interim order passed by Supreme Court, 66, 655 teachers have already been appointed and, therefore, instead of giving a direction to continue with the selection process in terms of advertisement dated 7.12.2012, Supreme Court in paragraph

19 of Shiv Kumar Pathak (supra) has granted liberty to State to fill up the remaining vacancies in accordance with law after issuing a fresh advertisement, therefore, effectively the Supreme Court has passed a direction that selection in terms of advertisement dated 7.12.2012 shall not proceed further. Accordingly, prayer of the petitioners being contrary to the observations and direction passed by Supreme Court in Shiv Kumar Pathak (supra), are therefore, rejected.

10. So far as other prayers are concerned, it is also settled by Supreme Court in Shiv Kumar Pathak (supra) against them and now, it could not be reopened since appointments made in pursuance of earlier selection process has also been protected, therefore, other prayers are also rejected.

11. All Writ Petitions being no force are accordingly dismissed.

12. In present circumstances, Court is constraint to observe that these litigations appear to be luxury litigations since issues raised in present bunch of writ petitions have already been settled by Supreme Court in Shiv Kumar Pathak (supra) and petitioners (6402 in numbers) in all writ petitions were also conscious of these facts, and decision of Shiv Kumar Pathak (supra) still they have filed present writ petitions, therefore, all Writ petitioners shall pay Rs.100/- each as cost since these litigations has wasted crucial time of this Court.

13. The deponent of affidavit accompanied with each Writ Petition shall be responsible that cost be paid by each petitioners since they have declared

themselves being pairokar of respective writ petitioners.

14. The cost shall be paid within a week before High Court Bar Association, Allahabad and compliance affidavit shall be filed which will be kept in records of this writ petitions. In case of default, Registrar General of this Court is directed to take appropriate steps for recovery from deponent/pairokar of each Writ Petitions.

15. Learned counsel for the petitioners in each Writ Petitions will inform about this order to deponent/pairokar.

(2025) 4 ILRA 555
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.04.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ - A No. 10689 of 2024
 Connected With
 Writ - A No. 19731 of 2024
 Connected With
 Writ - A No. 19646 of 2024
 Connected With
 Writ - A No. 20429 of 2024
 Connected With
 Writ - A No. 18826 of 2024
 Connected With
 Writ - A No. 2701 of 2025

Sita Ram Sharma & Ors. ...Petitioners
Versus
State Of U.P.& Ors. ...Respondents

Counsel for the Petitioners:
 Aditya Prakash Verma, Shailesh Verma

Counsel for the Respondents:
 C.S.C.

Service Law-Constitution of India,1950-Article 226-Re-employment-Selection for constable(GD) U.P. Police 2018-Petitioners denied pay protection under Government Order dated 23.12.2020 while similarly situated candidates in earlier training batch were granted the benefit -Petitioners who were ex-army personnel selected under the same recruitment advertisement for constable(GD) U.P. Police 2018, form a homogeneous class with others who were appointed earlier-Denial of pay protection solely based on administrative delay in training and appointment caused by the pandemic violates Article 14 of the constitution-Government order being prospective cannot be applied to candidates selected prior to its issuance-Held, entire selection process formed a homogeneous group-Division into batches due to administrative decisions(COVID-19) cannot justify differential treatment-Government order prospective in nature-Petitioners entitled to same benefits as first batch-Directions issued to extend pay protection within 30 days.(Para 1 to 16)

The writ petition is allowed. (E-6)

List of Cases cited:

1. UOI Vs Anil Prasad (2022) 5 SCC 461
2. Manilal Vs The St. of Raj. & ors.(2024) 0 SC 764
3. Firangi Prasad Vs St. of U.P. & ors.(2011) 2 UPLBEC 987
4. Mahesh Naryan & ors.Vs St. of U.P. & ors.(Writ A No. 55606 of 2008)

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard learned counsel for the petitioners and learned Additional Chief Standing Counsel.

2. By means of above writ petitions filed under Article 226 of the Constitution,

petitioners who were selected for Constable GD in U.P. Civil Police 2018 are aggrieved for the discriminatory stand taken by respondents in not awarding them pay protection in terms of last pay drawn by them as ex-army personnel. All the petitioners were selected and appointed in the category of ex- army men and submit that if as a result of the same selection, selectees are sent in four batches for training at different point of time, the State is not justified in awarding pay protection to first batch of trainees and denying the same to other trainees only on the ground that Government Order decided for not giving a pay protection to ex- servicemen with effect from a subsequent date.

3. It is submitted that after selection was held selected candidates were required to be sent for training, but due to the then prevailing circumstances for Pandemic Covid-19 the U.P. Directorate Police Training vide its order dated 25th July, 2020 divided selectees in four batches to be sent for training on different dates for different period. The first batch was sent for training in August, 2020 for the period of six months, second batch was sent for training in March, 2021 for the period of six months, the third batch was sent for training in October 2021 for six months and last and fourth batch was sent for training in May, 2022 for six months.

4. The petitioners before this Court claim to have been sent for training in second batch, which started from March, 2021 and lasted for six months till September, 2021. While first batch was completing its training appointment order got issued in their respect prior to the Government order dated 23rd December, 2020, the date when Government Order got issued, in which it was decided that

no more pay protection shall be granted to the selectees, who are ex army personnel. The Government Order provided further that it will come into force with immediate effect. The relevant paragraph of the Government Order as contained in paragraph 22 is reproduced hereunder:

"उपर्युक्त प्रस्तर-1 में वर्णित तथ्यों को ध्यान में रखते हुये शासन स्तर पर सम्यक् विचारोपरान्त लिये गये निर्णय के क्रम में मुझे यह कहने का निदेश हुआ है कि राज्य सरकार की सेवा में भूतपूर्व सैनिकों का पुनर्योजन किये जाने की दशा में उनके वेतन निर्धारण के संबंध में राज्यपाल महोदया द्वारा निम्नवत प्रक्रिया निर्धारित करने की स्वीकृति प्रदान की गयी है:-

(1) सेना से सेवानिवृत्त सैन्य कर्मियों का राज्य सरकार की सेवा में पुनर्योजन होने पर उन्हें उस पद के वेतनमान में ही वेतन ग्राह्य होगा जिस पद पर उनका पुनर्योजन हुआ है। सेवानिवृत्ति के पूर्व धारित पद के वेतनमान का संरक्षण नहीं किया जायेगा।

(2) ऐसे पुनर्योजित सैन्य पेंशन जिनकी पूरी पेंशन वेतन निर्धारण हेतु उपेक्षणीय (ignored) है, का वेतन पुनर्योजन के पद के वेतनमान के न्यूनतम पर निर्धारित किया जायेगा।

(3) ऐसे प्रकरण जिनमें वेतन निर्धारण हेतु पूरी पेंशन उपेक्षणीय (ignored) नहीं है, उनमें पुनर्योजन पर प्रारम्भिक वेतन सेवानिवृत्ति के पूर्व प्राप्त वेतन के प्रक्रम पर निर्धारित किया जायेगा, परन्तु-

(I) यदि पुनर्योजन के पद के वेतनमान में ऐसा प्रक्रम उपलब्ध नहीं है, तो उक्त प्रक्रम के ठीक नीचे वाले प्रक्रम पर वेतन निर्धारित किया जायेगा।

(ii) यदि पुनर्योजन के पद के वेतनमान का अधिकतम सेवानिवृत्ति के पूर्व आहरित वेतन से कम है, तो पुनर्योजन के पद के वेतनमान के अधिकतम पर वेतन निर्धारित किया जायेगा।

(iii) यदि पुनर्योजन के पद के वेतनमान का न्यूनतम सेवानिवृत्ति के पूर्व आहरित अन्तिम वेतन से अधिक है, तो

वेतन निर्धारण पुनर्योजन के पद के न्यूनतम पर किया जायेगा।

उपरोक्तानुसार निर्धारित होने वाले वेतन में से, सैन्य सेवा से प्राप्त पेंशन का वह भाग जो उपेक्षणीय (ignored) नहीं है, घटा दिया जायेगा।

(4) राज्य सरकार की सेवा में पुनर्योजित सैन्य पेंशनर उपरोक्तानुसार निर्धारित वेतन के अतिरिक्त अपनी पूरी पेंशन अन्य सेवानैवृत्तिक लाभ सहित आहरित करते रहेंगे।

4- उपरोक्त आदेश तात्कालिक प्रभाव से लागू होंगे अर्थात् शासनादेश निर्गत होने की तिथि अथवा उसके उपरान्त राज्य सरकार की सेवा में नियुक्ति पाने वाले भूतपूर्व सैनिकों के प्रकरण इन आदेशों से आच्छादित होंगे। शासनादेश की तिथि के पूर्व राज्य सरकार की सेवा में पुनर्योजित हो चुके सैन्य पेंशनरों के प्रकरण पुनरूद्घटित (रीओपेन) नहीं किये जायेंगे।"

5. Learned counsel for the petitioners argued that after first batch completed its training in January, 2021, it was accorded with pay protection and for example pay fixation of Kuldeep Singh newly selected constable bearing pno no. 202641386 dated 24th January, 2024 has been brought on record. It is argued that after benefit was accorded to the first batch, the candidates selected in second, third and fourth batch who were also ex- army personnel, were not accorded with this benefit.

6. These above pleadings have come to be raised in paragraph 14 of the writ petition, in which details of various other constables who were benefited with last pay protection, that they were claiming as ex-army men. In the counter affidavit in reply to paragraph 14. Vide paragraph 16, it has been averred thus:

" That the contents of paragraph no. 14 of the writ petition are admitted to

the extent that at the time of appointment of the constable Kuldeep Singh PNO No. 202641386 in the police department on 11.10.2020 the government order dated 26.8.1977 and 18.5.1983 were effective, currently, the government order dated 23.12.2020 for the reappointment of the ex-serviceman in the service of state government is effective, in which it is clearly mentioned that the above order will be implemented with immediate effect i.e. in the cases of the ex-serviceman who have been appointed in services of the state government on or after the date of issue of the Government Order will be covered by this order"

7. From a bare reading of the averments made in paragraph 14 of the Counter affidavit as quoted above, it transpires that Kuldeep Singh though was sent for training in first batch was was offered appointment on 11.10.2020 when the Government Order dated 26.8.1977 and 18.5.1983 were in force and hence he was accorded this benefit of pay protection. However, coming into force of government order dated 23.12.2020 in respect of re-appointment of ex servicemen they were held not entitled for pay protection of their previous establishment and hence no such benefit could be given to the present petitioner. Thus, it is admitted position of fact that petitioners have been denied pay protection only on account of their training getting completed subsequently to the first batch of training though the petitioners were also trainees like first batch who later on became constables. Thus all appointees were selected pursuant to selection and recruitment held in the year 2018 and hence claimed pay parity.

8. Learned Standing Counsel has sought to defend the stand taken under the

Government Order denying pay protection, relying upon an authority of Supreme Court in the case of **Union of India v. Anil Prasad** 2022 5 SCC 461 wherein Central Government rules denying benefit of pay protection to ex army men had been upheld. It is submitted, therefore that no flaw can be found in the action of government in denying pay protection benefit so as to hold it to be perverse or otherwise discriminatory or arbitrary. Learned Standing Counsel has relied upon paragraph 4.5 of the judgment, which runs hereunder:

“5.4 Therefore, the pay fixation of the respondent in the government service was absolutely in consonance with para 8 of the CCS Order 1986. Para 8 does not provide that on reemployment in Government Services a retired Armed Force personnel would be entitled to his basic pay being fixed at par with his last drawn pay. Holding so will violate para 8 of the CCS Order. Under the circumstances the High Court has committed a grave error in observing and holding that the retired Armed Forces personnel on reappointment in the government service would be entitled to the last drawn pay as Armed Forces personnel. Therefore, the impugned judgment and order passed by the High Court is unsustainable being contrary to para 8 of the CCS Order, 1986.”

9. Having heard learned counsel for the respective parties and having perused the records, I find that in this petition there is more challenge to the discrimination being meted out to the petitioners than the relevant provision contained in the Government Order denying benefit of pay protection to ex-army personnel while getting re-

employment in government non-defence establishment.

10. Learned counsel for the petitioner has placed emphasis upon judgment in the case of **Manilal v. The State of Rajasthan and Others**, 2024 0 SC 764, and has contended that merely if counselling was not held and got delayed the teachers being similarly and identically placed pursuant to same selection could not have been discriminated against. He has placed reliance upon paragraph 15 of the Judgment, that runs as under:

“The appellant’s case was more akin to the case of Rakesh Gaur (supra), who had taken admission on 05.11.2009. We are clearly of the opinion on the special facts of this case that the Division Bench erred in applying the case of Dinesh Chandra Damor (supra) instead of applying the reasoning in the judgment in Ankul Singhal (supra) and Rakesh Gaur (supra) to the facts of this case. As was held in Ankul Singhal (supra), it will be improper to discriminate inter se among a homogenous group of students admitted for the academic session 2009-10. As was pointed out therein, it could not be that those students admitted in the first round of counselling would be eligible, even with less than 50% marks in graduation, while the others admitted in the subsequent rounds of counselling would not be. It was on this reasoning that Rakesh Gaur (supra) was given relief. Rakesh Gaur (supra) was a case identically situated with the case of the appellant. What is sauce for the goose should be sauce for the gander too.”

11. Thus only question that requires determination by this Court in this petition is whether pay protection granted to the selected candidates of the same

selection while they were sent for training in earlier point of time could be denied to the petitioners who got training subsequently as training was being organized in four different batches on account of impact of pandemic Covid- 19. There is no denial at the end of respondents that all petitioners who were sent in second batch for training and subsequently were selected for the post of constable (GD) U.P Police under the same selection pursuant to the same advertisement. The training is part-exercise undertaken for giving appointment to such selected candidates and once the candidate is selected training takes place as a result of consideration being placed in select list finally published and declared. Thus no more any stage of selection remained to be attended once selected list was prepared for the candidate to be sent for training for appointment purposes. It is, therefore, part and parcel of exercise to offer appointment to the selected candidates, and therefore, in the considered view of the Court, respondents on their own in administrative exercise of power if decided to bifurcate trainees in different cluster and groups to be sent on different dates for training and upon completion of training successfully such trainees were being offered appointment, they should definitely not be discriminated against in the matter of service benefits, like pay-scale, allowance and other emoluments that are admissible to post in question. Even in the matter of seniority, the select list is only to be followed. The judgment that has been cited in the case of *Manilal (supra)* squarely covers the case of petitioners'. The Court therein had held that discrimination inter se amongst homogeneous group cannot be approved. Thus all the selectees pursuant to the same selection would form a homogeneous group and their appointment is only a

consequential result of training course subject to their rejection during training. Once a homogeneous group is sent for training, all the members are to be treated alike.

12. Any classification on the basis of cluster or groups being sent for training would hit Article 14 of the constitution as it would not form a reasonable classification for the purposes of giving benefit to identically placed employees. A well settled rule of equality is that unlike cannot be treated alike and identically placed are to be treated alike for pay parity and to be offered service benefits.

13. In the matter of **Firangi Prasad v. State of U.P and Others (2011) 2 UPLBEC 987**, this Court has held that for the fault of appointing authority in issuing appointment letter, petitioners cannot be put to a disadvantageous position. Although this matter related to regularization but since management had issued delayed appointment orders and even beyond cut off date of regularization rules, all were treated alike to be given benefit of regularization. This judgment has further been followed in the case of **Mahesh Naryan and Others v. State of U.p. and Others (Writ A No. 55606 of 2008)**, decided on 19.12.2019, in which all the applicants of one advertisement upon being selected were taken to form a homogeneous group to give benefit of old pension scheme for the reason that advertisement and selection took place prior to scrapping off the old pension scheme even though appointment orders issued subsequently.

14. In such above view of the matter while I do not find any thing discriminatory in government order in its

application so far as denial of pay protection is concerned to ex-army men, but government order would apply only to those cases where candidates were selected after its issuance. All those who have been sent for training to be ultimately given appointment will form one homogeneous group to be privileged with all such benefits including pay protection and their claim will not yet hit by the government order.

15. In so far as judgment cited by learned standing counsel, I do not find any quarrel about the same, qua the law laid down therein because I am also of the view that government order need not be set aside in special circumstances of this case, rather it is held to be not applicable to the present case.

16. In view of above, writ petition succeeds and is allowed. Respondents no. 3 is directed to surrender benefit of last pay protection to the petitioners as has been given to the first batch of trainees pursuant to U.P. Police Constable Recruitment 2018. Appropriate order shall be passed and consequential benefit will be accorded to the petitioners within maximum period of thirty days from the date of presentation of certified copy of this order.

(2025) 4 ILRA 560
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.04.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ - A No. 16760 of 2023

Naved Akhtar	Versus	...Petitioner
State of U.P. & Ors.		...Respondents

Counsel for the Petitioner:

Sri Narendra Kumar, Sri Pradeep Kumar
Maurya, Sri Ramesh Narayan

Counsel for the Respondents:

C.S.C.

Service Law-Constitution of India, 1950-

Article 226---Writ petition against the impugned order rescinding the contract of employment of the petitioner on the ground that he had been found negligent in discharge of his duties as a contract employee--- Show cause notice issued to the petitioner for remaining absent for seven days--- Petitioner submitted reply appending therewith the prescription paper of 'advised bed rest' by the doctor but no consideration has been accorded to the reply and even the medical advise was not even referred to in the order impugned--- The medical prescription for bed rest as advised by the medical officer of the district hospital itself has not been taken into consideration and the decision has been taken to rescind the contract of the petitioner arbitrarily holding him to be guilty of negligence in discharge of duties--- Impugned order cannot be sustained in law and accordingly is hereby quashed--- respondents are directed to consider the reinSt.ment of the petitioner as contract employee and pass appropriate orders in the light of the circular dated 7th March, 2019.
(Para 7, 8 & 9) (E-15)

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard Sri Ved Prakash Shukla, learned Advocate holding brief of Sri Narendra Kumar Pandey, learned counsel for the petitioner and learned Standing Counsel for the State respondents.

2. By means of this petition filed under Article 226 of the Constitution, petitioner has assailed the order dated 24th May, 2022 passed by the Chief Medical Officer, Meerut rescinding the contract of employment of the petitioner as a 'Ward Boy' on the ground that he had been found negligent in discharge of his duties as a

contract employee and accordingly, District Health Committee decided to rescind his contract.

3. It is argued by learned counsel for the petitioner that petitioner had fallen ill and accordingly was advised bed rest by the doctor, namely Dr. Annu Gupta, the emergency medical officer of the Government District Hospital, Meerut from 19th April, 2022 to 25th April, 2022 and while petitioner was issued with show cause notice on 28th April, 2022 for remaining absent for seven days. He submitted reply thereto appending therewith the prescription paper of 'advised bed rest' by the doctor. This reply was submitted by the petitioner on 4th May, 2022 but no consideration has been accorded to the reply and even the medical advise was not even referred to in the order impugned. It is also submitted that the decision of the District Level Committee was not communicated to the petitioner at any point of time.

4. Sri Shukla has argued that in view of the guidelines/ circular issued by the Director Health Mission, Uttar Pradesh dated 7th March, 2019, the District Level Health Committee could proceed to rescind the contract of employment only in the rarest of the rare cases where the charges are very serious otherwise certain other punishments have been directed to be imposed like 15 days cut in the pay or no increment in the next one year or transfer to another block or if the posting is in the district level then transfer to another district or any penalty that may be reasonable and according to the rules by the committee. The relevant circular dated 7th March, 2019 is reproduced hereunder:

"प्रेषक,

मिशन निदेशक,
राष्ट्रीय स्वास्थ्य मिशन,
उत्तर प्रदेश।
सेवा में,
समस्त मुख्य चिकित्साधिकारी,
समस्त जनपद,
पत्रांक: 197/SPMU/DAP-

HR/GRC/2018-19/12394-75 दिनांक:
07.3.2019

विषय: राष्ट्रीय स्वास्थ्य मिशन के अन्तर्गत जनपदों में कार्यरत संविदा कर्मचारियों द्वारा कार्य में अनियमितता पाये जाने के विरुद्ध कार्यवाही प्रक्रिया हेतु।

महोदय/महोदया,

उपरोक्त विषयक अवगत कराना है कि राष्ट्रीय स्वास्थ्य मिशन के अंतर्गत जनपदों में कार्यरत संविदा कर्मचारियों द्वारा कार्य में अनियमितता पाये जाने के विरुद्ध निम्न प्रक्रिया का पालन करना सुनिश्चित करें:

अ. जिला स्तरीय संविदा कर्मी (जिसकी नियुक्ति

प्राधिकारी जिला स्वास्थ्य समिति है)

संविदा कर्मी द्वारा किसी भी अनियमितता होने पर सर्वप्रथम कर्मी को लिखित चेतावनी व स्पष्टीकरण लिया जाये और उससे संतुष्ट न होने की दशा में जिला स्तर पर मुख्य चिकित्साधिकारी की अध्यक्षता में गठित समिति के समक्ष रखा जायेगा। समिति के सदस्य निम्नवत् हैं:-

1. जिलाधिकारी द्वारा नामित अधिकारी।

2. अपर मुख्य चिकित्साधिकारी / नोडल अधिकारी सम्बन्धित जिला।

3. जिलाधिकारी द्वारा वित्त विभाग का नामित अधिकारी।

4. चिकित्सा अधीक्षक (अगर अनियमितता सम्बन्धित इकाई से है)।

यदि उपरोक्त समिति द्वारा कर्मचारी दोषी पाया जाता है तो आरोप की गंभीरता को देखते हुए समिति द्वारा निम्न बिन्दुओं में से अपनी संस्तुति जिला स्वास्थ्य समिति को निर्णय हेतु अग्रसारित की जायेगी।

1. 15 दिन की वेतन की कटौती।

2. 01 वर्ष के वार्षिक बढ़ोत्तरी की कटौती।

3. यदि ब्लॉक स्तरीय कर्मचारी हो तो अन्य ब्लॉक में स्थानान्तरण की संस्तुति।

4. यदि जिला स्तरीय कर्मचारी हो तो अन्य जिला में स्थानान्तरण की संस्तुति।

5. समिति द्वारा अन्य कोई नियमानुसार देय दण्ड।
6. यदि आरोप अत्यंत गंभीर हो तो संविदा समाप्ति की संस्तुति।

जिला स्वास्थ्य समिति द्वारा लिया गया निर्णय ही अन्तिम निर्णय माना जायेगा।

नोट- यदि जनपद में कार्यरत संविदा कर्मी प्रदेश स्तर से नियुक्त हैं एवं नियुक्ति प्राधिकारी राज्य स्तर पर है अथवा जनपद से स्थानान्तरण प्रस्तावित है तो जिला स्वास्थ्य समिति अपनी संस्तुति मिशन निदेशक, राष्ट्रीय स्वास्थ्य मिशन को निर्णय हेतु प्रेषित करेगी।

ब. इसी प्रकार राज्य स्तर पर भी समिति का गठन मिशन निदेशक, राष्ट्रीय स्वास्थ्य मिशन की अध्यक्षता में किया जायेगा। समिति के सदस्य निम्नवत् है:-

1. संबंधित महाप्रबंधक।
 2. महाप्रबंधक, मानव संसाधन।
 3. महानिदेशक, चिकित्सा एवं स्वास्थ्य द्वारा नामित अधिकारी (संबंधित कार्यक्रम)।
 4. महानिदेशक, परिवार कल्याण द्वारा नामित अधिकारी (संबंधित कार्यक्रम)।
 5. वित्त नियंत्रक, राष्ट्रीय स्वास्थ्य मिशन।
- यदि उपरोक्त समिति द्वारा कर्मचारी दोषी पाया जाता है तो आरोप की गंभीरता को देखते हुए निम्नवत् दण्ड हेतु निर्णय लिया जायेगा-

1. 15 दिन की वेतन की कटौती।
 2. 01 वर्ष के वार्षिक बढ़ोत्तरी की कटौती।
 3. यदि कार्यक्रम का कर्मचारी हो तो अन्य कार्यक्रम में स्थानान्तरण की संस्तुति।
 4. समिति द्वारा अन्य कोई नियमानुसार देय दण्ड।
 5. यदि आरोप अत्यन्त गंभीर हो तो संविदा समाप्ति की संस्तुति।
- उक्त दिशा निर्देशों का तत्काल प्रभाव से पालन करना सुनिश्चित करें। राज्य स्तर पर गठित समिति निर्णय अन्तिम होगा।

भवदीया,
ह० अप०
(सुधा यादव)
महाप्रबन्धक (मानव संसाधन)।"

5. This circular that has been relied upon by the petitioner and pleadings to this

effect has been raised in paragraph 8 of the writ petition, has not been denied in paragraph 7 of the counter affidavit. Only this much has been stated that these are matters of record and can be verified therefrom.

6. In paragraph 17 and 19 of the writ petition sufficient pleadings have been raised that petitioner has been be deligently discharging duties except for those seven days when he absented for medical ground and that there was no negligence attributable to the daily discharge of duties. These paragraphs have come to be replied in paragraphs 12 and 13 of the counter affidavit but no specific denial has come as to how the petitioner was found to be guilty for negligence in discharge of his duties except for these seven days of absence. Even the recommendation of District Health Committee which has been relied upon by the Chief Medical Officer in passing the order impugned has not been appended with the counter affidavit.

7. In such above view of the matter, it is quite apparent on the face of record that the medical prescription for bed rest as advised by the medical officer of the district hospital itself has not been taken into consideration and the decision has been taken to rescind the contract of the petitioner arbitrarily holding him to be guilty of negligence in discharge of duties.

8. In such circumstances, therefore, the order passed by the Chief Medical Officer dated 24th May, 2022 cannot be sustained in law and accordingly is hereby quashed. Consequently, the recommendation of District Health Committee dated 28th April, 2022 is also hereby quashed.

9. The respondents are directed to consider the reinstatement of the petitioner as contract employee and pass appropriate orders in the light of the circular dated 7th March, 2019.

10. Appropriate order shall be passed within a maximum period of one month from the date of production of certified copy of this order.

(2025) 4 ILRA 563
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.04.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.

Writ C No. 169 of 2025

Veer Bahadur Singh **...Petitioner**
Versus
Hindustan Petroleum Corp. Ltd. & Ors.
...Respondents

Counsel for the Petitioner:
 Sri Anshul Kumar Singhal

Counsel for the Respondents:
 Sri Ajay Kumar Singh, Sri Ashish Kumar Singh, Sri Nishant Mehrotra

Lease deed-Execution-The respondent was chosen in draw of lots- with respect to location no.1375- for retail outlet dealership- claim illegal selection-as lease deed of offered leased property was signed by only one of the co-owners-other co-owners witnessed the lease-there is difference between executing a particular document and being a witness to the same document-co-owners witnessing a particular document would not amount to compliance of the Brochure that categorically requires execution by all the co-owners-impugned order quashed.

W.P. allowed. (E-9)

Cases Cited:

1. Poonam Verma & ors.Vs Delhi Development Authority reported in (2007) 13 SCC 154
2. Rahul Singh Vs Indian Oil Corp. Ltd. & ors., Neutral Citation No. - 2024:AHC:40545-DB
3. Akshay Kumar Jaiswal Vs U.O.I. & ors., Neutral Citation No. -2024:AHC:107416-DB
4. Abrar Qureshi Vs U.O.I. & ors., Neutral Citation No. - 2025:AHC:42480-DB
5. Rashmi Saroj Vs Ministry of Petroleum and Natural Gas through its secretary A Wing Shashtri Bhawan & ors.,

(Delivered by Hon'ble Shekhar B. Saraf, J.
 &
 Hon'ble Vipin Chandra Dixit, J.)

1. Heard learned counsel appearing on behalf of the parties.

2. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by the rejection of his complaint dated 24.01.2024 filed with the respondent no.2 with regard to the illegal selection of the respondent no.3.

3. The facts of the case are that the respondent no.3 was chosen in draw of lots with respect to location no.1375 for retail outlet dealership. The main complaint of the petitioner is that the respondent no.3 had offered a leased property which did not comply with the mandatory provision laid down under Clause 4 (vi) (a) of the Brochure June, 2023 which reads as under:-

"The other conditions with respect to offering of land are as under:-

a) The land should be available with the applicant as on the date of application and should have minimum lease of 19 years and 11 months (as advertised by respective oil company) from the date or after the date of advertisement but not later than the date of application. If the offered land is on Long-term lease and there are multiple owners, then lease deed should be executed by all co-owners of the offered plot. In case lease deed is not executed by all co-owners' such lease deed shall be treated as invalid."

4. Sri Anshul Kumar Singhal, learned counsel appearing on behalf of the petitioner has submitted that the lease deed was signed by only one of the co-owners while the other co-owners witnessed the lease deed. His further argument is that two lease deeds had been filed by the respondent no.3 dated 24.7.2023 and 18.9.2023. He submits that the subsequent deed was treated as the final lease deed. He submits that the subsequent deed was not an amendment of the first deed but was treated as such by the respondent no.2.

5. Sri Ashish Kumar Singh, learned counsel appearing on behalf of respondent no.3 has submitted that the purpose of the relevant clause is only to ensure no future litigation between the parties. He submits that since the other co-owners have signed as witnesses to the lease deeds, they had in effect concurred with the said lease deed, and in a manner of speaking, acted as confirming parties. He relies on the judgment of the Supreme Court in Poonam Verma and others Vs. Delhi Development Authority reported in (2007) 13 SCC 154 (paras 26 to 28 of the judgment).

6. Learned counsel appearing on behalf of respondent nos.1 and 2 has also

supported the learned counsel appearing on behalf of respondent no.3 and submitted that both the lease deeds that were provided were dated before the cut off date, and accordingly, they have accepted the subsequent deed.

7. Upon consideration of the submissions made by the learned counsel appearing on behalf of the parties and upon perusal of the materials on record, we are unable to digest the reasoning provided by the respondent no.2 while dealing with the complaint filed by the petitioner. No specific reason has been provided by the respondent no.2 as to why the second lease deed was to be accepted as the amended lease deed. Secondly, the respondent no.2 has stated that the co-owners having witnessed the lease deed would meet the dealer selection guidelines.

8. First of all, there is merit in the argument of the learned counsel for the petitioner that when an earlier lease deed was in existence, a second lease deed could not have been executed without cancelling the first lease deed. The second lease deed in fact does not speak of any amendment but is a fresh lease deed. This procedure by itself appears to be incorrect and against the principles established in law. Secondly, Clause 4 (vi) (a) of the Brochure is a mandatory provision and requires all the co-owners to execute the lease deed. Catena of judgments of this High Court have held this particular clause to be mandatory in nature. [See: Rahul Singh Vs. Indian Oil Corporation Ltd. and others, Neutral Citation No. - 2024:AHC:40545-DB, Akshay Kumar Jaiswal Vs. Union of India and others, Neutral Citation No. - 2024:AHC:107416-DB, Abrar Qureshi Vs. Union of India and others, Neutral Citation No. - 2025:AHC:42480-DB and Rashmi

Saroj Vs. Ministry of Petroleum and Natural Gas through its secretary A Wing Shashtri Bhawan and others, Neutral Citation No. - 2024:AHC-LKO:69732-DB]. The argument made by learned counsel appearing on behalf of respondent no.3 that other co-owners have witnessed the lease deed, and accordingly, had become confirming parties, is an argument in sophistry and is required to be rejected by us outright. There is a huge difference between executing a particular document and being a witness to the same document. The witness does not in any manner agree to the terms and conditions in the said lease deed while a person who executes the document agrees to the terms and conditions. In light of the same, co-owners witnessing a particular document would not amount to compliance of Clause 4 (vi) (a) of the Brochure that categorically requires execution by all the co-owners.

9. The judgment cited by the learned counsel appearing on behalf of the respondent no.3 is in a different factual background, and accordingly, does not apply to the present facts and circumstances where the terms and conditions are specifically provided in the Brochure made available during the time of advertisement.

10. With the above observations, the impugned order dated 18.11.2024 is quashed and set aside and the writ petition is allowed. The authority is directed to cancel the allotment made to the respondent no.3 and carry out fresh draw of lots in accordance with law.

(2025) 4 ILRA 565
ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 10.04.2025

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Writ - C No. 1380 of 2023

Satish Dhuriya ...Petitioner
Versus
The State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Hemant Kumar Mishra, Arti Ganguly

Counsel for the Respondents:
C.S.C., Krishna Ram Yadav, Prahlad Singh

Civil Law -Petitioner was elected as Gram Pradhan, a seat reserved for SC, based on a caste certificate (dated 23.07.2015) stating he belongs to the "Gond" (SC) caste-A rival candidate who lost election, obtained another caste certificate for the petitioner showing his caste as "Kahar"(OBC), and complained to the District Magistrate to cancel the SC certificate-The District Level Committee canceled the petitioner's SC certificate without referring the matter to vigilance, declaring him OBC-Petitioner appealed to the Divisional and then State Level Caste Scrutiny Committees-The court found that the Vigilance Report had confirmed the petitioner's claim to SC status-As per the Supreme Court's decision in Kumari Madhurti Patil Vs. Addl. Commr., the State Level Committee cannot disregard a favorable Vigilance Report-The State Level Committee overstepped its jurisdiction by rejecting the petitioner's appeal despite a favorable Vigilance Report-The court quashed the State Level Committee's order rejecting the appeal and the District Magistrate's order canceling the petitioner's election-Directed issuance of a fresh caste certificate to the petitioner as per the Vigilance Report-Ordered reinstatement of the petitioner as Gram Pradhan based on his valid election-The

court held that administrative bodies are bound by the procedure laid down in government orders and judicial precedents-the committee lacked the authority to overrule a favorable Vigilance report, and the cancellation of the petitioner's election was unlawful.(Para 1 to 21)

The writ petition is allowed. (E-6)

List of Cases cited:

1. Kumari Madhuri Patil Vs Addl. Commr. Tribal Development (1994) 6 SCC 241
2. Dharendra Kumar Vs St. of U.P. & ors. Writ-C No. 7137 of 2020

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. An order passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No(s).2764 of 2025 passed on 07.03.2025, a request has been made to decide the matter expeditiously, preferably within a period of three months. In pursuance of the said request, the matter is being taken up for decision.

2. Heard learned counsel for the petitioner, Shri Saharsh Srivastava, learned Additional Chief Standing Counsel and Shri Krishna Ram Yadav, learned counsel appearing on behalf of the complainant/ opposite party no.4.

3. The present petition has been filed by the petitioner challenging the order dated 25.01.2023 passed by the opposite party no.1/ State Level Caste Scrutiny Committee, Lucknow dismissing the appeal preferred by the petitioner as well as the consequent order dated 10.02.2023 passed by the opposite party no.3/ District Magistrate, Sultanpur, whereby the election certificate granted to the petitioner as a Gram Pradhan was cancelled.

4. The facts in brief are that the petitioner claims to be elected Pradhan of village- Semari Kala, Block- Pratappur Kamaicha, District- Sultanpur, which was reserved for a Scheduled Caste candidate and the petitioner claiming himself to be a Scheduled Caste candidate contested the election held on 19.04.2021 and was declared elected on 02.05.2021. The claim of the petitioner was that he belongs to the caste "Gond", sub-caste "Dhuria" which according to him is recognized as a Scheduled Caste, the said claim was also made on the basis of a Caste Certificate No.490541503125 dated 23.07.2015 issued to the petitioner, wherein the caste of the petitioner was mentioned as "Gond". It is claimed that the opposite party no.4 also contested the same election and lost, however, the opposite party no.4 obtained a new caste certificate of the petitioner on 15.05.2021, which was bearing No.495213010301, wherein the caste of the petitioner was shown as "Kahar", which falls under the OBC category. The petitioner, approached the District Level Authority for cancellation of the forged caste certificate obtained by the opposite party no.4 dated 15.05.2021 but as he did not get any relief, he approached this Court by filing Writ Petition No.12656 of 2021 (M/B), which was disposed of by this Court by holding that the remedy of the petitioner would be either before the Tehsildar or before the District Level Caste Scrutiny Committee. Thereafter, the opposite party no.4 made a complaint against the petitioner for cancellation of the Scheduled Caste certificate of the petitioner dated 23.07.2015 before the District Magistrate, who issued notices to the petitioner and the District Level Committee constituted under the Government Order, without referring the matter to vigilance cancelled the

certificate of the petitioner, which was dated 23.07.2015 by means of an order dated 08.09.2021 and the petitioner was declared as OBC, based upon the certificate obtained by the opposite party no.4 on 15.05.2021.

5. Aggrieved against the said order of the District Level Committee, an appeal was preferred by the petitioner before the Divisional Level Committee and the same was also dismissed vide order dated 17.11.2021. Both the said orders i.e. passed by the District Level Committee as well as the Divisional Level Committee were challenged from moving an appeal before the State Level Committee. The State Level Caste Scrutiny Committee, referred the case of the petitioner for investigation to the Vigilance Cell established in pursuance of the Government Order dated 05.01.1996.

6. The report of the Vigilance Cell was submitted in which, it was found that the caste certificate of the petitioner obtained on 23.07.2015 is correct. The said report is on record as Annexure No.7.

7. The State Level Committee, thereafter taking into consideration the report of the Vigilance Cell inquiry, proceeded to analyze the same and ultimately proceeded to dismiss the appeal. In consequent to the said order, the election of the petitioner stood annulled by means of an order passed which is also impugned as Annexure No.2.

8. The submission of the learned counsel for the petitioner is that in terms of the directions given by the Supreme Court in the case of **Kumari Madhuri Patil versus Additional Commissioner, Tribal Development** reported in **1994 (6) SCC 241**, wherein directions were given. My

attention is also drawn to para 5 to para 9 of the said judgment, which are quoted here-in-below:-

"5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He also should examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial and dead bodies etc. by the concerned castes or tribes or tribal communities etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the Director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgment due or through the head of the concerned educational institution in which the

candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation / reply shall convene the Committee and the Joint / Addl. Secretary as Chairperson who shall give reasonable opportunity to the candidate / parent / guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him / it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents / guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-today proceedings within

such period not exceeding two months. If after inquiry, the caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent / guardian and the applicant."

9. The State Government in pursuance with the said direction has issued a Government Order dated 05.01.1996, which is contained in Annexure No.9 to the petition.

10. My attention is drawn to the Government Order, which is on record and specific attention is drawn to clause 5 and 6, which are noticed as under:-

"(5) जाति प्रमाण पत्र के सत्यापन हेतु स्कूटनी कमेटी को आवेदन पत्र प्रस्तुत किये जाने पर वे यथाशीघ्र उसे संबंधित निदेशालय को प्रेषित करेंगे, जो उसे अपने अधीन कार्यरत सतर्कता-कोष्ठक को सौंपेंगे। सतर्कता-कोष्ठक के संबंधित पुलिस निरीक्षक अभ्यर्थी के निवास स्थान, उसके मूल निवास व सामान्यतः निवास किये जाने के स्थानों आदि पर जाकर जाति प्रमाण पत्र की जांच करेंगे तथा उसकी जांच के पश्चात सतर्कता अधिकारी व्यक्तिगत रूप से तथ्यों का सत्यापन करेंगे तथा संबंधित तथ्यों को एकत्र करेंगे। वे शैक्षिक संस्थओं के

अभिलेखों, जन्म पंजीयन आदि का परीक्षक कर सकेंगे तथा अभ्यर्थी, उसके माता-पिता या अभिभावक अथवा अभ्यर्थी के सामाजिक स्तर की जानकारी रखने वाले किसी अन्य व्यक्ति का परीक्षण कर सकेंगे तथा परीक्षणोपरान्त विस्तृत विवरणों सहित निर्धारित प्रपत्र पर अपनी आख्या संबंधित निदेशालय को प्रस्तुत करेंगे।

(6) यदि संबंधित सतर्कता-कोष्ठक की जांच-पड़ताल के अनुसार जाति प्रमाण पत्र सत्यापित हो जाता है तो संबंधित निदेशक द्वारा 'जाति प्रमाण पत्र का सत्यापन कर दिया जायेगा, परन्तु जाति प्रमाण पत्र के सत्यापित न होने की दशा में निम्नलिखित कार्यवाही की जायेगी:-

(1) संबंधित निदेशक द्वारा सतर्कता अधिकारी की आख्या की प्रति भेजते हुए अभ्यर्थी को एक कारण बताओ नोटिस पावती पंजीकृत डाक द्वारा अथवा संबंधित संस्था, जहां वह अध्ययनरत हो या सेवारत हो, के अध्यक्ष (हेड) के माध्यम से दी जायेगी, जिसमें नोटिस की प्राप्ति से दो सप्ताह के भीतर अभ्यर्थी से अभ्यावेदन या उत्तर, यदि वह देना चाहे, दिये जाने की अपेक्षा की जायेगी।

(2) ऐसा अभ्यावेदन या उत्तर देने के लिए अभ्यर्थी के अनुसार पर अधिक से अधिक नोटिस की प्राप्ति के 30 दिन का समय दिया जा सकता है, इससे अधिक नहीं।

(3) समयान्तर्गत प्रस्तुत अपने अभ्यावेदन या उत्तर में यदि अभ्यर्थी सुनवाई का अवसर प्रदान करने या इस विषय में अन्वेषण (इनक्वायरी) कराने का अनुरोध करता है तो अभ्यावेदन/उत्तर प्राप्त होने पर संबंधित निदेशक स्कूटनी-कमेटी और उसके अध्यक्ष को अवगत करायेंगे, जा अभ्यर्थी या यथास्थिति उसके माता-पिता या अभिभावक को उक्त जाति प्रमाण पत्र की सत्यता के पक्ष में समस्त साक्ष्य प्रस्तुत करने का युक्ति-युक्त अवसर प्रदान करेंगे और संबंधित गांव या आबादी में उद्घोषणा द्वारा या अन्य सुलभ रीति से एक सार्वजनिक सूचना प्रसारित करेंगे और ऐसी सार्वजनिक सूचना पर यदि का जाति प्रमाण पत्र की सत्यता का कोई व्यक्ति या संगठन, स्वयं या अपने अधिवक्ता के माध्यम से, विरोध करता है तो उसे अपने विरोध के पक्ष में साक्ष्य प्रस्तुत करने का अवसर प्रदान किया जायेगा। इस अवसर पर अभ्यर्थी भी अपने पक्ष को

अधिवक्ता के माध्यम से प्रस्तुत कर सकेगा।

(4) स्कूटनी-कमेटी, अभ्यर्थी द्वारा प्रस्तुत तथ्यों व विपक्षियों द्वारा उठाई गई आपतियां आदि के प्रकाश में, विचारोपरान्त समुचित आदेश पारित करेगी, जिसमें कमेटी के निष्कर्षों के समर्थन में संक्षिप्त कारणों का भी उल्लेख किया जायेगा।

(5) उपरोक्त कार्यवाही शीघ्रतिशीघ्र दिन प्रतिदिन के आधार पर इस प्रकार की जायेगी कि अनाधिक 2 मास की अवधि में पूरी हो जाय।

(6) कमेटी के निर्णयों से अभ्यर्थी या यथास्थिति उसके माता-पिता या अभिभावक को निर्णय लेने के एक माह के भीतर अवगत कराया जायेगा।

(7) यदि स्कूटनी-कमेटी के निर्णयानुसार जाति प्रमाण पत्र असत्य पाया जाता है तो :-

(क) कमेटी द्वारा जाति प्रमाण पत्र को निरस्त करने के आदेश पारित किये जायेंगे व उक्त जाति प्रमाण पत्र को जब्त कर लिया जायेगा।

(ख) यथास्थिति, संबंधित शैक्षिक आदि संस्था या नियुक्ति

प्राधिकारी से, पंजीकृत डाक से अनुरोध किया जायेगा कि यथास्थिति संबंधित अभ्यर्थी के प्रवेश / नियुक्ति को बिना कोई नोटिस दिये तत्काल निरस्त कर दें और तदनुसार आगे अध्ययनरत या यथास्थिति उसे पद/सेवा पर बने रहने से वंचित कर दिया जायेगा।

(ग) संबंधित अभ्यर्थी या यथास्थिति उसके माता-पिता या अभिभावक के विरुद्ध झूठा दावा करने के लिए अभियोजन की कार्यवाही की जायेगी।"

11. In the light of the said, the submission of learned counsel for petitioner is that once, the vigilance report was in favour of the petitioner, it was not open to the State Level Committee, to sit over the said report or to exercise a power of judicial review as has been done by means of impugned order. It is further argued that the clause 6 of the Government Order is very specific and clear and elaborates that in the event, the vigilance report is not found in favour of the person, the procedure as prescribed under clause 6 shall be followed. He thus argues that the State Level Committee, had no jurisdiction to sit over the report of the vigilance and to take stand, contrary to the vigilance report as has been done by means of the impugned order.

12. He draws my attention to the Annexure No.1, wherein the report of the vigilance was placed and considered by the State Level Committee, the State Level Committee thereafter analyzed the said

report and recorded its disagreement on the basis of the analysis of the material, based upon which, the vigilance report was submitted and thus proceeded to dismiss the appeal.

13. In the light of the arguments as raised above, it is argued that once, the vigilance report was in favour of the petitioner, the passing of an order dismissing an appeal was beyond the power and scope of the State Level Committee as such, the writ petition deserves to be allowed. While attacking to the Annexure No.2 it is a consequential order whereby the election of the petitioner was quashed, a reliance is placed upon the judgment of this Court in the case of **Dhirendra Kumar versus State of U.P. & others, Writ-C No.7137 of 2020** decided on 08.09.2020, to argue that the procedure for upsetting the election, is prescribed under the Panchayat Raj Act and rules and without following the said procedure, the elected candidate cannot be revoked. It is also argued that this question whether the cancellation of the election on the ground of cancellation of the caste certificate can be done under the provisions of the Panchayat Raj Act and rules or only through an election petition, has been referred to a Full Bench, however, no orders have been passed by the Full Bench determining the said issue.

14. Learned counsel for the opposite party no.4, on the other hand, argues that in terms of the documents which included the document of the father of the petitioner who was working as a Government employee and in his service, the caste "Kahar" was recorded and there is no material to form a view as to how, the petitioner became a Scheduled Caste whereas his father's caste was "Kahar". He also draws my attention to the documents

which are on record to demonstrate that in the family register, in front of the petitioner's name, the name is shown as "Kahar of the Godia".

15. In the light of the said, it is proposed to be argued that, the petitioner has used the word "Gond" only as a title and the said use of the word would not amount to change of the caste. He argues that these aspects were not considered by the Vigilance Committee and have been adequately considered by the State Level Committee while dismissing the appeal which warrants no interference under Article 226.

16. Learned Additional Chief Standing Counsel argues that the order has been passed after analyzing the facts and the discrepancies as were noticed by the State Level Committee and in the light of the impugned order to form a view that the appeal merits a rejection. He argues that the vigilance report, had not considered the service book of the father of the petitioner in its true perspective and thus, no error can be found with the order of the State Level Committee, warranting interference. He further argues that as the Caste Level Certificate of the petitioner was found to be forged, the election contested by him on the foundation of the said caste certificate, deserved to be quashed and has been rightly quashed by means of the order which is contained as Annexure No.2.

17. My attention was drawn to a judgment of the Bombay High Court wherein, it was observed that the report of the vigilance, is to be considered as an evidence in the decision making process by the State Level Committee and thus, the same can only be seen as an evidence and the same is not binding on the State Level

Committee. Learned Additional Chief Standing Counsel, very fairly states that in terms of the rules framed in Maharashtra in pursuance with the guidelines issued by the Hon'ble Supreme Court in the case of **Kumari Madhuri Patil (supra)**, there is a stipulation that the Vigilance Committee report shall be a material relevant for being considered by the State Level Committee, he however states that in terms of the Government Order issued in the State of Uttar Pradesh, the same is binding on a plain reading of clause 6 of the Government Order. The Court appreciates his fairness.

18. Considering the submissions made at the bar and recorded above, what transpires is that in terms of the general directions issued by the Hon'ble Supreme Court in the case of **Kumari Madhuri Patil (supra)**, the State Government has issued a Government Order which prescribes the manner of taking decisions in the event of a challenge to the caste certificate and clause 6 of the said Government Order, on a plain reading circumsizes the power of the State Level Committee in the event vigilance report is in favour of any candidate, the power of judicial review can be exercised by the State Level Committee only when, the report is contrary to the person whose caste certificate is sought to be scrutinized. In the absence of their being any adverse report, the State Level Committee in terms of the Government Order did not have any power of judicial review sitting over the report of Vigilance Committee as has been done by means of impugned order. It is also relevant to note that the State Level Committee, is created by the Government Order itself and thus, the same cannot exercise the powers which are not vested

in a body in the said Government Order itself.

19. In the present case, order of the State Level Committee dismissing the appeal after analyzing and differing with the report of this Vigilance Committee, is beyond the scope of decision making power conferred upon the State Level Committee and finding the same to be beyond the decision making power of the State Level Committee, the same cannot be accepted and is accordingly quashed. The State Level Committee was bound to accept the report of the Vigilance Committee in terms of the mandate of clause 6 as such, the order passed by the State Level Committee is quashed. Directions are issued to the State Level Committee to issue directions to the authority concerned to issue a caste certificate to the petitioner in terms of the recommendation of the Vigilance Committee within a period of four weeks from today. In view of the fact that the order of the State Level Committee has been set aside, the consequential order passed by the District Magistrate under the U.P. Panchayat Raj Act, 1947, which is solely founded on the quashing of the caste certificate also deserves to be quashed and is accordingly quashed.

20. It is further directed that on the strength of the caste level certificate as directed to be issued to the petitioner within a period of four weeks from today, the petitioner shall be restored to his position as a Pradhan in terms of his election.

21. The State Level Committee shall pass an order and shall ensure that the competent authority issue a fresh certificate of caste of the petitioner in terms

of the earlier caste certificate issued to him on 23.07.2015.

(2025) 4 ILRA 573
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 29.04.2025

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE OM PRAKASH SHUKLA, J.

Writ C No. 1953 of 2021

Career Convent Edu. And charitable Trust
Thru. Manager & Anr. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Lalta Prasad Mishra, Amit Jaiswal-Ojus
Law, Gaurav Mehrotra, Sharad Pathak

Counsel for the Respondents:

C.S.C., Dilip Kumar Pandey

A. Civil Law - U.P. Revenue Code, 2006 - Sections 67, 210(1), 216, 219 & 230(2) - U.P. Revenue Code Rules, 2016 - Rule 67 - U.P. Land Revenue Act, 1901 - Sections 15, 221 & 224 - U.P. Zamindari Abolition and Land Reforms Act, 1950- Section 122-B - U.P. General Clauses Act, 1904 - Section 24 - Issue : Whether notification dated 29.12.2020 empowering the Tehsildar to exercise the powers vested in the Assistant Collector, with retrospective effect from the date of promulgation of the U.P. Revenue Code, 2006, i.e., 11.02.2016 is sustainable ? Held : Law is settled that unless and until there is a provision in the statute itself permitting retrospective effect to Rules and

Notifications made thereunder, the same cannot be done - Notification dated 29-12-2020 held ultra vires and unsustainable, as: (i) Code, 2006 contains no provision permitting issuance of such notification with retrospective effect (ii) Section 219 merely allows delegation of State Government's own powers, whereas powers under S. 67 are not State Government's, (iii) notification dated 29.12.2020 cannot be sustained as it does not deal with procedural aspect but one which vests jurisdiction on the Tehsildar - Notifications dated 06-06-1953, 25-07-1960 and 07-01-1964 issued under repealed Acts of 1901 and 1950 empowering Tehsildars as Assistant Collectors and to act under S. 122-B (corresponding to S. 67 of Code, 2006) are not inconsistent with the provisions of the Code and hence saved under S. 230(2) of Code, 2006 and also deemed continued by S. 24 of the General Clauses Act, 1904 - No necessity to issue fresh notification in 2020 - Notification dated 29-12-2020 quashed as legally unsustainable and otiose - Liberty given to State Government to issue clarificatory notification if it so chooses - Until then, Tehsildars to continue to exercise powers under earlier saved notifications. (Para 12, 13, 20, 33, 36, 40, 41)

B. Civil Law - U.P. Revenue Code, 2006- Sections 67 & 216 - U.P. Revenue Code Rules, 2016, R. 67 - Encroachment upon Gram Panchayat Property - Final eviction order passed without service of notice upon it, in terms of the provisions of S. 216 and without hearing it - Appellate authority also without considering the pleas raised rejected the

appeal - Held : Appellate court erred in dismissing petitioners' appeal without ensuring compliance with R. 67 of Rules, 2016 read with S. 67 and S. 216 of the Code, 2006 (Para 43)

C. Civil Law - U.P. Revenue Code, 2006 - Sections 67 (1) & 67(5) - Revision u/s 210 (1) - A revision under Section 210(1) of the U.P. Revenue Code, 2006 can be filed only if no appeal lies against the order under challenge. Since an appeal lies against an order passed under Section 67(3) of the Code under Section 67(5), a revision against an order passed in such an appeal is not maintainable. (Para 7)

Allowed. (E-5)

(Delivered by Hon'ble Rajan Roy, J.
&
Hon'ble Om Prakash Shukla, J.)

(1) Supplementary counter affidavit filed today by Shri Manish Mishra, learned Additional Chief Standing Counsel for the State, is taken on record.

(2) We have heard learned Counsel for the petitioners Mr. Gaurav Mehrotra, learned Advocate assisted by Mr. Amit Jaiswal, Ms. Maria Fatima, Ms. Manjari, and Mr. Aditya Singh, and Shri Manish Mishra, learned Additional Chief Standing Counsel for the State.

(3) The petitioner is an educational institution. Its campus is spread over an area of nearly 15 lakhs square feet of which a small part i.e. 5080 square feet is alleged to be an encroachment. Alleging such encroachment, proceedings were drawn under Section 67 of U.P. Revenue Code, 2006 (hereinafter referred to as "Code,

2006") against it. According to the petitioner, without service of notice upon it and without hearing it, final order was passed therein on 29.02.2020. Being aggrieved, an appeal was preferred by the petitioner under Section 67 (5) of U.P. Revenue Code, 2006, but, the appellate authority without considering the pleas raised rejected the same on 05.10.2020 which led to the filing of a revision before the Board of Revenue under Section 210 of the U.P. Revenue Code, 2006. The revision was initially allowed on 27.10.2020 on the ground that the Tehsildar did not have authority to exercise the power which in fact was vested in the Assistant Collector (under Section 67 of the Code, 2006.). However, thereafter, a notification dated 29.12.2020 was issued by the State Government empowering the Tehsildar to exercise such powers, that too, with retrospective effect i.e. from the date of promulgation of the Code, 2006 i.e. on 11.02.2016. Based on the same, a review application was filed before the Board of Revenue by the State authorities which was allowed. Being aggrieved against the aforesaid, this petition has been filed inter alia challenging the notification dated 29.12.2020, the order dated 29.02.2020 passed under Section 67 (1) of Code, 2006, the appellate order dated 05.10.2020 passed under Section 67 (5) of the Code, 2006 and the order passed in the review proceedings arising out of the Revision, on 08.01.2021, by the Board of Revenue.

(4) It has also been brought to our notice that in the interregnum, as according to the petitioner, the area in dispute was purchased by it and is part of the property purchased by the trust deed dated 01.10.1995 but in order to avoid any further litigation or dispute the petitioner, as it was ready to purchase the said property or

exchange it in terms of Section 101 of the Code, 2006 and the relevant Government Orders on the subject, therefore, it accordingly applied and the said exchange proceedings are pending consideration before the Commissioner as the State Government has delegated its powers under the proviso to sub section 2 of Section 101 of the Code, 2006, a fact which is admitted to the State Counsel. In these circumstances, it was also argued by the counsel for the petitioner that apart from the fact that the orders impugned including the notification are not sustainable on facts and in law, even if this Court arrives at a different conclusion or for that matter, in the alternative, as, exchange proceedings are pending, the same be also ordered to be decided at the earliest, as, ultimately, if the exchange takes place, the merits of the dispute may become irrelevant.

(5) After arguing the matter at some length, a consensus was arrived at between the parties which is also based on the averments made in the supplementary counter affidavit of the State filed today, that the procedure prescribed in Rule 67 of the U.P. Revenue Code Rules, 2016 (hereinafter referred to as "**Rules, 2016**") read with Section 67 of the Code, 2006 has not been followed and notices were not served upon the petitioners in terms of the provision of the Code, 2006 especially Section 216 of the Code, 2006. We also find it to be so. This aspect of the matter was not seen appropriately by the Appellate Court, which dismissed the appeal of the petitioners vide judgement dated 05.10.2020. So far as the revision filed by the petitioner which was initially allowed on 27.10.2020, the same was reviewed by a subsequent judgment dated 08.01.2021 on the ground that subsequent to the initial judgment in the revision, a notification had

been issued by the State Government with retrospective effect from 29.12.2020, empowering the Tehsildar to exercise powers of the Assistant Collector under Section 67 of the Code, 2006; secondly, the revision was not maintainable in the first place in view of Section 210(1) of the Code, 2006 as an appeal had already been preferred by the revisionist, therefore, as the aforesaid grounds constituted an error apparent on the face of the record for allowing the review, the review application was allowed and the revision was dismissed.

(6) We have perused Section 210(1) of the Code, 2006 and find that a revision can be filed under it, only if, against the order under challenge, an appeal does not lie under the Code, 2006, whereas, against the order passed under Section 62 of the Code, 2006 an appeal lies under Section 67(5) of the Code, 2006, the revision filed by the petitioner was, thus, not maintainable. To this extent, the order passed in review can not be said to be erroneous.

(7) The question which is, however, required to be considered is as to whether the notification dated 29.12.2020 empowering the Tehsildar to exercise the powers of Assistant Collector (First Class) under Section 67 of the Code, 2006 that too with retrospective effect from 11.02.2016, is sustainable, was it at all required ?.

(8) In this context, we may refer to our order dated 08.04.2025 which reads as under:-

"I. Heard Sri Gaurav Mehrotra, Advocate, assisted by Sri Amit Jaiswal, Advocate and Aditya Singh, Advocate for the petitioner and Addl. C.S.C. for the State

as also Sri Dilip Kumar Pandey, learned counsel for the Gaon Sabha.

2. After hearing the parties, one of the issues which arises for consideration is as to whether the Tehsildar had jurisdiction to initiate proceedings and pass a final order under Section 67 of the U.P. Land Revenue Code, 2006 (hereinafter referred to as 'the Code') or not?

3. Although the counsel for the petitioner places reliance upon an order of this Court putting a similar query, whereupon the State Government issued a Notification dated 29.12.2020 under Section 14(2) and Section 2(1)(9) of the Code authorizing the Tehsildar and Tehsildar (Judicial) to discharge the acts of Assistant Collector as prescribed under Section 67 of the said Code with effect from 11.2.2016, i.e. retrospective effect.

4. Apart from the issue as to whether this could have been done with retrospective effect, another issue which crops in this context is as to whether the Notification authorizing the Tehsildar, for similar action under a similar provision, i.e. Section 122-B of the U.P. Zamindari Abolition & Land Reforms Act, 1950 (hereinafter referred to as 'the Act 1950'), existed earlier and whether it continued to operate for the purposes of Section 67 of the U.P. Land Revenue Code, 2006 or not, as under the proviso to sub-Section (2) of Section 230, such Notifications, insofar as they are not inconsistent with the provisions of the U.P. Land Revenue Code, 2006 be deemed to have been done or taken under the corresponding provisions of the said Code, and shall continue to be in force

accordingly, unless and until they are superseded by anything done or action taken under the said Code.

5. There is another process contained in Section 24 of the U.P. General Clauses Act 1904, which is also relevant in this regard

6. We would, therefore, like to have the Notifications, if any, under the Act 1950 or the Act 1901 for exercise of power by the Tehsildar under Section 122-B, as Sri Pandey, learned counsel for the Gaon Sabha says that there were Notifications under the earlier authorizing the Tehsildar to perform the said duty.

7. Once the Notifications are on record, then the burden would be upon the petitioner's counsel to demonstrate as to whether they are inconsistent with the Code 2006, if so, how? At least as of now the provisions of Section 122-B of the Act 1950 and Section 67 of the Code 2006 appear to be *para materia*.

8. Another aspect to be considered is as asserted by Sri Mehrotra, that the land in question ceases to be land of any Gaon Sabha in view of the Notification dated 5.12.2019 under Section 3 of the U.P. Municipal Corporation's Act 1959 (hereinafter referred as 'the Act 1959'), as the said land was included within the Municipal limits of Municipal Corporation, Lucknow, and thereafter though the villages may continue, but the land in question would not be that of the Gaon Sabha, but would be of the Municipal corporation, Lucknow. However, in this context when we peruse section 67, we find that such lands, if they belong to local authority, then also the said

provision would apply and the term 'local authority', though it has not been defined in U.P. Revenue Code 2006, has been defined in Section 4(25) of the U.P. General Clauses Act 1904, which includes a Nagar Maha Palika, therefore, the land, even if belongs to Municipal Corporation, Lucknow, would attract Section 67 of the Code 2006, however, here again there is a twist. Even if Section 67 is applicable, assuming it to be so, the procedure for taking any action thereunder is prescribed in Rule 67, and it is the case of Sri Mehrotra that the said procedure has not been followed. In fact, no notice, whatsoever, as is envisaged therein, and under Section 67 of the Code 2006 was ever issued and served to the petitioner.

9. On being confronted Sri Tiwari, at least as of now could not demonstrate that any such notice issued, was served, upon the petitioner, prior to passing an under Section 67.

10. Other issues pertaining to the validity of the Notification dated 29.12.2020, i.e. retrospectivity given, validity of the order passed by the Board of Revenue on the review application as also the validity of the orders passed under Section 67, U.P. Land Revenue Code, 2006 and the appellate order(s) on merits, shall also be considered, if required.

11. List/put up this case tomorrow, i.e. on 9.4.2025 for further hearing.

12. We expect some responsible officer, not below the rank of Joint Secretary in the Revenue Department of the Government and the officer, not

below the rank of Addl. Commissioner in the Board of Revenue to assist us tomorrow, on the points referred hereinabove."

(9) It appears that some query was put by this Court at Allahabad in Writ-C No.2111 of 2020 vide order dated 10.06.2020, which reads as under:-

"As per Section 233(3) of the U.P. Revenue Code, 2006 (hereinafter referred to as the 'Code'), only such orders of the State Government or of the Board of Revenue passed before the enactment of the Code were to continue which were not inconsistent with the provisions of the Code.

In the instant case, learned Standing Counsel to justify orders being passed by the Tehsildar has taken recourse to certain Government Orders dated 25.7.1960 and 7.1.1964 and has submitted that a Tehsildar could exercise powers of the Assistant Collector under section 67 of the Code by virtue of the Government Orders.

Learned counsel for the petitioner, however, submitted that if the provisions of section 233(3) were perused, then these Government Orders would become inconsistent with the provisions of the Code and, therefore, would be deemed to have been done away with.

Learned Standing Counsel may, therefore, produce such fresh orders of delegation, if they are there, under sections 14 and 219 of the Code by the next date of listing otherwise it shall be established that the Tehsildar had no authority to pass orders under section 67 of the Code.

Since, the jurisdiction of the Tehsildar itself has been questioned and the Tehsildar had sent the impugned notice, the proceedings initiated by the impugned notice shall remain stayed till the next date of listing.

List this petition along with the connected petitions on 6.7.2020 as a first case before the appropriate Court."

(10) After passing of the above quoted order, the impugned notification dated 29.12.2020 was issued.

(11) In our order dated 08.04.2025, we had raised two points in this regard; firstly, as to whether such a notification could have been given retrospective effect under Section 219 of the Code, 2006 and the other was as to the necessity of issuing the impugned notification empowering the Tehsildar as aforesaid, if, there were earlier notifications under the erstwhile U.P. Land Revenue Act, 1901 (hereinafter referred to as "Act, 1901") or U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as 'Act, 1950') already empowering him under Section 122-B of the Act, 1950 and if the said notifications continued to operate for the purposes of Section 67 of the Code, 2006, a provision corresponding to Section 122-B.

(12) Now, so far as the first issue is concerned, the law is settled that unless and until there is a provision in the statute itself permitting retrospective effect to Rules and Notifications made thereunder, as is impugned herein, the same cannot be done. We may in this context refer to the judgments of Hon'ble Supreme Court in the case of *Union of India and Ors. vs. G.S. Chatha Rice Mills and Anr.* reported in **2020 SCC OnLine SC 770**, *Vice*

Chancellor, M.D. University Rohtak vs. Jahan Singh reported in **(2007) 5 SCC 77**, *State of Rajasthan and Others vs. Basant Agrotech (India) Limited* reported in **(2013) 15 SCC 1** and *Union of India and Others vs. Dr. S. Krishna Murthy and Others* reported in **(1989) 4 SCC 689**.

(13) No such provision has been placed before us nor could we find any in the Code, 2006 which permitted issuance of such notification with retrospective effect. Thus, the notification dated 29.12.2020 to the extent it has been given retrospective effect cannot be sustained in law especially as the notification does not deal with procedural aspect but one which vests jurisdiction on the Tehsildar.

(14) On the other issue regarding requirement/necessity of such a notification dated 29.12.2020, in view of queries made by us on 08.04.2025, certain notifications issued under the erstwhile Act, 1950 and Act, 1901 have been brought on record, which are dated 06.06.1953, 25.07.1960 and 07.01.1964, alongwith the supplementary counter affidavit filed today.

(15) As per the notification dated 06.06.1953 exercising the powers under Section 15 read with Section 221 and 224 of the Act, 1901 all Tehsildars were appointed as ex-officio Assistant Collectors of the First Class. By the second notification dated 25.07.1960 in exercise of the powers conferred by Section 15 read with Section 221 and 224 of the Act, 1901 as amended in its application to the areas to which U.P Land Reforms (Amendment) Act, 1958 (hereinafter referred to as 'Act, 1958') extends, the Governor was pleased to confer on Tehsildars of the said areas all the powers of the Assistant Collectors of the First Class. By the third notification

dated 07.01.1964 in relation to areas to which the Act, 1950 applied and with reference to Section 15 read with Section 221 and 224 of the Act, 1901, the Governor was pleased to appoint all the Tehsildars as Assistant Collectors of First Class. By another notification of the same date i.e. 07.01.1964 all such Assistant Collectors of the First Class were empowered to exercise the powers under Section 122-B of the Act, 1950 etc., which were to be performed by the Collectors referred therein.

(16) As is evident from a reading of the aforesaid notifications, the same have been issued under Section 15 read with Section 221 and 224 of the Act, 1901. The said Act, 1901 dealt with jurisdiction of revenue officers in the United Provinces, which subsequently became State of Uttar Pradesh. Section 15 of the Act, 1901 empowered the State Government to appoint to each district as many other persons as it thinks fit to be Assistant Collector of the first or second class. Therefore, by virtue of the aforesaid notifications referable to this provision, the Tehsildars were appointed as ex-officio Assistant Collectors by the notification dated 06.06.1953 and by the subsequent notification dated 25.07.1960, they were given all the powers of the Assistant Collectors of the first Class. By the third notification dated 07.01.1964, all the Tehsildars in relation to the areas to which the Act, 1950 applied were appointed as Assistant Collectors of First Class and by another notification dated 07.01.1964, all such Assistant Collectors of the First Class were empowered to exercise powers under Section 122-B of the Act, 1950.

(17) As per Section 122-B of the Act, 1950, according to which, the Assistant Collector could take action in

matters where any property vested under the said Act in a Gaon Sabha or local authority is damaged or misappropriated and such Gaon Sabha and local authority is entitled to take or retain possession of any such land. Section 67 of the Code, 2006 with which we are concerned in this case is a corresponding/similar provision.

(18) We may also point out that Section 221 of the Act, 1901 empowered the State Government to confer powers under the said Act, 1901 and empower persons by name, or classes of officials generally by their official titles and to vary or cancel any such order. Section 224 of the Act, 1901 empowered the State Government to confer on any Tehsildar or any of the powers of an Assistant Collector of the first or second class etc.

(19) Now, the aforesaid Act, 1901 and the Act, 1950 were repealed by Section 230 (1) of the Code, 2006 read with the First Schedule appended to it. Sub-section 2 of Section 230 contains a saving clause. The repealing and saving clause is contained in Section 230 of the Code, 2006, which reads as under:-

"230. Repeal.

(1) The enactments specified in the First Schedule are hereby repealed.

(2) Notwithstanding anything contained in sub-section (1), the repeal of such enactments shall not affect –

(a) the continuance in force of any such enactment in the State of Uttaranchal.

(b) the previous operation of any such enactment or anything duly done or suffered there under; or

(c) any other enactment in which such enactment has been applied incorporated or referred to; or

(d) the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title or obligation or liability already acquired, accrued or incurred (including, in particular, the vesting in title State of all estates and the cessation of all rights, title and interest of all intermediaries therein), or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt penalty, obligation, liability, claim or demand, or any indemnity already granted or the proof of any past act or thing; or

(e) any principle or rule of law or established jurisdiction, form or course of pleading practice or procedure or existing usage, custom privilege, restriction, exemption, office or appointment:

*Provided that anything done or any action taken (including any rules, manuals, assessments, appointments and transfers made, **notifications**, summonses, notices, warrants, proclamations issued, **powers conferred** leases granted, boundary marks fixed, records of rights and other records prepared or maintained, rights acquired or liabilities incurred) under any such enactment shall, in so far as they are not inconsistent with the provisions of this Code, be deemed to have been done or taken under the corresponding provisions of this Code, and shall continue to be in force accordingly, unless and until they are superseded by anything done or action taken under this Code."*

(20) The proviso to sub-section 2 of Section 230 of the Code, 2006 is relevant, according to which, 'anything

done or any action taken including any rules, manuals, assessments, appointments and transfers made, **notifications, powers conferred** under any such enactment shall, in so far as they are not inconsistent with the provisions of this Code, be deemed to have been done or taken under the corresponding provisions of this Code, and shall continue to be in force accordingly, unless and until they are superseded by anything done or action taken under this Code.

(21) Now, the words 'under any such enactment' occurring in the proviso are a reference to the enactments which were being repealed by sub-section 1 of Section 230 of the Code, 2006. The Act, 1950 and the Act, 1901 were such enactments, as already referred. The notifications referred hereinabove were issued under the said enactment conferring the power of Assistant Collector on the Tehsildar specifically with regard to Section 122-B of the Act, 1950.

(22) The question is as to whether the aforesaid notifications by which power was conferred upon the Tehsildar, as already noticed, for taking action under Section 122-B of the Act, 1950, to which Section 67 of the Code, 2006 corresponds, are inconsistent with the provisions of the Code, 2006, if not, then the proviso to sub-section 2 of Section 230 of the Code, 2006 comes into play. If they are inconsistent, then, of course, the result would be otherwise, and they would not apply to proceedings under Section 67 of the Code, 2006.

(23) When we peruse the Code, 2006, we find Section 13 (1) of the Code, 2006, to be *pari materia* with the provisions of Section 15 (1) of the Act,

1901 as it provides that the State Government may appoint in each district as many persons as it thinks fit to be Assistant Collectors of the First or Second Class. It is under such a provision contained in sub section 1 of Section 15 of the Act, 1901 that the aforesaid notifications were issued, of course, read with Section 221 and 224 of the Act, 1901.

(24) In this context, we may mention that not every Assistant Collector of the First or Second class is made in-charge of one or more sub divisions of a district as is referred in sub-section 2 of Section 13 of the Code, 2006. Where such an officer i.e. an Assistant Collector of the First Class is made in-charge of one or more sub divisions of a district, he is to be called the Assistant Collector of First Class in-charge of a sub division or a Sub Divisional Officer.

(25) As per Section 14(2) of the Code, 2006, subject to the provisions of the Code, the Tehsildar and Tehsildar (judicial) shall exercise such powers and discharge such duties as the State Government or the Board or in absence of any direction from the State Government or the Board, the Collector may direct.

(26) Section 17 of the Code, 2006 provides that it shall be lawful for the State Government or the authority competent to appoint, as the case may be, to appoint one and the same person being otherwise competent according to law, for any two or more of the offices provided for in the said Chapter or to confer upon an officer of one denomination all or any of the powers or duties of any other officer or officers within certain local limits or otherwise, as it may deem expedient.

(27) We may also refer to Section 19 (2) of the Act, 1901, according to which, the Revenue Officers appointed under the Code, 2006 shall, subject to the control of the State Government, exercise such other powers and discharge such other duties, as the State Government may, by general or special order, direct.

(28) As per Section 225-D, an Assistant Collector of the First Class not in-charge of a sub-division of a district shall exercise all or any of the powers conferred on an Assistant Collector of the First Class in-charge of a sub-division in such cases or classes of cases as the Collector may from time to time refer to him for disposal.

(29) Thus, the provisions of the Code, 2006 referred hereinabove are almost similar to the provisions contained in the Act, 1901 which have been referred, under which the notifications have been issued meaning thereby similar notifications such as the one which were issued under the Act, 1901 could be issued by the State Government under the aforesaid provisions also.

(30) Similarly, Section 67 of the Code, 2006, which is the provision under which action has been taken against the petitioners, is also *pari materia* to Section 122-B of the Act, 1950.

(31) We have already mentioned that under this section 122-B, it is the Assistant collector who was empowered to take action by the said provision itself. Now the designation Assistant Collector was specifically mentioned in Section 15 as distinct from the designation/ post of Tehsildar which was mentioned in Section 17 of the Act, 1901 but looking into the necessity to empower Tehsildars and confer

upon them the powers of Assistant Collectors referred in Section 15, the above mentioned notifications were issued under the Act, 1901 by virtue of which the Tehsildar exercised the powers of Assistant Collector under Section 122-B of the Act, 1950 and other provisions.

(32) We do not find any inconsistency in the notifications referred above which were issued under the Act, 1901 viz-a-vis the provisions of the Code, 2006 or any notification issued thereunder including the impugned notification dated 29.12.2020.

(33) This Court while passing the interim order dated 10.06.2020 in Writ-C No. 2111 of 2020 which in fact triggered issuance of the impugned notification has not noticed the provisions contained in Section 230 of the Code, 2006 nor has it mentioned the basis for its observation that there would be inconsistency between the notifications dated 25.07.1960 and 07.01.1964 viz-a-viz the Code, 2006. No reasons have been given. No final orders have been passed in the said proceedings. There is nothing on record to show that the said notifications were/are in any manner inconsistent with the provisions of the Code, 2006. Neither the Counsel for the petitioners nor the Counsel for the State could point out any such inconsistency. Therefore, as a logical corollary, notifications dated 06.06.1953, 25.07.1960, 07.01.1964 shall be deemed to have been done or issued under the corresponding provisions of the Code, 2006 which are Sections 13 (1), 14, 17 and 19 of the Code, 2006 and they continue to be in force accordingly under the proviso to sub-section 2 of Section 230 of the Code, 2006, , especially as the notification dated 29.12.2020 does not

superceed the earlier notifications under the Act, 1901.

(34) We may in this very context point out that prior to implementation of the Code, 2006, it is the Sub Divisional Officer which was empowered to act under Section 67 of the Code, 2006. However, by the UP Act No.4 of 2016, the word Sub Divisional Officer were substituted by the words Assistant Collector. This is relevant when it is read conjointly with section 13(1), 17 and 19 of the Code, 2006.

(35) We may in this very context refer to Section 24 of the U.P. General Clauses Act, 1904 (hereinafter referred to as "Act, 1904"), which reads as under:-

"Section 24. Continuation of appointments, notifications, orders, etc., issued under enactments repealed and re-enacted. –

Where any enactment is repealed and re-enacted by an [Uttar Pradesh] Act, with or without modification, then, unless it is otherwise expressly provided, any appointment, [or statutory instrument or form], made or issued under the repealed enactment, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so reenacted, unless and until it is superseded by any appointment, [or statutory instrument or form] made or issued under the provisions so re-enacted."

(36) As per the above-quoted provision where any enactment is repealed and re-enacted by an [Uttar Pradesh] Act, with or without modification, then, unless it

is otherwise expressly provided, any appointment, [or statutory instrument or form] made or issued under the repealed enactment, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so reenacted, unless and until it is superseded by any appointment, [or statutory instrument or form] made or issued under the provisions so re-enacted. The term statutory instrument has been defined in Section 4 (42B) of the Act, 1904 to mean any notification, order or scheme, rule or bye-law issued under any enactment and having the force of law. It is beyond cavil that the notifications issued under the Act, 1901 and the Act, 1950 as referred hereinabove are statutory instruments as referred in Section 24 of the Act, 1904, therefore, by virtue of the said provision of the Act, 1904 also, which is on similar lines as the repeal and saving provision contained in Section 230 of the Code, 2006, the aforesaid notifications are not only saved but continue to apply to the Code, 2006 and, in this context, to the proceedings under Section 67 of the Code, 2006 as such there was no necessity to issue the notification dated 29.12.2020, which in any case does not add anything to the earlier notifications nor susbstract from it. It appears to have been issued merely because of the tentative observations in the order dated 10.06.2020 referred earlier instead of informing the Court about the correct factual and legal provision.

(37) In view of the above discussion, the irresistible conclusion is that the impugned notification dated 29.12.2020 appears to have been issued under some misconception of facts and law and possibly without proper scrutiny as to the applicability of the notifications issued

under the Act, 1901 and Act, 1950 to the proceedings under the Code, 2006 in the light of Section 230 contained therein, apart from the fact that it could not have been implemented with retrospective effect.

(38) Another anomaly which we find in the impugned notification dated 29.12.2020 is that it appears to have been issued in exercise of powers under Section 219 of the Code, 2006 whereas the said provision empowers the State Government to delegate the powers vested in it under the Code, 2006 to the Board or any other officer or authority subordinate to it. The power which is exercised under Section 67 of the Code, 2006 is not one which is exercised by the State Government, therefore, for this reason also the alleged delegation by the impugned notification is not sustainable.

(39) In any case, we have already held, for the reasons discussed hereinabove, that the notification apart from being bad in law, is also otiose.

(40) In view of these anomalies and illegalities, we quash the notification dated 29.12.2020, however, with liberty to the State Government to issue a clarificatory notification referable to the provisions discussed hereinabove or such other provisions as may be attracted, that, the Tehsildar shall continue to exercise the powers vested in him by the notifications dated 06.06.1953, 25.07.1960, 07.01.1964 under Section 15 read with 221 and 224 of the Act, 1901 for the purposes of Section 67 of the Code, 2006 as he has been doing, if it so chooses.

(41) In the meantime, the Tehsildars referred above shall continue to exercise the powers of Assistant Collector

for purposes of proceedings under Section 67 of the Code, 2006 under the notifications referred above read in terms of the proviso to Section 230(2) of the Code, 2006.

(42) Consequently, the order of the Board of Revenue insofar as it relies the notification dated 29.12.2020 cannot be sustained. It is, however, sustained on the ground of non-maintainability of the revision itself under Section 210 of the Code, 2006 as already mentioned.

(43) Now, so far as the merits of the challenge to the orders passed under Section 67 of the Code, 2006 and the appellate order is concerned, in view of the admitted position in the supplementary counter affidavit filed today on behalf of the State that the procedure prescribed in Rule 67 of the Rules, 2016 read with Section 67 of the Code, 2006 was not followed, as, this aspect has not been appreciated by the Appellate Court, even though the revision of the petitioner was not maintainable, apparently so, we, quash the order dated 29.02.2020 passed under Section 67 of the Code, 2006 as also the appellate order dated 05.10.2020 and remand the proceedings back to the Tehsildar for a consideration afresh as per law. The petitioner shall now put in appearance before the Tehsildar without waiting for a notice, within the next one month.

(44) As already noticed, proceedings for exchange of land alleged to have been encroached by the petitioner with another land under Section 101 of the Code, 2006 are said to be pending before the Divisional Commissioner, Lucknow. It is informed that earlier the

Additional District Magistrate, Lucknow had made a favourable recommendation for exchange/purchase as offered by the petitioner based on N.O.C. granted by the Municipal Corporation, Lucknow on 08.02.2024, however, subsequently it appears that the Municipal Corporation, Lucknow has informed the Additional District Magistrate, Lucknow that the matter had not been taken to the House of the Municipal Corporation as was requirements which is proposed to be done now, therefore, the matter is still pending. If the House grants permission or N.O.C., as the case may be, the same shall be forwarded to the Divisional Commissioner, Lucknow for a decision under Section 101 of the Code, 2006. Even though, the Municipal Corporation, Lucknow is not an opposite party herein but as we are not adjudicating any of its rights in these proceedings, it is ordered/directed that till exchange proceedings under Section 101 of the Code, 2006 read with Government Orders and notifications as may be applicable, are pending, further proceedings under Section 67 of the Code, 2006 shall not be held, however, as soon as a final decision is taken in the exchange proceeding, if it is against the petitioner, then, the Tehsildar shall proceed to consider and dispose of the said proceedings as per law, as already observed. If the exchange is allowed, then, this fact shall be brought to the notice of the Tehsildar. The House of the Municipal Corporation, Lucknow is directed to take an early decision in the matter say within three months especially in view of the statement of the petitioners' Counsel that it has applied for being upgraded as a University and a letter of intent in this regard has been issued by the State Government. Shri Manish Mishra, Additional Chief Standing Counsel shall

communicate our order to the Municipal Commissioner, Lucknow for compliance.

(45) We appreciate the assistance provided by learned Standing Counsel for the State as also the officers of the State Government, namely-Shri Raj Kumar Dwivedi, O.S.D., Board of Revenue and Shri Ghanshyam Chaturvedi, Under Secretary, Government of U.P. who are present. but we wish that this effort would have been made prior to issuance of the impugned notification dated 29.12.2020 so as to avoid the situation which has arisen in this case.

(46) The writ petition is **allowed but only in the aforesaid terms, in part.**

(47) Copy of this judgment shall be sent to the Chairman, Board of Revenue, Government of Uttar Pradesh, Additional Chief Secretary/Principal Secretary, Revenue, Government of U.P. as also the Legal Remembrancer, Government of U.P.

(2025) 4 ILRA 585
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 01.04.2025

BEFORE

THE HON'BLE SAURABH LAVANIA, J.

Writ C No. 2884 of 2025

Smt. Susheela Devi @ Susheela
...Petitioner
Versus
State of U.P. & Ors. **...Respondents**

Counsel for the Petitioner:
 Santosh Kumar Tripathi, Paritosh Shukla

Counsel for the Respondents:

C.S.C., Pankaj Gupta

Non-speaking order-Order should be speaking and reasoned- entire facts and relevant provisions were not been taken note of-impugned orders are unsustainable in the eyes of law-impugned orders set aside.

W.P. disposed. (E-9)

Cases Cited:

1. CCT Vs Shukla & Bros., (2010) 4 SCC 785
2. St. Project Director, U.P. Education for All Project Board & ors. Vs Saroj Maurya & ors., Civil Appeal No.3465 of 2023
3. Ircon International Ltd. Thru. General Manager Vs Deepak Yadav, 2019 SCC OnLine All 4239

(Delivered by Hon'ble Saurabh Lavania, J.)

1. Heard Sri Santosh Kumar learned Counsel for the petitioner, Sri Hemant Kumar Pandey, learned State Counsel, who appeared on behalf of opposite party nos. 1 to 5 and Sri Pankaj Gupta, appearing for opposite party no.6/Gaon Sabha.

2. The present petition has been filed seeking following main reliefs:-

"i. Issue a Writ, order or direction in the nature of 'Certiorari' thereby quashing and setting aside impugned order dated 31/01/2025 passed in Case No. 1226/2024, 'Smt. Susheela Devi Vs President, LMC' by Learned Additional Commissioner (Administration-I), Devipatan Division and impugned order dated 23/02/2024 passed by Learned Sub-Divisional Magistrate, Bhinga, Shrawasti

(Annexure-1 and 2), in the interest of justice;

ii. Issue a Writ, order or direction in the nature of 'Mandamus' thereby directing the Respondent authorities to not act upon impugned order dated 31/01/2025 and 23/02/2024 and not disturb the peaceful possession of the Petitioner, during pendency of this Writ Petition, in the interest of justice;"

3. It would be apt to indicate that order dated 23.02.2024 passed by opposite party no.4/Sub-Divisional Magistrate, Bhinga, Shrawasti, is a non speaking order, which reads as under:-

"यथाप्रस्तावित स्वीकृत"

4. At this stage, it would also be relevant to indicate that order should be speaking and reasoned, which are required in view of the settled principles of law (*Vide CCT Vs. Shukla & Bros., (2010) 4 SCC 785 considered in Civil Appeal No.3465 of 2023 (State Project Director, U.P. Education for All Project Board & others Vs. Saroj Maurya & others, decided on 21.08.2024 and Ircon International Limited Thru. General Manager Vs. Deepak Yadav, 2019 SCC OnLine All 4239).*

5. In terms of impugned order dated 23.02.2024 passed by opposite party no.4/Sub-Divisional Magistrate, Bhinga, Shrawasti, the entry favourable to one Rampheran s/o Cheddi, who had expired about 15 years back, in the revenue record related to Gata No.128/0.3200 Hectare, over which Rampheran was in possession in terms of 'Patta' executed in his favour, has been expunged.

6. Vide order dated 31.01.2025 passed by opposite party no.2/Additional Commissioner (Administration-I), Devipatan Division, Shrawasti (in short 'Revisional Authority') in revision preferred by the petitioner in terms of Section 210 of U.P. Revenue Code, 2006 (in short 'Code of 2006') being Revision No. 1266/2024, Computerized Case No. C202408000001226 (Smt. Susheela Devi Versus President, Land Management Committee and others), the Revisional Authority, dismissed the revision. The order dated 31.01.2025 reads as under:-

"31.01.2025- पत्रावली आदेशार्थ प्रस्तुत हुई दिनांक 02.01.2025 को उभयपक्ष के विद्वान अधिवक्तागण न्यायालय पर उपस्थित हुए, जिन्हें निगरानी की ग्राह्यता के बिन्दु पर सुना गया तथा निगरानी पत्रावली का अवलोकन किया गया।

उपरोक्त निगरानी उपजिलाधिकारी भिनगा द्वारा पारित आदेश दिनांक 23.02.2024 के विरुद्ध दिनांक 09.08.2024 को योजित की गयी है। निगरानीकर्त्री के विद्वान अधिवक्ता का तर्क है कि प्रश्नगत आराजी गाटा संख्या-128/0.320 हे० स्थित ग्राम शाहपुर बरगदवा का सीलिंग कृषि आवंटन करीब 60 वर्ष पूर्व रामफेरन पुत्र छेदी के पक्ष में हुआ था। सीलिंग कृषि आवंटन पर कोई विवाद नहीं है। रामफेरन अपने जीवनकाल में उक्त भूमि के मालिक हुए। कालान्तर में रामफेरन ने उक्त भूमि का दिनांक 16.11.2007 को निगरानीकर्त्री के पक्ष में पंजीकृत वसीयतनामा निष्पादित कर दिया गया, जिसके सम्बन्ध में नामान्तरण का वाद तहसीलदार भिनगा के न्यायालय में विचाराधीन है। दिनांक 26.11.2022 को ग्रामप्रधान शाहपुर बरगदवा द्वारा जिलाधिकारी श्रावस्ती के समक्ष इस आशय का प्रार्थनापत्र दिया कि रामफेरन लावलद मरे है इनका कोई वारिस नहीं है इसलिए सीलिंग आवंटन निरस्त कर दिया जाये तथा भूमि गाँवसभा में घोषित कर दी जाये। ग्रामप्रधान के उक्त प्रार्थनापत्र पर हल्का लेखपाल /राजस्व निरीक्षक द्वारा दिनांक 12.02.2024 को आख्या प्रस्तुत की गयी तथा बगैर किसी नोटिस के, उपजिलाधिकारी भिनगा द्वारा दिनांक 23.02.2024 को यथा प्रस्तावित स्वीकृत लिखकर सीलिंग कृषि आवंटन निरस्त कर दिया गया है, जो उचित नहीं है। उपजिलाधिकारी भिनगा को सीलिंग आवंटन निरस्त करने का

अधिकार प्राप्त नहीं है। अंत में निगरानीकर्त्री द्वारा निगरानी को ग्राह्य कर प्रश्नगत आदेश का क्रियान्वयन स्थगित किये जाने पर बल दिया गया।

दूसरी ओर मण्डलीय शासकीय अधिवक्ता (राजस्व) द्वारा अपने लिखित आपत्ति में यह कहा गया कि प्रस्तुत निगरानी त्रुटिपूर्ण व विधिक बाधा से ग्रसित है क्योंकि अवर न्यायालय ने विवादित आराजी श्रेणी-4क उ०प्र० अधिकतम जोत सीमा आरोपण अधिनियम के अन्तर्गत दर्ज करके अभिलेख में अंकना की गयी। इस प्रकार उ०प्र० राजस्व संहिता 2006 का प्राविधान सीलिंग अधिनियम के ऊपर प्रभावी नहीं होगा। प्रस्तुत निगरानी पोषणीय नहीं है, इसलिए निरस्त की जाये। उभयपक्ष के विद्वान अधिवक्तागण के तर्कों को सुनने तथा निगरानी पत्रावली पर उपलब्ध अभिलेखों के अवलोकन से स्पष्ट है कि उपरोक्त निगरानी लेखपाल / राजस्व निरीक्षक द्वारा प्रस्तुत की गयी आख्या पर पारित आदेश दिनांक 23.02.2024 के विरुद्ध है, जिसके विरुद्ध उ०प्र० राजस्व संहिता 2006 के अन्तर्गत निगरानी पोषणीय नहीं है। पक्षकार यदि चाहे तो नियत प्राधिकारी के यहाँ वाद प्रस्तुत कर अनुतोष प्राप्त कर सकते हैं। पत्रावली बाद आवश्यक कार्यवाही दाखिल दफ्तर की जाये।"

7. Upon due consideration the material available on record as also the submissions advanced by learned Counsel for the parties, this Court is of the view that interference in the matter is required. It is for the following facts/reasons:-

(i) A 'Patta' with regard to Gata No.128/0.3200 Hectare, situated at Village Shahpur Bargadva, Post and Tehsil Bhinga, District-Shrawasti, was executed in favour of one Rampheran s/o Cheddi;

(ii) The land in issue i.e. Gata No.128/0.3200 Hectare, detailed above, was ceiling land and covered under the U.P. Imposition of Ceiling on Land Holdings Act 1960 (in short Act of 1 of 1961;

(iii) During his lifetime late Rampheran s/o Cheddi executed a registered 'Will' dated 16.11.2007 before

the Sub-Registrar, Bhinga, District-Shrawasti, in favour of the petitioner;

(iv) Section 131 of U.P. Z.A. & L.R. Act, 1950 (in short 'Act of 1950') was amended by U.P. Act No. 14 of 1987 w.e.f. 14.04.1987. By this amendment Sub-section 'd' was inserted in Section 131 of the Act of 1950. The same reads as under:-

"131. Bhumidhar with non-transferable rights.

Every person belonging to any of the following classes shall be called a bhumidhar with non-transferable rights and shall have all the rights and be subject to all the liabilities conferred or imposed upon such bhumidhars by or under this Act, namely-

(a) every person admitted as a sirdar of any land under Section 195 before the date of commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1977 or as a bhumidhar with non-transferable rights under the said section on or after the said date;

(b) every person who in any other manner acquires on or after the said date, the rights of such bhumidhar under or in accordance with the provisions of this Act;

(c) every person who is, or has been allotted any land under the provision of the Uttar Pradesh Bhoodan Yagna Act, 1952.

(d) [with effect from July 1, 1981 every person with whom surplus land is or has been settled under Section 26-A or sub-section (3) of Section 27 of the Uttar Pradesh Imposition of Ceiling on Land

Holdings Act, 1960.] [Inserted by U.P. Act No. 24 of 1986.]"

(v) After the aforesaid, Act of 1950 was amended by Act No.14 of 1987, effective from 15th April, 1987 and by this Section 131-A was inserted. Section 131-A, reads as under :-

131-A. Bhumidhari rights in Gaon Sabha or State Government land in certain circumstances.- Subject to the provisions of Section 132 and Section 133-A, every person in cultivatory possession of any land, vested in a Gaon Sabha under Section 117 or belonging to the State Government, in the portion of District Mirzapur South of Kaimur Range, other than the land notified under Section 20 of the Indian Forest Act, 1927, before the 30th day of June, 1978, shall be deemed to have become a Bhumidhar with non-transferable rights of such land :

Provided that where the land, in cultivatory possession of a person, together with any other land held by him in Uttar Pradesh exceeds the ceiling area determined under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, the rights of a Bhumidhar with non-transferable rights shall accrue in favour of such person in respect of so much area of the first-mentioned land, as together with such other land held by him, does not exceed the ceiling area applicable to him and the said area shall be demarcated in the prescribed manner in accordance with the principles laid down in the aforesaid Act.

(vi) After the aforesaid, Section 131-B was inserted by U.P. Act No.19 of 1995, w.e.f. 14.01.1995. Section 131-B reads as under :-

"131-B. Bhumidhar with non-transferable rights to become bhumidhar with transferable rights after ten years. –

(1) Every person who was a bhumidhar with non-transferable rights immediately before the commencement of the Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1995 and had been such bhumidhar for a period of ten years or more, shall become a bhumidhar with transferable rights on such commencement.

(2) Every person who is bhumidhar with non-transferable rights on the commencement referred to in sub-section (1) or becomes a bhumidhar with non-transferable rights after such commencement, shall become bhumidhar with transferable rights on the expiry of period of ten years from his becoming a bhumidhar with non-transferable rights.

(3) Notwithstanding anything contained in any other provision of this Act, if a person, after becoming a bhumidhar with transferable rights under sub-section (1) or sub-section (2). Transfers the land by way of sale, he shall become ineligible for a lease of any land vested in Gaon Sabha or the State Government or of surplus land as defined in the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960."

(vii) At this stage, it would be relevant to take note of **Section 132 of the Act, 1950**, which indicates that when 'Bhumidhari Rights' shall not accrue. Section 132 of the Act, 1950 reads as under :-

"132. Land in which [bhumidhari] rights shall not accrue.-

Notwithstanding anything contained in Section 131, but without prejudice to the provisions of Section 19, [bhumidhari] rights shall not accrue in –

(a) pasture lands or lands covered by water and used for the purpose of growing singhara or other produce or land in the bed of a river and used for casual or occasional cultivation;

(b) such tracts of shifting or unstable cultivation as the State Government may specify by notification in the Gazette; and

(c) lands declared by the State Government by notification in the Official Gazette, to be intended or set apart for taungya plantation or grove lands of a [Gaon Sabha] or a Local Authority or land acquired or held for a public purpose and in particular and without prejudice to the generality of this clause-

(i)lands set apart for military encamping grounds;

(ii)lands included within railway or canal boundaries;

(iii)lands situate within the limits of any cantonment;

(iv)lands included in sullage farms or trenching grounds belonging as such to a local authority;

(v) lands acquired by a town improvement trust in accordance with a scheme sanctioned under Section 42 of the U.P. Town Improvement Act, 1919 (U.P. Act VII of 1919) or by a municipality for a purpose mentioned in Clause (a) or Clause

(c) of Section 8 of the U.P. Municipalities Act, 1916 (U.P. Act VII of 1916); and

(vi) lands set apart for public purposes under the U.P. Consolidation of Holdings Act, 1953 (U.P. Act V of 1954).]"

(viii) It is also relevant to mention here that there is a Government Order on the subject matter of the issue, i.e. G.O. No.258/16(1)/73-Rajasva-1, dated 9th May, 1984.

*(ix) It would also not be out of place to mention here that according to the judgment of this Court dated 06.12.2017, passed in Civil Misc. Writ Petition No.54990 of 2007 (**Matlub and Ors. Vs. State of U.P. and Ors.**), 2018 (7) ADJ 240 : 2018 139 RD 491, the person to whom the 'Patta' was provided in relation to the surplus land of ceiling would be entitled to the benefits flowing from Section 131. The relevant paragraphs of the judgment are extracted herein under :-*

"1. The land of Khasra No. 107/2, area 0.165 hectares situate in village Haroda, District "- Saharanpur, was allotted to the father of the petitioner Late Bundu under section 27 of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as 'the Act'), after the same was declared as a surplus holding of another tenure-holder. The petitioners on 24.4.2006 sold the property in question to the respondent No. 5 and 6 by means of a registered sale-deed. However, the respondent No. 5 and 6 were put to notice by the Additional Collector Saharanpur that the sale-deed by which they had purchased the Plot No. 107/2 was void and, therefore, no title accrued to them. In response to the notice, the respondents replied but by the order dated

29.2.2007, the sale was cancelled as it was found violative of section 131 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951 (hereinafter referred to as 'the U.P.Z.A. & L.R. Act'). As per the sections 166 and 167 of the U.P.Z.A. & L.R. Act, it was held that the land had vested in the State Government. The petitioners who were sellers were thereafter being pestered by the purchasers as they were asking for the return of the sale consideration. This necessitated the petitioners to file a Revision, which was decided *ex parte* on 5.7.2007. Thereafter, the recall application was also dismissed on 10.9.2007. Aggrieved thereof, the petitioners have filed the instant writ petition.

2. The contention of the petitioners is that after the petitioners' father was given the patta of the surplus land on 14.7.1976 then on 1.7.1981, the predecessor in interest of the petitioners i.e. their father became a *bhumidhar* with nontransferable rights. Section 131 of the U.P.Z.A. & L.R. Act, 1950 was read out by the petitioner. It is, therefore, being reproduced here as under:-

"Section 131. *Bhumidhar* with nontransferable rights.- Every person belonging to any of the following classes shall be called a *bhumidhar* with non-transferable rights and shall have all the rights and be subject to all the liabilities conferred or imposed upon such *bhumidhars* by or under this Act, namely,-

(a) every person admitted as a *sirdar* of any land under section 195 before the date of commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1977 or as a *bhumidhar* with non-

transferable rights under the said section on or after the said date;

(b) every person who in any other manner acquires on or after the said date, the rights of such *bhumidhar* under or in accordance with the provisions of this Act;

(c) every person who is, or has been allotted any land under the provisions of the Uttar Pradesh Bhoodan Yagna Act, 1952.

(d) with effect from July 1, 1981 every person with whom surplus land is or has been settled under section 26-A or sub-section (3) of section 27 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960."

3. Thereafter with the coming into force of the Uttar Pradesh Act No. 19 of 1995 which came into effect on 14.1.1995, the Counsel for the petitioner submitted, the petitioners became *bhumidhars* with transferable rights. As the learned Counsel for the petitioners read out section 131-B of the U.P.Z.A. & L.R. Act the same is being reproduced here as under:-

"131-B *Bhumidhar* with nontransferable rights to become *bhumidhar* with transferable rights after ten years.- (1) Every person who was a *bhumidhar* with non-transferable rights immediately before the commencement of the Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1995 and had been such *bhumidhar* for a period of ten years or more, shall become a *bhumidhar* with transferable rights on such commencement.

(2) Every person who is a *bhumidhar* with non-transferable rights on

*the commencement referred to in sub-section (1) or becomes a bhumidhar with non-transferable rights after such commencement, shall become bhumidhar with transferable rights on the expiry of period of ten years from his becoming a bhumidhar with non-transferable rights. (3) Notwithstanding anything contained in any other provision of this Act, if a person, after becoming a bhumidhar with transferable rights under sub-section (1) or sub-section (2). Transfers the land by way of sale, he shall become ineligible for a lease of any land vested in Gaon Sabha or the State Government or of surplus land as defined in the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960."*4. The Counsel for the petitioner, thereafter submitted that since they were bhumidhar with transferable rights w.e.f. 14.1.1995, the sale which took place on 24.4.2006 was a valid sale-deed and no fault could be found with it. This ground was raised before both the Courts below. Specific argument is also to be found in the body of the judgements impugned.

5. However, simply because the petitioners were entered as bhumidhars with non-transferable rights in the revenue record, the two Courts below had held that the sale-deed could not have been executed.

6. Learned Standing Counsel could not dispute the factual and the legal aspect of the matter and submitted that the petitioners, in fact, on the date when the sale-deed was executed were bhumidhars with transferable rights.

7. Having heard the learned Counsel for the parties, I am of the view that because of the provisions of sections 131 and 131(B) of the U.P.Z.A. & L.R. Act, the petitioners had initially become

bhumidhars with non-transferable rights and subsequently had acquired bhumidhari with transferable rights and they could definitely have sold off their land. Revenue entries do not matter it mattered little that the petitioners were entered as Bhumidhars with non transferable rights.

8. Therefore, the impugned orders fated 10.9.2007 and 5.7.2009 passed by Additional Commissioner Saharanpur and the order dated 28.2.2007 passed by Additional Collector (Administration) Saharanpur cannot be sustained and are, thus, quashed. The writ petition is allowed."

(x) From a conjoint reading of aforesaid and impugned order(s) dated 23.02.2024 and 31.01.2025, this Court finds that the entire facts and relevant provisions were not been taken note of by the opposite party no.2/Sub Divisional Magistrate concerned as also by the Revisional Authority, as such the same are unsustainable in the eyes of law.

8. Accordingly, the order dated 31.01.2025, passed by Additional Commissioner (Administration-I), Devipatan Division, Gonda and order dated 23.02.2024, passed by learned Sub Divisional Magistrate, Bhinga, Shrawasti are hereby set aside/quashed.

9. The matter is remanded back to the opposite party no.2/Sub Divisional Magistrate concerned to pass an appropriate order afresh, by a reasoned and speaking order, after taking note of the aforesaid facts and relevant statutory provisions. The petitioner would remain in possession of the property/land in issue, which would be subject to the order passed

was found that the land was allotted in violation of statutory provisions-The petitioner was found to have misrepresented his residential status and landless condition.(Para 1 to 10)

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 02.04.2025

The writ petition is dismissed. (E-6)

List of Cases cited:

BEFORE

THE HON'BLE SAURABH LAVANIA, J.

Writ - C No. 3033 of 2025

Ramesh Kumar Singh ...Petitioner
Versus
Commissioner, Lucknow Division,
Lucknow & Ors. ...Respondents

1. A.M. Allison Vs B.L. Sen (1957) AIR SC 227

2. Grahi Shanker Singh Vs VIII ADJ & ors.(1991)
RD 10

3. Bux Singh Vs Joint Dir. of Consolidation, U.P.,
Lko & ors.(1966) AIR 156 All

4. Om Prakash Vs U.P. SESC Allenganj, Alld & ors.(1990) UP LBEC 983

5. Pulukuri Kottaya Vs Emperor
MANU/PR/0049/1946: AIR 1947 PC 67

6. Ram Nihor Vs Addl Commr.(Admin.) ,
Vindhyachal Div. Writ-C No 24211 of 2006

7. Nohar Lal Verma Vs Distt Co-op. Central Bank Ltd. Jaqdalpur (2008) 14 SCC 445

8. Gadde Venkateswara Rao Vs Govt of A.P. & ors.(1966) AIR SC- 828 Champalal Binani Vs CIT, W.B. (1970) AIR SC 645

9. Maharaja Chintamani Saran Nath Shahdeo Vs
St. of Bih. & ors.(1999) AIR SC 3609

10. Malikarjuna Mudhagal Nagappa & ors.Vs St.
of Kar. & Ors(2000) AIR SC 2976

11 Chandra Singh Vs St. of Raj. (2003) AIR SC 2889

12 S.D.S. Shipping Pvt. Ltd. Vs Jay Container
Ser-vices Co. Pvt. Ltd. & Ors(2003)4 Supreme
44

13. St. of Uttaranchal & anr.Vs Ajit Singh Bhola & Anr (2004) 6 SCC 800 St. of Ori. & Anr VS Mamata Mohanty(2011) 3 SCC 437

14. Bharat Singh Vs Addl Comr. & ors.(2017) 5
ADJ 466

Counsel for the Petitioner:

Mohammad Ehtesham Khan, Shashi Kant Mishra

Counsel for the Respondents:

C.S.C., Dilip Kumar Pandey, Hari Anuj
Bahadur Sinha

Civil Law-Constitution of India,1950-Article 226-U.P. Revenue Code,2006-Section 128-UPZA & LR Act,1950-Section 198(4)-The petitioner challenged the cancellation of a land lease(patta) originally granted to him in 1993 for 2 bighas of land-The lease had been cancelled initially by the ADM in 1998 u/s 198(4) of the Act,1950 on the grounds that the petitioner was not landless resident of village and was using the land for non-agricultural purpose(petrol pump)-Despite this, he continued to occupy the land-In 2023, fresh proceedings were initiated u/s 128 of the Code,2006 by private respondents-After giving opportunity to be heard, the District Magistrate again cancelled the lease on 30.12.2024-The revisional authority affirmed this decision-The court upheld the concurrent findings of the District Magistrate and Commissioner-it

15. Jodhey Vs St. (1952) AIR All 788

16. Dukh Haran Verma Vs St.of U.P. (2004) 2 AWC 1147

17. Central Council for Research in Ayurvedic Sciences Vs Bikartan Das (2023) SCC Online SC 99

18. S.P. Chengalvaraya Naidu Vs Jagannath & ors.(1994) 1 SCC 1

19. Ram Chandra Singh Vs Savitri Devi (2003) 8 SCC 319

20. Jai Narain Parasrampuriah Vs Pushpa Devi Saraf (2006) 7 SCC 756 Madhukar Sadbha Shivarkar Vs St. of Mah.(2015) 6 SCC 557

21. Jai Vidyut Nigam Vs Raj Kumar Rajinder Singh (2019) 14 SCC 449

(Delivered by Hon'ble Saurabh Lavania, J.)

1. Heard Sri M.E.Khan, learned Counsel for the petitioner, Sri Hari Anuj Bahadur Sinha Advocate, who filed the application for dismissal of writ petition supported by an affidavit annexing therewith relevant documents (in short 'affidavit in response'), which is taken on record, as also Sri Hemant Kumar Pandey, learned State Counsel.

2. It would be apt to indicate that the time to file the affidavit in reply to the 'affidavit in response' has not been sought by the learned Counsel for the petitioner.

3. The present petition has been filed for the following main relief(s):-

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned judgment and order dated 11.03.2025 passed by the opposite party No. 1 in Case No. 152 of

2025 Computerized Case No. C202510000000152 In Re: Ramesh Singh Versus Dinesh Yadav and others contained as Annexure No. 1 to the writ petition.

(ii) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 30.12.2024 passed by the opposite party No. 2 in Case No. 3999/2023 In Re : Dinesh Yadav and others Versus Ramesh Singh contained as Annexure No. 8 to this writ petition.

(iii) Issue a writ, order or direction in the nature of mandamus commanding the state authorities thereby restraining them from dispossessing the petitioner from the land in dispute."

4. The present petitioner has approached this Court impeaching the order dated 30.12.2024 passed by opposite party no.2/Collector/District Magistrate, Unnao, in Case No. 3999 of 2023 (Dinesh Yadav and Others Versus Ramesh Singh), instituted under Section 128 of U.P. Revenue Code 2006 (in short 'Code of 2006'), as also the order dated 11.03.2025 passed by the opposite party no.1/Commissioner, Lucknow Division, Lucknow (in short 'Revisional Authority'), in Case No. 152/2025, Computerized Case No.C202510000000152, instituted under Section 210 of the Code of 2006, whereby the opposite party no.1 affirmed the order of opposite party no.2 dated 30.12.2024.

5. The brief facts of the case are as under:-

(i) The land in issue i.e. Gata No. 2669 area 2 Bigha situated at Village Methi Tikur, Pargana and Tehsil Safipur, District-

Unnao, was provided to the petitioner by way of 'Patta' approved on 26.11.1993.

(ii) The proceedings were initiated after the aforesaid against the petitioner in terms of Section 198(4) of U.P.Z.A. & L.R. Act, 1950 (in short 'Act of 1950'), registered as Case No. 437/174 (State Versus Ramesh Singh).

(iii) The proceedings initiated under Section 198(4) of the Act of 1950, were concluded by Additional District Magistrate (Finance and Revenue) Unnao, vide order dated 16.01.1998. The order as available on record, reads as under:-

'तहसीलदार सफीपुर की आख्या के आधार पर वाद अन्तर्गत धारा 198 (4) ज०वि० अधिनियम दिनांक 16.05.1994 को कलेक्टर के न्यायालय में प्रस्तुत हुआ। वाद दर्ज रजिस्टर होकर इस न्यायालय को निस्तारण हेतु प्राप्त हुआ। रिपोर्ट में कहा गया है कि भूखण्ड संख्या 2669 रकबा 2 बीघा का पट्टा भू०प्र०सं० द्वारा रमेश सिंह पुत्र केशनपाल सिंह के नाम किया गया था। यह जाति के ठाकुर है यह पेट्रोल पम्प चकलवंशी के लड़के है और ग्राम में अन्य व्यक्ति जिनकी संलग्न सूची 184 है आवंटन से छूट गये है। यह समस्त व्यक्ति भूमिहीन खेतिहर मजदूर है परन्तु आवंटि खेतिहर मजदूर नहीं है। यह भूमि आवंटन की तारतम्य की श्रेणी में नहीं आता है। उक्त कारणों से विवादित भूखण्ड का किया गया पट्टा निरस्त करने की संस्तुति की है।

विपक्षी को नोटिस जारी की गई। विपक्षी ने आपत्ति दिनांक 14.05.96 प्रस्तुत कर कहा है कि पट्टा निरस्तीकरण के सम्बन्ध में जो आख्या तहसील से आयी है वह कानून व नियम के विपरीत है। विवादित भूखण्ड का पट्टा उसे नियमानुसार किया गया था। यह भी कहा है कि उसका परिवार खतम है तथा वह अलग ही रहता है। प्रार्थी के नाम विवादित भूखण्ड का अमल दरामद भी राजस्व अभिलेखों में हो चुका है। कार्यवाही मियाद बाहर है। दी गई नोटिस वापस लेने की प्रार्थना की गई है।

राज्य सरकार की ओर से विजय प्रताप सिंह लेखपाल का बयान कराया गया। लेखपाल ने अपने बयान में कहा है कि मैं हाजिर अदालत रमेश सिंह को जानता हूँ इनके पास पट्टे वाली भूमि के अलावा अन्य भूमि नहीं है। पेट्रोल पम्प जो मेथीटीकुर में है उसमें रमेश सिंह के चाचा पार्टनर है वह रमेश सिंह का नहीं है। रमेश सिंह वहां उठते बैठते है। रमेश सिंह भूमिहीन खेतिहर मजदूर नहीं है। यह पात्रता श्रेणी में नहीं आते। ग्राम में कई भूमिहीन अनु० जाति के लोग है जिन्हें पट्टा नहीं हुआ। लेखपाल ने अपने बयान में तहसील रिपोर्ट की पुष्टि भी की है जिरह में कहा कि विवादित मुकदमें के कोई कागज मुझे जांच के लिए नहीं दिये गये।

जिस समय पट्टे की कार्यवाही हुई थी उस समय मैं यहां तैनात नहीं था। रमेश सिंह का पट्टा केवल इस कारण मैं गलत बताता हूँ क्योंकि ग्राम में अन्य अनु० जाति के व्यक्ति मौजूद है जिन्हें पट्टा नहीं हुआ। इसके अतिरिक्त अन्य कोई कारण नहीं है। फिर कहा कि वह ठेकेदारी भी करते है परन्तु मैंने रमेश सिंह के ठेकेदारी के सम्बन्ध में कोई कागज अपनी आंखों से नहीं देखा केवल मैंने सुना है।

डी०डब्ल्यू०-1 रमेश कुमार सिंह पुत्र श्री कृष्णपाल सिंह निवासी-मेथीटीकुर परगना व तहसील सफीपुर ने अपने बयान में कहा है कि विवादित भूमि का रकबा काफी बड़ा है इसके जुज भाग में 2 बीघे का पट्टा मेरे पक्ष में नियमानुसार भू०प्र०सं० द्वारा किया गया था जिसका अमल दरामद भी परगनाधिकारी के आदेश दिनांक 21.11.93 के द्वारा राजस्व अभिलेखों में हो चुका है। विवादित भूमि के अलावा मेरे पास अन्य जमीन नहीं है मैं अपने परिवार से अलग रहता हूँ। पट्टे वाली जमीन पर मैं काबिज हूँ मेरा कब्जा गाटा संख्या 2669 के उत्तर और पश्चिम कोने में है। जिरह में कहा है कि मैं जाति का ठाकुर हूँ चकलवंशी में मेरा पेट्रोल पम्प नहीं है। मेरे पिता के नाम भी नहीं है। राजाराम सिंह व राम चरन मिश्र के नाम है। मेरे पिता मिलेट्री में थे अब रिटायर हो गये है उनके नाम भी खेती नहीं है। पट्टे के समय लेखपाल, प्रधान सदस्य तथा अन्य जनता भी थी। चकलवंशी में ऐसा कोई व्यक्ति नहीं है जिसके पास जमीन न हो। मैं ठेकेदारी नहीं करता हूँ विवादित भूमि का कब्जा नवम्बर 93 में लेखपाल कानूनगो व प्रधान ने दिलाया था। सिंचाई किराये के इंजन से करता हूँ।

डी०डब्ल्यू०-2 शिवबरन प्रसाद पुत्र राम शंकर ने अपने बयान में कहा है कि विवादित भूमि को मैंने देखा है इस पर रमेश सिंह का कब्जा है लगभग 4 साल से कब्जा है। रमेश सिंह भूमिहीन खेतिहर मजदूर की श्रेणी में आते है इनके पास पट्टे वाली जमीन के अलावा परिवार में अन्य जमीन नहीं है जिरह में कहा है कि विवादित भूमि का नम्बर 2669 है कुल रकबा नहीं मालूम चौहद्दी जानता हूँ। मेरे पास पिता की कुल जमीन मिलाकर 8 बीघा जमीन है। रमेश सिंह पहले बटाई खेती करते थे। किसकी करते थे यह नहीं मालूम चकलवंशी में इनके पिता का पेट्रोल पम्प नहीं है। पेट्रोल पम्प राम शरण मिश्रा राजाराम सिंह व शिव शंकर सिंह का है। राजाराम सिंह इनके खानदान के नहीं है। चकलवंशी में हरिजन भी रहते है वह भी मजदूरी करते है जमीन सभी हरिजनों के पास है कोई हरिजन भूमिहीन नहीं है। रमेश सिंह के पिता के पास भी जमीन नहीं है। लेखपाल ने कब्जा दिलाया था। पट्टे हुये लगभग 4 साल हो गये है।

डी०डब्ल्यू०-3 राज किशोर पुत्र टेढ़ा ने अपने बयान में कहा है कि गाटा संख्या 2669 का रकबा बहुत बड़ा है इसी के पूरब 2669 नम्बर है इसी 2669 नम्बर में मेरे बाबा को पट्टा

किया गया था। मेरे बाबा व पिता का निधन हो गया तब से मेरा कब्जा है। इसी कारण मेरा आना जाना है गाटा संख्या 2669 के उत्तर पश्चिम कोने पर 2 बीघे रकबे पर रमेश सिंह का कब्जा करीब 4 साल से देख रहा हूँ। इस भूमि के अलावा रमेश सिंह के पास तथा उनके परिवार में नहीं है। रमेश अपने परिवार से अलग रहते हैं। मैं जाति का पासी हूँ जिरह में कहा कि मैंने रमेश सिंह के यहां कभी काम नहीं किया विवादित भूमि की चौहद्दी जानता हूँ रमेश सिंह के पिता के पास कोई जमीन नहीं है। रमेश सिंह के पास भी नहीं है रमेश सिंह पट्टे वाली भूमि पाने से पहले भैसे पाले थे। रमेश सिंह को 3-4 साल से जोतते बोते देख रहा हूँ पेट्रोल पम्प टेबई के ठाकुर राजाराम सिंह का है।

मैंने विपक्षी के विद्वान अधिवक्ता व जिला राजकीय अधिवक्ता राजस्व की बहस को सुना तथा पत्रावली पर उपलब्ध साक्ष्यों/अभिलेखों का भली भांति अवलोकन किया। जिला राजकीय अधिवक्ता द्वारा तर्क किया गया कि आवंटि पात्रता की श्रेणी में नहीं आता है ग्राम में कई भूमिहीन हरिजन हैं जिन्हें पट्टा नहीं किया गया। यह भी कहा कि इनका पेट्रोल पम्प है तथा ठेकेदारी भी करते हैं पट्टा अनियमित है निरस्त किया जाये। विपक्षी ने अपने तर्क में कहा है कि पट्टा उसे नियमानुसार किया गया था। राजस्व अभिलेखों में अमल दरामद भी हो चुका है पट्टे वाली भूमि पर उसका कब्जा बराबर चला आ रहा है। तहसील रिपोर्ट में कहा गया है कि 184 भूमिहीनों की सूची रिपोर्ट के साथ में संलग्न था परन्तु इस तरह की कोई सूची साथ में संलग्न नहीं है। लेखपाल ने स्वयं अपने बयान में कहा है कि रमेश सिंह के पास पट्टे वाली जमीन के अलावा अन्य कोई जमीन नहीं है। यह भी कहा है कि रमेश सिंह का पेट्रोल पम्प नहीं है इनके चाचा इसमें पार्टनर है यह वहां उठते बैठते हैं लेखपाल ने यह भी कहा है कि मैंने सुना है कि यह ठेकेदारी करते हैं तथा ठेकेदारी के सम्बन्ध में कोई कागज मैंने अपनी आंखों से नहीं देखा उभय पक्षों की बहस सुनने तथा पत्रावली पर उपलब्ध साक्ष्यों के अवलोकन से मैं इस निष्कर्ष पर पहुंचा हूँ कि राज्य सरकार की ओर से ऐसा कोई अभिलेखीय साक्ष्य नहीं प्रस्तुत किया गया जिससे तहसील रिपोर्ट की पुष्टि होती है।

भूमिहीनों की सूची जो रिपोर्ट में संलग्न होना कहा गया है कि वह भी प्रस्तुत नहीं की गयी। लेखपाल तथा अन्य गवाहों के बयान से यह स्पष्ट है कि आवंटि के पास पट्टे वाली भूमि के अलावा अन्य कोई भूमि नहीं है। उपर्युक्त विवेचना के आधार पर विपक्षी पर जारी की गयी नोटिस वापस लिये जाने योग्य है।

आदेश

विपक्षी पर जारी की गई नोटिस वापस ली जाती है। विपक्षी को विवादित भूखण्ड का किया गया पट्टा बहाल रखा जाता है। वाद आवश्यक कार्यवाही पत्रावली दाखिल दफ्तर हो।'

(iv) The Act of 1950 was repealed by the Code of 2006, enforced w.e.f. 11.02.2016. Section 128 of the Code of 2006 is similar to Section 198(4) of the Act of 1950. Section 128 of the Code of 2006, being relevant for disposal of present petition, is reproduced hereinunder:-

"Section 128 in U.P. Revenue Code, 2006

128. Cancellation of allotment and lease.

(1) The Collector may, of his own motion and shall on the application of any person aggrieved, inquire in the manner prescribed into any allotment and if he is satisfied that the allotment is in contravention of the provisions of this Code or any of the enactments repealed by this Code or the rules made thereunder, he may cancel the allotment and the lease, if any.

[(1-A) Any application under sub-section (1) may be moved in the case of an allotment of land made before the commencement of this Code, within five years from the date of such commencement and in the case of an allotment of land made on or after the date of such commencement, within five years from the date of such allotment or lease.] [Inserted by U.P. Act No. 4 of 2016, dated 11.3.2016.]

(a) the right, title and interest of the allottee of lessee or any other person claiming through him in such land and in every tree or other improvement existing thereon shall cease, and the same shall revert to the [Gram Panchayat] [Substituted 'Gram Sabha' by U.P. Act No. 4 of 2016, dated 11.3.2016.];

(b) the Collector may direct delivery of possession over such land, tree or improvement forthwith to the [Gram Panchayat] [Substituted 'Gram Sabha' by U.P. Act No. 4 of 2016, dated 11.3.2016.]

after ejectment of every person holding or retaining possession thereof and may for that purpose use or cause to be used such force as may be necessary.

(3) Where in proceedings for cancellation of allotment or lease referred to in clause (b) of sub-section (1) the Collector is satisfied that any land referred to in Section 77 excepting clause (a) or clause (h) or (i) thereof has been allotted to any person as bhumidhar with non-transferable rights, he may instead of cancelling the allotment or lease, direct that the allottee or lessee shall be treated as an asami under clause (b) of Section 125.

(4) Every order made by the Collector under this section shall, subject to the provisions of Section 211, be final.

(5) The provisions of Sections 5 and 49 of the Uttar Pradesh Consolidation of Holding Act, 1953 shall not apply to the proceeding under this section."

(v) After enforcement of Code of 2006, w.e.f. 11.02.2016, the private opposite party nos. 4 and 5 namely Dinesh Yadav s/o Kailash and Rajdeep Singh Chauhan s/o Rudra Deep Singh Chauhan initiated the proceedings, impleading the petitioner as opposite party no.1, under Section 128 of the Code of 2006.

(vi) Impeaching the proceedings aforesaid under Section 128 of the Code of 2006, the petitioner approached this Court by filing Writ-C No.9622 of 2024 (Ramesh Singh Versus Collector/District Magistrate, Unnao and 4 Others). This Court dismissed the petition vide order dated 12.11.2024, which reads as under:-

"Heard learned counsel for the petitioner. Notice on behalf of respondent nos. 1 to 3 has been accepted by the office of the learned Chief Standing Counsel. Sri Dilip Kumar Pandey, learned counsel has

accepted notice on behalf of respondent nos. 4 and 5.

By means of the instant petition, the petitioner prays for the following main relief:-

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned notice dated 10.10.2024 issued by the opposite party No. 1 in Case No. 202310690003999 in Re:- Dinesh Yadav and Another Versus Ramesh Singh and others in proceedings initiated under Section 128 of U.P. Revenue Code, 2006 contained as Annexure No. 1 to the writ petition."

A specific query was put to the learned counsel for the petitioner as to whether the petitioner has responded to the notice dated 10.10.2024 to which he has answered in the negative.

Considering the fact that a notice has been issued in terms of Section 128 of the U.P. Revenue Code, 2006 and the petitioner has adequate opportunity to give a reply to the same which needless to say shall be considered by the Authority concerned, hence, this Court at this stage, the Court is not inclined to entertain the present petition leaving it open for the petitioner to respond to the said notice.

With the aforesaid, the petition is dismissed."

(vii) Thereafter, the petitioner filed the objection dated 24.10.2024. The relevant portion of the objection is extracted hereinunder:-

"धारा 1- यहकि उपरोक्त वाद अन्तर्गत धारा 128 उ०प्र० राजस्व संहिता 2006 के तहत वादीगण दिनेश यादव व राजदीप सिंह चौहान द्वारा मुझ प्रतिवादी सं०-1 के पक्ष में ग्राम पंचायत मेथीटीकुर परगना तहसील सफीपुर जिला उन्नाव द्वारा भूमि न०-2669 में से प्रार्थी के पक्ष में निष्पादित 2 बीघा भूमि का पट्टा के निरस्तीकरण हेतु दिनांक 19.06.2023 को दायर किया गया है जबकि पट्टा नियमानुसार निष्पादित हुआ और प्रतिवादी ग्राम मेथीटीकुर का ही मूल निवासी था।

धारा 2- यह कि वादी के अनुसार प्रश्नगत पट्टा ग्राम सभा मेथीटीकुर द्वारा दिनांक 26.11.1993 को 31 वर्ष पूर्व मुझ प्रतिवादी के पक्ष में निष्पादित हुआ था तथा यह वाद उपरोक्त पट्टा निष्पादित के 30 वर्ष बाद दायर किया गया है तथा विलम्ब का आधार पट्टे की जानकारी की तिथि से दिनांक 16.06.2023 से होना और धारा 5 मियाद अधिनियम का लाभ दिये जाने के साथ में अभिकथन करके उक्त दिनांक 19.06.2023 को दायर किया गया।

धारा 3- यहकि उपरोक्त पट्टे के निरस्तीकरण हेतु यह आधार लिया गया कि प्रार्थी पट्टे के निष्पादन की तिथि पर ग्राम मेथीटीकुर का निवासी नहीं था और तत्समय उसके पास 5 बीघा से अधिक कृषक भूमि थी वादीगण के यह अभिकथन एकदम गलत है और मैं प्रतिवादी तत्समय मेथीटीकुर का निवासी और भूमिहीन रहा मुझ प्रतिवादी के पिता भारतीय सेना में कार्यरत भी रहे।

धारा 4- यहकि उपरोक्त धारा 128 उ०प्र० राजस्व संहिता के अन्तर्गत दिनेश यादव जो दूध व खोये का व्यापारी है तथा राजदीप सिंह जो बिजली विभाग में नौकर है की ओर से दायर किया गया है और यह दोनो लोग मुझ प्रतिवादी के पट्टे से पीड़ित व्यक्ति नहीं है तथा धारा 128 उ०प्र० राजस्व संहिता के तहत किसी भी पट्टे के निरस्तीकरण का वाद वही व्यक्ति दायर कर सकता है जो पीड़ित व्यक्ति हो। चूंकि वादीगण सिर्फ रंजिश की वजह से यह वाद दायर किया है। वादी सं०-2 राजदीप सिंह से कई मुकदमे दीवानी न्यायालय व राजस्व न्यायालय में चल रहे हैं तथा दिनेश यादव उनके गिरोह का आदमी है इसलिए यह दोनो एग्रीव्ड परसन्स नहीं है तथा उनके द्वारा दायर किया गया मुकदमा बाबत निरस्तीकरण पट्टा इसी आधार पर निरस्त होने योग्य है।

धारा 5- यहकि वास्तव में स्वीकृत रूप से प्रश्नगत पट्टा 26.11.1993 का है तथा उ०प्र० राजस्व संहिता के प्राविधान मय धारा 128 दिनांक 11.02.2016 से प्रभावी किये जा चुके थे और वादीगण ने यह वाद दिनांक 19.06.2023 यानि कि सात वर्ष चार माह व 8 दिन पश्चात दायर किया है तथा धारा 128 उ०प्र० राजस्व संहिता की धारा 128(1)-A के अनुसार तथा नियम 126 के अनुसार उपरोक्त अधिनियम उ०प्र० राजस्व संहिता 2006 के लागू होने से पांच वर्ष के अन्दर ही किसी भी पट्टे का निरस्तीकरण वाद चाहे वह इस अधिनियम के आने के पूर्व का हो या उसके पश्चात का हो ही दायर किया जा सकता है और इस मियाद के पश्चात दायर किया गया वाद पोषणीय नहीं होगा।

धारा-6 यहकि जहां तक वादीगण द्वारा धारा 5 मियाद अधिनियम का फायदा देने की बात कही गयी है तो उसका फायदा केवल अपील/निगरानी में दिया जा सकता है न कि मूल वाद में और मूल याद निर्धारित अवधि चाहे वह विशिष्ट अधिनियम के

अन्तर्गत दी गयी हो या जनरल लिमिटेशन के अन्तर्गत दी गयी हो के अन्दर ही दायर किया जा सकता है।

धारा 7- यह कि नियम 126 के अन्तर्गत वाद की सुनवायी के पूर्व न्यायालय को नियम 126(2) के तहत सर्वप्रथम यह देखना होता है कि पट्टा निरस्तीकरण की वाद पीड़ित व्यक्ति द्वारा तथा अधिनियम में दी गयी मियाद के अन्तर्गत दायर किया गया है अथवा नहीं और यदि उसका अनुपालन नहीं है तो वाद प्रारम्भिक स्तर पर ही निरस्त होगा।

धारा 8- यहकि वास्तव में इस वाद के पूर्व सरकार की ओर से एक वाद सं०-437/174 धारा 198 के तहत प्रार्थी के प्रश्नगत पट्टे के निरस्तीकरण हेतु वाद दायर किया गया था और उक्त मुकदमा दोनो पक्षों की साक्ष्य लेने के पश्चात न्यायालय अपर जिलाधिकारी वित्त एवं राजस्व द्वारा अपने निर्णय दिनांकित 16.01.1998 से पट्टे को बहाल कर दिया था और निरस्तीकरण नोटिस वापस ले ली गयी थी तथा उक्त निर्णय अंतिम हो चुका है इसलिए पुनः प्रार्थी के प्रश्नगत पट्टे के निरस्तीकरण की कार्यवाही नहीं हो सकती है।

धारा 9- यहकि वास्तव में वर्ष 2001 में भी सरकार भी ओर से एक नोटिस पट्टा निरस्तीकरण हेतु दी गयी थी जिस पर माननीय उच्च न्यायालय ने पूर्व उपरोक्त निर्णय को मानते हुए नोटिस स्थगित की और उपरोक्त वाद बादहू वापस हो गया था।

धारा 10- यहकि वास्तव में वादीगण ने रंजिशन यह वाद मुझ प्रतिवादी के विरुद्ध दायर किया है जो उपरोक्त कारणों से निरस्त होने योग्य है।"

(viii) The opposite party no.2, thereafter passed the impugned order dated 30.12.2024. Relevant portion of the same is extracted hereinunder:

"वादीगण द्वारा वाद अन्तर्गत धारा 128 राजस्व संहिता दिनांक 19.06.2023 को न्यायालय में प्रस्तुत किया गया। वाद पत्र में कहा गया कि विवादित आराजी सं० 2669 रकबा 11 बीघा 4 बिसुवा स्थित ग्राम मेथीटीकुर पर० व तह० सफीपुर जिला उन्नाव की खतौनी 1397-1402 फसली खाता सं० 1018 में बंजर दर्ज है। विपक्षी सं० 01 रमेश सिंह पुत्र कृष्णपाल सिंह ग्राम कोरारीकलाँ पर० आसीवन रसूलाबाद के मूल निवासी है। कृष्णपाल सिंह पुत्र छत्रपाल सिंह नि०ग्राम कोरारीकलाँ सन् 1996 से 2006 तक कोरारीकलाँ के ग्राम प्रधान तथा इसके पूर्व सरकारी विभाग में नौकरी करते थे रमेश सिंह के नाम 10 बीघे खेती योग्य भूमि है। यह सम्पन्न व्यक्ति है। अभिलेखों की जाँच करने पर ज्ञात हुआ कि रमेश सिंह पुत्र कृष्ण पाल के पक्ष में गाटा सं० 2669 रकबा 02 बीघा गाँवसभा से खारिज कर अपने नाम दर्ज करा लिया है। नकल प्राप्त करने पर उसे जानकारी हुयी कि

विपक्षी सं० 01 ने विधि विरुद्ध गाटा सं० 2669 रकबा 02 बीघा स्थित ग्राम मेथीटीकुर का पट्टा 26.11.1993 अपने हक में करवा लिया है जो निरस्त होने योग्य है रमेश सिंह सम्पन्न व्यक्ति है और इनके पास पट्टे के समय 05 बीघा से अधिक कृषि भूमि थी। आवंटि के पिता ने अपने पद का दुरुपयोग करते हुए अपने पुत्र के नाम ग्राम कोरारीकलां में आवंटन दिनांक 26.11.1993 को किया है। विपक्षी सं० 01 के पक्ष में किया गया पट्टा दिनांक 26.11.1993 को जानकारी के दिनांक से अंदर मियाद मानते हुए धारा 05 मियाद अधिनियम का लाभ देकर निरस्त किये जाने की माँग की है।

वादी ने अपने कथन के समर्थन में खतौनी फसली सन् 1427 से 1432 बावत खाता सं० 10718 दाखिल किया है।

वादपत्र की प्रति भेजकर तहसील से प्रस्तरवार व बिन्दुवार आख्या मँगायी गयी। विपक्षीगण को नोटिस निर्गत की गयी। विपक्षी सं० 01 की ओर से आपत्ति दिनांक 24.10.2024 प्रस्तुत कर कहा गया कि विपक्षी के विरुद्ध गाटा सं० 2669 में से प्रार्थी के पक्ष में निष्पादित 02 बीघा भूमि के पट्टा निरस्तीकरण हेतु दिनांक 19.06.2023 को वाद दायर किया गया है। जबकि पट्टा नियमानुसार किया गया है। प्रतिवादी ग्राम मेथीटीकुर का मूल निवासी था वाद पत्र 30 वर्ष बाद प्रस्तुत किया गया है। विलम्ब का आधार जानकारी के दिनांक से होना कहते हुए धारा 05 मियाद अधि० का लाभ दिये जाने की माँग की गयी है। वादीगण का कथन गलत है। प्रतिवादी के पिता भारतीय सेना में कार्यरत रहे हैं। वादीगण विपक्षी के पट्टे से पीड़ित व्यक्ति नहीं हैं। दीवानी न्यायालय में कई मुकदमे वादी सं० 02 से चल रहे हैं। पट्टा निरस्तीकरण वाद राजस्व संहिता के अनुसार 05 वर्ष के अन्दर दायर किये जाने का प्राविधान है। मूल वाद मे म्यूटेशन का लाभ नहीं दिया जा सकता। इस वाद के पूर्व सरकार की ओर से एक वाद 437/174 धारा 198 के तहत प्रपन्नगत पट्टे के निरस्त हेतु दायर किया गया था उक्त मुकदमा अपर जिलाधिकारी राजस्व ने अपने निर्णय दिनांक 16.01.98 से पट्टे को बहाल कर दिया था वर्ष 2001 में भी सरकार की ओर से एक नोटिस पट्टा निरस्तीकरण हेतु दी गयी जिसे मा० उच्च न्यायालय ने पूर्व निर्णय को मानते हुए नोटिस स्थगित की बादहू वाद वापस हो गया था। प्रपन्नगत वाद रजिशन प्रतिवादीगणों के विरुद्ध दायर किया गया है।

तहसीलदार सफीपुर ने अपनी विस्तृत आख्या दिनांक 28.10.2024 न्यायालय में प्रस्तुत की जिसके अनुसार गाटा सं० 2669 मि० 2669 मि० रकबा 0.506 हे० का आवंटन रमेश सिंह पुत्र कृष्णपाल सिंह नि० चकलवंशी मजरे मेथीटीकुर को भू०प्र०स० मेथीटीकुर द्वारा किया गया। आख्या में यह भी अंकित

किया गया कि प्रतिवादी रमेश सिंह पुत्र कृष्णपाल सिंह का मूल निवास ग्राम कोरारीकलां पर० आसीवन रसूलाबाद प्रतीत होता है। वर्तमान समय में रमेश सिंह ग्राम मेथीटीकुर में निवासरत है। रमेश सिंह के पिता कृष्णपाल सिंह के पास पैतृक भूमि 3.630 हे० में से 1/3 भाग यानी 1.210 हे० होने के सम्बन्ध में सी०एच० 11 के खाता सं० 85 पृष्ठ सं० 42.43 संलग्न है। प्रतिवादी के पक्ष में किया गया आवंटन प्रतिवादी नियमानुसार पात्र नहीं है।

न्यायालय के आदेश दिनांक 29.10.2024 द्वारा विपक्षी के पेट्रोल पम्प की भूमि के स्वामित्व के सम्बन्ध में जाँच कर आख्या चाही गयी। तहसीलदार सफीपुर ने अपनी आख्या दिनांक 12.11.2024 न्यायालय में प्रस्तुत की जिसके अनुसार गणेश पेट्रोलियम चकलवंशी के संचालन में कृष्णपाल सिंह व कृष्णपाल के पुत्र रमेश सिंह यानी प्रतिवादी के द्वारा कृषि भूमि आवंटन के दौरान कार्य किया जाना पाया गया। पेट्रोल पम्प के मिनजुमला गाटे की भूमि गाटा सं० 2560/01 रकबा 0.2530 हे० व गाटा सं० 2560/3 क्षेत्र फल 0.2530 हे० फसली सन् 1404 से बतौर वादी रमेश सिंह सह खातेदार दर्ज है।

मैंने न्यायालय में उपस्थित उभयपक्ष के विद्वान अधिवक्ता व अपर जिला षासकीय अधिवक्ता राजस्व के तर्क को सुना। वादीगण की ओर से वाद पत्र पर बल देते हुए कहा गया कि आवंटि रमेश सिंह पुत्र कृष्णपाल सिंह ग्राम कोरारीकलां पर० आसीवन रसूलाबाद तह० हसनगंज के मूल निवासी है। रमेश सिंह के पिता कृष्ण पाल सिंह पुत्र छत्रपाल सिंह ग्राम कोरारीकलां के वर्ष 1996 से 2006 तक प्रधान रहे। रमेश सिंह काफी साधन सम्पन्न व्यक्ति है। विपक्षी सं० 01 ने विधि विरुद्ध साजिषन गाटा सं० 2669 रकबा 02 बीघा स्थित ग्राम मेथीटीकुर का पट्टा अपने नाम करा लिया। विपक्षी के पास पट्टे के समय 05 बीघा से अधिक भूमि थी। विपक्षी ग्राम मेथीटीकुर के मूल निवासी नहीं हैं। बल्कि कोरारी कलां तहसील हसनगंज के मूल निवासी है। ग्राम मेथीटीकुर के निवासी न होने के कारण पट्टा निरस्त किये जाने की माँग की। वाद पत्र में जानकारी के दिनांक 16.06.2023 से वाद को अन्दर मियाद मानते हुए धारा 05 मियाद अधि० का लाभ दिये जाने की माँग की गयी है।

विपक्षी के विद्वान अधिवक्ता ने अपने तर्क में न्यायालय का ध्यान आपत्ति पत्र दिनांक 24.10.2024 की ओर ध्यान आकृष्ट कर कहा कि पट्टा निरस्तीकरण हेतु वाद 19.06.2023 को दायर किया गया है। जबकि विवादित भूमि का पट्टा विपक्षी के पक्ष में 26.11.1993 को निष्पादित किया गया है। निरस्तीकरण हेतु आवंटि को ग्राम का निवासी न होने और आवंटि के पास 05 बीघे से अधिक भूमि होने का उल्लेख किया गया है। आपत्ति में यह भी उल्लिखित है कि राजस्व संहिता में आवंटन निरस्तीकरण हेतु वाद प्रस्तुत करने की समय सीमा 05 वर्ष

निर्धारित की गयी है। इस वाद के पूर्व सरकार की ओर से एक वाद 437/174 धारा 198 प्रजगत पट्टे के निरस्तीकरण हेतु दायर किया गया था जिसे अपर जिलाधिकारी वि०/रा० ने अपने निर्णय दिनांक 16.01.98 द्वारा नोटिस वापस ले ली थी उक्त निर्णय अंतिम हो चुका है। वर्ष 2001 में भी सरकार की ओर से एक नोटिस दी गयी थी जिसपर मा० न्यायालय ने उक्त निर्णय मानते हुए नोटिस स्थगित की और बादहू वाद वापस हो गया। वाद पत्र को निरस्त किये जाने की माँग की।

अपर जिला षासकीय अधिवक्ता राजस्व ने अपने तर्क में न्यायालय का ध्यान वाद पत्र तहसील आख्या दिनांक 28.10.2024 व आख्या दिनांक 12.11.2024 की ओर ध्यान आकृष्ट कर कहा कि आवंटी रमेश सिंह के पिता ग्राम कोरारीकलां के प्रधान रहे है। रमेश सिंह का मूल निवास ग्राम कोरारीकलां है। वर्तमान मे रमेश सिंह मेथीटीकुर में निवास कर रहे है। रमेश सिंह के पास पट्टे के समय पूर्व से घृत भूमि 0.329 हे० अंकित है जिससे स्पष्ट है कि रमेश सिंह भूमिहीन कृशक मजदूर नहीं थे रमेश सिंह साधन सम्पन्न व्यक्ति है और इनके पास पेट्रोल पम्प है। जिसके वह सह स्वामी है।

मेने न्यायालय की पत्रावली का परिशीलन किया। पत्रावली पर उपलब्ध तहसील की आख्या दिनांक 28.10.2024 व आख्या दिनांक 12.11.2024 के अनुसार रमेश सिंह पुत्र कृष्णपाल सिंह हाल निवास चकलवंशी मजरे मेथीटीकुर पर० व तह० सफीपुर भू अभिलेख व मतदाता सूची से स्पष्ट है कि इनका मूल निवास कोरारीकलां पर० आसीवन रसूलाबाद तह० हसनगंज जिला उन्नाव है। प्रतिवादी रमेश सिंह को ग्राम मेथीटीकुर में कृशि आवंटन के समय भूमि के क्रय किये जाने के साक्ष्य उपलब्ध है। प्रतिवादी रमेश सिंह के पिता कृष्णपाल सिंह के पास 1.210 हे० भूमि सह खातेदारी की है। गाटा सं० 2669 चकलवंशी से सण्डीला मार्ग पर होने के कारण बेषकीमती है। प्रतिवादी के पक्ष में किये गये कृशि आवंटन का पट्टा नियमानुसार पात्र नहीं है। आख्या दिनांक 12.10.2024 के अनुसार गणेश पेट्रोलियम चकलवंशी के संचालन मे कृष्णपाल सिंह व कृष्णपाल के पुत्र रमेश सिंह यानी प्रतिवादी के द्वारा भूमि आवंटन के दौरान कार्य किया जाना पाया गया है। जहाँ तक विपक्षी के आवंटन के निरस्तीकरण हेतु स्वप्रेरित आख्या के आधार पर वाद सं० 437/174 धारा 198 (4) ज०वि० ग्राम मेथीटीकुर सरकार बनाम रमेश सिंह निर्णय दिनांक 16.01.98 का प्रश्न है। पूर्ववत् प्रचलित मामले में आवंटी का खेतिहर मजदूर नहीं माने जाने की आख्या प्रस्तुत की गयी थी बल्कि आख्या में यह भी अंकित किया गया था कि आवंटी जाति के ठाकुर है और पेट्रोल पम्प चकलवंशी के लड़के है जबकि प्रचलित वाद में विपक्षी को ग्राम चकलवंशी का मूल निवासी न होने व विपक्षी के पिता के पास आवंटन के समय भूमि होने का उल्लेख किया गया है। चूँकि दोनो मामलो के वाद के आधार प्रथक प्रथक है ऐसी स्थिति मे

इस मामले मे वाद को दर्ज कर न्यायालय के आदेश दिनांक 18.09.2023 द्वारा स्थलीय रिपोर्ट माँगी गयी। पत्रावली पर तहसील आख्या दिनांक 28.10.2024 व 12.11.2024 से स्पष्ट है कि आवंटी आवंटन के समय भूमिहीन कृशक मजदूर नहीं था और न ही वह आवंटन के लिये पात्र था बल्कि पत्रावली पर उपलब्ध परिवार रजिस्टर ग्राम कोरारीकलां के अनुसार म०नं० 102अ/2 में रमेश सिंह पुत्र कृष्णपाल सिंह व उसके परिवार का नाम दर्ज अभिलेख है जिससे स्पष्ट है कि रमेश सिंह आवंटन के समय ग्राम कोरारीकलां के निवासी थे। विपक्षी के पक्ष में किया गया आवंटन दिनांक 26.11.93 यथावत् रखा जाना उचित नहीं पाता है।

उपर्युक्त विवेचना एवं पत्रावली पर उपलब्ध अभिलेखीय साक्ष्यों से मै इस निश्कर्ष पर हूँ, कि आवंटी के पक्ष मे किया गया आवंटन निरस्त किये जाने योग्य है।

आदेश

विपक्षी के पक्ष में गाटा सं० 2669 मि० रकबा 0.506 हे० ग्राम मेथीटीकुर पर० व तह० सफीपुर का किया गया आवंटन निरस्त किया जाता है। आदेश की प्रति तहसीलदार सफीपुर को इस निर्देश के साथ भेजी जाती है, कि वह तदुसार अभिलेखों में अंकन की कार्यवाही करें। आवश्यक कार्यवाही के उपरान्त पत्रावली अभिलेखागार में सुरक्षित की जाय।"

(ix) Being aggrieved the petitioner approached the opposite party no.2 by means of Revision No. 152/2024, detailed above, the opposite party no.1/Revisional Authority dismissed the revision vide impugned order dated 11.03.2025 and affirmed the order dated 30.12.2024 passed by the opposite party no.2. Relevant portion of order dated 11.03.2025 reads as under:-

"6. उभयपक्ष के विद्वान अधिवक्ताओं को सुना गया तथा निगरानी मेमो, निगरानी मेमो के साथ प्रस्तुत किये गये अन्य संलग्नकों, मैटर्स अण्डर आर्टिकल 227 नम्बर 382 आफ 2025 रमेश कुमार सिंह बनाम कमिश्नर, लखनऊ डिवीजन, लखनऊ व अन्य में पारित मा० उच्च न्यायालय के आदेश दिनांक 27-01-2025 तथा पत्रावली का सम्यक अवलोकन किया गया। विपक्षी संख्या 02 की ओर से दिनांक 11.02.2025 को प्रार्थना पत्र के साथ वकालतनामा प्रस्तुत किया गया तथा लिखित आपत्ति हेतु समय माँगा गया। विपक्षी संख्या-02 की ओर से 17-02-

2025 को लिखित आपति दाखिल की गई है जिसका अवलोकन किया गया।

प्रश्नगत निगरानी वाद संख्या-3999/2023 धारा-128 राजस्व संहिता-2006 दिनेश यादव आदि बनाम रमेश सिंह आदि में पारित कलेक्टर, उन्नाव के आदेश दिनांक 30-12-2024 के के विरुद्ध दाखिल की गई है।

कलेक्टर, उन्नाव द्वारा पारित आदेश दिनांक 30-12-2024 में स्पष्ट उल्लेख किया गया है कि तहसील आख्या दिनांक 28-10-2024 व आख्या दिनांक 12-11-2024 के अनुसार रमेश सिंह पुत्र कृष्णपाल सिंह हाल निवासी चकलवंशी मजरे मेथीटीकुर परगना व तहसील सफीपुर भू अभिलेख व मतदाता सूची से स्पष्ट है कि अनका मूल निवास कोरारीकलाँ परगना आसीवन रसूलाबाद तहसील हसनगंज जिला उन्नाव है। प्रतिवादी रमेश सिंह को ग्राम मेथीटीकुर में कृषि आवंटन के समय भूमि के क्रय किये जाने के साक्ष्य उपलब्ध है। प्रतिवादी रमेश सिंह के पिता कृष्णपाल सिंह के पास 1.210हे० भूम सह खातेदारी की है। प्रतिवादी के पक्ष में किये गये कृषि आवंटन का पट्टा नियमानुसार पात्र नहीं है। आख्या दिनांक 12-10-2024 के अनुसार गणेश पेट्रोलियम चकलवंशी के संचालन में कृष्णपाल सिंह व कृष्णपाल सिंह के पुत्र रमेश सिंह यानी प्रतिवादी के द्वारा भूमि आवंटन के दौरान कार्य किया जाना पाया गया है। जहाँ तक विपक्षी के आवंटन के निरस्तीकरण हेतु स्वप्रेरित आख्या के आधार पर वाद संख्या 437/174 धारा-1984 ज०वि० ग्राम मेथीटीकुर सरकार बनाम रमेश सिंह निर्णय दिनांक 16-01-98 का प्रश्न है। पूर्ववत् प्रचलित मामले में आवंटनी को खेतिहर मजदूर नहीं माने जाने की आख्या प्रस्तुत की गई थी, बल्कि आख्या में यह भी अंकित किया गया था कि आवंटनी जाति के ठाकुर है और पेट्रोल पम्प चकलवंशी के लड़के है जबकि प्रचलित वाद में विपक्षी को ग्राम चकलवंशी का मूल निवासी न होने व विपक्षी के पिता के पास आवंटन के समय भूमि होने का उल्लेख किया गया है। चूंकि दोनों मामलों के वाद के आधार पृथक-पृथक हैं। ऐसी स्थिति में इस मामले में वाद को दर्ज कर न्यायालय के आदेश दिनांक 18-09-2023 द्वारा स्थलीय रिपोर्ट मंगाई गई। तहसील आख्या दिनांक 28-10-2024 व 12-11-2024 से स्पष्ट है कि आवंटनी आवंटन के समय भूमहीन कृषक मजदूर नहीं था और न ही वह आवंटन के लिये पात्र था बल्कि परिवार रजिस्टर ग्राम कोरारीकलाँ के अनुसार म०नं० 102अ/2 में रमेश सिंह पुत्र कृष्णपाल सिंह व उसके परिवार का नाम दर्ज अभिलेख है, जिससे स्पष्ट है कि रमेश सिंह आवंटन के समय ग्राम कोरारीकलाँ के निवासी थे।

निगरानीकर्ता को इस न्यायालय द्वारा सुनवाई का समुचित अवसर प्रदान किया गया किन्तु निगरानीकर्ता की ओर से

ऐसा कोई ठोस आधार नहीं बताया जा सका जिससे कलेक्टर, उन्नाव द्वारा पारित आदेश में कोई विधिक त्रुटि परिलक्षित होती हो।

कलेक्टर, उन्नाव द्वारा पारित आदेश के अवलोकन से विदित है कि कलेक्टर, उन्नाव ने पक्षों को साक्ष्य प्रस्तुत करने एवं सुनवाई का समुचित अवसर देकर उपलब्ध अभिलेखीय साक्ष्यों की विस्तृत विवेचना करते हुये गुणदोष पर मुखर आदेश पारित किया है जिसमें कोई विधिक त्रुटि परिलक्षित नहीं होती है। निगरानी आधारहीन एवं बल्हीन होने के कारण निरस्त किये जाने योग्य है।

7- उपरोक्त विवेचना के प्रकाश में निगरानी आधारहीन एवं बलहीन होने के कारण निरस्त की जाती है। आदेश की एक प्रति अवर न्यायालय को भेजी जाये। बाद आवश्यक कार्यवाही इस न्यायालय की पत्रावली दाखिल दफ्तर हो।"

5. In the aforesaid background of the case, the present petition, seeking the relief(s), quoted above has been filed on the grounds as pleaded and indicated by the learned Counsel for the petitioner, which are as under:-

(a) The proceedings initiated under Section 128 of the Code of 2006, were highly barred by limitation i.e. about 31 years and as such, the same ought to have been rejected without going into the merits of the case by opposite party no.2.

(b) The proceedings for cancellation of 'Patta' in issue, initiated under Section 198(4) of the Act of 1950 were dropped and as such could not be reopened.

(c) Earlier the proceedings initiated for cancellation of 'Patta' under Section 198(4) of the Act of 1950, were dropped vide order dated 16.01.1998 and thereafter, the said order was not challenged and accordingly the subsequent proceedings under Section 128 of the Code of 2006 were barred by principle of Res-judicata.

(d) The subsequent proceedings initiated under Section 128 of the Code, 2006 were also barred in terms of Explanation-IV to Section 11 C.P.C.

(e) The arguments on stay application were heard in revision by the opposite party No. 1/Revisional Authority on 11.02.2025 and the case was reserved for order on 11.03.2025, but subsequently two applications moved by the opposite party No. 5 were entertained by the opposite party No. 1/Revisional Authority behind the back of the petitioner, in as much as copy of none of them were served either upon the petitioner or his counsel.

(f) The opposite party No. 1/Revisional Authority has decided the revision on merits even without calling for lower court record from the opposite party No. 2.

7. Opposing the present petition, learned Counsel for the side opposite submitted as under:-

(i) By the impugned order(s) substantial justice have been done, and as such if it is presumed that the order is passed in a case instituted after expiry of limitation provided in Section 128 of Code of 2006 i.e. order is without jurisdiction in terms of Section 3 of the Limitation Act, 1963, even then the same is not liable to be interfered with by this Court in exercise of power under Article 226/227 of Constitution of India.

(ii) The question of limitation would not apply in the instant case, as the 'Patta' was executed in favour of person, who was not eligible at relevant point of time.

(iii) On the issue of eligibility reliance has been placed on Section 198 of the Act of 1950, as applicable on 26.11.1993 (the date of approval of 'Patta' in the instant case), which reads as under :-

"198. Order of preference in admitting persons to land under Sections 195 and 197.

(1) In the admission of persons to land as [bhumidhar with non-transferable rights] or asami under Section 195 or Section 197 (hereinafter in this section referred to as allotment of land) the Land Management Committee shall, subject to any order made by a Court under Section 178 observe the following order of preference :

(a) landless widow, sons, unmarried daughters or parents residing in the circle of a person who has lost his life by enemy action while in active service in the Armed Forces of the Union;

(b) a person residing in the circle, who has become wholly disabled by enemy action while in active service in the Armed Forces of the Union;

(c) a landless agricultural labourer residing in the circle and belonging to a Scheduled Caste or Scheduled Tribe;

(cc) any charitable institution established by a person belonging to a Scheduled Castes or Scheduled Tribes for the welfare of Scheduled Castes or Scheduled Tribes or landless agricultural labourer residing in the circle on such terms and conditions and for such purposes as may be, prescribed;

(d) any other landless agricultural labourer residing in the circle;

(e) a bhumidhar, or asami residing in the circle and holding land less than 1.26 hectares (3.125 acres);

(f) a landless person residing in the circle who is retired, released or discharged from service other than service as an officer in the Armed Forces of the Union;

(g) a landless freedom fighter residing in the circle who has not been granted political pension;

(h) any educational institution situated within the terminal area of the Kshettra Panchayat as established by a persons belonging to a Scheduled Castes or Scheduled Tribes on such term and condition as may be prescribed.

Explanation.- For the purposes of this sub-section,-

(1) 'landless' refers to a person who or whose spouse or minor children hold no land as bhumidhar, or asami, and also held no land as such within two years immediately preceding the date of allotment; and

(2) 'agricultural labourer' means a person whose main source of livelihood is agricultural labour;

(3) 'Freedom-Fighter' means an inhabitant of Uttar Pradesh who is certified by the Collector to have participated in the National struggle for freedom during the period between 1930 and 1947 and who in connection with such participation, is similarly certified to have-

(a) undergone a sentence of imprisonment for a period of at least two months; or

(b) been in jail for a period of at least three months by way of preventive detention or as an under trial; or

(c) been subjected to at least ten stripes in execution of a sentence of whipping;

(d) been declared an absconding offender; or

(e) suffered a bullet injury;

and includes a person who was involved in the Peshawar-Kand or who was recognised members of the Indian National Army or former Indian Independence League; but does not include a person who was granted pardon on account of his

tendering apology or expressing regret for such participation.

Provided that where List Two or List Three contains of more than one person or List One contains names of more than two persons the persons in whose favour the allotment is to be made on each successive occasion shall be chosen by lot.

(3) The land that may be allotted under sub-section (1) shall not exceed-

(i) in the case of a person falling under Clause (e) such area as together with the land held by him as bhumidhar, or asami immediately before the allotment would aggregate to 1.26 hectares (3.125 acres);

(ii) in any other case, an area of 1.26 hectares (3.125 acres).

(4) The [Assistant Collector incharge of the sub-division] may of his own motion and shall on the application or any person aggrieved by an allotment of land enquire in the manner prescribed into such allotment and if he is satisfied that the allotment is irregular, he may cancel the allotment and the lease, if any.

(4-A) The Collector may on his own motion or on the application of any aggrieved person call for the record of any suit or proceeding under sub-section (4) decided by the Assistant Collector incharge of the sub-division for the purpose of satisfying himself as to the legality or propriety of any order passed in such suit or proceedings and if such Assistant Collector incharge of the sub-division appears to have-

(i) exercised a jurisdiction not vested in it by law; or

(ii) failed to exercise a jurisdiction so vested; or

(iii) acted in the exercise of jurisdiction illegally or with material irregularity;

the Collector may pass such order in the case as he thinks fit and every order passed by the Collector under this sub-section shall be final;

(5) No order for cancellation of an allotment or lease shall be made under sub-section (4), unless a notice to show-cause is served on the person in whose favour the allotment or lease was made or on his legal representative;

Provided that no such notice shall be necessary in proceedings for the cancellation of any allotment or lease where such proceedings were pending before the Collector in any other court or authority on August 18, 1980.

(6) Every notice to show cause mentioned in sub-section (5) may be issued-

(a) in the case of an allotment of land made before November 10, 1980 (hereinafter referred to as the said date), before the expiry of a period of [Seven years] from the said date; and

(b) in the case of an allotment of land made on or after the said date, before the expiry of a period of [five years from the date of such allotment or lease or up to November 10, 1987, whichever be later].

(7) Where the allotment or lease of any land is cancelled under sub-section (4) the following consequences shall ensure, namely:

(i) the right, title and interest of the allottee or lessee or any other person claiming through him in such land shall cease and the land shall revert to the Gram Sabha;

(ii) the [Assistant Collector incharge of the sub-division] may direct delivery of possession of such land forthwith to the Gram Sabha after ejectment of every person holding or retaining possession thereof and may for

that purpose use or cause to be used such force as may be necessary.

(8) Every order made by the Assistant Collector incharge of the sub-division under sub-section (4) shall subject to the provisions of sub-section (4-A) be final.

(9) Where any person has been admitted to any land specified in Section 132 as a sirdar or bhumidhar with non-transferable rights at any time before the said date and such admission was made with the previous approval of the Assistant Collector incharge of the Sub-division in respect of the permissible area mentioned in sub-section (3), then notwithstanding anything contained in other provisions of this Act or in the terms and conditions of the allotment or lease under which such person was admitted to that land, the following consequences, shall with effect from the said date ensue, namely:

(a) the allottee or lessee shall be deemed to be an asami of such land and shall be deemed to be holding the same from year to year, and the allotment or lease of the land to the extent mentioned above shall not be deemed to be irregular for the purposes of sub-section (4);

(b) the proceeding, if any, pending on the said date before the Collector or any other Court or authority for the cancellation of the allotment or lease of such land, shall abate."

(iv) In view of the facts, not refuted specifically in the present petition, which in nutshell is to the effect that at relevant point of time i.e. on 26.11.1993 when the 'Patta' in issue, was approved, the petitioner was not eligible person in view of statutory provisions and accordingly this approval would come into the category of illegality committed by the authority concerned and would not fall under the expression 'irregularities'. The word

irregularity would be, if some procedure was not followed, whereas in this case the petitioner was not eligible. Thus, no interference in the matter is required.

(v) No interference in the impugned order is required by this Court, on the point of limitation or on the principles of res-judicata or on account of procedure irregularities committed by the authority concerned in the light of the facts pleaded including the pleadings based upon the Annexure No. 11 that the matter was heard on 11.02.2015 on interim relief application, which are completely misconceived and baseless for the reason that to establish the same, the order sheet has not been placed on record and only case summary of the portal has been placed on record. It is for the reason that if interference is caused in the impugned order(s) then in that eventuality the 'illegality' committed by the authority concerned in providing the 'Patta' to the petitioners would revive, which appears to be obtained by the petitioner by play fraud.

(vi) To establish the aforesaid i.e. the petitioners was not eligible person, the reliance has been placed on the following paragraphs of 'affidavit in response' :-

7. *That in support of the original residence and land owner, the answering opposite party has submitted Akar Patra 11 of village Korari Kala Pargana Asivan Rasulabad Tehsil Hasanganj District Unnao as well as the copy of the "Pariwar Register", in which the name of the petitioner's Grand Father Chhatrapal Singh son of Jage Singh is mentioned in serial number 85 on page number 42 and 43 It is also important to point out here that from perusal of Akar Patra 11 that name of the petitioner is shown as heirs of family and all land are in Village Kaurari, Pargana Asivan Rasulabad, Tehsil Hasanganj, District Unnao. The copies of*

th Akar Patra 11 and the copy of the Pariwar Register are collectively annexed as ANNEXURE NO. CA-1 to this Counter affidavit.

8. *That in support of the application filed under section 128 of U.P. Land Revenue Code, the answering opposite parties had also filed the photocopies of Khatauni 1400 to 1405 Fasli of village Barmbhola Tehsil Safipur District Unnao, showing the name of the Petitioner as Land Owner of lands purchased by the petitioner before allotment of the said PATTa, while at the time of allotment of Patta of land no. 2669 area 2 Bigha the petitioner declares that he was land less.*

(1) *In Khata No. 345 having area of 0.284 hectare through registered sale deed dated 14.04.1993*

(ii) *part of Gata No. 376 area 0.531 hectare and Gata No. 377 area 0.253 hectare and Gata No. 387 through Registered sale dated 10.04.1992 and 26.12.1992*

(iii) *In account number 52 of the above Khatauni, the order of purchase of land by the petitioner through Registered Sale Deed dated 14.06.1993 is mentioned,*

(iv) *In Account No. 126, the Petitioner had purchased the land in Khata No. 345 having area of 0.284 hectare through sale deed dated 14.04.1993.*

A Copy of Khatauni 1400-1405 Fasli of village Koraari Kala, Pargana Aasiwan Rasulabad, Tehsil Hasanganj, District Unnao, is annexed herewith and marked as ANNEXURE NO. CA-2 to this counter affidavit.

9. *That in support of the application regarding the residence the answering opposite party had filed the copies of Khatauni of the year 1423 to 1426 Fasli of village Koraari Kala, Pargana Aasiwan Rasulabad, Tehsil*

Hasanganj, District Unnao, as well as the copy of CH_23 showing the name of Petitioner as land owner and mutation/inheritance the name in Account No. 662, Plot No. 1925/1.475, 2016/0.098, Account No. 247, Plot No. 1787/0.0030, 2014/0.0380, Account No. 128, Plot No. 2389/0.9920 and in Account no. 121 of deceased Krishnapal father of the petitioner. A copy of the Khatauni of the year 1423 to 1426 Fasli as well as the copy of CH 23 of village Koraari Kala, Pargana Aasiwan Rasulabad, Tehsil Hasanganj, District Unnao is annexed herewith and marked as ANNEXUR NO. CA-3 to this counter affidavit.

10. That after seeing the contents of application filed by the answering opposite parties the opposite party no. 2 on 18/09/2023 passed an order and call for inspection report from the opposite party no. 3.

11. That the opposite party no. 3 i.e. Tehsildar Safipur, District Unnao has submitted detailed report on dated 28.10.2024 before the court of opposite party no. 2, according to which allotment of plot no. 2669 M area 0.506 hectare was allotted to the petitioner, by the opposite party no. 7 i.e. Land Management Committee of gram Methitikur. It was also mentioned in the report that, the Gaata No. 2669 in question was compared with the Consolidation Settlement and Khasra 1359 F, from which it was found that the Gaata in question does not belong to the reserved category of land and the holding is mentioned in the BANZAR in Akar Patra 41 and 45. The total area of Gaata No. 2669 is recorded as 2.834 hectare and land marked as Gata No. 2669, Area-0.506 hectare, as alleged to the petitioner declared from non-transferable landholder to transferable landholder on 29.09.2011 by the Sub-Divisional Magistrate, Safipur, Unnao and

as per perusal of Voter list District Unnao, and documentary evidence that the original residence of the petitioner appears to be village Korari Kala Pargana Asivan Rasulabad Tehsil Hasanganj District Unnao. A copy of the report dated 28/10/24 submitted by the Opposite Party no. 3 is annexed herewith and marked as ANNEXURE NO. CA-4 to this Counter Affidavit.

12. That it is further point out to mention here that the opposite party no. 2 also passed an order on 29/10/94 in case no. 3999/2023, computerized case no. D202310690003999, Dinesh Yadav & Another...vs.. Ramesh Singh & Others filed under section 128 of the Uttar Pradesh Revenue Code 2006, and directed the opposite party no. 3 to submit an Investigation report regarding the ownership of the land of the alleged petrol pump.

13. That the opposite party no. 3 i.e. Tehsildar Safipur submitted the report on dated 12.11.2024 which is annexed herewith and marked as Annexure No. CA-5 to this Counter affidavit.

(vi) On the issue(s) involved in the present case reliance has been placed on the following judgments by the side opposite –

*a) In the case of **A.M. Allison Vs. B. L. Sen, AIR 1957 SC 227**, the Hon'ble Apex Court observed as under:-*

"Proceedings by way of certiorari are "not of course". (Vide Halsbury's 'Laws of England', Hailsham Edition, Vol 9, paras 1480 and 1481, pp. 877-878). The High Court of Assam had the power to refuse the writs if it was satisfied that there was no failure of justice and in these appeals which are directed against the orders of the High Court in applications under Art. 226, we could refuse to interfere unless we are satisfied that the justice of

the case requires to. But we are not so satisfied. We are of opinion that, having regard to the merits which have been concurrently found in favour of the respondents both by the Deputy Commissioner, Sibsagar, and the High Court, we should decline to interfere."

b) In the case of **Grahi Shanker Singh Vs. VIII Addl. District Judge and Others, 1991 RD 10** the Court declined to interfere with the order passed in revision by the District Judge repelling the contention that the revision against the order of the Sub Divisional Officer was not maintainable, on the ground that if substantial justice has been done, the Court under Article 226 is not bound to quash the order passed by any authority relying upon various decisions of the Supreme Court and the High Court.

c) In the case of **Bux Singh v. Joint Director of Consolidation, U.P., Lucknow and others, AIR 1966 All. 156**, this Court observed as under:-

"Where orders impugned are equitable and substantial justice seems to have been done to the parties, the High Court would not be inclined to interfere in its writ jurisdiction merely on the ground that such orders are wrong in law"

d) The aforesaid is based on the judgment passed in the case of Parahu Vs. Deputy Director of Consolidation, 1964 AWR 155 and Begum A.H. Khan Vs. The Regional Transport Authority Meerut 1963 ALJ 909.

e) In the case of **Om Prakash Vs. U.P. Secondary Education Service Commission, Allenganj, Allahabad and Others, (1990) UP LBEC 983**, this Court has observed as under:-

"It is well settled that a decision of an authority, even though without jurisdiction, may not be quashed in proceedings under Article 226 of the

Constitution if by the decision the substantial justice is done between the parties." (Para 9)

In the instant case, respondent No. 1 having found that though the inspection was alleged to have been done but the inspection memo being not on the record, he rightly directed for inspection again and thereafter to decide the case afresh after giving opportunity of hearing to the parties. I do not find that it is a fit case for interference under Article 226 of the Constitution of India."

f) In the case of **Pulukuri Kottaya v. Emperor MANU/PR/0049/1946: AIR 1947 PC 67**, the Privy council interpreting Section 537 of the Code of Criminal Procedure, the Privy Council considered the question whether non-compliance of an express provision of law would amount to an irregularity. The Privy Council held that distinction between illegality and irregularity was based on the degree rather than kind, if there was substantial compliance of the procedure prescribed, the defect, if any, would be irregularity but if the noncompliance was of mandatory provision of law, that would result in illegality.

g) In the judgment dated 14.07.2014 passed in **Writ - C No. 24211 of 2006 (Ram Nihor Versus Additional Commissioner (Administrative), Vindhyachal Div.)** at Allahabad, this Court held that the order of allotment of land, if obtained by fraud or collusion cannot be allowed to stand and the court would not intervene in such matters so as to permit squandering of the property of the state which vests in the Gaon Sabha. Protection of the state property from such fraud by initiation of action for cancellation of allotment/lease would however, be independent of the power of cancellation of

such allotment envisaged under section 198(4) of the Act.

h) In the case of **Nohar Lal Verma v. District Co-operative Central Bank Ltd., Jagdalpur, 2008 (14) SCC 445**, Hon'ble Apex Court has observed in paragraph - 32 as under :

"Now, limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation Court or an adjudicating authority has no jurisdiction, power or authority to entertain such a suit, appeal or application and to decide it on merits."

And has further held after referring to Sub-section (1) of Section 3 of the Limitation Act, 1963 that a suit or appeal preferred after the prescribed period has to be dismissed even though no such plea has been raised or defence has been set up at the threshold, by the Court itself.

i) The Hon'ble Apex Court has also held if by quashing of illegal order another illegality revives, in that eventuality, the Court should not interfere with such order under writ jurisdiction (See **Gadde Venkateswara Rao v. Government of Andhra Pradesh and others, AIR 1966 SC - 828, Champalal Binani v. CIT, West Bengal, AIR 1970 SC 645, Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar and others, AIR 1999 SC 3609, Malikarjuna Mudhagal Nagappa and others v. State of Karnataka and others, AIR 2000 SC 2976, Chandra Singh v. State of Rajasthan, AIR 2003 SC 2889, S.D.S. Shipping Pvt. Ltd. v. Jay Container Services Co. Pvt. Ltd. and others, 2003(4) Supreme 44, State of Uttaranchal and another v. Ajit Singh Bhola and another, (2004) 6 SCC 800 and State of Orissa and another v. Mamata Mohanty, (2011) 3 SCC 437**).

j) In the case of **Bharat Singh Versus Additional Commissioner and**

Others reported in 2017 (5) ADJ 466, this Court observed as under:-

20. This Court is of the considered opinion that as and when it came to the notice of the authority concerned that allotment of land of Gaon Sabha had been made illegally to ineligible person ignoring the rightful claim of several others of the same village who came within the eligibility zone/order of preference given under sub-section (1) of Section 1998 of the Act, the authority concerned was duty bound to set up an inquiry and take action as legally permissible to remedy the wrong. Hence, the allotment order being ex facie illegal, even if the suo motu inquiry was set up by the Revenue Authority and action taken thereafter to correct the wrong could be said to be a bit delayed, this Court would not interfere and set aside such an order as it would revive the illegal allotment made in favour of the petitioner.

21. The allotment of the petitioner was a result of nepotism and corruption amounting to fraud played upon the Statute. Each day passing with 'the allotment of petitioner over the land in question continuing a fresh cause of action would arise. Being a continuing cause of action of which suo motu cognizance was taken by the Additional District Magistrate, it cannot be said to be an illegal or arbitrary exercise of jurisdiction by the Revenue Authorities. As such, I do not think that there is any good ground on which extra-ordinary jurisdiction under Article 226 of the Constitution should be exercised by me to quash the order impugned.

k) In **Jodhey vs State, reported as AIR 1952 All 788**, this Court considered the discretionary and equitable jurisdiction of the High Court and the manner in which the same ought to be exercised. Relevant portion of the same reads:-

"There are no limits, fetters or restrictions placed on this power of superintendence in this Clause and the purpose of this Article seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned therein. (emphasis supplied)

1) In the case of **Dukh Haran Verma Vs. State of U.P. (2004) 2 AWC 1147**, this Court has observed as under:-

"4. It must be remembered that writ is discretionary remedy vide Chandra Singh v. State of Rajasthan, (2003) 6 SCC 545: JT (2003) 6 SC 20. In a writ petition the petitioner has not only to show violation of law, he must also show that equity is in his favour. Thus, to obtain a writ the petitioner must satisfy the Court about both law and equity. If the petitioner has only satisfied the Court that the law has been violated but equity is not in his favour the Court shall not issue a writ.

5. In the present case, admittedly the resolution for no-confidence was passed by 2/3rd of the members of the Board of Directors of the Bank as required by Rule 460. Hence assuming that initiation of the proceedings by means of the notice was bad as the notice was not valid yet the resolution has validly been passed by 2/3rd members of the Board of Directors of the Bank. It must be remembered that if 2/3rd members of the Board are against the petitioner then as provided under the Rules he has to quit his office.

m) In the case of **Central Council for Research in Ayurvedic Sciences Vs. Bikartan Das 2023 SCC**

OnLine SC 99, the Hon'ble Apex Court observed as under:-

"52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be falling in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not."

n) Fraud vitiates every solemn proceeding and no right can be claimed by a fraudster on the ground of technicalities (*See: S.P. Chengalvaraya Naidu Vs. Jagannath and Others, (1994) 1 SCC 1, Ram Chandra Singh v. Savitri Devi, (2003) 8 SCC 319, Jai Narain Parasrampur v. Pushpa Devi Saraf (2006) 7 SCC 756, Madhukar Sadbha Shivark Madhukar Sadbha Shivarkar v. State of Maharashtra, (2015) 6 SCC 557,*

Jal Vidyut Nigam v. Raj Kumar Rajinder Singh, (2019) 14 SCC 449

8. Considered the aforesaid and perused the records.

9. Upon due consideration of following facts of the case, which born out from the record, this Court is of firm view that the 'Patta' to the petitioner was illegally provided as he was not eligible person in terms of Section 198 of the Act of 1950. It is for the following facts/reasons:-

(i) On 26.11.1993 the 'Patta' in issue was approved with regard to the land i.e. Gata No. 2669 area 2 Bigha situated at Village Methi Tikur, Pargana and Tehsil Safipur, District-Unnao.

(ii) Whereas from the document(s) mentioned in quoted paragraph(s) of the 'affidavit in response', in paragraph 7(v) of this judgment, the position which appears is as under:-

(a) The petitioner was not the r/o Village Methi Tikur, Pargana and Tehsil Safipur, District-Unnao, where land i.e. Gata No. 2669, in issue, is situated.

(b) In fact the petitioner was the r/o Village Korari Khalan, Pargana-Asiwan Rasulabad, Tehsil-Hasanganj, District-Unnao.

(c) The petitioner was not 'landless agricultural labour' on 26.11.1993 (the date of approval of 'Patta' in issue), as he purchased three properties through registered sale deed(s) dated 10.04.1992, 26.12.1992 and 14.04.1993.

(iii) The facts aforesaid, have not been refuted by the petitioner.

9. Thus, in view of the aforesaid, this Court finds that if interference is caused in the impugned order(s) on the grounds indicated above including the ground of

limitation as also the ground based on principle of Res-judicata, the illegality in providing the 'Patta' to the petitioner would be revived, which was on account of fraud played by the present petitioner and principle in this regard is that fraud vitiates every solemn act.

10. Accordingly, the present petition is liable to be ***dismissed***. It is dismissed. No order as to costs.

11. The Court records the valuable assistance given by Ms. Urmish Shankar, Research Associate, attached with me in drafting this judgment and finding out case laws applicable in the present case.

(2025) 4 ILRA 609

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 23.04.2025

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Writ C No. 3684 of 2024

AND

Writ C No. 3683 of 2024

Mayoor Ahu

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Counsel for the Petitioner:

Sri Pranjali Krishna

Counsel for the Respondents:

C.S.C.

Non speaking order-License of the petitioner for wholesale vend of country liquor cancelled-and the security deposit was forfeited —entire case is based upon the interception of a truck belonging to the Co-operative Company -the St.ment made by the driver - without there

being any material either alleged by the driver against the petitioner or there being any allegation to that effect in the show cause notice-in the absence of any allegation- the cancellation of the license is wholly arbitrary and illegal-impugned order quashed.

W.P. allowed. (E-9)

Cases Cited:

1. Jay Pratap Singh Vs St. of U.P. & ors.(Writ-C No.5098 of 2017)

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Heard learned Counsel for the petitioner as well as learned Standing Counsel.

2. The petition being Writ-C No.3684 of 2024 has been filed challenging the order dated 27.03.2021 whereby, the license of the petitioner for wholesale vend of country liquor in District Budaun has been cancelled and the order dated 23.02.2024 whereby, the revision filed against the cancellation order has also been dismissed.

3. The Writ-C No.3683 of 2024 has been filed challenging the order dated 31.03.2021 whereby, the license of the petitioner for wholesale vend of country liquor in District Sambhal has been cancelled and the order dated 23.02.2024 whereby, the revision filed has also been dismissed.

4. Both the petitions arise out of the similar orders, as such, both are being decided by means of this common judgment.

5. For the brevity, the facts of Writ-C No.3684 of 2024 are noted. The petitioner is the CL-2 License Holder (Wholesaler) for the District Badaun for

the calendar year 2020-21 and similarly for the District Sambhal for the same calendar year and was operating in terms of the Rules which are known as The Uttar Pradesh Excise (Settlement of Licences for Wholesale of Country Liquor) (Thirteenth Amendment) Rules, 2020 (in short 'the Rules 2020'). It is claimed that a confidential trip was received with regard to some of the trucks going to Unnao carrying country made liquor with a gate-pass. On investigation, certain statements were made by the drivers of the said truck and on the basis of the said statements, a search was conducted at the premises of the petitioner and a prima facie report was given on 04.03.2021 (Annexure-2 to the writ petition), wherein as many as four discrepancies were noticed. In the terms of the said inspection carried out, the petitioner was served with a show cause notice on 05.03.2021, wherein, it was indicated that on the basis of the search carried out on 04.03.2021, following discrepancies were noticed:

“1- साइनबोर्ड नियमानुसार नहीं लगा पाया गया।

2- अभिलेखानुसार स्टॉक से 3670 V/V तीव्रता व 200 मिली0 धारिता के 1980 पौंवे कम पाए गए।

3- गोदाम कक्ष के अन्दर कैमरे नहीं लगे पाये गए। बाहर लगे दोनों कैमरो की रिकार्डिंग का बैक-अप नहीं रखा गया है। कैमरे की मेमोरी में दिनांक 12.02.2021 से अद्यतन रिकार्डिंग सुरक्षित है। कैमरे का I.P. एड्रेस विक्रेता द्वारा उपलब्ध नहीं कराया गया। सम्बन्धित निवास संलग्न है।

4-अग्नि सुरक्षा हेतु आवश्यक अग्निशमक यन्त्रों का प्रबन्ध नहीं पाया गया।”

6. It was also stated that on the interception of the truck, some information

were received by the driver of the said truck, wherein, he had indicated certain irregularities committed by the manufacturer of the liquor. It was also noticed that the irregularities were noticed in the books of account of the manufacturer. It was also noticed that in terms of the first information reports registered with FIR No.97 of 2021, under Section 60 of the Excise Act and FIR No.98 of 2021, under Section 420, 467, 468, 471, 477-A IPC, it was noticed that the liquor was being transported to CL-2 godowns illegally and based upon the said, a view was formed that the liquor manufactured by the manufacturer was being transported, which resulted into loss of revenue to the State. It was also alleged that in collusion with the manufacturer of liquor, the illicit liquor was affixed with forged barcodes and with one gate pass, the liquor was transported twice, which was illegal and resulted into the loss of the revenue of the State Government.

7. It was also alleged that the action was proposed against the petitioner in terms of the provisions contained in Rule 16 of the Rules 2000. The petitioner gave a reply to the said show cause notice, denying the allegations and specifically stated that the inference drawn based upon the interception of the truck and the statements of the driver, in any way, did not implicate the petitioner or link him with the offence in question. It is also on record that subsequently, the petitioner had approached this Court at Allahabad by filing Writ Tax No.261 of 2021, wherein a plea was taken that the allegations levelled against the petitioner in the show cause notice was compoundable, however, the Court without entering into the merits noticed that the petitioner has already approached the Commissioner (Excise) and

directions were issued to take a decision on the application filed by the petitioner. The said order was passed on 25.03.2021. Subsequent to the passing of the said order, an order came to be passed by the Commissioner, U.P. Excise being order dated 27.03.2021, which is on record as Annexure-7. By means of the said order, the Commissioner noticed the order passed by the High Court, the allegations levelled in the show cause notice, the reply submitted by the petitioner and thereafter it was recorded that certain facts were relevant for adjudication. While doing so, in para 4, it was recorded that some report have been submitted by the SIT as a preliminary report, wherein, it is alleged that liquor is being transported by violating the relevant rules. On the basis of the said report, an order came to be passed holding that the petitioner was found guilty of violating conditions 1, 4, 10, 21, and 23 and consequently, the license of the petitioner was cancelled and the security deposit was forfeited in the State Government. The petitioner challenged the said order by preferring revision before the State Government, which too was dismissed by means of the impugned order dated 23.02.2024. The said orders are under challenge before this Court.

8. The Counsel for the petitioner argues that the show cause notice was vague. No allegation specific to the petitioner was levelled. He argues that the inference drawn based upon the FIR and the statements of the drivers were whimsical. It is further argued that none of the conditions of the license granted to the petitioner as noticed in the order were violated, even if for the sake of the argument, all the allegations are treated to be correct. It is further argued that in terms of the Rule 2020 all the offences alleged

against the petitioner, even though are not admitted, would be compoundable and thus the action of forfeiting the security are bad in law. He further argues that the power exercise for cancelling the license is contrary to the mandate of Section 16 and as of the infractions mentioned in Section 16, which can lead to cancellation, ever existed in the case of the petitioner. He places reliance on the judgment of this Court in the case of *Ajay Pratap Singh vs State of U.P. and others (Writ-C No.5098 of 2017)*, decided on 06.07.2022. He thus argues that the order of confiscating the sureties deserves to be quashed, inasmuch as, the license already come to an end cannot be renewed.

9. The Counsel for the petitioner also argues that copy of the SIT report heavily relied upon was never made available to the petitioner and are never supplied to him and in fact, the said SIT report was filed after the cancellation order was passed.

10. Learned Standing Counsel, on the other hand, justifying the order impugned argues that after the detailed analysis of the allegations levelled, an order has been passed. He further argues that as huge loss has been caused to the State exchequer by unscrupulous people, in which the petitioner was also engaged, the steps were rightly taken to protect the interest of the State Government. He further argues that even certain Officer, who are also alleged to be involved, are under suspension and departmental proceedings are going on. In the light of the said, he argues that the writ petitions deserve to be dismissed.

11. Considering the submissions raised by the parties and recorded above, it

is clear that the license was granted to the petitioner subject to the conditions mentioned in the license, which are contained as Annexure-1 in both the writ petitions, as well as the Rules, which are framed and applicable and from time to time and The Uttar Pradesh Excise (Settlement of License for wholesale of Country Liquor) Rules, 2020.

12. A perusal of the license cancellation order in the context of the show cause notice reveals that the show cause notice was confined to four allegations as recorded above and were said to be in violation of Rule 16 (ka), (kha), (da) and (chha) of the Rules 2020. The five allegations levelled do not entail cancellation of license and are mere infractions, which are referable to the list of compoundable breach as mentioned in Clause nos.4, 5, 7 and 17 of the Rules. Even the other allegation with regard to the transportation of goods and the interception of the goods, which are carrying the goods of a Company and the statements made therein, no specific allegation was levelled against the petitioner so as to warrant the invocation of any of the clauses mentioned in Rule 16(1) which can lead to cancellation of the license.

13. It is also worthwhile to note that the order of cancellation, which records that there was a violation of condition no.4. The order records that the wholesale country liquor was to be supplied through pass P.D.-25A and the records thereof shall be kept, a finding was recorded that the goods were transported without a valid P.D.-25A, which was in violation of condition no.4 of the license. In terms of the show cause notice, there was no allegation levelled to that effect and thus, the finding is without any allegation

in the show cause notice or maligned to allege the same.

14. The impugned order further records that there was a violation of Condition No.10 of the condition of the license, which prescribes that the licensee shall prepare and issue computer generated transport pass in triplicate in the form prescribed by the Excise Commissioner in accordance with the provisions of Rule 11, in which name of the retailer, date of issue, purchased quantity and the consideration fee involved shall be entered, whereas the same was violated by the petitioner. The said reasoning is also bereft of any allegation levelled in the show cause notice and without there being any material either alleged or recorded in the impugned order.

15. The third reasoning for passing the cancellation order is the violation of Condition No.21, which prescribes that the licensee shall install active C.C.T.V. Cameras near opening gate and within godown of licensed premises which could easily be monitored from Excise Headquarters, which has been found to be violated in the case of the petitioner. The said allegation was also not even levelled in the show cause notice. In the absence of any allegation to that effect and there being any material to establish the violation on that count, the order impugned cannot be sustained.

16. The next reasoning recorded was that there was a violation of Condition No.23, which prescribed that the consignments of country liquor from distilleries of U.P. or BWCL-1 licenses of other states settled in Uttar Pradesh other states shall be transported only through the vehicle fitted with Global Positioning System (GPS). It was recorded that the

petitioner has violated as he has received the liquor from the vehicle which did not have GPS. The said finding is also perverse and without there being any allegation in the show cause notice or any material whatsoever to allege and establish the violation against the petitioner and thus in absence of any allegation levelled in the show cause notice and without there being any material to allege and establish the contravention at the instance of the petitioner, the said order could not have been sustained.

17. All the above reasoning as recorded in the cancellation order appears to have been taken in the inspection carried out in the petitioner's premises, however, the same was never made a part of the show cause notice and thus the finding recorded based upon the infractions is wholly arbitrary.

18. The order passed by the revisional authority, does not consider these aspects in totality. The entire case against the petitioner is based upon the interception of a truck belonging to the Co-operative Company Limited, Saharanpur and the statement made by the driver of the said vehicle without there being any material either alleged by the driver against the petitioner or there being any allegation to that effect in the show cause notice. In the absence of any allegation, the cancellation of the license is wholly arbitrary and illegal. Thus, the order dated 27.03.2021 & 23.02.2024 challenged in Writ-C No.3684 of 2024 and the orders dated 31.03.2021 & 23.02.2024 challenged in Writ-C No.3683 of 2024, cannot be sustained and are accordingly quashed.

19. The forfeiture of the security deposit as has been done by means of the

impugned order shall be returned to the petitioner within a period of two months from the date of petitioner moving an appropriate application.

20. The amount payable to the petitioner on account of wrongful seizure of the goods at the time of cancellation of the license shall be returned to the petitioner in accordance with the Rules.

21. The petitioner may move an appropriate application before the Commissioner, Central Excise for refund of the money payable in terms of the Rules for the goods that were seized at the time of cancellation which shall be decided and if found payable, shall be paid to the petitioner within a further period of three months.

22. The writ petitions stand *allowed* in the above terms.

(2025) 4 ILRA 614
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.04.2025

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Writ - C No. 4944 of 2023

**R.S. Filling Station Indian Oil
 Corporation Ltd. Kheri & Anr.
 ...Petitioners**

**Versus
 Indian Oil Corporation Ltd. & Ors.**

...Respondents

Counsel for the Petitioners:

Abhinav Trivedi, Anshuman Singh, Ashok Kumar Singh, Geetika Yadav, Radhika Singh

Counsel for the Respondents:

Manish Jauhari

Opportunity of hearing-The petitioner was appointed as a retail outlet dealer by Indian Oil Corporation- inspection was also carried out on the petitioner's outlet-order the retail outlet dealership of the petitioner terminated-clarificatory e-mail, relied upon in the two orders was never supplied to the petitioner and was never made a relied upon document in the show cause notice-impugned orders quashed.

W.P. allowed. (E-9)

Cases Cited:

1. St. of Punjab Vs Davinder Pal Singh Bhullar; (2011) 14 SCC 770

2. Indian Oil Corp. Ltd. Vs Pullareddy Service Centre (2021) SCC Online AP 2909

3. M/s Chaudhary Filling Point Kazipur through its Proprietor & anr. Vs St. of U.P. through Principal Secretary, Food and Civil Supplies & ors. decided on 30.01.2019 in Misc. Bench No.27043 of 2018

4. Indian Oil Corporation Ltd. & ors.Vs M/s Modern Service Station, decided on 06.03.2024 in Special Appeal No.456 of 2023

5. M/s Laltu Filling Station Vs U.O.I. & ors.; 2016 SCC Online Cal 626

6. Hindustan Petroleum Corp. Ltd. Vs Super Highway Services & anr.(2010) 3 SCC 321

7. Writ-C No.20271 of 2018 (M/s Maharashi Filling Station (Indian Oil Dealer) Vs Indian Oil Corp. Ltd. U.P. St. Officer & anr.

8. M/s Kisan Sewa Kendra Sarai Dubaulia Vs U.O.I. & ors.; Writ C No.32973 of 2018

9. M/s Shree Rajendra Agro Service Centre Vs Indian Oil Corporation Ltd. DB Special Appeal Writ No.456 of 2023

10. Special Appeal No.215 of 2024 (Executive Director Retail and Sales Indian Oil Corporation Ltd. & ors.Vs M/s Mishra Automobiles through Jagdish Mishra & ors.)

11. Savitri Devi & ors. Vs U.O.I. & ors.; Writ C No.29859 of 2017

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Heard Ms. Geetika Yadav, learned counsel for the petitioners and Dr L.P. Mishra & Shri Manish Jauhri, learned counsel for the respondents.

2. The present petition has been filed by the petitioner challenging the order dated 12.01.2023 whereby the license of the petitioner for retail outlet dealer of Indian Oil Corporation was terminated as well as the order dated 15.05.2023 by which the appeal preferred against the said order was rejected.

3. The facts, in brief, are that the petitioner was appointed as a retail outlet dealer by Indian Oil Corporation (for short 'corporation') by means of an appointment letter dated 02.12.2005 for running a retail outlet at Bariha Taranpur, District Lakhimpur Kheri, which was being run by the petitioner in the name and style of M/S R.S. Filling Station. An agreement was executed in between the parties on 01.04.2006. It is also common ground that the dealership granted to the petitioner is governed by the agreement executed in between the parties and the Marketing Discipline Guidelines (hereinafter referred as "MDG") issued from time to time.

4. In the month of April, 2017 in pursuance to the directions given by the State Government, inspections were carried out by the authorities as specified in the Government Order across various petrol

and diesel outlets and an inspection was also carried out on the petitioner's outlet on 31.05.2017 by a team of three persons. An inspection report was prepared, which is on record. It is also relevant to note that detailed instructions were issued by the Chief Secretary, State of U.P. vide communication dated 15.06.2017 constituting a team of 5 persons for carrying out the inspections. In the inspection report as prepared, it was recorded that an inspection was carried out and the machines were checked. At the time of inspection, four dispensing units (8 nozzles) were found, out of which 6 nozzles were found in working conditions. From each nozzle, 15 ltrs. each of petrol and diesel were taken out and after inspection, the same were found to be showing proper delivery. 2 nozzles were found to be not in the working conditions. On inspection of pulsar cards of the nozzles, 2 pulsar cards appeared to be suspicious, which were seized and taken into custody and a plastic seal was affixed thereon.

5. Based upon the inspection report dated 31.05.2017, the respondent – corporation issued a letter dated 31.05.2017 calling for the response from the petitioner. The said letter, was termed as "fact finding letter". It was mentioned that during the inspection following observations were made and the petitioner was called upon to submit his explanation within a period of 15 days as to why action should not be taken as per the MDG/dealership agreement to protect the marketing interest of the corporation:

"2 Pulsar card were found with impression of tempering, due to which 3 Nozzles (2 MS AND 1 HSD) were affected by these 2 Pulsar card."

6. The petitioner submitted a reply on 15.06.2017 denying the allegations and submitted that no extra chips were found in the machines, the seals of machines were found intact, measurements checked were found in order and the calibration of the machines was done by the Weights and Measurement Officer and a certificate was issued by them, thus, no fault could be attributed to the petitioner.

7. Subsequently, a show – cause notice was issued to the petitioner on 30.08.2018. In the said show – cause notice, first charge alleged was that during the inspection, following irregularities were found at the retail outlet:

“2 Pulsar card were found with impression of tempering, due to which 3 Nozzles (2 MS AND 1 HSD) were affected by these 2 Pulsar card.”

A copy of the inspection report was attached with the show – cause notice. It was also mentioned that the fact finding letter was issued to which the petitioner had replied. It was also noticed that in the reply of the petitioner he had requested not to take any action till the time test report of the pulsar card is received. It was also noticed that the District Supply Officer had suspended the diesel selling license of the petitioner. It was indicated in the said show – cause notice that MIDCO Company had released/sent a test report vide its letter dated 15.06.2018 with the following remarks:

“(I) R1 resistor is found missing on pulsar PCB.

(II) Additional Solder marks are observed on C8 capacitor-lead.

(III) Additional solder marks are observed on L4 location of pulsar PCB.”

A copy of the report was attached alongwith the show – cause notice. It was further recorded that after going through the reply dated 15.06.2017, the same appeared to the respondent to be not satisfactory/convincing and the attention of the petitioner was drawn to the Clause Nos. 16, 44, 58(m) and Clause No.5.1.4 of MDG2012 as amended, which attracts penal action under Clause 8.2 IV – Critical Irregularities: Termination of the first instance. Extract of the report submitted by the MIDCO is as under:

TEST REPORT

Received	Item No.1 – Midco Sure Fill Pulsar card for nozzle No.1

PCB Design Reference Number	Item No.1 MID03323B201003 -

Tests/Paramete	Result	Remarks
Visual Inspection Note: Visual inspection has been done without providing Power to the received materials under test.	NOT OK (Refer Remarks)	Item No.1 (I) R1 resistor is found missing on pulsar PCB. (II) Additional Solder marks are observed on C8 capacitor lead. (III) Additional Solder marks are observed on L4 location of

		pulsar PCB.
Delivery Test:	NOT TESTED (Refer Remark)	Not tested due to non conformance to Midco design.

Result:	Pulsar card is not found in conformance with Midco standard design as per visual inspection test.

Note:	Tests have been carried out as per Midco norms only.

The second charge was that the irregularity has also been widely reported in the print and electronic media, which has caused prejudice in the mind of the general public and the customers and as such has tarnished the good image and reputation of the corporation and the same was against the marketing interest of the corporation.

8. The petitioner was called upon to file his reply within a period of 15 days. It is stated that the petitioner submitted a detailed reply to the said show – cause notice on 05.10.2018, which is on record. It is also on record that in the intervening period, the license of the petitioner, which was cancelled by the State, was restored on 31.09.2017. It is on record that the 2 pulsar cards, which were taken into custody by the inspecting team on 31.05.2017 were handed over to the District Supply Officer, however, subsequently, the same were taken by the corporation from the District Supply Officer and one of the pulsar cards was handed over to the Original Equipment Manufacturer (OEM) MIDCO for testing on 15.12.2017 and the other card was handed over to the other OEM Dreser Wayne on 08.12.2017 for testing

at NOIDA. The said two reports given by the two OEMs are on record.

9. The report of MIDCO has already been reproduced hereinabove. In the report of the other OEM Dreser Wayne, no signs of damage were found. The said report also observed that although soldiering signs impression have been observed in the pulsar PCB circuitry, however, during testing all operations were found normal.

10. The petitioner in his defense and to discredit the report of OEM-MIDCO relied upon the report of the Dreser Wayne also to impress that merely by eye estimation, it cannot be presumed that anything wrong was done, which stood confirmed by the other Dreser Wayne (OEM) while recording that although impressions of soldiering were found on the pulsar PCB, however, during testing all operations were found normal. The report of the other OEM Dreser Wayne was submitted by the petitioner along with supplementary reply dated 27.11.2018.

11. It is on record that after the inspection, an FIR was also lodged against the petitioner under Section 3/7 of Essential Commodities Act, however, subsequently, a final report was submitted by the Investigating Officer on 26.12.2018, which was also accepted by the trial Court. It is on record that subsequent to the FIR coming to an end and the supply license being restored by the District Supply Officer on 13.09.2017, the sale of petrol etc., was supplied by the respondents and the operation continued from 01.07.2017 uninterrupted and the supply of HSD was resumed w.e.f 13.09.2017.

12. On 14.03.2019 the respondent – corporation passed an order terminating the retail outlet dealership of the petitioner. A copy of the said termination order is on record.

13. Aggrieved against the termination order dated 14.03.2019, the petitioner preferred a writ petition being Writ Petition No.9062 (MB) of 2019 (R.S. Filling Station v. Indian Oil Corporation & Ors.) before this Court wherein this Court granted an interim indulgence by staying the implementation of the termination order till the disposal of the application for interim relief by the appellate forum and the petitioner was relegated for filing an appeal before the Disputes Resolution Panel.

14. The petitioner preferred an appeal challenging the termination order dated 14.03.2019. The said appeal was disposed off vide order dated 15.10.2019 whereby the appellate authority noticing the contention of the petitioner remanded the matter solely on the ground that the petitioner was denied an opportunity of hearing before passing of the order dated 14.03.2019 with a direction to proceed with the matter from the stage of granting of personal hearing as provided under Clause 8.6 of MDG. The order dated 14.03.2019 was set aside.

15. The said order of the appellate Court was challenged by the petitioner by filing a writ petition being Writ - C No.21992 of 2020, however, during the course of pendency of the said writ petition, a personal hearing letter was issued to the petitioner by respondent no.4 fixing 02.01.2020 for grant of personal hearing in terms of the remand order dated 15.10.2019. The petitioner vide his letter dated 27.12.2019 requested for an

adjournment in view of the fact that petitioner could not contact his legal adviser on account of winter vacations, however, an order came to be passed on 19.10.2020 once again cancelling the dealership agreement of the petitioner. The said termination order was made subject to the final outcome of Writ Petition No.1262 (MS) of 2020, which was pending.

16. As the order was passed during the pendency of the writ petition, an amendment application was filed which was allowed permitting the petitioner to amend the writ petition and it is also noticed that earlier Writ – C No.21992 of 2020 was withdrawn by the petitioner in view of the subsequent developments.

17. The order of cancellation was also challenged by the petitioner in Writ-C No.1262 of 2020. This court, heard the matter and vide judgment dated 31.05.2022 allowed the writ petition. The said judgment dated 31.05.2022 was challenged by the Corporation by preferring a Special Appeal No.307 of 2022 before the Division Bench of this Court. The said Special Appeal was disposed off vide judgment dated 07.09.2022 wherein the Division Bench held that they were upholding the decision of the Single Judge and on the basis of the observations made above, directed the authority concerned to decide the matter afresh in the following terms :

"28. For the reasons aforesaid, we are not inclined to interfere in the judgment and order dated 31.05.2022 passed by the learned Single Judge. We accordingly affirm the same.

29. However, before parting with the case, we also find it appropriate to direct the appellant-Corporation to reconsider the entire matter in the light of

the observations made herein above considering all relevant material, including the second report dated 12.10.2018 and take decision afresh.

30. The competent authority of the respondent-corporation, thus, shall decide the matter afresh as observed above within two months from the date a certified copy of this order is submitted by the respondent no.1-petitioner before it.

31. We are issuing the direction to the appellant-Corporation for reconsideration of the entire matter afresh for the reason that the exact purport of the second report dated 12.10.2018 can be analyzed and effect of the said report can be considered only by the experts of the area for the reason that the report is technical in nature which lies in the exclusive realm of the technical experts.

32. The Special Appeal is, thus, disposed of in the aforesaid terms."

18. That the corporation aggrieved against the said judgment preferred a Special Leave Petition No.17686 of 2022 which was disposed off with the following observations :

"Since the impugned order only directs reconsideration on remand, we are not inclined to interfere with the same. The special leave petition is dismissed accordingly.

However, we clarify that the respondents shall cooperate in the expeditious disposal of the enquiry on remand and shall remain present, as and when called upon to do so.

Needless to state that while conducting the enquiry, the competent authority shall consider the effect of both the reports.

We further clarify that the competent authority shall proceed without

being influenced by any observation made in the impugned judgment of learned single Judge or the Division Bench."

19. That in terms of the liberty given by the Division Bench of this Court as well as the observations made by the Hon'ble Supreme Court, a fresh order came to be passed on 12.01.2023 terminating the dealership of the petitioner. The petitioner challenged the said order dated 12.01.2023 by preferring an appeal, which was decided by the appellate authority vide judgment dated 15.05.2023 whereby the appeal was dismissed. The impugned orders dated 12.01.2023 and 15.05.2023 are subject matter of the present writ petition.

20. The counsel for the petitioner argues that the order dated 04.11.2022 passed by the Hon'ble Supreme Court were to be complied with, however the report of the two OEMs were not placed before the technical experts for their opinion and findings have been recorded without there being any material alleged to that effect in the show cause notice or there being any material to corroborate. She argues that it has been recorded that the petitioner must have been involved in manipulation of the delivery, which was neither reported by the OEMs nor was any show cause notice served to that effect. She further argues that the reports of the OEMs were not submitted for any examination of technical experts as was directed by the Division Bench as well as the Supreme Court. She further argues that in both the orders, it has been wrongly recorded that as there was no direction by the Supreme Court to consider the fresh submissions made by the petitioner, no consideration was accorded to the same. She further argues that the sole report against the petitioner was submitted by the OEM, MIDCO, which itself is based upon

visual inspection without there being any technical examination, whereas the report of other OEM Dresser and Wayne is based upon a technical examination and after conducting the lab tests on the seized pulsar cards. She further argues that MIDCO is not a government approved testing agency. It is further argued that the respondent Corporation has tried to supplant the joint inspection report as well the report by the Dresser and Wayne by alleging that as it was reported that a chip has been removed, as such, when the testing was done by the Dresser and Wayne, all operations were found to be normal.

21. The counsel for the petitioner further argues that the said finding is without any basis and without any material and thus perverse to that extent. She further argues that even the directions of the Supreme Court for consideration of both the reports has not been complied with. It is further argued that reliance on the clarificatory e-mail dated 20.06.2018, sent by MIDCO to the respondent corporation, was never served upon the petitioner nor was it made a subject matter of relied upon documents in the show cause notice. She further argues that the said e-mail by MIDCO (relied upon in the impugned orders) is a procured document as the same is not in consonance with the report of the MIDCO. She further argues that the said email is in the teeth of the joint inspection report. She further argues that the Supreme Court in its judgment directed that while conducting the enquiry, the authority shall consider the effect of the both the reports and it was further held that the competent authority shall proceed without being influenced by any observations made in the judgment of the learned Single Judge or the Division Bench. Thus, it was incumbent upon the authority to consider the effect of

both the reports afresh, whereas in the present case, order has been passed on the considerations of reports other than the two reports as well as on the personal view expressed in the orders.

22. It is further argued that the same appellate authority, who has passed the order impugned, took a different view in another case while deciding the similar matter as an appellate authority in the case of **Firozabad Fuels and Services Versus Indian Oil Corporation Limited Agra** and thus, the two orders passed by the Appellate Authority are contradictory to each other insofar as the effect of the report of OEM is concerned. It is further argued that in terms of the Clause 8.5.6 of the MDG, it is incumbent that a show cause notice be issued within a period of thirty days, whereas the show cause notice was issued after about more than two and a half months, which itself makes the entire proceedings void ab-initio.

23. She further argues that the joint inspection committee having been constituted in pursuance of the Government Order dated 02.05.2017 and not under the provisions of MDG, mandates procedure under clause 8.7 of the MDG to be followed before taking any action against the petitioner. Clause 8.7 provides that in cases where inspection has been conducted by authorities other than the Oil Companies, action against erring Retail Outlets will only be taken when malpractice or irregularity is "established by such authorities" and any action taken would be "on receipt of advice from such authority". However, in the case of the petitioner, despite a Final Report having been submitted by the Investigating Officer and accepted by the learned Magistrate, for some unfathomable reason, the Respondent

Corporation in a hurry to assume the charge of the investigation has taken punitive action against the petitioner in blatant violation of clause 8.7 of the MDG.

24. The counsel for the petitioner specifically draws the attention of this court to Clause 5.1.4 of the MDG to argue that in terms of the said provision, the 'addition', 'removal', 'replacement' or 'manipulation' alleged should be in *conjunction* with the 'likelihood of manipulating delivery in order to gain undue benefit', whereas in the case of the petitioner, admittedly there was no short selling, manipulation of delivery nor were the same alleged also, and thus reliance on clause 5.1.4 is misplaced. It is also argued by the petitioner that the pre-deposit of 50% made for preferring the appeal is also liable to be refunded to the petitioner.

25. The petitioner has placed reliance on the judgment of the Supreme Court in the case of **State of Punjab vs. Davinder Pal Singh Bhullar; 2011 (14) SCC 770**, in support of her arguments that when the foundation falls, the entire superstructure falls. She argues that when the initial inspection was *de-hors* the Government Order dated 02.05.2017, no further proceedings could be maintained on the basis of the said inspection. She further argues that as the seals on the retail outlet were put by the Weights and Measurement Department, there being no allegation of tampering with the said seals, no wrong on that ground could have been attributed to the petitioner as the petitioner could never gain access to the machinery without tampering the seals in that regard. Reliance is placed upon the judgment in the case of **Indian Oil Corporation Limited vs. Pullareddy Service Center; 2021 SCC Online AP 2909 and M/s Chaudhary**

Filling Point and State of U.P. [Misc. Bench No.2703 of 2018] and IOCL vs. M/s Modern Service Station [Special Appeal No.456 of 2023].

26. She further argues that the test carried out is contrary to the provisions contained in Legal Metrology Act, 2009 and the Essential Commodities Act, 1955. She lastly argues that the manner in which the dealership has been terminated is contrary to the law and affects the livelihood of the petitioner thus, the same requires strict interpretation as held in the case of **Hindustan Petroleum Corporation Limited vs. Super Highway Services (2010) 3 SCC 321**. In the light of the said, it is argued that the writ petition deserves to be allowed.

27. The counsel for the respondents Corporation Dr. L.P. Mishra assisted by Sri Manish Jauhari argues that in the light of the directions given by this Court in Public Interest Litigation (Civil) No.10652 of 2017, State wide drive inspections were carried out including at the dealership of the petitioner. It is argued that in the joint inspection, in two Dispensing Units, prima-facie, tampering was found in the Pulsar Cards as was indicated in the show cause notice. It is further argued that two Pulsar Cards, which were found to be suspicious, were taken for testing and a fact finding letter was also served upon the petitioner. It is submitted that the reports were obtained by the OEM MIDCO who had recorded its finding, as have been also relied upon by the counsel for the petitioner.

28. The other arguments with regard to the filing of the Writ Petition, Special Appeal as well as Special Leave Petition are reiterated by the counsel for the respondents. It is argued that in compliance

of the Supreme Court judgement, the order dated 12.01.2023, adequately considered the affect of both the reports in details as are evident from the impugned orders. It is further argued that the argument that no opinion was taken from the expert, was an observation made by the High Court in its order passed in Special Appeal whereas the Supreme Court had specifically held, that the Corporation will not be influenced by any observations made by the learned Single Judge or the Division Bench.

29. As regards the submission that the same appellate authority has taken two contradictory view in two appeals decided by him, it is argued that the same was in different facts. It is further argued that in any case, the petitioner cannot plead negative equality with the other order passed by the same appellate forum. He further argues that even in the report of Dresser and Wayne, it is crystal clear that the said OEM has made specific observation that there was tampering in the Pulsar Unit and it was not the same product which has been original installed by the Company. He further argues that the clarificatory e-mail issued by the MIDCO was communicated to the petitioner while they were contesting the matter before the appellate authority in the year 2019 and proper opportunity was given to the petitioner to reply to the contents of the clarification e-mail but the petitioner did not respond.

30. The counsel for the respondents have placed reliance on the following judgments :

i. Civil Appeal No.6748 of 2018 arising out of SLP (C) No.33100 of 2015 (Indian Oil Corporation Ltd. and another vs. T. Natrajan).

ii. 2017 SCC Online All 2912; (2018) 127 ALR 692; ECI SPIC SMO MCML (JV) vs. Central Organization for Railway Electrification and Another.

iii. Writ C No.20271 of 2018; M/s Maharashi Filling Station (Indian Oil Dealer) vs. Indian Oil Corporation Ltd. UP State Officer and Another.

iv. Writ-C No. 32973 of 2018; M/s Kisan Sewa Kendra, Sarai Dubaulia vs. Union of India and 3 others.

v. High Court of Judicature for Rajasthan at Jodhpur; DB Special Appeal Writ No.456 of 2023 (M/s Shree Rajendra Agro Service Centre through its Proprietor vs. Indian Oil Corporation Ltd. through its Chief Manager and 02 others.

vi. Special Appeal No.215 of 2024 (Executive Director Retail And Sales Indian Oil Co. Ltd. and 2 others vs. M/s Mishra Auto-mobiles through Jagdish Mishra and 2 others.

vii. Writ-C No.29859 of 2017 (Savitri Devi and others vs. Union of India and four others).

viii. Writ-C No.16611 of 2021; (S.J. Lal Filling Station Indian Oil Retail Outlet and Another vs. Indian Oil Corporation Ltd. and another).

31. In the light of the said submissions, it is argued that the writ petition is bound to be dismissed and should be accordingly dismissed.

32. Before advertng to the arguments raised at the bar, it is essential to notice that the contract in between the parties was executed which provided for applicability of the provisions of Marketing Discipline Guidelines (MDG) affected w.e.f. 08.01.2013 as amended on 03.08.2018, the same are also relied upon by the petitioner and has been filed as Annexure no.4. In the counter affidavit, there is no pleading that

the said MDG dated 08.01.2013 amended on 03.08.2018 is not applicable. Specific assertions to that effect is made by the petitioner in para 10 of the writ petition and in para 30 of the counter affidavit, it has been recorded that the said paragraph needs no reply.

33. Para 5.1.4 of the Marketing Discipline Guidelines is being quoted herein as under :

5.1.4 ADDITIONAL /
UNAUTHORISED FITTINGS / GEARS
FOUND IN DISPENSING UNITS
/TAMPERING WITH DISPENSING UNIT
—

Any mechanism / fittings / gear
found fitted in the dispensing unit which is
likely to manipulate the delivery.

Addition, Removal, replacement
or manipulation of any part of the
Dispensing Unit including any mechanism,
gear, microprocessor chip/electronic parts/
OEM software will be deemed as
tampering of the dispensing unit.

*In such cases, views and
independent opinion of the original
equipment manufacturer would be obtained
and suitable decision taken.*

*In case of this irregularity sales
from the concerned dispensing unit to be
suspended, DU sealed. Samples to be
drawn of all the products and send to lab
for testing."*

34. It is also essential to notice that in terms of the Marketing Discipline Guidelines, which are admittedly applicable to the agreement executed in between the parties and is the foundation for taking the decision. It is also essential to notice the provisions of para 8.7 of the MDG which are as under :

"Under existing laws, Control Orders etc., various authorities, Acts/Rules of Central Government/State Government in addition to Oil Company Officers are empowered to carry out checks of the dealership for determining and securing compliance with such laws/Control Order. If any "malpractice or irregularity" is established by such authorities after checking, the same would also be taken as a "malpractice or irregularity" under these guidelines and prescribed action would be taken by the Oil Company, on receipt of advice from such authority."

35. In terms of MDG Corporation is authorised to take action, which is triggered in two manners, the first being the action taken by the State Government when they notice malpractice or irregularity, based upon the receipt of the advice from such authority in terms of the prescription under the MDG action can be taken. The other manner in which the proceedings can be initiated, is by the Corporation itself, when malpractice or irregularity are brought to its notice.

36. In the present case, although the State Government had conducted the first proceedings and had noticed the malpractice or irregularity, however the action in the present case against the petitioner has been taken by the Corporation, based upon the materials available with them in terms of the provisions contained in para 5.1.4 of the MDG, thus to that extent the first submission of the counsel for the petitioner that the constitution of the Committee, which had done the inspection at the first instance, was not properly constituted as prescribed under the Government Order, merits rejection and is accordingly rejected.

37. The second issue which arises for consideration is the mandate of the Supreme Court while remanding the matter. On perusal of the three orders passed in the earlier round of litigation, what transpires is that by means of a judgment dated 31.05.2022, the writ petition was allowed. In the judgment of the Special Appeal dated 07.09.2022, the Special Appeal Court had noticed and had affirmed the judgment of the learned Single Judge, however, a liberty was given to the Corporation to reconsider the entire matter in the light of the observations made and after considering the all materials including the second report dated 21.10.2018 was at liberty to take a decision afresh.

38. The Supreme Court in its judgment dated 04.11.2022, as recorded in paragraph above, makes it clear that in addition to the direction given by the Special Appellate Court, it was clarified that the authority shall consider the effect of both the reports and shall not be influenced by any observations made in the impugned judgment.

39. The net effect of the judgment passed by the Hon'ble Supreme Court is that while the Supreme Court had expressed that it had no inclination to interfere with the Special Appeal judgment, however, by way of clarification, it was directed that on remand, the appropriate authority would be competent to consider the effect of both the reports and would not be influenced by any of the observations of Writ Court or Special Appeal Court.

40. In terms of the said clarification as well as the directions given by the Special

Appellate Court, it was open for the corporation to pass fresh orders.

41. The order passed by the licensing authority at the first instance records the entire materials that had led to passing of the order of the Special Appeal Court as well as the Supreme Court and while considering the additional written submissions that were filed by the petitioner, although it was observed that although the assessing authority was not bound to consider the additional written arguments, however for the sake of avoiding any multiplicity, the same were being reconsidered. The order also held that in the show cause notice that was issued to the petitioner at the first instance, the same was based upon the report of the MIDCO and the Corporation did not take any action against the petitioner on the basis of the second report although it was legally entitled to do so. The order further records that the action was being taken on the basis of the report given by the MIDCO as well as the further clarification given by the OEM MIDCO through its clarificatory e-mail.

42. The contention of the petitioner, placing reliance on the report of the NIT Karnataka was rejected. The report of the OEM MIDCO was analysed and held that the perusal of the remarks/comments/conclusion of the Test Report dated 15.06.2018 and the clarificatory e-mail dated 20.06.2018 makes it clear that there was a definite tampering in the MIDCO make Pulsar Card. The report of the other OEM was also considered, although the same was not the basis for passing the cancellation order. The OEM report of M/s Dresser Wayne was considered and it was observed as under :

"Further, as regards the observations made by the OEM - Dresser Wayne (i.e. GEMS) that 'during testing all operations were found normal, it is noteworthy that the electronic chips had gained popularity amongst defaulting or errant dealers for precisely the same reason that unless the dealer used the remote in his possession to make short delivery, the delivery and function of the pulsar card was normal. The dealers used to control the functions with the help of the remote, which was discovered in the raids made by STF. However, when the said raids were widely publicized in media, the errant dealers removed the electronic chips which left soldering marks/ signs, as found on the Pulsar Cards in the present case. Therefore, when the Dresser Wayne Pulsar card was tested in the lab without there being a spurious electronic chip over it, all the operations were found normal. Simply because the testing was found normal, it would not mean that no tampering with the Pulsar Card had taken place. It is reiterated that the OEM - Dresser Wayne had opined (only after seeing the test results of the pulsar card) that the soldering signs on the pulsar card indicate that an external wiring was soldered and removed from its pulsar card. Thus, making it clear that the Dresser Wayne Pulsar Card was tampered with and the appropriate action (i.e. termination) may be taken against your dealership under the MDG & Dealership Agreement.

In view of the aforementioned two separate test reports given by two different OEMs as regards their own equipments (ie. Pulsar Card), it is clear that:

(a) Both the said reports are completely distinct and independent of each other and there cannot be any overlapping between them.

(b) Both the OEMs have independently carried out their testing/inspection of the two separate Pulsar cards supplied to them, after which both the OEMs have opined/concluded that there has been some manipulation/ tampering with the Pulsar Cards.

(c) Each of the said reports clearly indicate that there has been tampering in the pulsar cards of both the said units and soldering marks/signs were found in the pulsar cards of both the said units thereby clearly indicating that a chip had been removed from the Pulsar Cards and the place from where the said chip was removed / replaced had thereafter been soldered.

(d) Each report constitutes a separate and independent cause of action in itself, for which the action (i.e. termination) under Clause 5.1.4 & 8.2 iv. of the MDG read with Clause 15, 16, 44, 58 (i) & (m) may be taken separately and/or cumulatively."

It was further observed that in terms of the test report of MIDCO and the clarificatory e-mail received on 20.06.2018, the first show cause notice could be issued by the Corporation on 30.08.2018. It was also observed that the tampering of an electronic component of the DU would be deemed as tampering under clause 5.1.4 of MDG, as such, fresh order came to be passed on 12.01.2023 terminating the dealership. The report of MIDCO and the clarificatory email are essentially the foundation for passing the order of cancellation.

43. The appellate order records the submission and was decided by Sri Vigyan Kumar, the Executive Director of the Corporation as an Appellate Authority

while rejecting the appeal for the following reasons:

A. From the above discussions, it is clear that the instant case pertains to the irregularities mentioned in Cl. 5.1.4 of the MDG and that the said irregularities stand established by the OEMs as reflected in their reports. No new fact pertaining to the two reports of the two OEMs has been produced by the Appellant-Dealer. No doubt an RO dealer is the custodian of equipments including DUs provided by the Corporation and any tampering found in DU is RO dealers' responsibility and no one other than the dealer is benefited with the tampering of the same. Infact, the general public stands to loose and is cheated because of the said tampering, leading to loss of goodwill of the Respondent Corporation. Tampering with DU is a critical irregularity defined in MDG 2012. If any kind of tampering is observed in any DU then action needs to be taken as per dealership agreement as well MDG 2012 irrespective of the make and model of the DU.

B. The dealer has to operate the retail outlet in accordance with the terms of the dealership agreement executed between the parties. As per the dealership agreement, it is the responsibility of the dealer to take care of the outfits of the dispensing unit. No repair of the outfits shall be done by the dealer without prior permission/authorization by the Corporation in writing. The dealer cannot interfere with or attempt to adjust the outfit or any part of the dispensing unit.

C. Admittedly on the date of inspection, the irregularities with respect to tampering in the components of both the dispensing units were observed and the same was recorded in the joint

inspection report. These irregularities were also established through OEM reports.

D. The seals of the Weights & Measure Dept. being found intact and there being no allegation of short supply, are not relevant in view of the amended provisions of Marketing Discipline Guidelines, 2012.

E. The contention that there is no allegation of short supply and any unlawful gain by the Appellant cannot be accepted merely because the seals were found intact or delivery from the dispensing unit was found correct at that time. It is to be noted that the same has no bearing on the fact of irregularities being detected during the inspection and established in the OEM report in light of Clause 5.1.4 of MDG.2012.

F. The contention regarding the RI Resistor has already been clarified by the OEM that since there were additional/abnormal solder marks on the pulsar PCB/card which is not as per OEM's standard design, the same clearly points towards the manipulation/tampering of the said Pulsar unit.

G. The petitioner was the custodian of the dispensing units as per the dealership agreement moreover the retail outlet premises were also under his control. No tampering with the Control card or any fittings on the same could have been made without the knowledge/involvement of the appellant-dealer. Hence, his responsibility of the acts done in the retail outlet, premises cannot be shifted to any other person.

43. In the light of the findings recorded, one of the submission of the counsel for the petitioner that the show cause notice was issued after a gap of thirty days, which is contrary to the regulations

and thus, make the entire proceedings bad in law, is further liable to be rejected as the same cannot be held to be mandatory as no consequence of not issuing a show cause notice within thirty days, is prescribed under the guidelines, as such, the same is clearly directory in nature and merely because there was some delay in issuing the show cause notice, the contention of the petitioner that the entire proceedings become bad in law is liable to be rejected and is accordingly rejected.

44. The contention of the counsel for the petitioner that the appellate authority has taken two different views while acting as an appellate authority based upon a report which is similar in respect of two retail outlets, is to be considered. The same appellate authority namely Sri Vigyan Kumar while deciding the appeal filed by one **Firozabad Fuels and Services**, considered the report of the OEM even in respect of that retail outlet noticed and recorded the report of the OEM as under :

"In the meantime, the pulsar card of the DU i.e. 1204135 (A1) and 13020600503 (A2) which was taken out from the DU and sent for lab testing. OEM report stated that tampering could have been done in the pulsar Cards. OEM vide its reporter ref: 18001 dated 28.03.2018 has stated as under:-

"The Pulsar Card A1 and Pulsar Card A2 not working. The U3IC pins are not properly soldered and pads are damaged. This is not a standard practice followed by Gilbarco. This could be an attempt to tamper the cards to alter the delivery."

Interpreting the effect of the said report, as quoted above in the context of

para 5.1.4 of the MDG, recorded its findings as under :

"OEM report ref: 18001 dated: 28.03.2018 states that "The Pulsar Card A1 and Pulsar Card A2 not working. The U3 IC pins are not properly soldered and pads are damaged. This is not a standard practice followed by Gilbarco. This could be an attempt to tamper the cards to alter the delivery".

The observation of OEM is not conclusive. It may be noted that the DU and pulsar cards were in working condition at the time of removal / seizure and hence the reason for the pulsars not working cannot be attributed to the dealership nor is the dealership liable for the same.

45. Thus, the submission of the counsel for the petitioner and the defense has to be considered in the light of parity as claimed by the petitioner. The two reports in respect of there being manipulation on the electronic part of the dispensing unit are similar; both the reports of the OEM records that the soldering marks were found not the standard practice followed by the OEM. In fact, the report in the case of Firozabad Fuels further records the opinion of the OEM that this could be an attempt to tamper the cards to alter the delivery, which is absent in the report submitted by the MIDCO in the case of the petitioner. While drawing the deeming inference under para 5.1.4 of the MDG, the appellate authority has rejected the appeal filed by the petitioner. The said observations has not been made and the deeming inference has not been recorded in the appeal decided in the case of Firozabad Fuels.

46. It is also clear that the judgment of the same appellate authority dated

30.08.2022 has been accepted by the Corporation and has not been challenged. Thus, what emerges is that for drawing a 'deeming inference' under 5.1.4 of MDG in respect of there being manipulations/errors in the electronic chips, two different views have been taken while the reports are similar in respect of discrepancies on the pulsar cards. Although, as per the counsel for the respondents, the petitioner cannot claim negative equality, is a view which is clearly well settled, however, the Corporation being a 'State' cannot take two stands in respect of two different dealers in cases of similar allegations. The two reports indicate almost similar errors and both the reports also indicate that these were not the errors which were standard in the equipment supplied by the OEMs. The Corporation which is 'State' within the meaning of Article 12, even in the contractual matters, is bound to act in fair and reasonable manner, the reasoning given by the appellate authority, in both the appeals is diametrically opposite. Once the corporation has accepted the reasoning given by the same appellate authority in its judgment dated 30.08.2022 and has not challenged the said order any further, the contrary finding recorded by the same appellate authority in the case of the petitioner, is clearly an arbitrary exercise of Appellate Powers.

47. It is also essential to notice at this stage that para 5.1.4 of the MDG, prescribes that if any unauthorised fittings etc. are found in the dispensing unit, *which are likely to manipulate the delivery*, the material should be existent to demonstrate that the irregularities noticed in the pulsar card could have led to manipulation of delivery. To substantiate on the said allegations with regard to second part of para 5.1.4 of the MDG, the Corporation has

founded the two impugned orders, based upon the clarificatory e-mail of MIDCO, referred to in the order as well the opinion expressed by the licensing authority while analysing the report of Dresser Wayne, as extracted above. The clarificatory e-mail, even as per the orders impugned, was available with the Corporation before the issuance of the first show cause notice, however, the same was not made a '*relied upon document*' or 'document proposed to be relied upon' in the show cause notice, which is evident from the perusal of the show cause notice. At no point, even after remand from the Supreme Court was any fresh show cause notice issued indicating that the respondents were intending to rely upon the said document (clarificatory e-mail) to establish the allegations levelled against the petitioner.

48. The submission of the counsel for the respondents that the clarificatory e-mail was supplied during the appellate proceedings at the first instance and thus, was available, cannot be accepted to be sufficient compliance of principals of natural justice for the sole reason that for a material to be relied upon in the show cause notice and providing the material during the course of the hearing are two different things. When the material proposed to be relied upon, is indicated in the show cause notice, the dealer is confronted and is aware of the materials proposed to be relied upon and thus, would be entitled to challenge the said material including by way of right of cross examination. Making a person aware of the material during the course of the appellate proceedings without there being anything to indicate that the said material is proposed to be relied upon, is clearly in violation of principles of natural justice as, the person against whom the document is

relied upon is never given an opportunity to defend the said evidence or to controvert it in any manner. Thus, I have no hesitation in holding that the reliance on the clarificatory e-mail which was available to the corporation even before issuance of the first show cause notice and the same not being made a part of the document relied upon in the show cause notice, has resulted in violation of the principle of natural justice.

49. It is also important to notice that while analysing the report of the second OEM Dresser Wayne, heavily relied upon by the petitioner in his support, the view has been recorded by the licensing authority based upon the materials which was neither a part of the show cause notice, nor the said view was ever confronted to the petitioner at any point of time nor is the said view supported by any material existing. The said appears to be a personal view of the licensing authority. Relying on the said personal view without there being any material to suggest that the petitioner was ever informed or confronted with any possible view of the nature referred, further makes the order bad in law and also arbitrary. The directions of the Special Appeal Court as well as the Supreme Court were to consider the expert views of the OEMs, no permission was granted to substitute a personal view as has been done in the impugned order that too without even confronting the petitioner with regard to the said view based upon any material.

50. Coming to the judgement cited by both the parties, the counsel for the petitioner has relied upon the judgment in the case of ***State of Punjab vs. Davinder Pal Singh Bhullar; (2011) 14 SCC 770***

to argue that there was a judicial bias in the decision making process. The said judgement is of no avail to the petitioner as the same arose out of adjudication of a criminal proceedings which require stricter judicial scrutiny. Coming to the next judgment in the case of ***Indian Oil Corporation Limited vs. Pullareddy Service Centre (2021) SCC Online AP 2909***, wherein specific reliance is placed upon paragraphs no. 18 to 27, the same was in respect of the allegation of the manipulation in the machine, the court observed as under :

18. In Ram Lal Agarwal's case(referred 2 supra), wherein reliance was placed on the judgment in P. Laxmikanth Rao's case (referred 1 supra) which was later upheld by the Division Bench in W.A. No. 318 of 2011, the learned Single Judge was examining more or less similar factual situation, but there is no allegation of stock variation as pointed out by the learned Senior Counsel. In the said case, the Inspecting Team observed the presence of double gear in one of the dispensing units. However, they did not find any irregularity or illegality in the functioning of the dispensing units, no differentiation was noted in dispensing of fuel nor the quantity of petroleum products was found to be deficient in any manner. It was inter alia contended on behalf of the Oil Company/respondent therein that mere existence of double gear in the dispensing unit is sufficient to hold a dealer responsible as double gear gets installed only to manipulate delivery and actual shortage of delivery is not material.

19. The learned Single Judge while interpreting Clause 5.1.4 of MDG which is pressed into service in the present case also, opined that double gear in

dispensing unit would assume critical irregularity only if deficiency is noticed in the quantity of fuel dispensed with. The said clause reads thus:

5.1.4 Additional/unauthorized fittings/gears found in dispensing unit/tampering with dispensing unit:

Any mechanism/fittings/gear found fitted in the dispensing unit with the intention of manipulating the delivery.....”

20. At para 27 of the judgment, the learned Single Judge opined as follows:

“.....If the material available on record does not necessarily lead to the conclusion that the tampering and tinkering has taken place at the hands of the writ petitioner, it will be totally unjust to penalize him. It is a fundamental principle of law that no innocent person should be penalized for no fault of his. That would be contrary to canons of justice. In the absence of linkage of the presence of the additional gear with 39 teeth in the equipment at the premises of the retail outlet run by the petitioner to him, it will not be safe to infer that he is guilty of tampering with the equipment. If there is no reasonable substratum to a conclusion that the petitioner is guilty of tampering with the equipment, no adverse action of termination of his dealership agreement could have been drawn against him. The petitioner therefore could not have been faulted unnecessarily.”

21. It may be trite to observe here that it is not the case of the appellants that by virtue of presence/or help of double gear, less quantity of petrol/diesel is dispensed with on testing at the time of the inspection conducted on 05.02.2015. No doubt, no satisfactory explanation is forthcoming with regard to the stock variations. However, in the absence of any evidence to the effect that additional gear

was inserted by/or at the behest of the petitioner/dealer and as a result of the same, there was stock variation which reaps benefit to the petitioner, no conclusion can be arrived at for penalizing the petitioner. In this regard, it may be apt to refer to the judgment of the Division Bench cited by Mr. N. Ashwani Kumar in support of his contentions. In W.A. No. 318 of 2011, the Hon'ble Division Bench while confirming the orders of the learned Single Judge in P. Laxmikanth Rao's case (referred 1 supra) vide orders dated 21.07.2011 elaborately dealt with the similar issues. In the said case, the dealership of the petitioner therein was terminated on the allegation that a spurious gear was found to have been introduced into the unit resulting in the short supply of High Speed Diesel (HSD). It is the case of the Oil Company that the dealer committed malpractice/irregularity of short supply by tampering with the Corporation's equipment, namely, dispensing unit by using unauthorized fittings/gears and that the said act of the dealer putting additional gear to the dispensing unit resulting in short supply tantamount to tampering with the dispensing unit. It was contended before the learned Single Judge that once the seal is found to be intact, the dealer cannot be held responsible for any error or defect as to the measurement and further that the dealer has no control over the dispensing unit and the Corporation and the Maintenance Agency are in complete control over the units.

22. While upholding the judgment of the learned Single Judge, the Division Bench held as follows:

"On the basis of the charge, it is appropriate that before any conclusion as to misconduct or malpractice or tampering by the dealer is arrived at, it must be

demonstrated by the appellants by the standards of preponderance of probabilities (no lesser standard known to law exists) that the dealer could access the internal mechanism of the unit and could introduce the spurious gear. Alternatively, a compelling inference as to tampering by or on behalf of the dealer could have perhaps been legitimately arrived at if the respondents could establish that proper gear was in fact installed in the unit on an earlier occasion and the dealer or his agents could have substituted the gear with a spurious one, even while the seal to the unit was intact. In the absence of officials of Weights and Measures Department and by obtaining only their telephonic approval, the seals were broken by agents of the appellants and the Metering Unit opened. It is the admitted factual scenario that the seals of the dispensing unit were intact and as observed by the learned Single Judge it is not the case of the appellants that the dealer or any other individual could gain access to the unit where the "spurious gear" was introduced even while the seal of the unit was intact. It is not the case of the appellants that the seals of the unit were tampered with or duplicate seals substituted for the seals put by officials of the Legal Metrology Department. Neither the show cause notice nor the final order impugned in the writ petition unravels the mystery of the closed unit and metaphysical entry of the spurious gear into the unit. This was a fatal error in the order of termination of the dealership, on account of which the learned Single Judge was persuaded to invalidate the order of termination of the respondent's dealership, by the appellants."

23. Further, with regard to the presence of the spurious gear, the Hon'ble Court recorded its conclusions as follows:

"Responding to a query from this Court as to how the appellants could explain the curious case of the spurious gear inside a locked unit, the learned senior counsel would urge that since the authorized dealer of the gears supplied by Larsen and Turbo had through a letter, dated 10.05.2010, informed the appellants that the gear found in the dealer's unit was an unauthorized gear and not manufactured and supplied by the authorized supplier, the inference is compelling that since it was only the dealer who stood to gain from short delivery of HSD, he must have introduced the gear notwithstanding that the unit was sealed and despite absence of an explanation as to how a spurious gear could have been introduced into the sealed unit. His contention does not commend acceptance by this Court as it suffers from the logical fallacy of an undistributed middle. The letter of the supplier to the appellants, dated 10.05.2010, is not conclusive of the fact that a standard gear was in place till the inspection nor it is to be construed by any principle of law that a spurious gear was not installed.

Since the HSD vended by the dealer is clearly found to be in short supply and that is an undisputed fact, and since a spurious gear having 39 teeth instead of 38 was also found embedded inside the HSD unit, the conclusion is irresistible in a world governed by physical laws that someone or some agent introduced a non-standard gear into the HSD unit. But from this fact to take a logical leap to infer that it was introduced by the dealer, is irrational. The chain of circumstances is not complete and merely because the dealer alone would stand to benefit from the short supply, no such inference could legitimately be drawn.

It is the admitted position that the supplier of the gears is a private agent. Neither the State nor an instrumentality of the State is the accredited supplying agent of the appellants. There is nothing in the pleadings, including in the counter affidavit of the appellants herein before the learned Single Judge that establishes that the introduction or replacement of the gears is by the respondent dealer."

24. While disposing of the writ appeal, the Division Bench opined that "the conclusion as to the dealer's malfeasance was arrived at by the appellants therein on the singular fact that there was short supply of HSD and on the opening of the seal of the unit after breaking it, the spurious gear was found." It was further observed that "the basis of these two facts found is inadequate and is flawed for the reason that the fact that a spurious gear was introduced by the dealer was not legitimately inferred and the fact of the external seals of the unit being intact was not adverted to nor explained in the order of termination."

25. This Court is of the considered view that the above said judgment of the Hon'ble Division Bench applies to the facts of the case in principle and is, therefore, not persuaded to take any different view in the facts and circumstances of the case, wherein no material/evidence was brought on record to the effect that the additional gear was inserted by the dealer with a view to manipulate the delivery of petrol/diesel. It is neither the case of the appellants that unauthorized fittings/additional gears in the dispensing units were inserted by the dealer in collusion with the authorities nor any such allegations were made to that effect. In the absence of which, nothing adverse against the petitioner/dealer can be inferred. This Court is, therefore,

inclined to uphold the submissions made by the learned counsel for the respondent and reject the contentions contra of the learned Senior Counsel for the appellant No. 1/Corporation.

26. In Indian Oil Corporation's case relied on by the learned counsel for the appellants, the Hon'ble Supreme Court looking to the facts and circumstances of the case and on perusing the material on record held that acknowledgement of inspection report by putting seal and signature cannot be allowed to be resiled on the ground that the same were signed in good faith and the officials of the Oil Company cannot take advantage of the same. The said Judgment, in the considered view of this Court, is not applicable to the facts of the present case. Signing of the inspection report acknowledging the presence of additional gear would not ipso facto amount to accepting the insertion of the same by the petitioner. The burden lies on the appellants to establish that the same was inserted to manipulate the delivery of the fuel. In the present case, respondent No. 3/the Original authority arrived at the conclusions to the effect that being custodian of the outlet/equipment, the petitioner is responsible for presence of additional/unauthorized gear without adverting to the plea that it is not possible to do so when seals are intact. Even the appellant No. 2/appellate authority based its findings on assumptions and presumptions while opining that termination of the dealership was based on established fact of unauthorized fitting alone and the issue of excess stock of MS and negative stock in HSD is of no further consequence, is not being dealt with. As pointed out by the Division Bench, no finding was recorded as to how a spurious gear can be inserted in

the dispensing unit when the seals are intact. It may be pertinent to note here that Clause 8.5.2 of MDG provides as follows:

“All cases of irregularities needs to be established before any action is taken against a dealer.”

27. Against the back ground of the above stated factual and legal position, the orders impugned in the writ petition cannot stand to legal scrutiny.”

51. The next judgment cited by the counsel for the petitioner is in the case of ***M/s Chaudhary Filling Point Kazipur through its Proprietor and another vs. State of U.P. through Principal Secretary, Food and Civil Supplies and others decided on 30.01.2019 in Misc. Bench No.27043 of 2018***, wherein this court had considered the allegation against the Petrol Pump Dealer which was similar to the allegations against the petitioner in respect of there being manipulation in the Pulsar Card. The court noticed that the opinion of the independent OEM was not taken and thus, the order impugned was found to be not sustainable. The court also noticed that the allegation levelled with regard to manipulation in the Pulsar Card was not substantiated by any independent opinion of the OEM and was not even supported by any competent court. The said judgment would not have much applicability to the facts of the present case inasmuch as in the present case, the opinion of the OEM is present and the action against the dealer was found to be in violation of the provisions of Clause 5.1.4 of the MDG.

52. The fourth judgment cited by the petitioner's counsel is in the case of ***Indian Oil Corporation Ltd. and others vs. M/s Modern Service Station, decided on 06.03.2024 in Special Appeal No.456 of 2023***. The contention of the parties and had

noticed the defense that the manipulation found were as a result of the act of the OEM and the licensee had no hand in the said manipulation, the matter was remanded back. The said judgment also has no applicability to the facts of the present case.

53. The next judgement cited is in the case of ***M/s Laltu Filling Station vs. Union of India and others; 2016 SCC Online Cal 626*** wherein the Calcutta High Court had the occasion to consider the effect of not taking the opinion of the experts and the court held that post the amendment of MDG 2005, the procedure required for suspending and stopping the supply has to be observed, the said case is also does not help the cause of the petitioner.

54. The next judgment cited is in the case of ***Hindustan Petroleum Corporation Limited vs. Super Highway Services and another (2010) 3 SCC 321***. In the said case, the Supreme Court had noticed that the cancellation of the dealership agreement of a party is a serious business and cannot be taken lightly. Para 31 to 33 of the Supreme Court judgment is quoted herein below :

"31. The cancellation of dealership agreement of a party is a serious business and cannot be taken lightly. In order to justify the action taken to terminate such an agreement, the authority concerned has to act fairly and in complete adherence to the rules/guidelines framed for the said purpose. The non-service of notice to the aggrieved person before the termination of his dealership agreement also offends the well-established principle that no person should be condemned unheard. It was the duty of the

petitioner to ensure that Respondent 1 was given a hearing or at least serious attempts were made to serve him with notice of the proceedings before terminating his agreement.

32. In the instant case, we are inclined to agree with Mr Bhatt's submissions that the High Court did not commit any error in allowing the writ petition filed by Respondent 1 herein, upon holding that notice of the laboratory test to be conducted at Barauni Terminal had not been served upon Respondent 1, which has caused severe prejudice to the said respondent since its dealership agreement was terminated on the basis of the findings of such test. Admittedly the dealership agreement was terminated on the ground that the product supplied by the petitioner Corporation was contaminated by the respondent. Such contamination was sought to be proved by testing the TT retention sample in the laboratory at Barauni Terminal.

33. The guidelines being followed by the Corporation require that the dealer should be given prior notice regarding the test so that he or his representative also can be present when the test is conducted. The said requirement is in accordance with the principles of natural justice and the need for fairness in the matter of terminating the dealership agreement and it cannot be made an empty formality. Notice should be served on the dealer sufficiently early so as to give him adequate time and opportunity to arrange for his presence during the test and there should be admissible evidence for such service of notice on the dealer. Strict adherence to the above requirement is essential, in view of the possibility of manipulation in the conduct of the test, if it is conducted behind the back of the dealer."

The said judgment, is to the effect that the termination of dealership in terms of the MDG Guidelines has to be interpreted strictly.

55. Coming to the judgment cited by counsel for the respondents, the first judgment cited is in **Writ-C No.20271 of 2018 (M/s Maharashi Filling Station (Indian Oil Dealer) vs. Indian Oil Corporation Ltd. U.P. State Officer and another**, wherein the court noticed that the cancellation of the license by the District Supply Officer and the report of the OEM were considered and also noticed that the cancellation order by the respondents corporation was a corollary to the termination of the license of the petitioner by the government authorities. It is not understandable as to how the judgment will have applicability to the facts of the present case, as the order has been passed by the Corporation independent of the action taken by the State authorities.

56. The next judgment in the case of **M/s Kisan Sewa Kendra Sarai Dubaulia vs. Union of India and others; Writ C No.32973 of 2018**, this court had noticed the infractions alleged against the dealer and had also noticed the report submitted by the OEM, none of the issues as raised in the present writ petition were either raised or considered in the said judgment, as such, the same would not have any applicability to the facts of the present case.

57. Coming to the next judgement cited in the case of **M/s Shree Rajendra Agro Service Centre vs. Indian Oil Corporation Ltd.; DB Special Appeal Writ No.456 of 2023**, wherein the High Court of Rajasthan had taken into consideration the 'deeming provision' contained in para 5.1.4 of the MDG to hold that the same would come within the definition of tampering. The argument raised in the present case were neither

raised nor considered and thus cannot have any precedential value.

58. The next order cited is an interim order passed in **Special Appeal No.215 of 2024 (Executive Director Retail and Sales Indian Oil Corporation Ltd. and others vs. M/s Mishra Automobiles through Jagdish Mishra and others)** wherein this court while granting an interim order had noticed that the order passed by the Single Judge was on the basis of unamended MDG whereas the MDG stood amended and this aspect was not considered by the learned Single Judge. An interim order has no precedential value and even otherwise said interim order, has no bearing on facts of the present case.

59. The next judgment cited in the case of **Savitri Devi and others vs. Union of India and others; Writ C No.29859 of 2017**, wherein the Division Bench of this Court had dismissed the writ petition by observing that no infirmity could be found, none of the arguments as raised were either considered or decided by the Division Bench.

60. In the present case, as expressed above, the orders impugned cannot be sustained for the following reasons :

(i). the clarificatory e-mail, relied upon in the two orders was never supplied to the petitioner and was never made a relied upon document in the show cause notice although the same was available prior to the issuance of the show cause notice as claimed by the respondents;

(ii). the finding recorded by the first authority while considering the report of the OEM Dreser Wayne, as noticed in para 42 above, were without any material either alleged in the show cause notice or made available during the course of the proceedings, the said view appears to be a

personal view and is perverse in absence of any material to justify the said view.

(iii). the appellate authority while invoking the 'deeming provisions' in para 5.1.4 of the MDG has taken two diametric views in respect of similar reports submitted by the OEM and the second view taken by the appellate authority in the case of M/s Firozabad Fuels has been accepted by the Corporation and thus, two different views interpreting a similar provision are arbitrary; and

(iv). the Para 5.1.4 of the MDG, is divided into two parts, the first being there being an additional, removal, replacement of manipulation, however the same has to be read in conjunction with the likelihood of manipulating delivery in order to gain undue benefit, to substantiate the second part of clause 5.1.4, no material exists except the clarificatory e-mail which was never made a part of the show cause notice and was never proposed to be relied upon.

61. In the light of the said reasoning and the logic as recorded above, the writ petition deserves to be allowed and is allowed. The impugned orders dated 12.01.2023 and 15.05.2023 are quashed.

(2025) 4 ILRA 635
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.04.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.

Writ C No. 6408 of 2025

Baby Aaliya (Minor) & Anr. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:

Sri Santosh Prajapati, Sri Sayyed Kashif
Abbas Rizvi

Counsel for the Respondents:

C.S.C.

Live in relationship-Father and mother of the child are of different religion-living together since 2018- parents of the child are apprehensive of certain threats from the private respondents who are the erstwhile in-laws of the biological mother- after the death of the erstwhile husband- biological mother started living with the biological father- parents are major-are entitled to live together-even if they have not undergone marriage-the Superintendent of Police, is directed to ensure that the first information report should be registered if the parents of the child approach the police station.

W.P. allowed. (E-9)

Cases Cited:

1. Gyan Devi Vs Superintendent, Nari Niketan, Delhi & ors., (1976) 3 SCC 234

2. Lata Singh Vs St. of U.P. & anr.,(2006) 5 SCC 475;

3. Bhagwan Das Vs St. (NCT of Delhi) (2011) 6 SCC 396)

(Delivered by Hon'ble Shekhar B. Saraf, J.
&

Hon'ble Vipin Chandra Dixit, J.)

Civil Misc. Impleadment Application No.3
of 2025

1. Heard learned counsel appearing on
behalf of the parties.

2. We have perused the affidavit
accompanying the impleadment application
and find that sufficient cause has been
made out for allowing the same.
Accordingly, application is allowed.

3. Necessary impleadment be made
during the course of the day.

Order on the Petition

4. Heard learned counsel appearing on
behalf of the parties.

5. This is a writ petition under Article
226 of the Constitution of India filed by the
petitioner, who is a child, through her
biological parents.

6. It appears that the father and mother
of the child are of different religion and
have been living together since 2018. The
child is presently one year and four months
old. The parents of the child are
apprehensive of certain threats from the
private respondents who are the erstwhile
in-laws of the biological mother.

7. It is to be noted that after the death
of the erstwhile husband, biological mother
started living with the biological father.

8. In our view, under the
Constitutional scheme the parents, who are
major, are entitled to live together, even if
they have not undergone marriage (see:
Gyan Devi vs. Superintendent, Nari
Niketan, Delhi and others reported in
(1976) 3 SCC 234; Lata Singh vs. State of
U.P. and another reported in (2006) 5 SCC
475; and Bhagwan Das vs. State (NCT of
Delhi) (2011) 6 SCC 396).

9. The parents of the child submits that
the police authorities are not willing to
register the first information report against
the private respondents and the police
authorities time and again are humiliating
them when they approach the police station
for lodging the first information report.

10 In light of the same, the Superintendent of Police, Sambhal is directed to ensure that the first information report should be registered at Police Station Chandausi, District Sambhal, if the parents of the child approach the police station. The Superintendent of Police, Sambhal is also directed to look into the aspect whether any security is required to be provided to the child and the parents in accordance with law. The authorities are also directed to act in accordance with the judgements indicated above.

11. With the above directions, the writ petition is allowed.

(2025) 4 ILRA 637

ORIGINAL JURISDICTION

CIVIL SIDE

**DATED: ALLAHABAD 02.04.2025 &
08.04.2025**

BEFORE

**THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.**

Writ C No. 14904 of 2016

Ramji & Ors.	...Petitioners
Versus	
State of U.P. & Ors.	...Respondents

Counsel for the Petitioners:

Sri Sanjay Goswami

Counsel for the Respondents:

Ms. Shubhra Singh, Sri Mohan Srivastava (S.C.), Sri Neelambhar Tripathi

Civil Law - Constitution of India, 1950 – Article 226 – Urban Land (Ceiling and Regulation) Act, 1976 – Sections 6(1), 8(3), 8(4), 10(1), 10(3), 10(5) & 10(6) – Urban Land (Ceiling and Regulation) Repeal Act, 1999 – Sections 3 & 4 – Writ of

Mandamus – Surplus Land – De Facto Possession – Abatement of Proceedings – Notice Requirement – Jurisdiction of Writ Court – Mixed Question of Law and Fact – Delay in Filing Writ Petition.

Held:

The petitioners sought a writ of mandamus to restrain the respondents from dispossessing them from 67,138.12 square meters of land declared surplus under the Urban Land (Ceiling and Regulation) Act, 1976, in village Lawayan, District Allahabad. Ceiling proceedings against Bholanath, the original tenure holder, resulted in an ex-parte order dated 24.05.1983 under Section 8(4), followed by notifications under Sections 10(1) and 10(3), and a notice under Section 10(5) dated 27.05.1996. No voluntary surrender or forceful dispossession under Section 10(6) occurred, and Bholanath and his heirs remained in physical possession until his death in 2005 and thereafter. The St. failed to provide evidence of de facto possession, such as a memorandum of possession or panchnama, before the Urban Land (Ceiling and Regulation) Repeal Act, 1999. Relying on *St. of U.P. v. Hari Ram, (2013) 4 SCC 280*, and *M/s A.P. Electrical Equipment Corporation v. Tahsildar, 2025 SCC OnLine SC 447*, the Court held that mere vesting under Section 10(3) does not confer de facto possession, and proceedings abate under Section 4 of the Repeal Act if possession was not taken. The issue of possession, a mixed question of law and fact, was within the writ court's jurisdiction under Article 226, despite a 20-year delay, as the St.'s threat of dispossession in 2015 provided a fresh cause of action. The writ was allowed, and the St. was directed to update revenue records in favor of the petitioners within eight weeks. A correction application adding counsel's name was also allowed.

Writ petition allowed; revenue records to be updated in favor of petitioners.

Case Law Discussed:

1. Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs St. of U.P., (2000) 6 SCC 325* – Proceedings abate under Section 4 of Repeal Act absent proof of possession.

2. Vinayak Kashinath Shelkar Vs Deputy Collector, (2012) 4 SCC 718* – Possession means actual physical possession, not de jure possession.

3. St. of U.P. Vs Hari Ram, (2013) 4 SCC 280* – Mere vesting under Section 10(3) does not confer de facto possession; St. must prove voluntary surrender or forceful dispossession.

4. Gajanan Kamlya Patil Vs Additional Collector, AIR 2014 SC 1843* – Actual physical possession required under Ceiling Act.

5. St. of Assam Vs Bhaskar Jyoti Sharma, (2015) 5 SCC 321* – Dispossession without notice under Section 10(5) does not vitiate possession for Repeal Act purposes if not challenged timely.

6. St. of U.P. Vs Ehsan, 2023 SCC OnLine SC 1331* – Writ court to refrain from deciding possession disputes with significant delay; relegation to suit appropriate.

7. M/s A.P. Electrical Equipment Corporation v. Tahsildar, 2025 SCC OnLine SC 447* – Possession under Repeal Act is de facto; writ court can adjudicate mixed questions of law and fact to prevent miscarriage of justice.

8. Dip Co. Op. Hsg. Soc. Ltd. Vs St. of Gujarat, 2020 SCC OnLine Guj 693* – Possession under Ceiling Act refers to actual physical possession.

9. Jor Singh @ Chhotelal Vs St. of U.P., Writ C No. 36691 of 2004* – Supports abatement of proceedings absent de facto possession.

10. Netra Pal Singh Vs St. of U.P., Writ C No. 34859 of 2013* – Reinforces requirement of actual possession for Ceiling Act proceedings.

11. St. of Orissa Vs Dr. (Miss) Binapani Dei, AIR 1967 SC 1269* – Writ court not precluded from deciding factual questions in appropriate cases.

Observation:

The Court observed conflicting revenue records, with petitioners' names in Khasra for 1422 Fasli (2012) and St.'s name in Khatauni for 1414-1419 Fasli (2004-2009) and 1426-1431 Fasli (2016-2021). The St.'s claim of possession via a

1996 Government Order transferring the land to Prayagraj Development Authority lacked evidence of actual possession or compensation payment. The 20-year delay was excused due to the 2015 dispossession threat, which triggered the cause of action. Accepting the St.'s claims without scrutiny risked injustice, justifying adjudication under Article 226.

(Delivered by Hon'ble Shekhar B. Saraf, J.)

1. This is a writ petition under Article 226 of the Constitution of India wherein the petitioners have prayed for the issuance of a writ of mandamus restraining the respondents from dispossessing or interfering with the peaceful possession of petitioners from their surplus declared land in question, situated in village Lawayan, Pargana Arail, Tehsil Karchhana, District Allahabad and in furtherance directing the respondents not to make any interference in the peaceful possession of the petitioners over the land/plots on area 67138.12 square meter situated at aforementioned place.

FACTS

2. Factual matrix giving rise to the instant writ petition is delineated below:

a) In the present lis, one Bholanath (father of petitioner no.1 to 4, father-in-law of petitioner no. 5 and 6, and grandfather of petitioner no. 7 to 11) was the owner in possession of various agricultural lands situated in village Lawayan Kala, Pargana Arail, Tehsil Karchhana, District Allahabad. His name was also recorded in Khasra of 1422 Fasli year (corresponding to the year 2012). He had been cultivating the land since then.

b) The State initiated ceiling proceedings against Bholanath in Case No. K-3770/1976 (State v. Bholanath) under

Section 6 (1) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'Ceiling Act') based on his statement regarding vacant land.

c) Thereafter, the Competent Authority, Urban Land Ceiling, Allahabad (hereinafter referred to as 'respondent no.3') passed an ex-parte order dated May 24, 1983 under Section 8 (4) of the Ceiling Act, declaring 67,138.12 square meter of land as surplus.

d) On July 24, 1993, a notification under Section 10 (1) of the Ceiling Act was published, followed by a declaration under Section 10 (3) of the Ceiling Act, in the official gazette.

e) Subsequently, respondent no.3 issued notice dated May 27, 1996 under Section 10 (5) of the Ceiling Act directing Bholanath to voluntarily handover/surrender the possession of surplus land to the Collector/District Magistrate, Allahabad within 30 days of receipt of the notice.

f) However, Bholanath neither voluntarily surrendered the possession of the land before the authority, nor did the District Magistrate/Collector, Allahabad or any other authority take forceful possession of the same under Section 10 (6) of the Ceiling Act. The ceiling proceedings only reached upto the stage of Section 10 (5) of the Ceiling Act.

g) Bholanath continued in the actual physical possession of land until his death in May, 2005. After his demise, his legal heirs inherited the property, including the surplus land, and have remained in actual physical possession since then.

h) Since neither actual physical possession of the land was taken by the State Government nor any compensation was awarded to them for the surplus declared land, all the proceedings under the Act, stood abated after enforcement of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as 'Repeal Act').

i) In December 2015, respondent authorities visited the land and threatened the petitioners to vacate the surplus land within 30 days. They warned of forced dispossession, if the land was not surrendered.

j) Being aggrieved by the ex-parte order and the threat received from respondents to dispossess them from the peaceful possession, the petitioners have approached this Court seeking relief.

CONTENTIONS OF THE PETITIONERS

3. Learned counsel appearing on behalf of the petitioners has made the following submissions:

a) It is a statutory mandate to issue proper and effective service of notice along with a draft statement to the person concerned under Section 8 (3) of the Ceiling Act before passing an order under Section 8 (4) of the Ceiling Act. The petitioners in the present case, were never served with notice under Section 8 (3). Inter alia, it is contended by the State in its counter-affidavit that the notice under Section 8 (3) of the Ceiling Act was served upon Sangam Lal (petitioner no. 4) who is the son of Bholanath and was the original tenure holder. However, Bholanath was the

original tenure holder during his lifetime till 2005.

b) The actual physical possession of the surplus land vests with the petitioners though State is showing de facto possession from the fact stated in its counter-affidavit that the land has been transferred to Prayagraj Development Authority via Government Order dated December 11, 1996 before the Repeal Act came into force.

c) Reliance has been placed upon umpteen judgments of the Apex Court as in **Vinayak Kashinath Shelkar v. Deputy Collector and Competent Authority and Ors. reported in (2012) 4 SCC 718; Gajanan Kamlya Patil v. Additional Collector and Competent Authority (ULC) and Ors. reported in AIR 2014 SC 1843; and Dip Co. Op. Hsg. Society Ltd. v. State of Gujarat reported in 2020 SCC Online Guj 693** wherein it was held that ‘possession’ means actual physical possession not *de facto* possession and not mere paper or *de jure* possession.

d) Entire proceedings were conducted in an ex-parte manner against Bholanath without providing any opportunity of hearing to him.

e) The entries in revenue records were changed by the State in a whimsical manner on the basis of notice issued under Section 10 (5) of the Ceiling Act.

f) State has not filed any documents/memorandum of possession justifying entries in the revenue records. State has also not prepared any panchnama in relation to show that the possession has been taken over by them.

g) The actual physical possession of the disputed land was not taken by the State and the proceedings have gone only up to the stage of Section 10 (5) of the Ceiling Act. The acquisition proceeding stands abated as per the Repeal Act. Hence, the peaceful possession of the petitioners should not be interfered with.

h) To buttress the arguments, reliance has been placed upon a judgment of the Apex Court in **Pt. Madan Swaroop Shrotiya Public Charitable Trust v. State of U.P. reported in (2000) 6 SCC 325** wherein the Court has held that in the absence of record to indicate the possession over the surplus land, the proceedings have to be abated under Section 4 of the Repeal Act. The relevant paragraph of the said judgment to substantiate the contentions is quoted below:

“5. Since there is nothing on record to indicate that the State had taken possession over the surplus land, the present proceedings have to be abated and are hereby abated under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.”

i) In **State of U.P. v. Hari Ram reported in (2013) 4 SCC 280**, the Apex Court has held that mere conferment of right under Section 10 (3) of the Ceiling Act does not confer any *de facto* right on the State to have possession unless there is voluntary surrender or delivery of possession peacefully under Section 10(5) of the Ceiling Act or forceful dispossession under Section 10 (6) of the Ceiling Act. The relevant paragraphs of the judgment are quoted below:

“Effect of the Repeal Act

41. Let us now examine the effect of Section 3 of Repeal Act 15 of 1999 on sub-section (3) of Section 10 of the Act. The Repeal Act, 1999 has expressly repealed Act 33 of 1976. The objects and reasons of the Repeal Act have already been referred to in the earlier part of this judgment. The Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.

42. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18-3-1999. The State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 4 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 4 of the Repeal Act.”

j) The judgments of the Division Bench of this Court that have been placed reliance upon to buttress the arguments are: **Jor Singh @ Chhotelal v. State of U.P. in Writ C No. 36691 of 2004; Netra Pal Singh and another v. State of U.P. and another in Writ C No. 34859 of 2013.**

CONTENTIONS OF THE RESPONDENTS

4. Learned Standing Counsel appearing on behalf of the State has made following submissions:

a) Petitioners alleged that they were not served with the notice dated December 10, 1980 under Section 8 (3) of the Ceiling Act before passing an ex-parte order under Section 8 (4) of the Ceiling Act declaring 67138.12 square meter as surplus land. In this regard, it is submitted that notice along with draft statement under Section 8 (3) of the Ceiling Act was duly issued and served on April 13, 1983 upon Sangam Lal (petitioner no.4) son of Bholanath, who was the original tenure holder of the land.

b) Publication of declaration of surplus land under Section 10 (3) of the Ceiling Act in the official gazette vide notification dated February 3, 1996 vests absolute right in the State Government free from all encumbrances with effect from date so specified in the said notification.

c) Upon service of notice and passing of an order dated May 27, 1996 under Section 10 (5) of the Ceiling Act, Bholanath peacefully transferred the possession of land in dispute to respondent no.3. Accordingly, the revenue records were rectified, replacing the name of the original tenure holder with the State Government. Hence, the physical possession was validly taken over by the respondents in accordance with the Act before the Repeal Act came into force. Issuance of notice and service thereof was in accordance with the Act.

d) The land which was in the name and possession of the State was transferred to Prayagraj Development Authority via Government Order dated

December 11, 1996. Therefore, the de facto possession of land is implied upon the State.

e) As per the decision of allotment committee dated September 2, 2009, the District Magistrate, Prayagraj, allotted the land vested in State to Prayagraj Development Authority (PDA) for development of High Tech Township and in pursuance of the above decision, a lease deed dated June 28, 2010 had also been executed by Prayagraj Development Authority in favour of M/s Pancham Realcon. Pvt. Ltd.

f) There is an alternative remedy under Section 32 of the Ceiling Act against the order passed under Section 8 (4) of the Ceiling Act. Petitioners neither challenged the order dated May 24, 1983 passed under Section 8 (4) nor challenged the notice dated May 27, 1996 under Section 10 (5) of the Ceiling Act but approached this Court by means of the present writ petition after gargantuan delay.

g) To buttress the arguments, reliance has been placed upon a judgment of the Apex Court in **State of Assam v. Bhaskar Jyoti Sharma** reported in **2015 (5) SCC 321**. The relevant paragraphs of the judgment are quoted below:

“11. Section 3 of the Repeal Act postulates that vesting of any vacant land under sub-section (3) of Section 10, is subject to the condition that possession thereof has been taken over by the competent authority or by the State Government or any person duly authorised by the State Government. The expression “possession” used in Section 3 (supra) has been interpreted to mean “actual physical possession” of the surplus land and not just

possession that goes with the vesting of excess land in terms of Section 10(3) of the Act.

12. The question, however, is whether actual physical possession of the land in dispute has been taken over in the case at hand by the competent authority or by the State Government or an officer authorised in that behalf by the State Government.

13. The case of the appellant is that actual physical possession of the land was taken over on 7-12-1991 no matter unilaterally and without notice to the erstwhile landowner. That assertion is stoutly denied by the respondents giving rise to seriously disputed question of fact which may not be amenable to a satisfactory determination by the High Court in exercise of its writ jurisdiction. But assuming that any such determination is possible even in proceedings under Article 226 of the Constitution, what needs examination is whether the failure of the Government or the authorised officer or the competent authority to issue a notice to the landowners in terms of Section 10(5) would by itself mean that such dispossession is no dispossession in the eye of the law and hence insufficient to attract Section 3 of the Repeal Act. Our answer to that question is in the negative.

17. Reliance was placed by the respondents upon the decision of this Court in Hari Ram case [State of U.P. v. Hari Ram, (2013) 4 SCC 280 : (2013) 2 SCC (Civ) 583]. That decision does not, in our view, lend much assistance to the respondents. We say so, because this Court was in Hari Ram case [State of U.P. v.

Hari Ram, (2013) 4 SCC 280 : (2013) 2 SCC (Civ) 583] considering whether the word “may” appearing in Section 10(5) gave to the competent authority the discretion to issue or not to issue a notice before taking physical possession of the land in question under Section 10(6). The question whether breach of Section 10(5) and possible dispossession without notice would vitiate the act of dispossession itself or render it non est in the eye of the law did not fall for consideration in that case. In our opinion, what Section 10(5) prescribes is an ordinary and logical course of action that ought to be followed before the authorities decided to use force to dispossess the occupant under Section 10(6). In the case at hand if the appellant's version regarding dispossession of the erstwhile owner in December 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no consequence and would not vitiate or obliterate the act of taking possession for the purposes of Section 3 of the Repeal Act. That is because Bhabadeb Sarma, erstwhile owner, had not made any grievance based on breach of Section 10(5) at any stage during his lifetime implying thereby that he had waived his right to do so.”

DISCUSSION AND ANALYSIS

5. We have considered the rival submissions and have perused the materials on record. Before proceeding to the rival contention canvassed by both the sides, we must look into Sections 3 and 4 of the Repeal Act, 1999 which are delineated below:

“Section 3. Savings—

(1) The repeal of the principal Act shall not affect—

(a) the vesting of any vacant land under sub-section (3) of Section 10, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under subsection (1) of Section 20 or any action taken thereunder, notwithstanding any judgment or any Court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under subsection (1) of Section 20.

(2) Where—

(a) any land is deemed to have vested in the State Government under sub-section (3) of Section 10 of the Principal Act but possession of which has not been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority; and (b) any amount has been paid by the State Government with respect to such land, then such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

Section 4. Abatement of legal proceedings:—*All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or any authority shall abate; Provided that this section shall not apply to the proceedings*

relating to Sections 11, 12, 13 and 14 of the principal Act insofar as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority.”

6. Section 3 of the Repeal Act provides that if the possession of vacant land has not been taken by the State Government or any person duly authorized by it before the commencement of the Repeal Act, then, by virtue of Section 4 of the Repeal Act, the proceedings would abate. Furthermore, if the ownership has vested in the State Government under Section 10 (3) of the Ceiling Act, it must be restored to the original landholder upon repayment of any compensation paid by the State for such land.

7. In **State of U.P. v. Hari Ram (Supra)**, the Apex Court held that mere vesting of title under Section 10 (3) of the Ceiling Act does not equate to the State having taken de facto possession of the land as the onus of proving the same is upon the State. The relevant paragraphs of the judgment are delineated below:

“41. Let us now examine the effect of Section 3 of Repeal Act 15 of 1999 on sub-section (3) of Section 10 of the Act. The Repeal Act, 1999 has expressly repealed Act 33 of 1976. The objects and reasons of the Repeal Act have already been referred to in the earlier part of this judgment. The Repeal Act has, however, retained a saving clause. The question whether a right has been acquired or liability incurred under a statute before it is repealed will in each case depend on the construction of the statute and the facts of the particular case.

42. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18-3-1999. The State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the landowner or holder can claim the benefit of Section 4 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 4 of the Repeal Act.”

(Emphasis Supplied)

8. Before delving into the issue, it would be useful to elucidate the facts which are not disputed by both the parties. The same are provided below:

a) 67,138.12 square meter of land was declared as surplus by order passed by the Competent Authority under Section 8 (4) of the Ceiling Act.

b) A notification under Section 10 (1) of the Act was published on July 24, 1993.

c) Notice dated May 27, 1996, issued under Section 10 (5) of the Ceiling Act to handover/surrender the possession of land to the State.

9. Learned counsel appearing on behalf of the petitioners submits that the actual physical possession of the surplus

land vests with the petitioners and the possession has never been surrendered or transferred to the State after issuance of notice under Section 10 (5) of the Ceiling Act nor the State has taken forceful possession of the land under Section 10 (6) of the Ceiling Act. Moreover, the State is unable to show the date on which the possession has been taken by them or the date on which the land has been transferred to Prayagraj Development Authority upon which de facto possession of the land is contended by the respondents.

10. Ergo, onus to prove the possession of surplus land vests upon the State, if they are contending so; but no documentary evidence such as memorandum of possession or panchnama has been brought on record to depict the same.

11. Per contra, the learned counsel appearing on behalf of the respondents debunking the arguments of the petitioners submitted that the possession of surplus land had already been taken by the State after issuance of notice under Section 10 (5) of the Ceiling Act. Furthermore, to substantiate his arguments, the State is also showing de facto possession of the land by the fact that it has been transferred to Prayagraj Development Authority in pursuance of the Government Order dated December 11, 1996, and thereafter, leased in favour of M/s Pancham Realcon. Pvt. Ltd on June 28, 2010 for development of High Tech Township.

12. Before deciding the issue at hand, it is pertinent to look at the nature of the issue that has arisen before this Court.

13. The factum of possession is primarily a question of fact and it is settled

law that normally the disputed question of fact is not investigated or adjudicated upon or interfered with by the writ Court while exercising powers under Article 226 of the Constitution of India. But mere existence of a disputed question of fact also will not take away the jurisdiction of the writ Court in granting appropriate relief.

14. In **State of U.P. v. Ehsan** reported in 2023 SCC OnLine SC 1331, the Apex Court while setting aside the order passed by the Division Bench of the Allahabad High Court in Writ C No. 21009 of 2012 has held that Court should refrain itself from deciding questions with regard to possession of surplus land through writ petition as factum of possession is primarily a question of fact. Hence, the Special Leave Petition filed by the State was allowed and the respondents have been relegated to suit to decide the question with regard to possession. The relevant paragraphs of the judgment are delineated below:

“35. In view of the discussion above and having regard to the following : (a) that there was a serious dispute with regard to taking of possession of the surplus land; (b) that there was a delay of about seven years in filing the first writ petition from the date when possession was allegedly taken by the State, after publication of the vesting notification; (c) that no documentary evidence such as a Khasra or Khatauni of the period between alleged date of taking possession and filing of the first writ petition was filed by the original petitioner; (d) that in the earlier two rounds of litigation, the High Court refrained from deciding the issue of possession of the surplus land even though that issue had arisen directly between the parties; and (e) that infraction of the

prescribed statutory procedure for taking possession cannot be the sole basis to discard State's claim of possession, when it is stated to have been taken long before the date the issue is raised, we are of the considered view that the High Court should have refrained from deciding the issue with regard to taking of actual possession of the surplus land prior to the cut off date specified in the Repeal Act, 1999. Instead, the writ petitioner should have been relegated to a suit.

36. In view of the above conclusion, the appeal is allowed. The impugned order passed by the High Court is set aside. The first respondent's writ petition is dismissed without prejudice to his right to institute a suit. Parties to bear their own costs."

15. Recently, in a celebrated judgment, two-Judge Bench of the Apex Court penned by Justice **J.B. Pardiwala in M/s A.P. Electrical Equipment Corporation v. Tahsildar** reported in **2025 SCC OnLine SC 447**, while dealing with the case of the **State of U.P. v. Ehsan (Supra)** has extensively examined the scope of writ jurisdiction under Article 226 of the Constitution of India, particularly in relation to disputed questions of fact. The Court clarified that while writ Courts generally avoid adjudicating factual disputes, their jurisdiction is not automatically ousted merely because the State or a party raises such disputes. If the facts are contested merely to evade judicial scrutiny, then writ Court has the authority to examine them in the interest of justice. The Court also emphasized that when faced with seemingly conflicting precedents, the High Court must endeavour to harmonize the facts of the case accordingly to reach a conclusion. Furthermore, it was observed

that certain issues, such as determining possession of surplus land, depends on the factual matrix of each case. This involves mixed questions of law and fact, which do not preclude writ jurisdiction, particularly when legal interpretation is integral to the resolution. This judgment reinforces that writ Courts are not entirely barred from dealing with factual disputes, and held that writ Court has discretion to entertain it, depending on facts of each case and documentary evidence produced before the Court. The relevant paragraphs of the judgment are delineated below:

"41. The propositions of law governing the issue of possession in context with Sections 10(5) and 10(6) respectively of the Act, 1976 read with Section 3 of the Repeal Act, 1999 may be summed up thus:

[1] The Repeal Act, 1999 clearly talks about the possession being taken under Section 10(5) or Section 10(6) of the Act, 1976, as the case may be.

[2] It is a statutory obligation on the part of the competent authority or the State to take possession strictly as permitted in law.[3] In case the possession is purported to have been taken under Section 10(6) of the Act, 1976 the Court is still obliged to look into whether "taking of such possession" is valid or invalidated on any of the considerations in law.

[3] The possession envisaged under Section 3 of the Repeal Act, 1999 is de facto and not de jure only.

[4] The mere vesting of "land declared surplus" under the Act without resuming "de facto possession" is of no consequence and the land holder is entitled to the benefit of the Repeal Act, 1999.

[5] The requirement of giving notice under sub-sections (5) and (6) of Section 10 respectively is mandatory. Although the word “may” has been used therein, yet the word “may” in both the sub-sections should be understood as “shall” because a Court is obliged to decide the consequences that the legislature intended to follow from the failure to implement the requirement.

[6] The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18th March 1999.

[7] The State has to establish by cogent evidence on record that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (6) of Section 10 or forceful dispossession under sub-section (6) of Section 10.

49. There is nothing in Article 226 of the Constitution to indicate that the High Court in the proceedings, like the one on hand, is debarred from holding such an inquiry. The proposition that a petition under Article 226 must be rejected simply on the ground that it cannot be decided without determining the disputed question of fact is not warranted by any provisions of law nor by any decision of this Court. A rigid application of such proposition or to treat such proposition as an inflexible rule of law or of discretion will necessarily make the provisions of Article 226 wholly illusory and ineffective more particularly Section 10(5) and 10(6) of the Act, 1976

respectively. Obviously, the High Court must avoid such consequences.

50. In the aforesaid context, we may look into the decision of this Court in the case of *State of Orissa v. Dr. (Miss) Binapani Dei*, AIR 1967 SC 1269. In paragraph 6 at p. 1270 of the said judgment, this Court has been pleased to hold as follows:—

“Under Art. 226 of the Constitution the High Court is not precluded from entering upon a decision on questions of fact raised by the petition. Where an enquiry into complicated questions of fact arises in a petition under Art. 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined. The High Court may in appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court.”

52. In one of the recent pronouncements of this Court in *State of U.P. & Anr. v. Ehsan & Anr.* reported in 2023 INSC 906, this Court observed that:-

“28. We are conscious of the law that existence of an alternative remedy is not an absolute bar on exercise of writ jurisdiction. More so, when a writ petition has been entertained, parties have exchanged their pleadings/ affidavits and the matter has remained pending for long. In such a situation there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. One such

compelling reason may arise where there is a serious dispute between the parties on a question of fact and materials/evidence(s) available on record are insufficient/inconclusive to enable the Court to come to a definite conclusion.

29. *Bearing the aforesaid legal principles in mind, we would have to consider whether, in the facts of the case, the High Court ought to have dismissed the third writ petition of the first respondent and relegate him to a suit as there existed a serious dispute between the parties regarding taking of possession. More so, when the High Court, in the earlier round of litigation, refrained from taking up the said issue even though it had arisen between the parties.*

30. *No doubt, in a writ proceeding between the State and a landholder, the Court can, on the basis of materials/evidence(s) placed on record, determine whether possession has been taken or not and while doing so, it may draw adverse inference against the State where the statutory mode of taking possession has not been followed [See State of UP vs. Hari Ram (supra)]. However, where possession is stated to have been taken long ago and there is undue delay on the part of landholder in approaching the writ court, infraction of the prescribed procedure for taking possession would not be a determining factor, inasmuch as, it could be taken that the person for whose benefit the procedure existed had waived his right thereunder [See State of Assam CA Nos. 4526-4527 of 2024 Page 139 of 145 vs. Bhaskar Jyoti Sarma, (supra)]. In such an event, the factum of actual possession would have to be determined on the basis of materials/evidence(s) available on record and not merely by finding fault in*

the procedure adopted for taking possession from the land holder. And if the writ court finds it difficult to determine such question, either for insufficient/inconclusive materials/evidence(s) on record or because oral evidence would also be required to form a definite opinion, it may relegate the writ petitioner to a suit, if the suit is otherwise maintainable.”

53. *Thus, it would all depend on the nature of the question of fact. In other words, what is exactly, that the writ court needs to determine so as to arrive at the right decision. If the only issue, that revolves around the entire debate is one relating to actual taking over of the physical possession of the excess land under the provisions of sub-sections (5) and (6) of Section 10 of the Act, 1976 respectively, then in such circumstances, the writ court has no other option but to go into the factual aspects and take an appropriate decision in that regard. The issue of possession, by itself, will not become a disputed question of fact. If all that has been said by the State is to be accepted as a gospel truth and nothing shown by the landowner is to be looked into on the ground that a writ court cannot go into disputed questions of fact, then the same may lead to a serious miscarriage of justice.*

54. *We are of the considered opinion that the issue as regards taking over of the actual physical possession of the excess land in accordance with the provisions of sub-sections (5) and (6) of Section 10 of the Act, 1976 could be said to be a mixed question of law and fact and not just a question of fact. Mixed question of law and fact refers to a question which depends on both law and fact for its*

solution. In resolving a mixed question of law and fact, a reviewing court must adjudicate the facts of the case and decide relevant legal issues at the same time. Mixed questions of law and fact are defined "as questions in which the historical facts are admitted or established, the rule of law is resolved and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated". [Bausch & Lomb v. United States C.I.T. 166, 169 (Ct. Int'l Trade 1997)]"

16. In the present case, petitioners showed Khasra for 1422 Fasli year (corresponding to the year 2012) depicting the name of Ramji and his legal heirs and respondents in its counter-affidavit brought on record the Khatauni for Fasli year 1426-1431 (corresponding to the year 2016-2021) depicting the name of State. The respondents also brought on record the Khatauni for Fasli year 1414-1419 (corresponding to the year 2004-2009) depicting the name of High Tech Township.

CONCLUSION

17. In view of the documentary evidence produced by both the parties, there appears some confusion with regard to whether possession was actually taken by the State. The present writ petition has been filed in the year 2016, that is, 20 years after the possession was supposedly taken by the State. The reason provided in the writ petition with regard to the laches on the part of petitioners in filing this writ petition so late in the day is that the State was after 20 years harassing the petitioners and trying to take possession of their land.

18. As opined by the Apex Court in **M/s A.P. Electrical Equipment Corporation (Supra)**, the issue as regards to taking over of the actual physical possession of the excess land in accordance with provisions of Sections 10 (5) and 10 (6) of the Ceiling Act is a mixed question of law and fact and not just a question of fact. The Apex Court has further elucidated that if all that has been said by the State is to be accepted as a gospel truth and nothing shown by the land owner is to be looked into on the ground that a writ Court cannot go into a disputed question of fact, then the same may lead to a terrible miscarriage of justice.

19. In light of the above ratio, we are of the view that the writ Court can decide on the aspect of de facto possession of land if the disputed facts can be discerned and the correct position, ascertained by the writ Court.

20. Furthermore, one may keep in mind the ratio laid down in **State of U.P v. Ehsan (Supra)** wherein the Apex Court had looked into various aspects and held that in certain circumstances the High Court should refrain from deciding a disputed question of fact especially when there is a huge delay in filing of the writ petition. The Apex Court had opined that the matter should accordingly be relegated to suit where the disputed question may be decided by undergoing a proper trial.

21. In the present case, though the State has not been able to indicate exactly as to when possession was taken by the State, it is clear from the facts that by a Government Order dated December 11, 1996 the State, after having supposedly taken possession of the land, had

transferred the same to Prayagraj Development Authority. However, in the counter-affidavit the State has not been able to indicate any notice under Section 10 (6) of the Ceiling Act having been issued to the land holder for forceful dispossession nor any amount having been paid by the State Government as compensation with respect to such land. These above facts tilt the scale in favour of the petitioners and one has to conclude that even though there have been laches on the part of the petitioners, the State has ultimately not ever been able to show *de facto* possession.

22. As envisaged in the judgment of **M/s A.P. Electrical Equipment Corporation (Supra)**, the possession envisaged under Section 3 of the Repeal Act, is *de facto* possession and not *de jure* possession. Furthermore, mere vesting of land declared surplus under the Act without resuming *de facto* possession is of no consequence and the land holder is entitled to the benefit of the Repeal Act.

23. In light of the above ratio, we are of the view that the factual matrix of the present case is clearly in favour of the petitioners as the State has not been able to indicate in any manner as to how *de facto* possession was taken by the State. From the facts, it is also indicated that in the Khasra, the name of the petitioners was present from 2012 till 2016.

24. In light of the above, one comes to the unequivocal findings that the State has not been able to bring on record any document to prove that *de facto* possession of the surplus land was taken by the State before the cut off date as specified in the Repeal Act. This being the position, this Court following the dictum in **M/s A.P. Electrical Equipment Corporation**

(Supra), exercising its discretionary powers under Article 226 of the Constitution of India, is duty bound to hold in favour of the petitioners.

25. The writ petition is, accordingly, allowed. Consequential reliefs to follow. The authorities are directed to carry out changes in the revenue records in favour of the petitioners within a period of eight weeks from date.

26. This Court would like to thank and appreciate Ms. Saumya Patel and Mr. Ashutosh Srivastava, Research Associates, who have assisted this Court in carrying out the extensive research and analysis. This Court would also like to show the appreciation towards the counsel who have appeared and diligently argued in this matter on behalf of their clients.

Civil Misc. Correction
Application No.21 of 2025

Heard Sri Suresh Kumar Shukla, learned counsel appearing for the applicant and the learned Standing Counsel appearing on behalf of the State

The present correction application has been filed for correction in the order dated April 2, 2025.

For the reasons stated in the correction application, the same is allowed.

In the order dated April 2, 2025, name of Sri Suresh Kumar Shukla be also read as counsel appearing for the petitioner.

This order be treated as part and parcel of the order dated April 2, 2025.

**ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.04.2025**

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.

Writ - C No. 25120 of 2020

Rajendra Prasad & Ors. ...Petitioners
Versus
District Magistrate, Bareilly & Anr. ...Respondents

Counsel for the Petitioners:

Sri Udit Chandra, Sri Subodh Kumar

Counsel for the Respondents:

C.S.C., Sri Prateek J. Nagar, Sri J. Nagar
(Sr. Advocate)

A. Compensation for damages due to erection of poles/towers - Electricity Act, 2003, S. 164 - Exercise of powers of Telegraph Authority - Telegraph Act, 1885, Sections 10(d), 16(3), 18(2) - The Telegraph Authority is empowered to place telegraph lines and posts upon any immovable property. Under Section 10(d) of the Telegraph Act, the Telegraph Authority shall pay full compensation to all persons for any damage sustained by reason of the exercise of such powers. Section 16(3) provides that where any dispute arises as to the adequacy of the compensation payable under Section 10(d), such dispute shall be determined by the District Judge. The Central Government framed a policy dated 15 October 2015 for awarding compensation for damages caused to land due to the erection of poles/towers, in addition to compensation for trees; the policy was implemented in the State of Uttar Pradesh on 19 November 2019.

B. The Power Grid Corporation of India Limited selected villagers' land for the erection of poles/towers and laying of

transmission lines. Petitioners submitted representation regarding damages caused to their land before the District Magistrate. **Held** : – It is the District Judge, and not the District Magistrate, who has jurisdiction under Section 16(3) of the Telegraph Act to determine issues relating to the adequacy and sufficiency of compensation. Petitioners relegated to approach the District Judge for redressal of their grievances. (Paras 27, 28)

Allowed. (E-5)

(Delivered by Hon'ble Shekhar B. Saraf, J.)

1. This is a writ petition under Article 226 of the Constitution of India wherein the petitioners are praying for the issuance of a writ of mandamus commanding and directing the District Magistrate, Bareilly (hereinafter referred to as 'respondent no.1') to decide their representation dated September 30, 2020.

FACTS

2. Factual matrix of the instant writ petition is delineated below:

a) The petitioners are small-scale farmers who own agricultural land in District Bareilly. A scheme for Northern Region System Strengthening Scheme-XXI (hereinafter referred to as the ‘Scheme’) for laying a 400 kV Bareilly-Kashipur-Roorkee-Saharanpur D/C (Quad) transmission line was approved by the Ministry of Power, Government of India, under its authority granted by Section 68 of the Electricity Act, 2003, vide notification dated November 16, 2009.

b) In pursuance of this notification, the Power Grid Corporation of India Limited (hereinafter referred to as the 'PGCIL'), an undertaking of the

Government of India, was granted authority for the project. In exercise of its powers under Section 164 of the Electricity Act, 2003 read with Section 10 of the Telegraph Act, 1885 (hereinafter referred to as 'Telegraph Act'), selected the petitioners' land alongwith some other villagers for the erection of poles/towers and laying down transmission lines for execution of the scheme. The project was supposedly started in the year 2011 and was completed in 2019 as contended by petitioners.

c) In 2014, PGCIL issued separate notices to the respective petitioners under Section 42 of the Electricity Supply Act, 1948 read with Part III of the Telegraph Act, regarding the cutting of trees for laying down of transmission lines within 30 days of receipt of the notice. PGCIL also requested the Tehsildar or concerned government department to determine the compensation for Right of Way (RoW) arising from laying down of the transmission line, which was to be paid by PGCIL. A copy of the aforementioned notice was also forwarded to the Tehsildar and the Additional District Magistrate for determination of compensation.

d) Subsequently, in 2015, PGCIL issued separate cheques of varying amounts to the petitioners as compensation.

e) Meanwhile, some other farmers from the same district filed writ petition no. 26594 of 2016 (Dharam Pal v. State of U.P.), alleging that they have received less compensation compared to the farmers in adjacent District of Rampur. This writ petition, being premature, was disposed of vide order dated May 30, 2016, with a direction to petitioners to approach respondent no.1 for the determination of compensation for both land as well as trees.

f) In compliance of the aforementioned order, respondent no.1

passed an order dated July 13, 2016 observing disparity in compensation between the farmers in District Rampur and Bareilly. Consequently, PGCIL was directed to provide compensation to farmers in Bareilly at par with those in Rampur. This order was further modified on September 3, 2016, extending its applicability to all farmers impleaded in writ petition no. 26594 of 2016.

g) PGCIL challenged the orders dated July 13, 2016 and September 3, 2016 passed by respondent no.1 before this Court through writ petition no. 3679 of 2017 (Power Grid Corporation of India Ltd. v. D.M., Bareilly and Others) on the ground that the District Magistrate was not the competent authority to enhance the compensation, as such power vests with the District Judge. The said writ petition was dismissed vide order dated September 5, 2018, with the observation that the impugned order was passed in an administrative capacity pursuant to the direction of the High Court and did not constitute quasi-judicial orders under Section 18 of the Telegraph Act.

h) Ultimately, PGCIL accepted the order passed by respondent no.1 and accordingly paid compensation to the farmers who had contested the aforementioned writ petition.

i) The petitioners in the present writ petition, after getting knowledge of the compensation awarded to those other farmers who were petitioners in writ petition no. 3679 of 2017, submitted representations dated October 10, 2018 and January 1, 2020, before the respondent no.1 seeking compensation for cutting of trees on their respective lands.

j) Since the representations dated October 10, 2018, and January 1, 2020, were not decided by respondent no.1, several petitioners filed individual writ

petitions, including writ petition no. 37675 of 2018, 37407 of 2018, 37675 of 2018, 38594 of 2018, 37780 of 2018 and 12576 of 2020, seeking a writ of mandamus from this Court in order to get their representations decided. Except for the present petition, all other writ petitions pertain solely to compensation for trees.

k) During the pendency of aforementioned writ petitions, a Coordinate Bench of this Court disposed of Writ C No. 37675 of 2018 vide order dated March 29, 2019, observing that the parties should be relegated to approach the District Magistrate, who would decide the claim based on the report submitted by the committee constituted as per the said order.

l) PGCIL filed a review petition against the aforementioned writ petition, which was dismissed vide order dated August 26, 2019. Meanwhile, respondent no.1 decided the representation vide order dated June 14, 2019, in compliance of the direction issued to him.

m) PGCIL challenged the order dated June 14, 2019, before this Court through writ petition no. 21207 of 2019 (Power Grid Corporation v. State of U.P.), on the ground that the District Magistrate has no locus to decide the said representation. However, the writ petition was dismissed vide order dated November 7, 2019.

n) The petitioners whose writ petitions had been decided were given compensation by the PGCIL, while those, whose writ petitions are still pending before the Court are waiting for the disbursement of their compensation.

o) Meanwhile, the Central Government pursuant to the order of the National Green Tribunal, framed a policy dated October 15, 2015, for awarding compensation for damages caused to land due to the erection of poles/towers, in

addition to compensation for trees, which was to be determined by the District Magistrate.

p) The aforementioned policy was implemented in the State of Uttar Pradesh on November 19, 2019. It was made effective at the request of PGCIL to the Chief Secretary, U.P. Government, vide letter dated June 20, 2019.

q) The petitioners, through their counsel, submitted a representation on September 30, 2020, regarding damages caused to their land in view of the policy framed by the Central Government. However, the District Magistrate has not acted upon it, thereby violating their fundamental rights under Articles 21 and 300A of the Constitution of India.

r) Since the representation dated September 30, 2020, seeking compensation under the policy remained undecided by the respondent no.1, the petitioners have filed the present writ petition.

CONTENTIONS OF THE PETITIONERS

3. Mr. Udit Chandra appearing on behalf of all the petitioners has made the following submissions:

a) The present writ petition is on a fresh cause of action and not barred by constructive res-judicata. Earlier writ petitions were filed by the petitioners to decide the representation with regard to compensation for damages caused to trees and the same was decided under Section 18 (2) of the Telegraph Act.

b) The notices which were issued to the petitioners were only with respect to determine compensation regarding damages caused to the trees and not for damages caused to the land by erecting electric poles/towers. There was no specific

notice with regard to the acquisition of land for laying of electric poles/towers, therefore the present proceedings are different proceedings arising out of different causes of action. Hence, the doctrine of constructive res-judicata will not be applicable in the present situation.

c) The compensation which has been decided and paid earlier by the respondent no.1 was only with respect to the cutting of trees under Section 18 (2) of the Telegraph Act whereas no compensation of any kind has been given for damages caused to the land by the erection of electric poles/towers which ought to have been assessed by the District Magistrate under Section 10 (d) of the Telegraph Act.

d) Petitioners are entitled to receive compensation as per the Central Government policy dated October 15, 2015 whereby farmers are entitled to receive 80% of the land value for the tower base in addition to damages done to crops or trees. Petitioners received the compensation with regard to damages caused to the trees and are not disputing that but have not received the compensation with regard to damages caused to the land. The present issue is to claim compensation with regard to the land as per the policy framed by the Government.

e) To buttress the arguments counsels for the petitioners have placed reliance upon a judgment of the Apex Court in **Kukreja Construction Co. v. State of Maharashtra** reported in **2024 SCC OnLine SC 2547** wherein twin pivotal holdings were delivered. First, it affirmed that once developers have attained vested development rights—such as additional Floor Space Index (FSI) or Transferable Development Rights (TDR) via Development Rights Certificates (DRC)—these rights cannot be

retroactively nullified by later amendments. Second, the Court held that once compensation for land acquisition is determined, it becomes immediately payable by the State without any further requirement for representation, and any delay would breach constitutional obligations under Article 300-A.

f) The counsel further relied upon a judgment of the Apex Court in **Kolkata Municipal Corpn. v. Bimal Kumar Shah** reported in **(2024) 10 SCC 533** wherein the Court emphasized that any acquisition must adhere to a set of minimum procedural safeguards consisting of seven sub-rights, which are inherent in the constitutional guarantee under Article 300-A of the Constitution of India, thereby ensuring that property is not deprived except by proper legal authority.

CONTENTIONS OF THE RESPONDENTS

4. Mr. J. Nagar, Senior Advocate assisted by Mr. Prateek J. Nagar learned counsel appearing on behalf of the PGCIL has made the following submissions:

a) The present writ petition is legally not maintainable intrinsically on three grounds. The first one is that the present writ petition is the second writ petition on the same cause of action and therefore barred by the principles of constructive res-judicata under Explanation IV to Section 11 CPC and Order II, Rule 2 of Civil Procedure Code (CPC).

b) The petitioners had earlier filed writ petition no. 37407 of 2018 seeking similar reliefs. The said writ petition was disposed of by the Coordinate Bench of this Court on September 13, 2019, directing the District Magistrate to examine their claim by constituting a three-

member committee. The petitioners had an opportunity to claim the present relief in their previous writ but they defaulted to do so, therefore they are barred from raising the same issue by filing another writ petition.

c) Purported policy dated October 15, 2015 was in existence and was well known to the petitioners at the time of filing aforesaid writ petition but still petitioners failed to claim the reliefs in that writ petition.

d) The project work was completed in the year 2015 and the different petitioners received varying cheques from the PGCIL in the year 2015, based on the evaluation of trees as contemplated by the Conservator of Forest, Moradabad, when district authorities had kept silent for a very long time with respect to determining compensation. The cheques so received have been aptly acquiesced to and also duly encashed by the petitioners. Therefore they are barred from approaching the Court due to the principle of estoppel.

e) The Supreme Court in **Commissioner of Income Tax, Bombay v. T.P. Kumaran** reported in (1996) 10 SCC 561, has held that a subsequent claim on the same cause of action is barred.

f) The second ground is that the policy upon which the petitioner relied on was framed in the year 2015 and the cutting of trees and erection of electric poles on the land of the petitioners had already been done in the year 2013-14 and at that time compensation were given as per the valuation of trees, assessed by the Conservator of Forest, Moradabad, and compensation was paid to all affected parties. Consequently, policy which came later on has no retrospective effect on the cause of action which arose much before.

g) The petitioners have approached the District Magistrate via

representation dated September 30, 2020 and thereafter filed the present writ petition, after an inordinate delay of more than three years. Hence, making their claim barred by limitation and *laches*.

h) The Supreme Court in **Kerala State Electricity Board v. T.P. Kunhaliumma** reported in (1976) 4 SCC 634, has held that the limitation period of three years (Article 137 of the Limitation Act, 1963) applies to proceedings under the Telegraph Act.

i) The third ground is that the present writ petition is not maintainable as the petitioners have an alternative statutory remedy under Section 16 (3) of the Telegraph Act, which provides for adjudication of compensation disputes before the District Judge upon dissatisfaction of compensation received under Section 10 (d) of the Telegraph Act.

j) The Supreme Court in **Power Grid Corporation of India Ltd. v. Century Textiles & Industries Ltd.** reported in (2017) 5 SCC 143 has categorically held that any dispute regarding compensation must be adjudicated by the District Judge and not the District Magistrate. The petitioners, having accepted compensation without protest, cannot now challenge the same through a writ petition.

DISCUSSION AND ANALYSIS

5. We have considered the rival submissions and have perused the materials placed on record. Before proceeding to the rival contention canvassed by both the sides, we must look into Sections 10 (d), 16 (3) and 18 (2) of the Telegraph Act, which are quoted below:

“10. Power for telegraph authority to place and maintain telegraph

lines and posts.—The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property:

Provided that—

(a) ...

(b) ...

(c) ...

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.”

“16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.—

(1) ...

(2) ...

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situated, be determined by him.

“18. Removal of trees interrupting telegraphic communication.—

(1) ...

(2) When disposing of an application under sub-section (1), the Magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the persons interested in the tree such compensation as he thinks reasonable, and the award shall be final.”

6. The counsel appearing on behalf of the petitioners submits that a representation dated September 30, 2020, has been filed before the District Magistrate in view of the policy dated October 15, 2015. This representation is wholly based on different causes of action arising from the erection of electric poles/towers on the land. The right to claim compensation for the land arose subsequent to implementation of the policy dated October 15, 2015, which mandates compensation for damages caused to the land in addition to compensation for damages to trees. Moreover, in all the previous writ petitions, the petitioners' representations were decided under Section 18 (2) of the Telegraph Act, under which compensation was awarded specifically for trees.

7. The counsel for the petitioners further argued that the petitioners cannot file representation under Section 16 (3) of the Telegraph Act, as this is an appellate provision that pertains to the sufficiency of compensation rather than an initial claim for damages. There has to be an original order to be appealed against with regard to compensation for damages caused to land in order to approach the District Judge under Section 16 (3) of the Telegraph Act. Therefore, the petitioners have very well filed their representations before the District Magistrate in view of the policy and not before the District Judge.

8. Per contra, Senior Advocate appearing on behalf of the respondents while debunking the arguments of the petitioners, submits that previously compensation was provided by PGCIL to the petitioners. Therefore, the present representation should be filed before the District Judge as per Section 16 (3) of the

Telegraph Act, as it pertains to the enhancement of compensation that was previously granted by PGCIL under Section 10 (d) of the Telegraph Act. Furthermore, the petitioners had duly accepted the earlier compensation without any protest.

9. The learned counsel for the respondents further submits that the policy on which petitioners are relying cannot be applied retrospectively, as it was introduced after the trees were cut and the towers were erected.

10. Section 10 of the Telegraph Act empowers the Telegraph Authority to place and maintain lines and posts. Clause(d) of this provision acts as a check and balance on the powers granted to the Telegraph Authority, ensuring that compensation is provided to affected individuals while exercising these powers.

11. Section 18 (2) of the Telegraph Act provides for the removal of trees that interrupt telegraphic communication. Under this provision, a Magistrate of the first or second class is empowered to order the removal of trees obstructing telegraphic communication upon an application by the Telegraph Authority. The Magistrate is also responsible for determining and awarding compensation for the removed trees and such an award is deemed final.

12. Section 16 of the Telegraph Act, addresses disputes arising from the exercise of powers granted to the Telegraph Authority under Section 10 of the Telegraph Act. According to this provision, if there is any resistance or obstruction, the District Magistrate may, at his discretion, permit the Telegraph Authority to proceed with its operations. Clause(d) of this

section further provides that if a dispute arises regarding the sufficiency or adequacy of compensation paid under Section 10 (d) of the Telegraph Act, then the aggrieved parties may approach the District Judge of the said jurisdiction where the affected property is situated.

13. Upon examining the policy, this court observed that albeit it was framed on October 15, 2015, it was made effective only after a request letter dated June 20, 2019, written by PGCIL to Chief Secretary, U.P., Lucknow. This was followed by a subsequent implementation letter dated November 19, 2019, issued by the Chief Secretary, U.P., Lucknow to all the District Magistrates.

14. The letter dated June 20, 2019 written by PGCIL to Chief Secretary, U.P., Lucknow is quoted below:

*“To,
The Chief Secretary, Uttar Pradesh Government, Lucknow-226001
Subject: Implementation of the direction from Ministry of Energy, GD, regarding payment of compensation to the farmer and owners for construction of transmission lines in Uttar Pradesh.*

*Sir,
Please refer to the letter No. 2023/chaubis/P-3-2018 dated 06.09.2018 (Copy enclosed) addressed to MD, UPPCL Shakti Bhawan Lucknow, regarding implementation of the direction from Ministry of Energy, GOI, for payment of compensation **with immediate effect** to the farmers land owners for construction of UPPCL transmission lines. As per direction, in the above referred letter, cost of 85% tower base land area to be compensated to the farmers/ land owners.*

The calculation of the compensation amount shall be made by the respective District Magistrate based on the circle rates.

It is humbly prayed to issued necessary direction to the revenue department for issuance of guidelines in line with above referred letter to district magistrates regarding payment of compensation to the farmers/land owners for construction of transmission lines by POWERGRID/other agencies in the state of UP.”

15. The letter for the implementation of the policy dated November 19, 2019 written by Chief Secretary, U.P., Lucknow to all the District Magistrate is quoted below:

“सेवा में,
समस्त जिलाधिकारी,
उत्तर प्रदेश।

ऊर्जाअनुभाग-3 / लखनऊ: दिनांक 19 नवम्बर,
2019

विषय- पावर ग्रिड कारपोरेशन आफ इण्डिया लि० के अन्तर्गत निर्मित होने वाली 765/400/220/132 के०वी० पारेषण लाइनों में लगाये जाने वाले विभिन्न कृषकों / भूस्वामियों को भूमि मुआवजे सम्बन्धी दिये जाने वाले क्षतिपूर्ति को भारत सरकार के ऊर्जा मन्त्रालय के दिशा-निर्देशों के अनुरूप अंगीकृत करने के सम्बन्ध में।

महोदय,

उपर्युक्त विषय के सम्बन्ध में अवगत कराना है कि ऊर्जा अनुभाग-3 के शासनादेश संख्या-2023/24-पी-3-2018 दिनांक 06 सितम्बर, 2018 द्वारा उत्तर प्रदेश पावर ट्रांसमिशन कारपोरेशन लि० के अन्तर्गत निर्मित होने वाली 765/400/220/132 के०वी० पारेषण लाइनों में लगाये जाने वाले विभिन्न कृषकों/भूस्वामियों को भूमि मुआवजे संबंधी दिये जाने वाले क्षतिपूर्ति को भारत सरकार के ऊर्जा मन्त्रालय के दिशा-निर्देशों के अनुरूप उ०प्र० पा०टा०का०लि० के अन्तर्गत निर्माण होने वाली विभिन्न विभव की लाइनों में वर्तमान क्षतिपूर्ति के अतिरिक्त *Land Compensation* के पद से टावर बेस के नीचे 85 प्रतिशत

क्षेत्रफल भूमि की लागत के रूप में अतिरिक्त क्षतिपूर्ति अनुमन्य किये जाने का प्राविधान किया गया है।

2. इस सम्बन्ध में उक्त शासनादेश दिनांक-06.09.2018 एवं अधिशासी, निदेशक, पावर ग्रिड कारपोरेशन आफ इण्डिया लि० के पत्र संख्या-पावर ग्रिड/एनआर-3/पीईएसए / 17684 दिनांक-20.06.2019 की प्रति प्रेषित करते हुये मुझे यह कहने का निर्देश हुआ है कि ऊर्जा विभाग की उपरोक्त व्यवस्था उत्तर प्रदेश में पावर ग्रिड कारपोरेशन ऑफ इण्डिया लि० के द्वारा स्थापित की जाने वाली पारेषण लाइनों पर भी लागू करने के लिये पावर ग्रिड कारपोरेशन ऑफ इण्डिया लि० के अनुरोध पर अन्तर्गत आवश्यक कार्यवाही की जाय।

3. उक्त आदेश राजस्व विभाग की सहमति से निर्गत किये जा रहे हैं।”

16. The policy of 2015 came into effect on November 19, 2019, following a request letter from PGCIL to the Chief Secretary on June 20, 2019. In the letter, PGCIL sought parity with UPPCL for the issuance of guidelines regarding implementation of compensation for land, in addition to compensation for trees, by the Ministry of Energy. The letter directed the policy to be implemented ‘with immediate effect’ for the UPPCL.

17. The phrase ‘immediate effect’ means the policy takes effect instantly or from a specified time. Therefore, the policy became effective immediately from the date of its implementation that is November 19, 2019.

18. It is pertinent to note that the project work has already been completed by this time. According to the petitioners, the project was completed in 2016 whereas the respondents claim it was completed in 2019. However, there is no dispute regarding the fact that the work has been completed.

19. The objective of the policy that has been framed earlier and implemented later

was evidently to address the concerns of farmers whose trees were cut and whose lands were utilized for erecting towers. This suggests that the policy could be applied retrospectively to project work that had already been executed by the PGCIL. While PGCIL undertakes various projects across India, the policy does not specify the particular project work to which it applies.

20. The Supreme Court in **Power Grid Corporation of India Ltd. (Supra)** has held that Power Grid, as a Central Transmission Utility and deemed licensee under the Electricity Act, 2003, possesses powers akin to those of a Telegraph Authority under the Telegraph Act. This includes the authority to place and maintain transmission lines over private land without the owner's consent and provide compensation for any damages incurred in exercise of those powers. The Court emphasized that such powers are essential to ensure the development of infrastructure projects serving the public interest, such as electricity transmission, and that individual property rights may be subject to reasonable restrictions to achieve these objectives. The proper forum for determination of adequacy of compensation under the Telegraph Act rests upon the District Judge, as per Section 16 (3) and not the District Magistrate. The relevant paragraphs of the judgment are quoted hereinbelow:

“28. These are sufficient reasons to allow Civil Appeal No. 10951 of 2016 preferred by the Power Grid by setting aside those directions. Ordered accordingly. We make it clear that if the writ petitioner feels that it is entitled to any compensation, the appropriate course of action is to file a suit before the District Judge concerned for this

purpose. It would also be apt to point out at this stage that the Central Government has framed guidelines dated 15-10-2015 in this behalf which inter alia provide that the issue of compensation may be resolved having regard to the mode and manner of assessment of compensation as per the said guidelines. Therefore, it would always be open to the writ petitioner to avail the remedy as per the said guidelines.”

“29. This appeal is filed by Power Grid in the case of Ram Naresh Singh. In this case, transmission lines are in District Sasaram in the State of Bihar. The complete work for laying down the transmission lines where 524 overhead towers have been erected by the Power Grid. Out of these, only 1 tower is located at the land belonging to Ram Naresh Singh. The dispute raised is with regard to quantum of compensation and as per the provisions of Section 16 of the Telegraph Act, 1885, it is to be settled by the District Judge. Thus, for all the reasons [Set out in paras 1 to 28, above.] given above in the case of Century Textiles & Industries Limited, this appeal of the Power Grid stands allowed and the judgment [Power Grid Corpn. of India Ltd. v. Ram Naresh Singh, 2011 SCC OnLine Pat 603 : AIR 2011 Pat 83] of the High Court is set aside.”

21. The Division Bench of this Court in **Prem Pal v. State of U.P.** reported in **2011 SCC OnLine All 370** has specifically held that authority is constraint to pay compensation for any damages accrued from their act while executing the work and upon dissatisfaction with compensation, parties may approach District Judge for redressal of issue. The relevant paragraphs of the judgment are quoted hereinbelow:

“It will, thus, be apparent that the Authority under Section 10 of the Telegraph Act is bound to pay full compensation to all persons interested for any damage sustained by them, by reason of using the land or putting up any structure on the land thereby causing waste or damage. It is also provided that if a person is dissatisfied with compensation, such person may approach the District Judge within whose jurisdiction the property is situate, who will then decide the sufficiency of the compensation.”

“A licensee under Section 2(39) of the Electricity Act, is a person who has been granted a licence under Section 14 of the said Act. Section 14 confers power on the Appropriate Commission to grant a licence to any person to transmit electricity as a transmission licensee, or to distribute electricity as a distribution licensee, or to undertake trading in electricity as an electricity trader, in any area specified in the licence. The expression ‘licensee’, therefore, is a wide term, which can include various kinds of licensees. Normally, the compensation will have to be determined in terms of the Licensees Rules. In those cases where, under Section 164 of the Electricity Act, the powers of Part III of the Telegraph Act have been conferred on a licensee, then in that class of cases, the compensation determined would not be under the Electricity Act or the Rules framed thereunder but under the provisions of the Telegraph Act. A construction of the provisions in this manner would lead to harmonious construction and will not result in conflict of exercise of jurisdiction under the Electricity Act on one hand and the Telegraph Act on the other. Under Section 10 of the Telegraph Act, the compensation is to be determined not by the District Magistrate or the Commissioner of Police

but by the licensee itself, in the instant case, the Power Grid Corporation. The Power Grid Corporation, in the instant case, has determined the compensation. The petitioner was given a cheque which he had accepted on 15.01.2011. In our opinion, therefore, the remedy to the petitioner, if he is aggrieved by the insufficiency or inadequacy of the compensation, will be to apply before the District Judge within whose jurisdiction the land is situated, for enhancement of compensation or the like, which he is entitled to.”

“That, there is a power to locate a tower over the land possessed by private individuals and such individual would be entitled for the compensation for the damage sustained by him, was upheld by a Division Bench of this Court in Janardan Pandey v. State of U.P., Civil Misc. Writ Petition No. 41411 of 2007 decided on 5th September, 2007.

Considering the above discussion, this petition is disposed of, by directing the petitioner to apply, if not already applied, to the District Judge having jurisdiction for enhancement of compensation, and if such an application is made, the District Judge having jurisdiction to proceed to determine the compensation in accordance with law and dispose of the matter as expeditiously as possible.”

CONCLUSION

22. From the bare reading of the implementation letter, it appears that the wordings of the policy is slightly ambiguous. The letter neither clearly specifies whether it applies to claimants whose land had already been acquired before the policy came into effect nor

explicitly states its applicability to specific projects undertaken by PGCIL. Moreover, ambiguity remains as to whether the policy extends to the farmers who have already received compensation from PGCIL but are dissatisfied with the amount paid to them.

23. At the outset, this Court deems it necessary to clarify that matters involving policy decisions fall within the exclusive domain of the executive, and judicial interference in such matters is warranted only in cases of manifest arbitrariness, unreasonableness, or violation of fundamental rights. The Writ Court cannot substitute its wisdom with the policy making authorities unless it suffers from conditional infirmity. In view of the above, the present writ petition, which primarily seeks judicial intervention in a policy matter, does not warrant the Court's indulgence at this stage.

24. In the present case, the compensation granted earlier by PGCIL was based on a report of Conservator of Forests, Moradabad as stated in the counter-affidavit filed by the respondents. However, no supporting record has been annexed. Furthermore, before disbursing the compensation, no formal award was passed by the District Judge for the same.

25. Accordingly, this Court concludes that the earlier compensation granted by PGCIL in absence of an award, was merely a *suo moto* payment made by the PGCIL, that is, Telegraph Authority under Section 10 (d) of the Telegraph Act and not under Section 18 (2) of the Telegraph Act, which requires an award to be passed following a diligent application by the Telegraph Authority.

26. Thus, the contention of the petitioner that the earlier compensation was granted under Section 18 (2) of the Telegraph Act is

categorically rebuffed by this Court, as no award was passed by the Magistrate. Consequently, the only remedy available to the petitioners, for their grievances in case they are aggrieved by the compensation or want to aggrandize the same which has been granted earlier by the Telegraph Authority, is to approach the District Judge under Section 16 (3) of the Telegraph Act by filing an appropriate application.

27. The Apex Court also affirmed in **Power Grid Corporation of India Ltd.** (supra) that it is the District Judge, and not the District Magistrate, who has jurisdiction under Section 16 (3) of the Telegraph Act, to determine issues relating to adequacy and sufficiency of compensation.

28. Accordingly, the present writ petition is disposed of on the ground of an alternative remedy available under Section 16 (3) of the Telegraph Act. The petitioners are relegated to approach the District Judge for redressal of their grievances.

(2025) 4 ILRA 661
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.04.2025

BEFORE

THE HON'BLE MANOJ KUMAR GUPTA, J.
THE HON'BLE ANISH KUMAR GUPTA, J.

Writ C No. 28104 of 2024
 With
 Writ C No. 33280 of 2024
 With
 Writ C No. 33439 of 2024

Sri Krishna & Anr. Petitioners
Versus
U.O.I. & Ors. ...Respondents

Counsel for the Petitioners:
 Sri Suresh Singh

Counsel for the Respondents:

A.S.G.I., C.S.C., Sri Subodh Kumar

Civil Law – Constitution of India, 1950 – Article 226, - U.P. Zamindari Abolition and Land Reforms Act, 1950 – Sections 198, 198(4), 198(5), 198(6) & 333 - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Sections 11 & 19:- Writ Petition – Direction sought for release of compensation pursuant to land acquisition - Agricultural land originally allotted to petitioners on lease (Patta) in 2003 – Mutation duly recorded in revenue records - complaint received in 2009, alleging irregularities in the allotment of Patta – proceeding initiated u/s 198(4) of Act, 1950 – lease cancelled by the Collector in 2015 – Revision, allowed on the ground of lack of jurisdiction in 2016 – Cancellation set aside – Proceedings attained finality – subsequently, the land was acquired by the government - compensation was awarded in 2023 – Authorities denied to paid compensation, on the ground that, a fresh proceedings were initiated by the SDM to cancel the leases - *whether the order of SDM after declaration of Award, petitioners can be denied for compensation for the acquired land* – court finds that, cancellation proceedings were reopened on the basis of a report received in 2023, – Notices were issued in 2024, nearly after lapse of 21 years, - Proceedings initiated u/s 198(4) of the Act, 1950 held to be ex facie barred by limitation – such action amounts to legal overreach – Further, the U.P. Z.A.L.R. Act, 1950 stands repealed by the U.P. Revenue Code, 2006 and as per Section 128 of the Code, limitation for cancellation of allotment or lease is 5 years – Thus, the proceedings were beyond the prescribed period and without jurisdiction – held - the fresh proceeding for cancellation of allotments was beyond the limitation and lack of jurisdiction therefore same is quashed - writ petition, allowed with directions, to pay the compensation to the petitioners in terms of Award, within four weeks, with a cost of Rs. 25000/- each Patta, direction issued accordingly. (Para – 11, 18, 21, 23, 24)

Writ Petition Allowed. (E-11)**List of referred Cases: -**

1. Suresh Giri & ors.Vs Board of Revenue & ors.– 2010 vol. 2 ADJ 514,
2. Ramker Chauhan Vs Commissioner, Azamgarh & ors.– 2012 vol. 8 ADJ 713,
3. Rishi Pal & ors.Vs St. of U.P. & ors.– 2018 vol. 7 ADJ 391,
4. Smt. Shakuntala & ors.Vs St. of U.P. & ors.– 2019 vol. 5 ADJ 871,
5. Joint Commissioner Ranga Reddy District & anr.Vs D Narsing Rao & ors.– 2015 vol. 3 SCC 695

(Delivered by Hon'ble Manoj Kumar Gupta, J.
&
Hon'ble Anish Kumar Gupta, J.)

1. The present batch of petitions involves similar facts and legal issues, as well as the relief sought, and therefore they have been heard together and are being decided by a common order and judgment.

2. The prayer made in all the petitions is for issuance of writ of mandamus, commanding the respondents to release compensation amount for the acquired lands belonging to the petitioners in pursuance of the land acquisition proceedings conducted by the respondents.

3. It is admitted by the parties that the petitioners were granted agricultural lease of different parcels of land admeasuring 0.2000/0.3000 hectare, situated in Village Maniyapur, Pargana and Tehsil Narwal, District Kanpur Nagar, on 31.3.2003, after obtaining approval from the competent authority as per the law prevailing at the relevant time. Based on the same, the names of the petitioners were mutated in the revenue records. On

16.9.2009, a complaint was made by one Ram Khilawan, alleging irregularities in the allotment proceedings. It was registered as Case No. 18 of 2009-2010, under Section 198(4) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (for short 'UPZALR Act') in the court of Collector, Kanpur Nagar. In the said proceedings, vide order of Collector dated 29.6.2015, the allotment dated 31.3.2003 was cancelled, holding that various irregularities were committed in granting the patta. The order of Collector dated 29.6.2015 was challenged by the allottees in Revision No. 134 of 2015, filed under Section 333 of UPZALR Act, read with the provisions of U.P. Land Revenue Act. The revision was allowed by Additional Commissioner by order dated 26.10.2016, holding that the power to cancel the leases was not with the Collector, but with the Assistant Collector of the Sub Division Incharge. The order dated 26.10.2016 allowing the revision was not challenged by any party and thus it became final.

4. On 11.04.2022, the respondents issued a notification under Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It was followed by notification under Section 19 dated 20.12.2022, and award dated 2.3.2023. Before declaring the award, notices were issued to the petitioners on 28.2.2023, intimating them that award would be declared on 2.3.2023 and they were required to submit necessary documents (a notary affidavit, along with passport size photograph, a revenue ticket, bank passbook, PAN Card, Aadhar Card, certified copy of khatauni and share certificate from Tehsildar) to facilitate the release of compensation amount in their favour.

5. Recently, on 6.3.2024, the respondents issued notices to the petitioners and other allottees, stating that a report dated 23.03.2023 has been submitted by Tehsildar for re-initiating proceedings for cancellation of allotments dated 31.03.2003. The petitioners were required to submit their reply by the next date, i.e. 18.3.2024, failing which, proceedings would be held ex-parte.

6. The case of the petitioners is that they have submitted the required documents for release of compensation in terms of award dated 02.03.2023, but they have not been paid compensation and therefore, the present batch of petitions has been filed seeking a direction to the said effect.

7. A counter affidavit has been filed by Naib Tehsildar, Narwal, District Kanpur Nagar, on behalf of respondent no. 5, i.e. Competent Authority (Land Acquisition)/Additional District Magistrate, Kanpur Nagar, wherein it is not disputed that the petitioners were granted separate agricultural leases in pursuance of approval order dated 31.3.2003 and that the same are covered under the acquisition notifications issued under Act No. 30 of 2013 and award dated 2.3.2023. It has also not been disputed that the petitioners were issued separate notices by respondent no. 5 to appear before him and submit documents to facilitate release of compensation amount in terms of the award. However, the respondents have taken the stand that at the stage of payment of compensation, it came to their knowledge that the leases in favour of the petitioners were not valid and that the Additional Commissioner allowed the revision filed by the allottees upon a finding that the authority competent to cancel the leases was Sub Divisional

Magistrate and not District Magistrate. Accordingly, the Sub Divisional Magistrate has registered Case No. T201603410408882 (State of U.P. vs. Ashok Kumar and Others) under Section 198(4) of UPZALR Act, for cancelling the agricultural leases granted to the petitioners on 31.3.2003. The said proceedings were stated to be pending and on basis of these facts, it has been prayed that the writ petitions be dismissed.

8. Another affidavit has been filed by Additional District Magistrate/Special Land Acquisition Officer, Kanpur Nagar in compliance of order dated 19.12.2024. The stand taken therein in respect of the allotment of agricultural leases in favour of the petitioners vide order dated 31.3.2003 and the proceedings held for cancellation of the agricultural leases vide Case No. 18 of 2009-2010 is the same as pleaded by the petitioners. It is also admitted that the subject land was acquired vide notifications dated 11.4.2022 and 20.12.2022 under the provisions of Act No. 30 of 2013 for establishment of a defence corridor. It is further admitted that in the past, the leases were cancelled by the Collector vide order dated 29.6.2015 and the said order was set aside by the Additional Commissioner by order dated 26.10.2016 on the ground of lack of jurisdiction with the District Magistrate. It is stated that since the findings on merits recorded by the District Magistrate in relation to irregularities in allotment proceedings were not set aside while allowing the revision, therefore, the court of Sub Divisional Magistrate/Assistant Collector 1st, Tehsil Narwal, District Kanpur Nagar has reopened the proceedings for cancellation of leases. It is stated that in the said proceedings, notices were issued to the petitioners and they were duly served.

Except one Ashok Kumar, others did not appear and therefore, after hearing arguments on his behalf, the Sub Divisional Magistrate passed a final order on 18.12.2024, cancelling the order of approval of leases dated 31.3.2003. It is stated that in view of the said order, the petitioners are not entitled to any compensation.

9. Learned counsel for the petitioners, on the other hand, submitted that the entire proceedings for cancellation of leases is mala fide and also without jurisdiction inasmuch as even show-cause notice for initiation of cancellation proceedings could not have been issued after lapse of five years from the date of allotment in view of Section 198(6) of U.P.Z.A. & L.R. Act. It is submitted that even the earlier proceeding initiated on the complaint of one Ram Khelawan on 16.09.2009, though stood terminated in favour of the petitioners, was barred by limitation. It is submitted that objection in this regard was duly taken by Ashok Kumar and the said fact is also noted in the order, but the same has not been considered. It is further submitted that it is settled law that the State does not acquire its own land and once the subject lands were notified for acquisition treating the same as belonging to private persons, it is too late in the day to allege that the patta granted in favour of the petitioners was irregular or illegal. As a necessary corollary, the proceedings under Section 198(4) initiated by SDM with issuance of show cause notice in month of March 2024 and the order dated 18.12.2024 are totally illegal and without jurisdiction.

10. It is evident from perusal of the record and submissions made by learned counsel for the parties that there is no

dispute between the parties that agricultural leases were granted in favour of the petitioners and other (total 176 persons) measuring 0.2000/0.3000 hectares on basis of the resolution of the Land Management Committee, duly approved by SDM on 31.03.2003. Giving effect to the same, names of the petitioners were mutated in the revenue records. The recent khatauni evidences that the petitioners were conferred the status of bhumidhar with non transferable rights.

11. The sole issue for consideration is whether in view of order dated 18.12.2024 passed by SDM after declaration of the award, the petitioners can be denied compensation for the acquired lands. In pith and substance, the plea of the State is that the patta in favour of the petitioners was illegal and the same having been cancelled vide order dated 18.12.2024, the land stood vested in the State and therefore, notwithstanding the award dated 02.03.2023, the petitioners are not entitled to any compensation. As the plea has been set up to deny compensation to the petitioners and that too on basis of order passed during pendency of the writ petition and in opposition to the said plea, it is contended that the entire proceedings are without jurisdiction, therefore, in the peculiar facts and circumstances of the instant case, we proceed to examine the same to the extent it is based on the admitted facts.

12. The power to cancel allotment is hedged with checks and balances. Thus, while sub-section (4) of Section 198 of UPZALR Act confers power in favour of the Collector to enquire as to whether allotment has been made in the manner prescribed, suo moto or on an application of any person aggrieved, sub-

section (5) stipulates that no order for cancellation of allotment or lease shall be made unless a notice to show cause is given to the allottee or his legal representative. There is a further restraint by way of limitation within which show cause notice could be issued, which in the instant case where the patta is dated 31.03.2003, was five years from the date of allotment i.e., upto 31.03.2008. Sub-sections (4), (5) and (6) of Section 198 which are relevant, are as follows:

“(4) The *[Assistant Collector in-charge of the sub-division] may of his own motion and shall on the application of any person aggrieved by an allotment of land inquire in the manner prescribed into such allotment and if he is satisfied that the allotment is irregular, he may cancel the allotment and the lease, if any.

**[(4-A) The Collector may on his own motion or on the application of any aggrieved person call for the record of any suit or proceeding under sub-section (4) decided by the Assistant Collector in-charge of the sub-division for the purpose of satisfying himself as to the legality of propriety of any order passed in such suit or proceedings and if such Assistant Collector in-charge of the sub-division appears to have –

(i) exercised a jurisdiction not vested in it by law; or

(ii) failed to exercise a jurisdiction so vested; or

(iii) acted in the exercise of jurisdiction illegally or with material irregularity;

the Collector may pass such order in the case as he thinks fit and every order passed by the Collector under this sub-section shall be final;]

(5) No order for cancellation of an allotment or lease shall be made under sub-section (4), unless a notice to show cause is served on the person in whose favour the allotment or lease was made or on his legal representatives :

Provided that no such notice shall be necessary in proceedings for the cancellation of any allotment or lease where such proceedings were pending before the Collector or any other Court or authority on August 18, 1980.

(6) Every notice to show cause mentioned in sub-section (5) may be issued –

(a) in the case of an allotment of land made before November 10, 1980, (hereinafter referred to as the said date), before the expiry of a period of [seven years] from the said date; and

(b) in the case of an allotment of land made on or after the said date, before the expiry of a period of [five years from the date of such allotment or lease or up to November 10, 1987, which ever be later].”

13. These provisions have been interpreted time and again by this court in various judgements and it has been held consistently that show cause notice for cancellation, whether suo moto or on application of any person aggrieved, has to be issued within stipulated period or else, the same would be barred by limitation. It would be advantageous to refer to some of the judgements on the point.

14. In **Suresh Giri and Others vs. Board of Revenue and Others, 2010 (2) ADJ 514**, it has been held as follows:

“(10) The time in which the notice for cancellation of allotment of land/lease can be issued by the authority concerned is provided in Section 198(6) of

the Act which lays down that in cases where allotment is made before 10th November, 1980 notice may be issued within a period of seven years of said date and in cases where allotment is made on or after 10th November, 1980 before the expiry of five years from such allotment or up to 10th November, 1987 whichever be later. In short, the limitation for issuing a show cause notice is five years from the allotment where it is made on or after 10th November, 1980.

(11) The provisions of sub-section (4), (5) and (6) of Section 198 of the Act are to be construed in conjunction with one another and cannot be read in isolation. The aforesaid provisions are unambiguous and the language used therein is plain and simple which makes no distinction between proceedings for cancellation of allotment initiated suo motu or on the application of a person aggrieved. Therefore, they have to be construed in the ordinary sense and in no other way. Sub-Section (4) of Section 198 of the Act provides for cancellation of allotment/lease by the Collector on his own motion as well as on the application of the person aggrieved. In both the cases, allotment/lease can not be cancelled without affording an opportunity of hearing to the allottee or the person concerned, as otherwise the action of cancellation would be termed arbitrary and violative of principles of natural justice. Sub-section (6) of Section 198 of the Act follows Section 198(4) of the Act which as such covers both the types of proceedings for cancellation viz. suo motu as well as on application of person aggrieved. (12) Accordingly, in my opinion, the inevitable conclusion is that the time frame prescribed for issuing notice before cancelling the allotment/lease of a land

provided under sub-section (6) of Section 198 of the Act is applicable to both suo motu proceedings as well as proceedings on the application of the person aggrieved.”

15. In Ramker Chauhan vs. Commissioner, Azamgarh and others, 2012 (8) ADJ 713, where, in order to defeat the bar of limitation, it was contended that the same would apply only to cases of irregular allotment and not to cases of illegal allotment, the plea was repelled, observing as follows:

“The power to initiate proceedings for cancellation of the land is provided under Section 198(4) of the Act. As per this Section, the Collector on his own motion or on an application of any person aggrieved by an allotment of land, may cancel the said allotment if he is satisfied that the same is irregular. Sub section (5) of Section 198 provides that no order for cancellation of an allotment or lease shall be made under sub-section (4), unless a notice to show cause is served on the person in whose favour the allotment or lease was made or on his legal representatives. Clause (b) of Section 198 (6) provides that every notice to show cause mentioned in sub-section (5) may be issued in the case of an allotment of land made on or after November 10, 1980, before the expiry of a period of five years from the date of such allotment or lease or up to November 10, 1987, whichever be later. Thus, it nowhere emerges from sub section (6) of Section 198 that any exception is provided in respect of allotments which have been made in violation of the statute. The very nature of the power exercised by the Collector under Section 198(4) is to seek cancellation of those allotment which have either been obtained irregularly or illegally. No

proceeding can be initiated beyond the period of limitation as provided under the statute irrespective of the fact whether the said allotment is irregular or illegal.”

16. The same view has been taken by this court in **Rishi Pal and Others vs. State of U.P. and Others**, 2018 (7) ADJ 391 and **Smt. Shakuntla and Others vs. State of U.P. and Others**, 2019 (5) ADJ 871.

17. In the present case, as noted above, it is undisputed that the leases were approved by SDM on 31.03.2003 who, at the relevant time, was the competent authority to grant the approval. On 16.09.2009, the complaint filed by Ram Khelawan was registered under Section 198(4) of UPZA & LR Act as Case No.18/2009-10. The said proceeding was initiated after lapse of more than five years and apparently barred by limitation. Additionally, as already noted, the said proceeding culminated in favour of the allottees, consequent upon, Revision No.134/2015 having been allowed by Additional Commissioner vide order dated 28.10.2016. The revisional court has simply set aside the order of the Collector dated 29.06.2015 on ground of lack of jurisdiction. The effect of the said order is that it was open to the appropriate competent authority i.e., SDM to re-draw proceedings for cancellation. In fact, as noted above, even that was impermissible as the initial complaint itself, made on 16.09.2009, was beyond the limitation prescribed for issuing show cause notice.

18. It is evident from the order dated 28.12.2024 that the cancellation proceeding were re-opened on basis of a report submitted by Revenue Authorities on 23.03.2023. The SDM issued notice to the

allottees on 06.03.2024 i.e., almost after lapse of twenty one years from the date of allotment i.e., 31.03.2003 fixing 18.03.2024 for filing written statement. Before that the subject land was notified for acquisition treating the same as belonging to the petitioners. An award for the same was duly made. The proceedings initiated on basis of notice issued on 06.03.2024 are ex facie barred by limitation and constitute an over-reach.

19. Here, we may notice an interesting feature of the case. It is clear that the authorities were also conscious of the fact that the limitation had expired. Therefore, instead of initiating fresh proceedings for cancellation, they invented a novel method to defeat the bar of limitation. Thus, Case No. 18/2009-2010, which stood consigned as a result of revision of the allottees having been allowed vide order dated 26.10.2016, was allocated a new computer number, i.e. T20160341040882 and in the same case notice to file written statement was issued fixing 18.02.2024.

20. It is well settled that what cannot be done directly also cannot be done indirectly. Undoubtedly, the proceedings now initiated were not continuation of the complaint of private person but an exercise of suo moto power. Even, in cases of fraud, where delay in initiation of proceedings is generally not fatal, the Supreme Court in **Joint Collector Ranga Reddy District and another vs. D. Narsing Rao and others, (2015) 3 SCC 695** held as under:

"25. The legal position is fairly well-settled by a long line of decisions of this Court which have laid down that even when there is no period of limitation prescribed for the exercise of any power,

revisional or otherwise, such power must be exercised within a reasonable period. This is so even in cases where allegations of fraud have necessitated the exercise of any corrective power. We may briefly refer to some of the decisions only to bring home the point that the absence of a stipulated period of limitation makes little or no difference in so far as the exercise of the power is concerned which ought to be permissible only when the power is invoked within a reasonable period.

31. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority.

32. In the case at hand, while the entry sought to be corrected is described as fraudulent, there is nothing in the notice impugned before the High Court as to when was the alleged fraud discovered by the State. A specific statement in that regard was essential for it was a jurisdictional fact,

which ought to be clearly asserted in the notice issued to the respondents. The attempt of the appellant-State to demonstrate that the notice was issued within a reasonable period of the discovery of the alleged fraud is, therefore, futile. At any rate, when the Government allowed the land in question for housing sites to be given to Government employees in the year 1991, it must be presumed to have known about the record and the revenue entries concerning the parcel of land made in the ordinary course of official business. In as much as, the notice was issued as late as on 31st December, 2004, it was delayed by nearly 13 years. No explanation has been offered even for this delay assuming that the same ought to be counted only from the year 1991. Judged from any angle the notice seeking to reverse the entries made half a century ago, was clearly beyond reasonable time and was rightly quashed."

21. There is one more aspect, which though not argued, is germane to the controversy. The UPZALR Act stands repealed by U.P. Revenue Code, 2006 (for short 'the Code'). Section 128 of the Code deals with cancellation of allotment and lease. Sub-section (1) of Section 128, which is relevant, is extracted below: -

128. Cancellation of allotment and lease. - (1) The Collector may, of his own motion and shall on the application of any person aggrieved, inquire in the manner prescribed into any allotment and if he is satisfied that the allotment is in contravention of the provisions of this Code or any of the enactments repealed by this Code or the rules made thereunder, he may cancel the allotment and the lease, if any -

(a) in the case of an allotment of land made before the commencement of this Code, within five years from the date of such commencement;

(b) in the case of an allotment of land made on or after the date of such commencement, within five years from the date of such allotment or lease.

22. The date of commencement of Code is 11.02.2016. Thus, even under the Code, the limitation was five years from the date of commencement, i.e. upto 11.02.2021, whereas the notices re-opening the proceedings were issued for the first time on 06.03.2024, much beyond the stipulated period.

23. As we have found that even on basis of undisputed facts, the proceeding for cancellation of allotments was beyond limitation, therefore the resultant order cancelling the lease is illegal and nonest in the eyes of law. In such a situation, we are of the opinion that declining relief to the petitioners and relegating them to other remedies to challenge the order passed during pendency of the writ petitions cancelling the allotment would be an empty formality and only result in unnecessary harassment and multiplication of proceedings. We, therefore, refrain from adopting such a course and declare the proceedings for cancellation of patta in pursuance of notice dated 06.03.2024 to be barred by time and thus, without jurisdiction. Accordingly, by way of ancillary relief, the said order is hereby quashed. Respondent no.5 is directed to pay compensation to the petitioners in terms of award dated 02.03.2023 within eight weeks from the date of communication of the instant order.

24. In the result, the petitions succeed and are **allowed**. As the petitioners have been subjected to unnecessary harassment and compensation has been withheld on a specious plea, which is evidently afterthought and unsustainable in law, therefore, the petitioners are held entitled to cost and damages, quantified as Rs. 25,000/- for each patta, to be paid by respondent no. 5, within four weeks from the date of communication of the instant order.

25. A copy of the order be kept on the file of each case.

(2025) 4 ILRA 670

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 16.04.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE DR. YOGENDRA KUMAR
SRIVASTAVA, J.

Writ C No. 31506 of 2023

Dr. Saba Sarif ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Ms. Akansha Mishra

Counsel for the Respondents:
C.S.C.

Civil Law – Constitution of India, 1950 – Article 226 - Writ Petition – seeking a writ of mandamus – commanding the medical college (respondent no. 2) to release the petitioner's original documents – petitioner submitted a bank guarantee in compliance with a prior court order – respondent no. 2 released the original documents – however, court finds that - Rs. 5,00,000/- as security taken by the medical college under a bond was not

enforceable and also same was not in consonance with the public policy – held, relying on precedents from the Madhya Pradesh and Gujarat High Courts, the Court directed to the respondent no. 2 to refund the security deposit of Rs.5,00,000/- along with interest at the rate of 4% per annum from the date of payment, including the bank guarantee, within four weeks – direction issued accordingly – writ petition is disposed of.

Writ Petition Disposed of. (E-11)

List of referred Cases: -

1. Ruxmaniben Deepchand Gardi Medical College Vs Dr. Anshul Jain & ors.– Writ Appeal No. 757 of 2020,
2. Dr. Anshul Jain Vs St. of MP & ors.– Writ Petition No. 7982/2019,
3. Shitanshu Shekhar Manoharlal Vs St. of Guj. – P/STA/18840/2014.

(Delivered by Hon'ble Shekhar B. Saraf,
J.
&
Hon'ble Dr. Yogendra Kumar Srivastava,
J.)

1. Supplementary affidavit filed on behalf of the petitioner is taken on record. The supplementary affidavit reveals that in pursuance of the order dated 22.09.2023 passed by a coordinate Bench of this Court, the petitioner has filed the bank guarantee before the respondent no.2.

2. Upon submission of the bank guarantee, the respondent no.2 has released the original certificates/documents to the petitioner.

3. Counsel appearing for the petitioner submits that the respondent no.2 is still to refund the security deposit of

Rs.5,00,000/- alongwith interest which was taken from the petitioner as condition of the bond. Relying on the Division Bench decision of the Madhya Pradesh High Court in **Writ Appeal No.757 of 2020 (Ruxmaniben Deepchand Gardi Medical College Vs. Dr. Ansul Jain and others)**, learned counsel further submits that the bond that was taken by the respondent no.2 is not valid and is required to be treated as null and void.

4. It is to be noted that the Division Bench of the Madhya Pradesh High Court in the aforementioned writ appeal, had affirmed an earlier judgment of a learned Single Judge in **Writ Petition No.7982 of 2019 (Dr. Anshul Jain D/o Vimal Jain Vs. State of MP and others)**, which in turn had relied upon a judgment of the Gujarat High Court judgment in **Shitanshu Shekhar Manoharlal Vs. State of Gujarat (P/STA/18840/2014)**, wherein it had been held as follows:-

"17. At this juncture, it would be relevant to mention that the Supreme Court time and again has struck down the clauses or the conditions contained in the service agreement, which were found to be unfair, unreasonable, unconscionable and opposed to the public policy. As stated earlier, pursuant to the G.R. dated 28.06.2013, the bonds are required to be executed by the students while taking the admission in PG Courses. The students have no choice but to sign in the agreement bond in the prescribed format. In the opinion of the Court such bond agreement could not be said to be have been executed by free will or consent of the students, in view of the provisions contained in the Indian Contract Act. As per Section 19A of the Indian Contract Act, when the consent to an agreement is caused by undue influence,

the agreement is a contract voidable at the option of the party whose consent was so caused. Subsection (1) of Section 16 defines "undue influence" to the effect that a contract is said to be induced by the "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. Subsection (2) of Section 16 further inter alia provides that a person is deemed to be in a position to dominate the will of another, where he holds a real or apparent authority over the other. At this juncture, it would be also relevant to refer to Sections 23 of the Contract Act. Section 23 states that the consideration or object of an agreement is lawful, unless inter alia the Court regards it as opposed to public policy. It also provides that every agreement of which the object or consideration is unlawful, is void.

18. The Supreme Court, in the case of Central Inland Water Transport Corporation versus Brojo Nath Ganguly reported in (1986) 3 SCC 156 employing the provisions of the Contract Act into the principles of reasonableness and fairness imbibed in Article 14 of the Constitution of India, has held inter alia that when the contracts are entered into by the weaker party under the pressure of circumstances, which results in inequality of bargaining power, such contracts would not fall within the four corners of the definition of "undue influence" given in Section 16(1) of the Contract Act, even though at times they are between the parties one of whom holds a real or apparent authority over the other. Such contracts, which affect a large number of persons or a group of persons, if they are unconscionable, unfair and unreasonable, are injurious to the public

interest. Such a contract or its clause should be adjudged void under Section 23 of the Contract Act on the ground of being opposed to the public policy. The Supreme Court in the said case was examining the question of validity of a service rule framed by a Government Company, namely Central Inland Water Transport Corporation. The rule viz. the Rule 9(i) empowered the corporation to terminate the services of its employees at will. The Supreme Court held the said Rule not only arbitrary, unreasonable and unconscionable infringing Article 14 of the constitution but the term contained in the said contract rule as opposed to the public policy and therefore void under Section 23 of the Contract Act. The relevant observations made by the Supreme Court may be reproduced as under:

"91. Is a contract of the type mentioned above to be adjudged voidable or void? If it was induced by undue influence, then under section 19A of the Indian Contract Act, it would be voidable. It is, however, rarely that contracts of the types to which the principle formulated by us above applies are induced by undue influence as defined by section 16(1) of the Indian Contract Act, even though at times they are between parties one of whom holds a real or apparent authority over the other. In the vast majority of cases, however, such contracts are entered into by the weaker party under pressure of circumstances, generally economic, which results in inequality of bargaining power. Such contracts will not fall within the four corners of the definition of "undue influence" given in section 16(1). Further, the majority of such contracts are in a standard or prescribed form or consist of a set of rules. They are not contracts between individuals containing terms meant for

those individuals alone, Contracts in prescribed or standard forms or which embody a set of rules as part of the contract are entered into by the party with superior bargaining power with a large number of persons who have far less bargaining power or no bargaining power at all. Such contracts which affect a large number of persons or a group or groups of persons, if they are unconscionable, unfair and unreasonable, are injurious to the public interest. To say that such a contract is only voidable would be to compel each person with whom the party with superior bargaining power had contracted to go to court to have the contract adjudged voidable. This would only result in multiplicity of litigation which no court should encourage and would also not be in the public interest. Such a contract or such a clause in a contract ought, therefore, to be adjudged void. While the law of contracts in England is mostly judge made, the law of contracts in India is enacted in a statute, namely, the Indian Contract Act, 1872. In order that such a contract should be void, it must fall under one of the relevant sections of the Indian Contract Act. The only relevant provision in the Indian Contract Act which can apply is section 23 when it states that "The consideration or object of an agreement is lawful, unless . . . the court regards it as . . . opposed to public policy."

92. The Indian Contract Act does not define the expression "public policy" or "opposed to public policy". From the very nature of things, the expressions "public policy", "opposed to public policy" or "contrary to public policy" are incapable of precise definition. Public policy, however, is not the policy of a particular government. It connotes some matter which concerns the public good and the public

interest. The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time. As new concepts take the place of old, transactions which were once considered against public policy are now being upheld by the courts and similarly where there has been a well recognized head of public policy, the courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from inventing a new head of public policy. There are two schools of thought "the narrow view" school and "the broad view" school. According to the former, courts can not create new heads of public policy whereas the latter countenances judicial law- making in this area. The adherents of "the narrow view" school would not invalidate a contract on the ground of public policy unless that particular ground had been well established by authorities. Hardly ever has the voice of the timorous spoken more clearly and loudly than in these words of Lord Davey in Janson v. Uriefontein Consolidated Mines Limited "Public policy is always an unsafe and treacherous ground for legal decision." That was in the year 1902. Seventyeight years earlier, & Burros, J., in Richardson v. Mellish, described public policy as "a very unruly horse, and when once you get astride it you never know where it will carry you." The Master of the Rolls, Lord Denning, however, was not a man to shy away from unmanageable horses and in words which conjure up before our eyes the picture of the young Alexander the Great taming Bucephalus he said in Enderbyby Town Football Club Ltd. v. Football Association Ltd.; "With a good man in the saddle, the unruly horse can be kept in control. It can jump over obstacles." Had

the timorous always held the field, not only the doctrine of public policy but even the Common Law or the principles of Equity would never have evolved. Sir William Holdsworth in his "History of English Law", Volume III, page 55, has said :

"In fact, a body of law like the common law, which has grown up gradually with the growth of the nation, necessarily acquires some fixed principles, and if it is to maintain these principles it must be able, on the ground of public policy or some other like ground, to supress practices which, under ever new disguises, seek to weaken or negative them.

It is thus clear that the principles governing public policy must be and are capable, on proper occasion, of expansion or modification. Practices which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience. If there is no head of public policy which covers a case, then the court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be opposed to public policy. Above all, in deciding any case which may not be covered by authority our courts have before them the beacon light of the Preamble to the Constitution. Lacking precedent, the court can always be guided by that light and the principles underlying the Fundamental Rights and the Directive Principles enshrined in our Constitution."

93. **** The types of contracts to which the principle formulated by us above applies are not contracts which are tainted with illegality but are contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the court. They are opposed

to public policy and require to be adjudged void."

19. *The aforestated decision has been affirmed by the Constitution Bench in case of Delhi Transport Corporation versus DTC Majdoor Congress and Others reported in 1991 Supp (1) SCC 600. The said decision has also been followed in the case of Indian Oil Corporation Ltd. versus Nilofer Siddiqui & Ors reported in (2015) 16 SCC 125. As per the legal position settled in the said decisions, even though the rights of the citizens are in the nature of contractual rights, the manner, the method and the motive of a decision of entering into a contract are subject to judicial review to be examined on the touchstone of reasonableness, fair play, equality and non discrimination. It has been stated inter alia that the Courts will not enforce, and will when called upon to do so, strike down an unfair and unreasonable agreement or a clause or condition in the agreement entered into between the parties who are not equal in the bargaining power. The ratio laid down in the said decisions would also apply where the person has no choice, rather no meaningful choice but to give his assent to a condition, howsoever unreasonable and unconscionable it may be, and sign on a dotted line in the prescribed or standard form of agreement.*

20. *If the facts of the present case are appreciated in the light of the aforestated legal position, it clearly transpires that the petitioners who are the meritorious students and have got their admission on their own merits in the PG Courses in the Government Colleges as per the admission Rules, have been called upon to give undertaking for execution of the bond in view of the G.R. dated 28.06.2013. They have also been*

called upon to sign on the dotted lines in a prescribed form of bond agreement, the copy of which is produced on record in Special Civil Application No. 2690 of 2016. The respondent authorities being in dominating position, the petitioners and the students similarly situated as the petitioners have no choice but to give assent to the conditions mentioned in the said bond agreement, though the said conditions are too harsh, unreasonable and onerous. The concerned respondent authorities by issuing the circular dated 28.02.2019, have literally tried to cause fear in the minds of the students that their stipend will be stopped, and that they will not be allotted the exam hall tickets, if they did not furnish the bond agreement. Thus, the action of the respondents in compelling the PG students to undertake to execute fresh bond of Rs. 10,00,000/- for serving in rural areas for three years, and to extend the bond already furnished as UG students for a further period of three years in view of G.R. dated 28.06.2013 and further compelling them to sign on the dotted lines of the bond agreement containing absolutely unreasonable and unconscionable conditions, smacks of arbitrary exercise of powers at the instance of the respondent authorities. Such bond agreement and the conditions mentioned therein being unreasonable, unjust and unconscionable are required to be construed as opposed to the public policy and therefore void, as also violative of Article 14 of the Constitution, in view of the decision of the Central Inland Water Transport Corporation (supra)."

5. In the present case, we are of the view that the bond that was executed by the medical college was not in consonance with the public policy, and accordingly the

bond cannot be enforced by the respondent no.2.

6. In light of the same, the respondent no.2 is directed to refund the security deposit of Rs.5,00,000/- alongwith interest at the rate of 4% per anum, of the principal sum, starting from the date of payment made by the petitioner till the payment to be made by the respondent no.2 to the petitioner.

7. The above refund should be made within a period of four weeks from the date of receipt of a certified copy of this order.

8. Further more, the bank guarantee that has been deposited by the petitioner, in pursuance of the order of the coordinate Bench of this Court, should also be returned to the petitioner alongwith the refund of the security deposit.

9. With the above directions, the writ petition is disposed of.

(2025) 4 ILRA 675

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 16.04.2025

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Writ - C No. 31742 of 2024

Smt. Kehkashan		...Petitioner
	Versus	
State of U.P.		& Ors.
...Respondents		

Counsel for the Petitioner:

Sri Imtiaz Husain, Sri Siddharth Nandan,
Sri H.N. Singh (Sr. Advocate)

Counsel for the Respondents:

C.S.C., Sri Ganesh Pratap Singh, Sri R.P.S. Chauhan, Sri Rajeev Kumar Singh, Sri Siddharth Khare, Sri Navin Sinha (Sr. Advocate)

Civil Law – Constitution of India,1950 –

Article 226 - U.P. Panchayat Raj Act, 1947 - Section 12-C, - U.P. Panchayat

Raj (Election of Members, Pradhan and Up-Pradhans) Rules, 1994 – Rule 33, 82,

86, 86(1), 86(2), 86(2)(b), 105, 105(2)-

Writ Petition – challenging the election of the Gram Pradhan - the petitioner initially secured 664 votes while respondent no. 4 received 658

- however, respondent no. 4 filed an election petition under Section 12-C of the U.P. Panchayat Raj Act, 1947, prompting a recount

– being aggrieved, petitioner filed writ petition - High Court by earlier order remanded the matter before the prescribed authority to decide the election petition a fresh - led to a Supreme Court – Supreme Court directed recount in present of a Court Commissioner – recounting revealing 659 votes for respondent no. 4 and 657 for the petitioner, with 114 ballots declared invalid - the Supreme Court remanded the matter to the High Court to quickly review only disputed ballots and decide the matter without delay – both contesting parties were allowed to inspect and filed their objections regarding invalid votes – the Court relying on the legal maxim *expressio unius est exclusio alterius* held that, any deviation from the prescribed method, such as using ink dots or thumb impressions, renders the ballot invalid and threatens the integrity of the election process – therefore, court upheld the rejection of several disputed ballot papers in the Gram Pradhan election, citing violations of the mandatory voting procedure under Rules 86 and 105 of the U.P. Panchayat Raj Rules, 1994 - after reviewing the objections to 40 out of the 114 invalid votes, the Court found 36 ballots to be invalid, while 2 were valid in favour of petitioner and 2 in favour of respondent no. 4 – thus, the revised tally brought petitioner's total to 659 votes and respondent no. 4's total to 661 votes - thereby declaring respondent no. 4 as the winning candidate – directions issued to respondent authorities to take consequential steps for

entering of respondent no. 4 as Gram Pradhan within one month – accordingly, writ petition is disposed of. (Para no. 30, 37, 50, 51).

Writ Petition Disposed of. (E-11)

List of referred Cases: -

1. Era Sezhiyan Vs T. R. Balu & ors.– 1990 (Supp) SCC 322,
2. Ram Autar Singh Bhadauria Vs Ram Gopal Singh & ors.– AIR 1975 SC 2182,
3. S. Sivaswami Vs Malaikannan & ors.– 1984 vol. 1 SCC 296

(Delivered by Hon’ble Vikram D.
Chauhan, J.)

1. Heard Sri H.N. Singh, learned Senior Advocate assisted by Sri Imtiaz Husain, learned counsel for petitioner and Sri Navin Sinha, learned Senior Advocate assisted by Sri R.P.S. Chauhan, learned counsel for respondent no. 4 and learned Standing Counsel for respondent-State.

2. The present writ petition is preferred challenging order dated 9.9.2024 passed by respondent no. 2 - Prescribed Authority/Sub Divisional Magistrate, Chandausi, District Sambhal in Election Petition No. 04085 of 2021 (Computerized Case No. T202113740404085) (Ashraf Khan Vs. Smt. Kehkashan and others) filed under Section 12-C of U.P. Panchayat Raj Act, 1947 as well as for quashing the entire proceedings initiated in pursuance to Election Petition No. 04085 of 2021.

3. The brief facts giving rise to present writ petition are that election for post of Gram Pradhan for Gram – Mohammadpur Kashi, Tehsil - Chandausi, District - Sambhal was notified. The petitioner and respondent no. 4 along with

other candidates submitted their nomination for post of Gram Pradhan. The election symbol of the candidates are as follows :-

i Ashraf Khan – Imli
Smt. Kehkashan – Car
Smt. Ishrat Jahan – Kanni
Mohd. Kasib – Kitab
Jakir – Camera
Jahid – Carrom Board

4. The election/voting took place on 29.4.2021. The counting took place on 2.5.2021 and the same was concluded. On completion of the counting, petitioner (Smt. Kehkashan) was declared as returned candidate having secured 664 votes and respondent no. 4 (Sri Ashraf Khan) had secured 658 votes, Mohd. Ansar secured one vote, Smt. Ishrat Jahan secured 6 votes, Mohd. Kasib secured 2 votes, Jakir secured 16 votes and Jahid secured 2 votes.

5. The respondent no. 4 thereafter preferred an election petition dated 28.5.2021 under Section 12-C of U.P. Panchayat Raj Act, 1947. The Prescribed Authority by order dated 9.9.2024 has directed recounting of votes.

6. On an earlier occasion, this Court by judgement dated 23.9.2024 decided the present petition. The respondent no. 4 (Ashraf Khan) being aggrieved by order dated 23.9.2024 preferred Civil Appeal No. 12308 of 2024 (Arising out of SLP(C) No. 25059/2024) (Ashraf Khan Vs. Kehkashan & Ors.) before the Hon’ble Supreme Court.

7. The Hon’ble Supreme Court by order dated 23.10.2024 directed recounting of votes in presence of Court Commissioner appointed by Hon’ble Supreme Court. In furtherance thereof,

recounting of votes was once again undertaken whereby the respondent no. 4 (Ashraf Khan) secured 659 votes and petitioner (Smt. Kehkashan) secured 657 votes. In the process, 114 votes have been declared as invalid. The Hon'ble Supreme Court thereafter by order dated 13.11.2024 has remanded the matter before this Court.

8. In pursuance to order dated 13.11.2024 passed by Hon'ble Supreme Court, learned Standing Counsel has produced a sealed envelope containing invalid ballot papers before this Court (in the presence of learned counsel for the petitioner and learned counsel for respondent No. 4 & 7) and same was taken on record on 21.11.2024. Further, by order dated 21.11.2024 on request of learned counsel for parties, learned counsel for petitioner and learned counsel for respondent No. 4 were permitted to inspect the invalid ballot papers (produced by learned Standing Counsel) before the Registrar General of this Court. Further, the parties were permitted to file their objections in respect of invalid ballot papers after inspection of same.

9. In pursuance to above-mentioned order dated 21.11.2024 passed by this Court, the Registrar General submitted its report dated 28.11.2024 reporting that the invalid ballot papers have been inspected and thereafter sealed in presence of learned counsel for the parties.

10. Learned counsel for petitioner has thereafter filed objection dated 2.12.2024 (on behalf of petitioner) in respect of invalid votes. Learned counsel for respondent No. 4 has also filed reply dated 9.1.2025 to the objection of petitioner dated 2.12.2024 before the Registry of this Court. Respondent No. 4 has also filed objection

dated 11.12.2024 in respect of invalid ballot papers.

11. Learned Senior Counsel for petitioner submits that after the above-mentioned order dated 13.11.2024 passed by Hon'ble Supreme Court, invalid votes have been inspected in pursuance to order dated 21.11.2024 of this Court and now only in respect of objections raised with regard to certain invalid votes the arguments are being advanced. Both, learned Senior Counsel for respondent no. 4 and learned Senior Counsel for petitioner agree that the only issue remains to be decided is with regard to the validity of certain invalid votes out of 114 invalid votes which have been detailed in their objection.

12. Learned Senior Counsel appearing on behalf of petitioner further submits that after inspection of invalid votes, the petitioner is raising objection in respect of ballots/votes detailed in paragraph nos. 12, 13 and 14 of objection dated 2.12.2024 filed on behalf of petitioner. Learned counsel for petitioner further submits that some of invalid votes contain thumb impression as a mark to cast the vote in favour of candidate and other invalid ballot papers pertain to objections which are to be individually examined.

13. Learned Senior Counsel appearing on behalf of petitioner further submits that elections for post of Gram Pradhan is conducted in accordance with Uttar Pradesh Panchayat Raj (Election of Members, Pradhans and Up-Pradhans) Rules, 1994 (for brevity hereinafter referred to as "Rules of 1994"). It is further submitted that Rule 105 of Rules of 1994 provides ground for rejection of ballot papers. Learned Senior Counsel for

petitioner by referring to Rule 86(2)(b) of Rules of 1994 submits that a mark on the ballot paper would be sufficient with respect to the intention of elector to vote. Learned counsel for petitioner further submits that insofar as the thumb impression on the ballot paper by elector is concerned, the same would be valid as the same would be a mark indicating the vote in favour of a particular candidate. It is further submitted that Rule 86 (2) of Rules of 1994 is not mandatory in nature and the ballot paper can only be rejected on the grounds enumerated in Rule 105 of Rules of 1994. It is submitted that any mark on ballot paper would be sufficient except where the mark which discloses the identification of elector.

14. In this respect, learned Senior Counsel for petitioner submits that ballot paper no. 9BE 2245141 (Polling Station No. 172), 9BE 2245421 (Polling Station No. 172), 9BE 2245115 (Polling Station No. 172), 9BE 2245336 (Polling Station No. 172), 9BE 2245476 (Polling Station No. 172), 9BE 2245490 (Polling Station No. 172) containing the thumb impression mark on the ballot paper is valid. Similarly, it is submitted that Ballot paper no 9BE 2245647 (Polling Station No. 173), 9BE 2245760 (Polling Station No. 173), 9BE 2244037 (Polling Station No. 173), 9BE 2245934 (Polling Station No. 173), 9BE 2245935 (Polling Station No. 173), 9BE 2245852 (Polling Station No. 173), 9BE 2245606 (Polling Station No. 173) containing the thumb impression mark on the ballot paper is valid. Learned Senior Counsel for petitioner further submits that ballot paper nos. 9BE 2244354 (Polling Station No. 174), 9BE 2244211 (Polling Station No. 174), 9BE 224433 (Polling Station No. 174), 9BE 2244297 (Polling Station No. 174), 9BE 2244204 (Polling

Station No. 174), 9BE 2244375 (Polling Station No. 174), 9BE 2244284 (Polling Station No. 174), 9BE 2244503 (Polling Station No. 174), 9BE 2244210 (Polling Station No. 174), 9BE 2244294 (Polling Station No. 174), 9BE 2244195 (Polling Station No. 174), 9BE 2244330 (Polling Station No. 174) containing the thumb impression mark on the ballot paper is valid.

15. Learned Senior Counsel appearing on behalf of the petitioner further submits as follows :-

a) The petitioner (Smt. Kehkashan) was allotted symbol of “Car” whereas the respondent no. 4 (Ashraf) was allotted the symbol of “Imli” for the purpose of election. It is submitted by learned Senior Counsel for petitioner that ballot paper no. 9BE 2245090 (Polling Station No. 172) contains full stamp on Symbol “Car” and Half stamp of Symbol “Kitab”. The Election Symbol of respondent no. 7 – Mohammad Kasib was “Kitab”. The ballot paper no. 9BE 2245090 was again shown to learned Senior Counsel for petitioner during hearing. Learned Senior Counsel appearing on behalf of petitioner after examining the said ballot paper submits that the said ballot paper contains double symbol, one on symbol “Car” and other on symbol “Kitab” as such, he is not pressing his objection in respect of aforesaid ballot paper.

b) The ballot paper no. 9BE 2245380 (Polling Station No. 172) contains full stamp on Symbol “Car” and Half stamp on Symbol “Kitab”. The Election Symbol of respondent no. 7 – Mohammad Kasib was “Kitab”. The ballot paper no. 9BE 2245380 was shown to learned Senior Counsel for petitioner during hearing. Learned Senior Counsel appearing on

behalf of petitioner after examining the said ballot paper submits that the said ballot paper contains double symbol, one on symbol “Car” and other on symbol “Kitab” as such, he is not pressing his objection in respect of aforesaid ballot paper.

c) The ballot paper no. 9BE 2244006 (Polling Station No. 173) contains stamp/mark on Symbol “Car” and lightly stamp on Symbol “Carrom Board”. The petitioner was allotted the symbol of “Car” whereas symbol “Carrom Board” was allotted to respondent no. 9 - Jahid. Learned Senior Counsel for petitioner submits that the primary stamp in said ballot paper is on symbol “Car” and there is an ink on symbol “Carrom Board” and the same is not a vote casted on symbol “Carrom Board”. The said ballot paper is to be treated in favour of petitioner.

d) The ballot paper no. 9BE 2244216 (Polling Station No. 174) contains light stamp/mark on symbol “Car”. The petitioner was allotted the symbol of “Car”. The said ballot paper is to be treated in favour of petitioner.

e) The ballot paper no. 9BE 2244136 (Polling Station No. 174) contains stamp on symbol “Car” and very light stamp on symbol “Kitab”. The petitioner was allotted the symbol of “Car”. The election symbol of respondent no. 7 – Mohammad Kasib was “Kitab”. Learned Senior Counsel for the petitioner submits that on the said ballot paper seal is on “Car” and ink is on symbol “Kitab”. It is submitted that intention of voter can be gathered that he actually voted for symbol “Car”. The said ballot paper is to be treated in favour of petitioner.

f) The ballot paper no. 9BE 2244330 (Polling Station No. 174) contains thumb impression on symbol “Car” and stamp on symbol “Carrom Board”. The petitioner was allotted the symbol of “Car”

whereas symbol “Carrom Board” was allotted to respondent No. 9 - Jahid. Learned Senior Counsel for petitioner submits that thumb impression in said ballot paper is on symbol “Car” and there is an ink on symbol “Carrom Board” and same is not a vote casted on symbol “Carrom Board”. The said ballot paper is to be treated in favour of petitioner.

g) The ballot paper no. 9BE 2244148 (Polling Station No. 174) contains full stamp on Symbol “Car” and half stamp on symbol “Kitab”. The petitioner was allotted the symbol of “Car” whereas symbol “Kitab” was allotted to respondent no. 7 – Mohammad Kasib. Learned Senior Counsel for petitioner submits that primary stamp in the said ballot paper is on symbol “Car” and there is an half stamp on symbol “Kitab” and the same is not a vote casted on symbol “Kitab” as the impression is transferred at the time of folding of ballot paper on other symbol. The said ballot paper is to be treated in favour of petitioner. Learned Senior Counsel appearing on behalf of petitioner after examining the said ballot paper submitted that the said ballot paper contains double symbol, one on symbol “Car” and other on symbol “Kitab” and as such, he is not pressing his objection in respect of the aforesaid ballot paper.

16. Sri Navin Sinha, learned Senior Counsel appearing on behalf of respondent no. 4 submits that the mark which is required to be placed on ballot paper to indicate the vote in favour of a particular candidate, by placing a mark on ballot paper with the instruments supplied for the purpose on or near the symbol of candidate for which the elector intended to vote. Rule 86(2) of Rules of 1994 are mandatory in nature. It is further submitted by learned Senior Counsel for respondent no. 4 to

submit that above-mentioned Rule is *pari materia* with Rule 39 of Conduct of Elections Rules, 1961 (under the Representation of People Act, 1951). Learned Senior Counsel has also relied upon the judgement of Supreme Court in **Era Sezhiyan Vs. T.R.Balu and others, 1990 (Supp) SCC 322** and **Ram Autar Singh Bhadauria Vs. Ram Gopal Singh and Ors., AIR 1975 SC 2182** to submit that the mark with instrument supplied for purpose is necessary to indicate the intention of elector to vote in favour of particular candidate. It is further submitted that use of any other mark would not be tenable in law and such ballot papers are liable to be rejected. Learned Senior Counsel for respondent no. 4 further submits that thumb impression was not mark supplied for purpose of demonstrating the intention of elector to vote in favour of a particular candidate.

17. Learned Senior Counsel appearing on behalf of respondent no. 4 further submits as follows :-

a) The ballot paper no. 9BE 2245512 (Polling Station No. 172) there is full and proper stamp on the middle line between symbol “Imli” and symbol “Kanni”. Learned Senior Counsel submits that the intention of voter was to cast his vote in favour of respondent no. 4 (the symbol of “Imli” was allotted to respondent no. 4 for the purpose of election). It is submitted that the aforesaid ballot paper has been incorrectly held as invalid.

b) The ballot paper no. 9BE 2245086 (Polling Station No. 172) there is full and proper stamp on the middle line between symbol “Imli” and “Kanni”. Learned Senior Counsel submits that intention of elector was to cast his vote in favour of respondent no. 4 (who was

allotted the symbol of “Imli” for the purpose of election). It is submitted that aforesaid ballot paper has been incorrectly held as invalid.

c) The ballot paper no. 9BE 2245305 (Polling Station No. 172) full and proper stamp on the middle line between symbol “Imli” and “Kanni” symbol. Learned Senior Counsel submits that the intention of voter was to cast his vote in favour of respondent no. 4 (who was allotted the symbol of “Imli” for the purpose of election). It is submitted that aforesaid ballot paper has been incorrectly held as invalid.

d) The ballot paper no. 9BE 2245813 (Polling Station No. 173) contains full and proper stamp on “Imli” symbol and another partial impression on another symbol. The said ballot paper was shown to learned Senior Counsel appearing for both the parties when case was being heard and after examining the said ballot paper, learned Senior Counsel appearing on behalf of respondent No. 4 fairly submits that the said ballot paper contains stamp against two symbol and as such learned Senior Counsel for respondent no. 4 at this stage submits that he would not press the challenge to ballot paper no. 9BE 2245813 which has been declared as invalid by the authorities.

e) The ballot paper no. 9BE 2244073 (Polling Station No. 173) contains full and proper stamp on “Imli” symbol and another partial impression on another symbol. The said ballot paper was shown to learned Senior Counsel appearing for both the parties when case was being heard and after examining the said ballot paper, learned Senior Counsel appearing on behalf of respondent No. 4 fairly submits that the said ballot paper contains stamp against two symbol and as such, learned Senior Counsel at this stage submits that he would

not press challenge to ballot paper no. 9BE 2244073 which has been declared as invalid by the authorities.

f) The ballot paper no. 9BE 2245690 (Polling Station No. 173) contain full and proper stamp on the middle line between symbol “Imli” and “Kanni” symbol. Learned Senior Counsel submits that the intention of voter was to cast his vote in favour of respondent no. 4 who was allotted the symbol of “Imli” for the purpose of election. It is submitted that the aforesaid ballot paper has been incorrectly held as invalid.

g) It is further submitted by learned Senior Counsel appearing on behalf of respondent no. 4 that ballot paper no. 9BE 2245962 (Polling Station No. 173) contains full and proper stamp on the middle line between symbol “Imli” and “Anaj Oshata Kisan” symbol. Learned Senior Counsel submits that intention of voter was to cast his vote in favour of respondent no. 4, (who was allotted the symbol of “Imli” for the purpose of election). It is submitted that the aforesaid ballot paper has been incorrectly held as invalid.

h) It is further submitted by learned Senior Counsel appearing on behalf of respondent no. 4 that ballot paper no. 9BE 2245963 (Polling Station No. 173) that full and proper stamp on the middle line symbol “Imli” and “Anaj Oshata Kisan” symbol. Learned Senior Counsel submits that intention of voter was to cast his vote in favour of respondent no. 4, who was allotted symbol of “Imli” for purpose of election. It is submitted that aforesaid ballot paper has been incorrectly held as invalid.

i) It is further submitted by learned Senior Counsel appearing on behalf of respondent no. 4 that ballot paper no. 9BE 2244273 (Polling Station No. 174),

respondent no. 4 was allotted the symbol of “Imli” for purpose of election. The ballot paper contains full and proper stamp on “Imli” symbol and another impression on another symbol. The said ballot paper was shown to learned Senior Counsel appearing for both the parties when case was being heard and after examining the said ballot paper, learned Senior Counsel appearing on behalf of respondent no. 4 fairly submits that the said ballot paper contains stamp against two symbol and as such learned Senior Counsel at this stage submits that he would not press the challenge to ballot paper no. 9BE 2244273 which has been declared as invalid.

18. The elections for post of Gram Pradhan for Gram Mohammadpur Kashi, Tehsil – Chandausi, District – Sambhal was notified and voting took place on 29.4.2021. The counting took place on 2.5.2021 and the same was concluded on the same date and the result was declared in which petitioner was declared as returned candidate having secured 664 votes whereas respondent no 4 secured 658 votes. The respondent no. 4 thereafter had filed election petition challenging the election result. By order dated 9.9.2024 passed in the above-mentioned election petition filed by respondent no. 4 an order for recount was passed.

19. The above-mentioned order dated 9.9.2024 was subject matter of challenge in present writ petition. The present writ petition (on an earlier occasion) by judgement dated 23.9.2024 was allowed and the matter was remitted back to respondent no. 2 – Sub Divisional Magistrate/Prescribed Authority with a direction to decide the same afresh. The above-mentioned judgement dated 23.9.2024 was subject matter of challenge

in Civil Appeal No. 12308 of 2024 (Ashraf Khan Vs. Kehkashan & Ors.). Hon'ble Supreme Court by order dated 23.10.2024 further directed for re-counting of votes to be undertaken in the presence of Court Commissioner appointed by the Supreme Court. In pursuance thereof, the recounting exercise was undertaken, whereby respondent no. 4 secured 659 votes and the petitioner secured 657 votes. Further, 114 votes were declared invalid.

20. The Supreme Court by order dated 13.11.2024 remanded the matter to this Court with the following observations:-

“8. As of now, the appellant appears to have an edge over respondent no.1 in view of the fact that in the fresh recounting conducted under the supervision of the Court Commissioner, the appellant received 659 votes as against the 657 votes found polled in favour of respondent no.1. However, there are debatable issues with regard to some of the votes declared invalid. Since the margin is of two votes only, we are of the view that it may be in the interest of justice to relegate the parties before the High Court. In that case, all the 114 rejected votes shall be required to be produced before the High Court. In our considered view, some of the votes examined are such that they are liable to be rejected out-rightly. The High Court will be well within its right not to invite objections so far as those votes are concerned. However, if there are some votes with respect to which there are arguable issues, we request the High Court to accord one week's time to the parties to submit their objections and thereafter, instead of remanding the case to the Election Tribunal, let the High Court take a final decision. We say so for the reason that substantial part of the term of Gram

Pradhan is already concluded and in the event of further remand, the matter faces the threat of becoming infructuous.

9. For the aforesaid reasons, the instant appeal is allowed. The impugned judgment of the High Court is set aside and the matter is remitted to the High Court to decide the writ petition filed by respondent no.1 afresh and in the light of the observations made hereinabove. Accordingly, the parties are directed to appear before the High Court on 20.11.2024.

10. Learned counsel for the parties may produce a copy of this order before the Registrar General of the High Court, who in turn is directed to put up the same before Hon'ble the Chief Justice of the High Court, so that the matter may be entrusted to an appropriate Bench as per roster, with a special request that the same may be decided on merits as soon as possible, and preferably within a period of three weeks.”

21. Learned Senior Counsels for petitioner and respondent no. 4 have submitted that only some of the invalid votes are being objected to and they have confined their arguments to the certain invalid votes as have been stated in their objections and raised hereinabove.

22. The argument raised on behalf of learned counsel for petitioner to the effect that in Polling Station No. 172 - Ballot Paper Nos. 9BE 2245141, 9BE 2245421, 9BE 2245115, 9BE 2245336, 9BE 2245476, 9BE 2245490 contains thumb impression on symbol “Car” which was allotted to the petitioner however, the aforesaid vote have been incorrectly declared invalid. It is further submitted by learned Senior Counsel appearing on behalf of petitioner that in Polling Station No. 173

- Ballot Paper Nos. 9BE 2245647, 9BE 2245760, 9BE 2244037, 9BE 2245934, 9BE 2245935, 9BE 2245852, 9BE 2245606 contains thumb impression on symbol “Car” which was allotted to petitioner however, the aforesaid vote have been incorrectly declared invalid. Similarly, in Polling Station No. 174 - Ballot Paper Nos. 9BE 2244354, 9BE 2244211, 9BE 224433, 9BE 2244297, 9BE 2244204, 9BE 2244375, 9BE 2244284, 9BE 2244503, 9BE 2244210, 9BE 2244294, 9BE 2244195 contain thumb impression on symbol “Car” (which was allotted to the petitioner) however, the aforesaid ballot paper has been incorrectly declared invalid. It is further submitted that ballot paper no. 9BE 2244330 contains thumb impression on the symbol “Car” and symbol on “Carrom Board”. The same has been incorrectly declared as invalid as thumb impression on symbol of petitioner would make vote valid.

23. The election for post of Gram Pradhan is held in accordance with provisions of Uttar Pradesh Panchayat Raj Act, 1947 (for brevity herein after referred to as “Act of 1947”) and Uttar Pradesh Panchayat Raj (Election of Members, Pradhan and Up-Pradhans) Rules, 1994 (for brevity hereinafter referred to as “Rules of 1994”). The procedure for election of Gram Pradhan is provided in Chapter III of Rules of 1994. The procedure for elector on receiving the ballot paper is provided under Rule 86(2) of Rules of 1994. The Rule 86(2) of Rules of 1994 is quoted hereinbelow :-

“86. Maintenance of secrecy of voting by electors within polling station and voting procedure. – (1) ...

(2) The elector on receiving the ballot paper shall forthwith, –

(a) proceed to one of the voting compartments;

(b) there make a mark on the ballot paper with the instrument supplied for the purpose on or near the symbol of the candidate for whom he intends to vote;

(c) fold the ballot paper as to conceal his vote;

(d) if required, show to the Matdan Adhyaksh the distinguishing mark on the ballot paper;

(e) insert the folded ballot paper into the ballot box; and

(f) quit the polling place.”

24. It is further to be noted that under Rule 86 of Rules of 1994, the secrecy of voting is an important object in respect of procedure for election on the post of Gram Pradhan. A perusal of Rule 86 (2) (b) of Rules of 1994 provide that the elector shall make a mark on ballot paper with the instrument supplied for the purpose on or near the symbol of candidate for whom elector intends to vote. The said Rule requires that the mark on ballot paper to indicate the intention of elector to vote against a particular candidate to be made by instrument supplied for the purpose of election. Rule 82 of Rules of 1994 provide that the Nirvachan Adhikari (Election Officer) shall provide at the polling station material for the purpose of enabling voters to mark the ballot paper.

25. It is not the argument of learned counsel for the parties that an instrument was not supplied by Election Officer at the time of voting for the purpose of making a mark on ballot paper with the instrument supplied. The submission raised by learned counsel for petitioner is to the effect that even the thumb impression would constitute a mark to indicate vote in favour of a particular candidate and the aforesaid

ballot paper could not have been rejected as invalid on account of the fact that thumb impression was made as a mark on the ballot paper to indicate the intention of elector to vote in favour of a particular candidate.

26. Rule 86(1) of the Rules of 1994 mandates that every elector to whom a ballot paper has been issued under Rule 33 or under any other provision of said Rules, shall maintain secrecy of voting within the polling station and for that purpose observe the voting procedure as laid down in Rules of 1994. For the purpose of maintaining secrecy of voting, Rule 86(2) of Rules of 1994 provides the procedure which the elector has to follow on receiving the ballot paper which is as follows :-

“(a) proceed to one of the voting compartments;

(b) there make a mark on the ballot paper with the instrument supplied for the purpose on or near the symbol of the candidate for whom he intends to vote;

(c) fold the ballot paper as to conceal his vote;

(d) if required, show to the Matdan Adhyaksh the distinguishing mark on the ballot paper;

(e) insert the folded ballot paper into the ballot box; and

(f) quit the polling place.”

27. Rule 82(2)(b) of the Rules of 1994 specifically provide for use of the instrument supplied for purpose of making a mark on ballot paper on or near the symbol of candidate for whom the elector intends to vote. Rule 86(2) starts with the words “shall” which is indicative of mandatory nature of procedure prescribed to be followed by elector on receiving the ballot paper. It is further to be noted that

such direction of law under Rule 86 (2) (b) of the Rules of 1994 for use of instrument supplied to make a mark on the ballot paper to demonstrate elector intention to vote in favour of a particular candidate is relatable to the larger object of secrecy of voting as has been provided under Rule 86 (1) of the Rules of 1994.

28. It is further to be noted that in present case some of invalid votes (detailed hereinabove) contained thumb impression (instead of use of instrument to mark on the ballot paper) in order to demonstrate the intention of elector to vote in favour of a particular candidate as per petitioner. The thumb impression was not the mark prescribed by election authorities as instrument for purpose of making a mark in favour of a particular candidate. It has not been disputed by learned counsel for parties before this Court that an instrument having a distinct mark was supplied at the time of voting. The aforesaid can also be gathered as some of the invalid ballot papers which has been challenged before this Court (and produced) contained the mark made on the ballot paper by the instrument supplied for the said purpose.

29. It is further to be noted that supplying of instrument by election authorities to make a mark on ballot paper on or near the symbol of candidate for whom the elector intends to vote has underlying purpose of fairness in election proceedings. The use of instrument would bring about uniformity in election process. The object of using an instrument to mark a ballot paper in an election is to ensure that the voter's choice is recorded clearly, accurately, and securely. Unauthorized markings on ballot paper can compromise these principles, leading to potential disputes and challenges to election's

validity. The use of instrument to mark the intention of voter on the ballot paper is to ensure the confidentiality and integrity of elector choice of candidate.

30. The use of thumb impression to indicate the intention of elector to vote in favour of a particular candidate instead of using instrument supplied by election authorities may disclose the person's identity who has put in the thumb impression on the ballot paper. The thumb impression can be connected and relatable to an individual on account of uniqueness of thumb impression. Even otherwise, if the law provides a thing to be done in a particular manner then the other manner or procedure is excluded by law. In this regard the legal maxim "expressio unius est exclusio alterius" meaning "the expression of one thing is the exclusion of the other" is applicable. Once the law has specifically provided the manner in which elector has to make a mark on ballot paper then other mark (including thumb impression) would not be available to elector to indicate his intention to vote in favour of a particular candidate. The dilution of aforesaid principle would have serious impact on the fairness of election process itself as then the parties to election process may claim that even a "point" (by ink) on the ballot paper would constitute a mark, which would result in dispute.

31. The Supreme Court in **Ram Autar Singh Bhadauria (supra)** while dealing with Rules 38 and 39 of Conduct of Elections Rules, 1961 (framed under Representation of the People Act, 1951) which is *pari materia* with Rule 86 of the Rules of 1994 has held that the said Rule to be mandatory in nature and a defect arising from their non-observance inexorably entails rejection of defective ballot paper.

Paragraph nos. 19 to 21 of the said judgement is quoted hereinbelow :-

"19. Clauses (a) and (b) of Rule 56(2) are referable to Rule 38 which requires every elector to whom ballot paper has been issued under Rule 38 to maintain secrecy of voting and "to make a mark on the ballot paper with the instrument supplied for the purpose on or near the symbol of the candidate for whom he intends to vote."

20. Rule 38 is also relevant. This Rule requires every ballot paper and the counter-foil attached thereto to be stamped on the back by the Presiding Officer with such distinguishing mark as the Election Commission may direct. Every such ballot paper before it is issued is required to be signed in full on its back by the Presiding Officer. Sub-rule (2) requires that at the time of issuing of ballot paper, the Polling Officer shall on its counter-foil record the electoral roll number of the elector and obtain his signature or thumb-impression.

21. The object of these rules is to secure not only the secrecy of the ballot but also to eliminate chances of sharp practices in the conduct of elections. Their requirements are therefore mandatory, and a defect arising from their non-observance inexorably entails rejection of the defective ballot paper except to the extent covered by the Provisos to Rule 56(2)."

32. It is further to be noted that under Rule 105 of Rules of 1994 it is provided that the ballot paper shall be rejected if no vote is recorded thereon. As per Rule 86 of Rules of 1994 the vote can be recorded by elector by making a mark on the ballot paper with instrument supplied for the purpose. If ballot paper has been marked with thumb impression (which is not the mark on the ballot paper with the

instrument supplied for the purpose) then the same would amount to no vote being recorded by elector under law. The recording of vote on ballot paper is required to be as per procedure prescribed and any other mark cannot be permitted to be used to indicate the intention of elector through the ballot paper. Rule 105(f) of Rules of 1994 is required to be read with Rule 86 of the Rules of 1994 and the ballot paper which do not satisfy the condition provided under Rule 86(2)(b) of Rules of 1997 would be termed as that no vote is recorded on the ballot paper by the elector and as such consequently such ballot papers which contains thumb impression and not the mark by the prescribed instrument would be liable to be rejected. Accordingly, the invalid ballot papers containing thumb impression to mark intention of voter through ballot paper has been rightly rejected and declared as invalid.

33. The objection raised by learned Senior Counsel for the petitioner that ballot paper no. 9BE 2245090 (Polling Station No. 172) and 9BE 2245380 (Polling Station No. 172) contains full stamp on symbol “Car” and half stamp of symbol “Kitab”. The election symbol of respondent no 7 – Mohammad Kasib was “Kitab”. The ballot paper no. 9BE 2245090 and 9BE 2245380 was again shown to learned Senior Counsel for the petitioner during hearing. Learned Senior Counsel appearing on behalf of the petitioner after examining the said ballot papers could not dispute the fact that the said ballot papers contains double symbol, one on symbol “Car” and other on symbol “Kitab”. A perusal of the above-mentioned ballot papers would clearly show that the mark/vote has been given in favour of more than one candidate and as such the ballot paper is liable to be rejected under Rule

105 (e) of the Rules of 1994. Consequently, the election authorities committed no error in rejecting the ballot paper no. 9BE 2245090 (Polling Station No. 172) and 9BE 2245380 (Polling Station No. 172).

34. The argument raised by learned Senior Counsel for petitioner that ballot paper no. 9BE 2244006 (Polling Station No. 173) contains stamp on symbol “Car” and lightly stamp on symbol “Carrom Board”. The petitioner was allotted the symbol of “Car” whereas symbol “Carrom Board” was allotted to respondent no 9 - Jahid. Learned Senior Counsel for the petitioner submitted that the primary stamp in the said ballot paper is on symbol “Car” and there is an ink on symbol “Carrom Board” and the same is not a vote casted on symbol “Carrom Board”. The said ballot paper is to be treated in favour of petitioner. This Court has perused the above mentioned ballot paper and find that there is mark against the symbol “Car” as well as against the symbol “Kitab”. It is however to be recorded that the mark against the symbol “Kitab” is lighter than against the symbol “Car”. Rule 105(1)(e) of the Rules of 1994 provides that the ballot paper shall be rejected if the vote is given in favour of more candidates than the number of seats required to be filled in a constituency. It is not in dispute between the parties that the Gram Pradhan post is to be given only one vote as there is only one post of Gram Pradhan in each constituency. Accordingly, only one vote could have been given by any elector by placing a mark by the instrument supplied against the name/symbol of a particular candidate contesting for the post of Gram Pradhan. It is further to be noted that as per Rule 105(2) of the Rules of 1994 a vote recorded on the ballot paper shall be rejected if the mark indicating the vote is placed on the

ballot paper in such manner as to make it doubtful to which candidate the vote has been given. It is further to be noted that the ballot paper in question is folded vertically and the names of the candidates contesting for the post of Gram Pradhan is placed horizontally in the ballot paper as such by folding the ballot paper vertically the mark or impression could not have been copied on symbol of other candidate. Rule 105(1)(e) of the Rules of 1994 creates no exception in respect of rejection of ballot paper where the vote is given in favour of more than one candidate. The intention of voter cannot be determined when the vote is cast in favour of more than one candidate. In this respect, it is to be seen that the instructions for voting is issued by the State Election Commission of Uttar Pradesh during general election of Panchayat 2021 (filed along with the objection dated 11.12.2024 of respondent no. 4) provides that at first instance the ballot paper is to be folded vertically which means that if the ink of the stamp/instrument is alleged to have been copied on the other side then the same would copy against the same symbol twice and would not be copied on the symbol of another candidate which are placed horizontally. Further, the principle of rejection of ballot paper if vote is given in favour of more than one candidate, ensures that each voter has an equal say in the electoral process, preventing unfair influence or manipulation. The said principle further ensures that the vote of an elector are recorded fairly and accurately. Consequently, the election authorities committed no error in rejecting the ballot paper no. 9BE 2244006 (Polling Station No. 173).

35. The submission of learned Senior Counsel appearing on behalf of petitioner is

that ballot paper no. 9BE 2244216 (Polling Station No. 174) contains light seal on symbol “Car”. The petitioner was allotted the symbol of “Car” and as such has been incorrectly held as invalid by concerned election authorities. The reply dated 9.1.2025 to the objection dated 2.12.2024 filed by respondent no. 4 in paragraph 8 has stated that the above-mentioned ballot paper is having no seal and is a blank vote without casting the vote in favour of any candidate. A perusal of the above-mentioned ballot paper would go to show that there is very light mark/stamp on the symbol “Car”. There is only one mark on the ballot paper which is a very light mark and is clearly visible through naked eyes. The said ballot paper has been rejected by the respondent authorities on the ground that the ballot paper does not contain the stamp/mark against symbol of any candidate.

36. A perusal of said ballot paper would show that the aforesaid ground for rejection of the ballot paper by the respondent authorities is non-existent as there is a mark on ballot paper against the symbol “Car” although the same may be a very light mark. It is further to be noted that proviso to Rule 105(2) of the Rules of 1994 provides that a ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct if the intention that the vote shall be for a particular candidate clearly appears from where the paper is marked.

37. In the present case, the vote recorded on the ballot paper is made on the symbol “Car” and the counsel for respondent no. 4 and learned Standing Counsel could not demonstrate that the aforesaid mark on the ballot paper creates doubt as to which candidate the vote has

been given. There is no doubt that the mark is made against the symbol of petitioner and the proviso to Rule 105(2) of Rules of 1994 further mandates that where intention of voter is clear by way the ballot papers is marked and then the ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct. If the voter's choice can be reasonably determined despite an unclear or imperfect mark, the vote is to be considered valid. In view of the aforesaid, the ballot paper no. 9BE 2244216 (Polling Station No. 174) has been incorrectly rejected by the election authorities and is held to be a vote in favour of petitioner.

38. Learned Senior Counsel for petitioner submitted that ballot paper no. 9BE 2244136 (Polling Station No. 174) contains stamp on symbol "Car" and very light on symbol "Kitab". The petitioner was allotted the symbol of "Car". The election symbol of respondent no. 7 – Mohammad Kasib was "Kitab". A perusal of above-mentioned ballot paper would go to show that there is a clear mark on the ballot paper against the symbol "Car" and there is a ink impression on the symbol "Kitab". A vote should be counted if the voter's intent is clear, even if the ballot is not marked perfectly. It is further to be seen that a perusal of the aforesaid ballot paper would go to show that there is no doubt that the vote is casted in favour of the petitioner who was having symbol "Car". The vote or mark against the symbol "Car" is clear & denotes the intention of elector and the ink impression on the symbol "Kitab" is not clear and the same cannot be treated as an intention to vote in favour of the symbol "Kitab". Further the ink mark against the symbol "Kitab" being not clear cannot be taken as an expression of intention of the elector to vote in favour

of candidate having symbol "Kitab". In view of the aforesaid, the ballot paper no. 9BE 2244136 (Polling Station No. 174) has been incorrectly rejected by election authorities and is held to be a vote in favour of petitioner.

39. Learned Senior Counsel for petitioner submitted that ballot paper no. 9BE 2244330 (Polling Station No. 174) contains stamp on symbol "Car" and also stamp on symbol "Carrom Board". A perusal of above-mentioned ballot paper would go to show that there is thumb impression against the symbol "Car" and partial thumb impression against the symbol "Carrom Board". The thumb impression mark on the ballot paper is not a valid mark as has been held hereinabove and as such the same cannot be treated to be a valid vote. The election authorities committed no error in rejecting the ballot paper no. 9BE 2244330 (Polling Station No. 174).

40. Learned Senior Counsel appearing on behalf of petitioner has pointed out that ballot paper no. 9BE 2244148 (Polling Station No. 174) contains full stamp on symbol "Car" and half stamp on symbol "Kitab". After perusal of ballot paper, learned Senior Counsel appearing on behalf of the petitioner has submitted that the said ballot paper contains double mark and as such he is not pressing the objection to rejection of the said ballot paper. Even otherwise, this Court has also seen the above-mentioned ballot paper where there are double mark in the ballot paper, one against the symbol "Car" and other against symbol "Kitab". In view of the aforesaid, the ballot paper no. 9BE 2244148 (Polling Station No. 174) has been rightly rejected by the election authorities.

41. The submission of learned Senior Counsel for respondent no. 4 is that the ballot paper no. 9BE 2245512 (Polling Station No. 172) there is full and proper stamp on the middle line between symbol “Imli” and “Kanni” symbol. A bare perusal of the said ballot paper would show that the mark has been made partly on the middle line between the symbol “ Imli” and symbol “Kanni” where the ballot paper number is printed. No part of the mark is made in the space provided for symbol “Kanni” however a part of mark is extended in space provided in symbol “Imli”. It is not the case that the mark indicating the vote is placed on the ballot paper in such a manner as to make it doubtful to which candidate the vote has been given. As per Rule 105(2) of Rules of 1994 a vote on ballot paper is to be rejected if the mark on ballot paper is placed in such manner as to make it doubtful to which candidate the vote has been given. However, the proviso to said Rule mandates that ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct, if the intention to vote for a particular candidate is clear. The part of the mark is in the space provided for symbol “Imli” and no part of the mark is in the space provided further symbol “Kanni” which is indicative of intention of elector to vote in favour of symbol “Imli”. The Rule 86(2)(b) of Rules of 1994 envisages that mark on ballot paper is to be made on or near the symbol of the candidate to whom elector is intend to vote. Therefore, the ballot paper no. 9BE 2245512 (Polling Station No. 172) has been incorrectly rejected as invalid and is voted in favour of symbol “Imli” belonging to respondent No. 4.

42. In respect of the argument of learned Senior Counsel for respondent no.

4 that the ballot paper no. 9BE 2245086 (Polling Station No. 172) and ballot paper no. 9BE 2245305 (Polling Station No. 172) contain full and proper stamp on the middle line of symbol “Imli” and “Kanni” is concerned, perusal of the above-mentioned ballot paper would go to show that the mark has been made on the middle line between the symbol “Imli” and symbol “Kanni” where the ballot paper number is printed. The mark indicating the vote is placed on the ballot paper in such a manner as to make it doubtful to which candidate the vote has been given. The mark on the ballot papers is equidistant to two symbols (between which the mark has been made) and the intention of elector to vote in favour of a particular candidate is not clearly indicated and as such the aforesaid ballot papers has been rightly rejected.

43. The ballot paper no. 9BE 2245813 (Polling Station No. 173) contains full and proper stamp on “Imli” symbol and another partial impression on another symbol. The said ballot paper was shown to learned Senior Counsel appearing for both the parties when case was being heard and after examining the said ballot paper, learned Senior Counsel appearing on behalf of respondent No. 4 fairly submits that the said ballot paper contains stamp against two symbol. Rule 105 (e) of Rules of 1994 provides that if votes are given in favour of more candidates than the number of seats required to be filled in a constituency then the said ballot paper shall be rejected. In the present case it is the admitted position of parties that the ballot paper contains two mark in respect of one post of Gram Pradhan and as such the said ballot paper has been rightly rejected.

44. The argument of learned Senior Counsel for respondent no. 4 that the ballot

paper no. 9BE 2244073 (Polling Station No. 173) contains full and proper stamp on “Imli” symbol and another partial impression on another symbol. The said ballot paper was shown to learned Senior Counsel appearing for both the parties when case was being heard and after examining the said ballot paper, learned Senior Counsel appearing on behalf of respondent no. 4 fairly submits that the said ballot paper contains stamp against two symbol. Rule 105(e) of Rules of 1994 provides that if votes are given in favour of more candidates than the number of seats required to be filled in a constituency then the said ballot paper shall be rejected. In the present case it is the admitted position of parties that the ballot paper contains two mark in respect of one post of Gram Pradhan and as such the said ballot paper has been rightly rejected.

45. It is further submitted by learned Senior Counsel appearing on behalf of respondent no. 4 that ballot paper no. 9BE 2244273 (Polling Station No. 174) respondent no 4 was allotted the symbol of “Imli” for the purpose of election. The ballot paper contains full and proper stamp on “Imli” symbol and another impression on another symbol. The said ballot paper was shown to learned Senior Counsel appearing for both the parties when case was being heard and after examining the said ballot paper, learned Senior Counsel appearing on behalf of respondent no. 4 fairly submits that the said ballot paper contains stamp against two symbols. The said ballot paper is hit by Rule 105(e) of Rules of 1994. The said ballot paper has been rightly rejected.

46. The argument of learned Senior Counsel appearing for respondent no. 4 is that ballot paper no. 9BE 2245690 (Polling

Station No. 173) contain full and proper stamp on the middle line between symbol “Imli” and “Kanni” symbol. He further submits that the intention of voter was to cast his vote in favour of respondent no. 4 who was allotted the symbol of “Imli” for the purpose of election. It is further submitted that the aforesaid ballot paper has been incorrectly held as invalid. The bare perusal of the above mentioned ballot paper would go to show that the mark is between the symbol “Imli” and symbol “Kanni”. The mark is made at the place where the ballot paper number is printed. Rule 105(2) of the Rules of 1994 provides that a vote recorded on a ballot paper shall be rejected if the mark indicating the vote is placed on the ballot paper in such a manner as to make it doubtful to which candidate the vote has been given. The mark on the ballot paper is equidistant to two symbols (between which the mark has been made) and the intention of elector to vote in favour of a particular candidate is not clearly indicated and as such the aforesaid ballot paper has been rightly rejected.

47. It is further submitted by learned Senior Counsel appearing on behalf of respondent no. 4 that ballot paper no. 9BE 2245962 (Polling Station No. 173) contain full and proper stamp on the middle line between symbol “Imli” and “Anaj Oshata Kisan” symbol. Learned Senior Counsel submits that the intention of the voter was to cast his vote in favour of respondent no 4, who was allotted the symbol of “Imli” for the purpose of election. It is submitted that the aforesaid ballot paper has been incorrectly held as invalid. A perusal of the above mentioned ballot paper would go to show that the mark has been made between the symbol “Anaj Oshata Kisan” and symbol “Imli”. The mark on the ballot

paper is partly on the symbol “Imli” and partly on the line showing “Pradhan Gram Panchayat 2020”. Definitely the mark is not made in the space provided for symbol “Anaj Oshata Kisan” however the part of the mark is in the space provided on the ballot paper for the symbol “Imli”. In the case of **S. Sivaswami Vs. V. Malaikannan and others, (1984) 1 SCC 296**, the Apex Court in paragraph no. 7 has observed as under:-

“7. ...If the right conferred on the people to choose their representatives to the State Legislatures and the Parliament through the process of free and fair elections is to be meaningful the will of the illiterate and unsophisticated voter expressed through a marking on the ballot paper which though not strictly inside the column of the particular candidate is clearly indicative of the identity of the candidate for whom the vote is cast has to be respected and given its full effect...”

48. The intention of voter clearly appears in favour of symbol “Imli”. The aforesaid symbol belongs to respondent no. 4. The said ballot paper is a vote in respect of respondent no. 4.

49. Learned Senior Counsel appearing on behalf of respondent no. 4 submits that ballot paper no. 9BE 2245963 (Polling Station No. 173) contain full and proper stamp on the middle line symbol “Imli” and “Anaj Oshata Kisan” symbol. Learned Senior Counsel further submits that intention of voter was to cast his vote in favour of respondent no. 4, who was allotted symbol of “Imli” for the purpose of election. It is submitted that the aforesaid ballot paper has been incorrectly held as invalid. A bare perusal of the above mentioned ballot paper would go to show

that the mark has been made between the symbol “Anaj Oshata Kisan” and symbol “Imli”. The mark has been made on the ballot paper in the space provided between the above-mentioned two symbols on the marking “Pradhan Gram Panchayat 2020”. The aforesaid marking is equidistant to both the above-mentioned symbols and it is not clear as to the intention of the voter to have casted vote in favour of a particular candidate. Accordingly, the said ballot paper has been rightly held to be invalid and rejected.

50. In view of the above-mentioned discussion/conclusion, it is to be noted that earlier the petitioner secured 657 votes and the respondent no. 4 secured 659 votes and 114 votes were declared as invalid votes (in pursuance to recount by order of Hon’ble Supreme Court by order dated 23.10.2024). The objections raised by the parties before this Court is to 40 invalid votes. The result of the discussion is hereinbelow :-

<u>S.N</u> <u>o</u>	<u>Ballot</u> <u>Paper</u> <u>No</u>	<u>Pollin</u> <u>g</u> <u>Statio</u> <u>n No.</u>	<u>Valid</u> <u>or</u> <u>Invalid</u> <u>Vote (as per</u> <u>reasoning</u> <u>hereinabove</u> <u>)</u>	<u>Determined</u> <u>Valid</u> <u>Vote</u> <u>in favour of</u> <u>(as</u> <u>per</u> <u>reasoning</u> <u>hereinabove</u> <u>)</u>
1.	9BE 224514 1	172	Invalid	-Not applicable –
2.	9BE 224542 1	172	Invalid	-Not applicable –
3.	9BE 224511 5	172	Invalid	-Not applicable –
4.	9BE 224533 6	172	Invalid	-Not applicable –
5.	9BE 224547 6	172	Invalid	-Not applicable –
6.	9BE 224549 0	172	Invalid	-Not applicable –
7.	9BE	172	Invalid	-Not

	224509 0			applicable –
8.	9BE 224538 0	172	Invalid	-Not applicable –
9.	9BE 224551 2	172	Valid	Respondent no 4 (Imli)
10.	9BE 224508 6	172	Invalid	-Not applicable –
11.	9BE 224530 5	172	Invalid	-Not applicable –
12.	9BE 224564 7	173	Invalid	-Not applicable –
13.	9BE 224576 0	173	Invalid	-Not applicable –
14.	9BE 224403 7	173	Invalid	-Not applicable –
15.	9BE 224593 4	173	Invalid	-Not applicable –
16.	9BE 224593 5	173	Invalid	-Not applicable –
17.	9BE 224585 2	173	Invalid	-Not applicable –
18.	9BE 224560 6	173	Invalid	-Not applicable –
19.	9BE 224400 6	173	Invalid	-Not applicable –
20.	9BE 224581 3	173	Invalid	-Not applicable –
21.	9BE 224407 3	173	Invalid	-Not applicable –
22.	9BE 224569 0	173	Invalid	-Not applicable –
23.	9BE 224596 2	173	Valid	Respondent no 4 (Imli)
24.	9BE 224596 3	173	Invalid	-Not applicable –
25.	9BE 224435 4	174	Invalid	-Not applicable –
26.	9BE 224421 6	174	Valid	Petitioner
27.	9BE 224421	174	Invalid	-Not applicable –

	1			
28.	9BE 224433	174	Invalid	-Not applicable –
29.	9BE 224429 7	174	Invalid	-Not applicable –
30.	9BE 224420 4	174	Invalid	-Not applicable –
31.	9BE 224413 6	174	Valid	Petitioner
32.	9BE 224437 5	174	Invalid	-Not applicable –
33.	9BE 224428 4	174	Invalid	-Not applicable –
34.	9BE 224450 3	174	Invalid	-Not applicable –
35.	9BE 224421 0	174	Invalid	-Not applicable –
36.	9BE 224429 4	174	Invalid	-Not applicable –
37.	9BE 224419 5	174	Invalid	-Not applicable –
38.	9BE 224433 0	174	Invalid	-Not applicable –
39.	9BE 224414 8	174	Invalid	-Not applicable –
40.	9BE 224427 3	174	Invalid	-Not applicable –

51. In view of above mentioned conclusion and findings and the objections to the forty invalid votes by the parties, this Court finds that thirty six ballot papers are invalid and two ballot papers are found to be voted in favour of petitioner and two ballot papers have been voted in favour of respondent no. 4. Therefore, the final result of present conclusion is to the effect that petitioner (Kehkashan) has secured 659 votes and respondent no. 4 (Ashraf Khan) has secured 661 votes. Accordingly, respondent no. 4 (Ashraf Khan) is hereby declared as the winning candidate. The respondents authorities are directed to take

consequential steps for entering of respondent no. 4 as Gram Pradhan of village in question within one month from the date of production of certified copy of this order.

52. The writ petition is disposed of with the aforesaid observations/directions.

(2025) 4 ILRA 693

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 18.04.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.

Writ C No. 34248 of 2024

M/S Rajan Construction Comp....Petitioner
Versus

State of U.P. & Anr. ...Respondents

Counsel for the Petitioner:

Sri Satyendra Chandra Tripathi, Sri Shiv Poojan Yadav

Counsel for the Respondents:

Sri Mukul Tripathi, S.C., Sri Shad Khan, Sri Shishir Prakash

Civil Law – Constitution of India, 1950 – Article 14, 19, 19(1)(g), 19(6), 21, 226 & 301- Writ Petition – challenging the restricting clause of the impugned E-tender – Petitioner, a biomass pellet supplier, was restricted from participating in an E-Tender issued by Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd. – tender was for the supply of Agro-based non-torrefied biomass pellets – - Judicial Review - court finds that, tender documents contained a restrictive clause 3(i) as a pre-qualifying condition, which mandated that only existing manufacturers in the NCR region or those are located within 100 km of HTP Station, Aligarh – Plea taken that, Clause 3(i) is arbitrary, unconstitutional, and violates Articles 14, 19(1)(g), 21, and 301 of the Constitution of India – court observed that, the restriction was aimed at reducing NCR air

pollution caused by stubble burning – and it is aligns with government policies, including the Environment Rules, 2023, and advisories from the Ministry of Power – court held that, - (i) Judicial review will not be permitted to be invoked to protect private interest at the cost of public interest – (ii) courts being the guardian of fundamental rights is duty-bound to interfere only in cases when there is arbitrariness, irrationality, mala-fide and biasness and not otherwise, - (iii) Restrictive condition in the tender cannot be considered to be arbitrary and discriminatory because, it is the wisdom of the employer to determine conditions/clauses which are suited for the work to be performed in the public interest – (iv) no evidence of mala fide intent or targeted exclusion was found – accordingly, writ petition is dismissed.

(Para no. 16, 22, 23, 24, 26, 27, 28, 29, 31, 32)

Writ Petition Dismissed. (E-11)

List of referred Cases: -

1. Maa Binda Express Carrier Vs North-East Frontier Railway - (2014) 3 SCC 760,
2. Reliance Energy Ltd. Vs Maharashtra St. Road Development Corpn. Ltd. - (2007) 8 SCC 1,
3. Tata Cellular Vs U.O.I.- (1994) 6 SCC 651,
4. Caretel Infotech Ltd. Vs Hindustan Petroleum Corpn. Ltd. - (2019) 14 SCC 81,
5. Silppi Constructions Contractors Vs U.O.I.- (2020) 16 SCC 489,
6. Montecarlo Ltd. Vs NTPC Ltd. - (2016) 15 SCC 272,
7. Agmatel India (P) Ltd. Vs Resoursys Telecom - (2022) 5 SCC 362,
8. Balaji Ventures (P) Ltd. Vs Maharashtra St. Power Generation Co. Ltd. - 2022 SCC OnLine SC 1967,
9. N.G. Projects Ltd. Vs Vinod Kumar Jain - (2022) 6 SCC 127,

10. Airport Authority of India Vs Centre for Aviation Policy, Safety & Research (CAPSR) - 2022 SCC OnLine SC 1334,

11. Engineering Kamgar Union Vs Electro Steels Castings Ltd. and another - (2004) 6 SCC 36,

12. Association of UPS and Power Conditioning Systems Manufacturer Vs Society of Applied Microwave Electronics Engineering and Research (Sameer) & Ors. - 2002 (65) DRJ 678,

13. Ramana Dayaram Shetty Vs International Airport Authority of India & ors.- (1979) 3 SCC 489,

14. Rash Bihari Panda Vs St. of Orissa - (1969) 1 SCC 414

(Delivered by Hon'ble Shekhar B. Saraf, J.)

1. The present writ petition has been filed under Article 226 of the Constitution of India, wherein the petitioner prays for the issuance of a writ of certiorari quashing the impugned E-Tender No. ET-60/MMC/PD/ETPS/HTPS/2024 dated July 10, 2024 as amended on August 13, 2024 issued by Superintending Engineer, Material Management Circle (MMC), Harduaganj Thermal Power Station (HTPS), Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited, Kasimpur, Aligarh (hereinafter referred to as 'respondent no.3') whereby the petitioner was restricted from participating in E-Tender. The petitioner further prays for a direction to respondent no.3 to invite a fresh tender for the supply of agro-based non-torrefied biomass pellets for coal handling plant at the aforementioned location and to permit the petitioner to participate in the tender process without imposing any pre-qualifying condition as mentioned in Clause 3(i) of the impugned E-Tender.

FACTS

2. The factual matrix of the present writ petition is delineated below:

a. The petitioner is a firm registered at District Ambedkar Nagar, Uttar Pradesh, engaged in small-scale business of supplying non-torrefied biomass pellets for coal handling plants.

b. On November 17, 2017 the Ministry of Power published a Standard Operating Procedure (SOP) regarding biomass utilization for power generation through co-firing in coal-based power plants. This was followed by an advisory dated November 24, 2017 wherein all State Power Secretaries, Thermal Power Generating Plants/ Utilities (Public or Private) along with the Managing Director of Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited, Lucknow (hereinafter referred to as 'respondent no.2') were directed to utilize biomass pellets to the extent of 5-10%.

c. Subsequently, the said advisory was revised on October 8, 2021 further emphasizing biomass utilization for power generation through co-firing in coal based power plants.

d. On March 2, 2022 the Ministry of Power issued a Model Contract for the use of biomass in Thermal Power Plants (TPPs) which was later revised on January 6, 2023.

e. Clause 2(b) of the aforementioned Model Contract provides that the power stations situated within 300 km of National Capital Region (NCR) must use a minimum 50% raw materials consisting of stubble/straw/crop residue

from rice paddy sourced exclusively from Punjab, Haryana or NCR region.

f. On July 11, 2023, Ministry of Environment, Forest and Climate Change notified the Environment (Utilisation of Crop residue by Thermal Power Plants) Rules, 2023 which are applicable to the NCR region. These rules mandate that all coal-based thermal power plants must utilize a minimum five percent blend of pellets or briquettes made from crop residue along with coal.

g. On July 10, 2024, respondent no.3 under the control of the Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd. floated an E-Tender (No. ET-60/MMC/PD/ETPS/HTPS/2024), inviting bids for the supply of non-torrefied biomass pellets, a renewable fuel source promoted by the Central Government to reduce pollution and encourage cleaner energy in thermal power plants and the said E-Tender was amended on August 13, 2024.

h. However, the tender documents contained a restrictive Clause 3(i) as a pre-qualifying condition, which mandated that only existing manufacturers in the NCR region or those whose manufacturing plants are located within 100 km from the Truck Gate (Material Entry Gate), Harduaganj Thermal Power Station, Kasimpur, Aligarh are eligible to participate in the tender. Bidders were required to confirm compliance with this condition in Part-I, that is, technical bid of the tender.

i. The technical bids wherein the confirmation of the impugned restrictive clause was mandatory were opened on September 12, 2024.

j. Subsequently, on October 8, 2024, Ministry of Power, Government of India, has issued a notification concerning significant shortfall in biomass co-firing monthly targets, wherein immediate action was required from the Head of all the thermal power plants to mitigate air pollution caused due to stubble burning in the NCR region by achieving the stipulated mandate for co-firing of biomass pellets in each thermal power plants.

k. Thereafter, the financial bids were opened on November 13, 2024 and twelve firms were selected for the supply of agro-based non-torrefied biomass pellets.

l. The petitioner's firm situated at District Ambedkar Nagar in Uttar Pradesh was excluded from participating due to the restrictive clause mentioned in the tender documents.

m. Aggrieved by the exclusionary condition under Clause 3(i) of the tender, the petitioner has approached this Court by means of the present writ petition.

CONTENTIONS OF PETITIONER

3. Learned counsel appearing on behalf of the petitioner has made the following submissions:

a. There exists no nexus between the objective of procuring raw materials from specific regions and location of manufacturing unit as required within a particular geographical area. The petitioner further emphasized that the restriction lacks any reasonable connection with the objective of the tender and merely serves to unfairly limit the competition.

b. The tender condition is in violation of Article 19 and Article 21 of the Constitution of India, as they restrict applicants to a specific location, particularly within the NCR region and are therefore, discriminatory, arbitrary and contrary to the principles of natural justice.

c. Clause 3(i) as a pre-qualifying condition in the tender document is wholly illegal, arbitrary and in gross violation of the right to equality under Article 14, the right to practice any profession or trade under Article 19(1)(g), and the freedom of trade and commerce across India under Article 301 of the Constitution of India.

d. Article 14 of the Constitution of India mandates that the State shall not deny equality before law or equal protection of laws. By imposing such a restrictive condition, the respondent authority being an instrumentality of the State has discriminated against the petitioner in the E-Tendering process.

e. Article 19(1)(g) of the Constitution of India guarantees all its citizens the right to practice any profession or to carry on any occupation, trade or business. However, this right is subject to reasonable restrictions under Article 19(6) of the Constitution of India and must be justified in the interest of the general public.

f. Clause 3(i) as a pre-qualifying condition is not based on any *intelligible differentia*. It lacks substantial reasoning or justification as to how it serves public interest and effectively excludes many capable suppliers from other parts of the

State from participating in the tender process.

g. Despite possessing all necessary registrations, technical capabilities, and willingness to comply with Government guidelines including the requirement of sourcing 50% raw materials as stubble, straw or crop residue of rice paddy from Punjab, Haryana, or NCR region, the petitioner was disqualified solely due to their location falling outside the arbitrary 100 km radius.

h. The Central Government through a circular dated January 6, 2023, issued a revised Model Contract which does not impose such a restriction. Therefore, the restriction under Clause 3(i) of the impugned E-Tender is in gross violation of the said circular and contradicts the spirit and intent of various Central Government policies.

i. The Ministry of Power, through its Model Contract and other advisories, has consistently emphasized promoting the use of biomass to combat air pollution, particularly that is caused by stubble burning in the northern states. However, none of these guidelines prescribe a territorial restriction on who may supply the biomass fuel. In case of any repugnancy between Central and State guidelines, the Central guidelines must prevail. Consequently, the tender floated by the State Government must conform to the Central policies.

j. The petitioner is left with no alternative remedy except to approach this Court against the arbitrary actions of the respondent authorities.

k. To buttress his arguments, counsel has placed reliance upon the judgments in **Engineering Kamgar Union v. Electro Steels Castings Ltd. and another** reported in (2004) 6 SCC 36; **Association of UPS and Power Conditioning Systems Manufacturer v. Society of Applied Microwave Electronics Engineering and Research (Sameer) & Ors.** reported in 2002 (65) DRJ 678 ; **Ramana Dayaram Shetty v. International Airport Authority of India and Others** reported in (1979) 3 SCC 489 and **Rashbihari Panda v. State of Orissa** reported in (1969) 1 SCC 414.

CONTENTIONS OF THE RESPONDENT

4. Learned counsel appearing on behalf of the respondents has made the following submissions:

a. The clause in question imposes certain restrictions aimed at addressing the significant issue of air pollution in the NCR region which is primarily caused by the widespread practice of farm stubble burning. This environmental regulation has been introduced with the objective of reducing the carbon footprints associated with thermal power generation, particularly in the NCR region, where air quality has been a persistent concern.

b. In this context, the impugned E-Tender was issued with the specific purpose of mitigating environmental pollution in the NCR region by promoting the use of biomass pellets, thereby offering a sustainable alternative to the conventional disposal of agricultural residue through burning. The ultimate aim of the tender is to support eco-friendly initiatives that contribute to cleaner air and align with the

broader goals of environmental protection and climate change mitigation.

c. The clause in question is in consonance with the draft notification dated July 11, 2023, issued by Ministry of Environment, Forest and Climate Change whereby the Environment (Utilisation of Crop residue by Thermal Power Plants) Rules, 2023 directed the thermal power plants to use crop residue in NCR region to reduce air pollution caused by stubble burning.

d. The tender condition is also in consonance and purposely made to mitigate air pollution caused due to stubble burning in the NCR region as directed vide notification dated October 8, 2024, issued by the Ministry of Power, Government of India concerning significant shortfall in biomass co-firing monthly targets.

e. It is pertinent to note that the petitioner was not found to be technically qualified during the bid evaluation process. Following this, the contract was awarded and executed between Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited and twelve successful manufacturers. These manufacturers have already commenced the supply of biomass pellets to the designated thermal power plant, and such supply has been ongoing for over a month.

f. To buttress his arguments, counsel has placed reliance upon judgments in **Tata Cellular v. Union of India** reported in (1994) 6 SCC 651 ; **Caretel Infotech Ltd. v. Hindustan Petroleum Corpn. Ltd.** reported in (2019) 14 SCC 81 ; **Silppi Constructions Contractors v. Union of India** reported in (2020) 16 SCC 489 ; **Montecarlo Ltd. v. NTPC Ltd.** reported in (2016) 15 SCC 272 ; **Agmatel**

India (P) Ltd. v. Resoursys Telecom reported in (2022) 5 SCC 362; **Balaji Ventures (P) Ltd. v. Maharashtra State Power Generation Co. Ltd.** reported in 2022 SCC OnLine SC 1967; **N.G. Projects Ltd. v. Vinod Kumar Jain** reported in (2022) 6 SCC 127 ; **Airport Authority of India v. Centre for Aviation Policy, Safety & Research (CAPSR)** reported in 2022 SCC OnLine SC 1334.

ANALYSIS

5. We have considered the rival submissions and have perused the materials placed on record.

6. Before delving into the rival contentions canvassed by both the sides, it is necessary to examine Clause 3(i) as a pre-qualifying condition of the E-Tender dated July 10, 2024. The said clause in verbatim is as follows:

“(1) Only Existing Pellets manufacturers having their Manufacturing Plant location in NCR region only shall be allowed to participate in the tender. Every bidder shall confirm the same in Part-I of the Tender Only”.

7. Subsequently, the said tender was amended on August 13, 2024. The amended clause in verbatim is as follows:

“1. Only Existing Pellets manufacturers having their Manufacturing Plant location in NCR region shall be allowed to participate in the tender. Every bidder shall confirm the same in Part-I of the Tender Only.

OR

2. Only those manufacturers whose manufacturing plant location is within the

radius of 100 Km from Truck Gate (Material Entry Gate), Harduaganj Thermal Power station, Kasimpur Aligarh shall also be allowed to participate in the tender. Every bidder shall confirm the same in Part-I of the Tender Only

Note: For measurement of Km (Kilometer) from Truck Gate (Material Entry Gate), Harduaganj Thermal Power station, Kasimpur Aligarh to the manufacturing plant location, Google Map shall be applicable only.”

8. Clause 2(b) of the Technical Specification in the tender documents mandates the manufacturers to purchase raw materials for manufacturing pellets only from Punjab, Haryana or National Capital Region (NCR). The said clause in verbatim is as follows:

“Since Harduaganj Thermal Power Station is within 300 km of NCR, use of minimum 50% raw material as stubble/straw/crop residue of rice paddy sourced from Punjab, Haryana or National Capital Region only is mandatory. Successful Bidder has to submit documentary evidence in the form of Certificate from State Authority from where the paddy straw has been sourced/ any amendment regarding this by SAMARTH (if any) may be incorporated from time to time.”

9. The Standard Operating Procedure (SOP) for biomass pellets co-firing published by the Ministry of Power, Government of India on November 17, 2017, highlights the need, advantages and impact of utilization of biomass in coal-based power plants. It also directs the development of site-specific SOPs based on the Model SOP.

10. The Ministry of Power subsequently issued an advisory dated November 24, 2017, to all State Power Secretaries, addressing smog in North-West India caused by stubble burning. The relevant paragraphs of the advisory in verbatim are as follows:

“As you may be aware that stubble burning has been cited as a major cause of recent smog in North-West India. Stubble burning is been cited as a major the straw stubble that remains after harvesting of paddy and other crops. Instead of burning in open fields, these can be collected, processed and can be used as Biomass fuel to generate power.

Biomass Co-firing is a well proven technology. With increasing environmental awareness, power plants all over the world have adopted Biomass Co-firing as a strategy to combat pollution. UNFCCC recognizes Biomass Co-firing as a carbon neutral technology for mitigation of carbon emission from coal based power plants.

NTPC have successfully demonstrated the Co-firing of 7% blend of Biomass pellets with coal in its Dadri Power Plant. This can be replicated in other coal fired power plants having bowl mills/vertical roller mills/ beater mills.”

11. The aforementioned advisory was later revised on October 8, 2021, specifically for coal-based power plants. The relevant paragraph of the advisory in verbatim is as follows:

“(1). All coal based thermal power plants of power generation utilities with bowl mill, shall on annual basis mandatorily use 5 percent blend of biomass

pellets made, primarily, of agro residue along with coal with effect from one year of the date of issue of this guideline. The obligation shall increase to 7 percent with effect from two years after the date of issue of this order and thereafter.”

12. The Revised Model Contract dated January 6, 2023, for the use of biomass in thermal power plants mandated the purchase of stubble from specific regions. The relevant paragraph from the aforesaid Model Contract in verbatim is as follows:

“ For power stations within 300 km of NCR use of minimum 50% raw material as stubble/straw/crop residue of rice paddy sourced from Punjab, Haryana or NCR Region only is mandatory. Successful Bidder has to submit documentary evidence in the form of Certificate from State Authority from where the paddy straw has been sourced.”

13. The submissions canvassed by the learned counsel for the petitioner is mainly two-fold. Firstly, there is allegedly no nexus between the requirement to procure biomass from specific regions and the location of manufacturing units within a defined geographical area. Secondly, the guidelines issued by the Central Government regarding biomass utilization do not impose such stringent territorial restrictions. Thus, in the event of any inconsistency, the Central Government's guidelines should prevail over the State's tender conditions.

14. Per contra, the learned counsel appearing for respondents submitted that although Article 19(1)(g) and Article 301 of the Constitution of India, guarantees the right to carry profession, trade, occupation

or business to all its citizens throughout the country but this right is subject to reasonable restrictions in the public interest. The primary objective behind the restrictive clause is mainly to reduce air pollution, a concern repeatedly addressed by the Hon'ble Supreme Court and the Central Government through its various guidelines in view of the persistent obnoxious environmental condition of NCR region. The clause limits participation to local manufacturers, ensuring they source biomass from Punjab, Haryana or NCR region. This directly reduces the availability of stubble for open burning by farmers in these regions, thereby addressing the root cause of the pollution. Thus, there exists a rational nexus between sourcing biomass from specified regions and locating manufacturing units nearby. The pre-qualification condition imposed by the State in the tender is accordingly, reasonable and serves a legitimate purpose.

15. The tender in question was floated for the supply of agro-based non-torrefied biomass pellets to Harduaganj Thermal Power Station in Aligarh. Non-torrefied biomass pellets are made from agro-based residue without undergoing torrefaction (a process to transform biomass into coal-like material). Biomass including wood, crops, seaweed, stubble, and animal waste, is an organic matter which contains stored energy from the Sun. Historically used for heating and cooking, biomass is now being traversed by large-scale energy production. Stubble, a residual product after harvesting of crops, is often burnt by farmers to quickly clear fields and make it ready for the next sowing. This practice results in severe air pollution releasing large amounts of unburnt carbon along with ashes which reduces soil fertility. Through torrefaction and

densification (pelletisation or briquetting), biomass becomes more suitable for transport and storage. When used as fuel in coal-based power plants, biomass pellets combust more efficiently, and their ashes are captured by electrostatic precipitators, thereby reducing the pollution. Co-firing biomass with coal significantly reduces greenhouse gas emissions. Recognized by the United Nations Framework Convention on Climate Change (UNFCCC) as a carbon-neutral practice, this method allows carbon released during biomass combustion to be absorbed in the next crop cycle via photosynthesis. Moreover, emissions from processing and transporting biomass are negligible as compared to the resulting carbon emissions from its utilization in large coal-based power plants. Biomass co-firing thus presents a viable path towards a cleaner environment.

16. Additionally, utilization of agro-based residue pellets in thermal power plants lowers carbon emissions and mitigates air pollution caused by manual stubble burning, which emits huge amounts of unburnt carbon, ashes, Sulphur and Mercury. Biomass also has a higher oxygen content compared to coal.

17. In a celebrated case of **Tata Cellular v. Union of India (Supra)**, the Supreme Court had laid down significant principles regarding judicial review of administrative decisions, particularly emphasizing the concept of judicial restraint. The Court emphasized that judicial review is concerned with the decision-making process, not the decision itself. It emphasized that Courts should not act as appellate authorities over administrative decisions and must not substitute their own judgment for that of

the authority. The relevant paragraphs of the judgment are quoted hereinbelow:

“70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”

18. In **Reliance Energy Ltd. v. Maharashtra State Road Development Corpn. Ltd.** reported in (2007) 8 SCC 1, the Supreme Court held that necessary conditions in the contract have to satisfy the test of ‘reasonableness’. The relevant paragraph of the judgment is quoted hereinbelow:

“36. We find merit in this civil appeal. Standards applied by courts in judicial review must be justified by constitutional principles which govern the

proper exercise of public power in a democracy. Article 14 of the Constitution embodies the principle of “non-discrimination”. However, it is not a free-standing provision. It has to be read in conjunction with rights conferred by other articles like Article 21 of the Constitution. The said Article 21 refers to “right to life”. It includes “opportunity”. In our view, as held in the latest judgment of the Constitution Bench of nine Judges in *I.R. Coelho v. State of T.N.* [(2007) 2 SCC 1], Articles 21/14 are the heart of the chapter on fundamental rights. They cover various aspects of life. “Level playing field” is an important concept while construing Article 19(1)(g) of the Constitution. It is this doctrine which is invoked by rel/hdec in the present case. When Article 19(1)(g) confers fundamental right to carry on business to a company, it is entitled to invoke the said doctrine of “level playing field”. We may clarify that this doctrine is, however, subject to public interest. In the world of globalisation, competition is an important factor to be kept in mind. The doctrine of “level playing field” is an important doctrine which is embodied in Article 19(1)(g) of the Constitution. This is because the said doctrine provides space within which equally placed competitors are allowed to bid so as to subserve the larger public interest. “Globalisation”, in essence, is liberalisation of trade. Today India has dismantled licence raj. The economic reforms introduced after 1992 have brought in the concept of “globalisation”. Decisions or acts which result in unequal and discriminatory treatment, would violate the doctrine of “level playing field” embodied in Article 19(1)(g). Time has come, therefore, to say that Article 14 which refers to the principle of “equality” should not be read as a stand alone item but it should be read in

conjunction with Article 21 which embodies several aspects of life. There is one more aspect which needs to be mentioned in the matter of implementation of the aforesaid doctrine of “level playing field”. According to Lord Goldsmith, commitment to the “rule of law” is the heart of parliamentary democracy. One of the important elements of the “rule of law” is legal certainty. Article 14 applies to government policies and if the policy or act of the Government, even in contractual matters, fails to satisfy the test of “reasonableness”, then such an act or decision would be unconstitutional.”

19. In the case of **Maa Binda Express Carrier v. North-East Frontier Railway** reported in (2014) 3 SCC 760, the Apex Court held that although fairness and transparency are essential in public procurement, administrative authorities must be granted the necessary autonomy to make decisions that best serves the public interest. The relevant paragraphs of the judgment are quoted hereinbelow:

“8. The scope of judicial review in matters relating to award of contracts by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognise that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on

behalf of the Government. All that participating bidders are entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers. So also, the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.

9. Suffice it to say that in the matter of award of contracts the Government and its agencies have to act reasonably and fairly at all points of time. To that extent the tenderer has an enforceable right in the court which is competent to examine whether the aggrieved party has been treated unfairly or discriminated against to the detriment of public interest. (See Meerut Development Authority v. Assn. of Management Studies [(2009) 6 SCC 171 : (2009) 2 SCC (Civ) 803] and Air India Ltd. v. Cochin International Airport Ltd. [(2000) 2 SCC 617 : (2000) 1 SCR 505])”

(Emphasis Supplied)

20. The Supreme Court in **Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.** (Supra), has held that the interpretation of terms and conditions of tender by the project owner or the employer should be respected, unless it is arbitrary or

mala fide. The owner is best positioned to understand its requirements, and thus, its interpretation should not be second-guessed by a court in judicial review proceedings. This case reinforces the limited scope of judicial intervention in administrative decisions, highlighting the discretion of the tendering authority and its expertise in relation to formulate the terms and conditions of the tender. The relevant paragraph of the judgment is quoted hereinbelow:

“15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.”

21. In **Silppi Constructions Contractors v. Union of India** (Supra), the Supreme Court citing precedents like **Tata Cellular** (Supra), **Afcons Infrastructure Ltd.** (Supra), **Air India Ltd.** (Supra), **Raunaq International Ltd.** (Supra) amongst others, reiterated that the evaluation of tenders falls within the exclusive domain of the tendering authority, and the Courts should refrain from substituting their judgment with that of authority unless there is a clear violation of constitutional or legal provisions. The decision reinforces the principle that administrative authorities

have the discretion to assess and decide on tender matters, and judicial interference is warranted only in exceptional circumstances where the decision-making process is flawed. The relevant paragraphs of the judgment are quoted hereinbelow:

“8. *In Raunaq International Ltd. v. I.V.R. Construction Ltd.* [*Raunaq International Ltd. v. I.V.R. Construction Ltd.*, (1999) 1 SCC 492] , this Court held that the superior courts should not interfere in matters of tenders unless substantial public interest was involved or the transaction was mala fide.

9. *In Air India Ltd. v. Cochin International Airport Ltd.* [*Air India Ltd. v. Cochin International Airport Ltd.*, (2000) 2 SCC 617] , this Court once again stressed the need for overwhelming public interest to justify judicial intervention in contracts involving the State and its instrumentalities. It was held that the courts must proceed with great caution while exercising their discretionary powers and should exercise these powers only in furtherance of public interest and not merely on making out a legal point.

11. *In Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd.* [*Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd.*, (2005) 6 SCC 138] it was held that while exercising power of judicial review in respect of contracts, the court should concern itself primarily with the question, whether there has been any infirmity in the decision-making process. By way of judicial review, the court cannot examine details of terms of contract which have been entered into by public bodies or the State.

14. *In Michigan Rubber (India) Ltd. v. State of Karnataka* [*Michigan Rubber (India) Ltd. v. State of Karnataka*, (2012) 8 SCC 216] it was held that if the State or its instrumentalities acted reasonably, fairly and in public interest in awarding contract, interference by court would be very restrictive since no person could claim fundamental right to carry on business with the Government. Therefore, the courts would not normally interfere in policy decisions and in matters challenging award of contract by the State or public authorities.

15. *In Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.* [*Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.*, (2016) 16 SCC 818] it was held that a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision. The owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.

17. *In Municipal Corpn., Ujjain v. BVG (India) Ltd.* [*Municipal Corpn.,*

Ujjain v. BVG (India) Ltd., (2018) 5 SCC 462 : (2018) 3 SCC (Civ) 291] it was held that the authority concerned is in the best position to find out the best person or the best quotation depending on the work to be entrusted under the contract. The court cannot compel the authority to choose such undeserving person/company to carry out the work. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work.

(Emphasis Supplied)

22. Upon a perusal of the umpteen judgments cited by both the parties and sifting through the ratios laid down by the Apex Court in the various judgments, it emerges that Courts can scrutinize the award of contracts by Government or its agencies in exercise of its power of judicial review to prevent arbitrariness or favouritism, but there are inherent limitations in the exercise of such power. It becomes crystal clear that conventionally the Writ Court does not intermeddle with the terms and conditions mentioned in the tender documents, unless, there is a *prima facie* arbitrariness, favouritism, irrationalism or perversity. After examining a catena of judgments cited before this Court, one may carve out the principles for judicial intervention in tender cases as follows:-

A. Emerging trend of globalisation and competition equates judicial review with judicial restraint in tender matters. The Writ Court does not act as a Court of appeal but merely reviews the *modus operandi* adopted by the tender making authority (either private or public) in arriving at a decision as it is not equipped with the expertise to correct the administrative decision. In arriving at a

commercial decision considerations which are paramount are commercial consideration. The authority can choose its own method to arrive at a decision. If a review of administrative decision is permitted by Writ Court without necessary expertise, it will lead to manifest injustice. Principles of equity and natural justice would normally stay at a distance in tender matter, unless there is patent illegality.

B. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender equates with invitation to offer which is in the realm of contract. While scrutinizing the terms and conditions of the tender documents, one has to keep in mind that particular terms and conditions are framed by the tender making authorities in order to achieve a specific goal that would serve the purpose of the authority in the interest of general public, even though the conditions are at the cost of the interest of individual applicants. The *raison d'être* of tender conditions must not be unreasonable or perverse, but must serve a meaningful purpose.

C. Tender making authority must have the freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body to perform its function in administrative sphere or quasi-administrative sphere and that freedom will not be curtailed unless it is detrimental to public interest.

D. Tender making authority is the best person to understand and appreciate its requirements and has the right to choose the best quotation as per its requirement. It is free to grant any relaxation or impose any restriction, for *bona fide* reasons. If the tender conditions permit such relaxation or

restriction, it may not accept the offer even though it happens to be the highest or the lowest. A term is essential or not is a decision taken by the employer, which should be respected and soundness of that decision cannot be questioned by Writ Court. Reasonableness of restriction is to be determined in an objective manner from the standpoint of interests of the general public and not from the standpoint of the interest of persons upon whom the restrictions have been imposed or upon abstract consideration.

E. No person could claim a fundamental right to carry on business with the government. If the authority is exercising its right to choose in order to get the best person or the best quotation, there can be no question of infringement of fundamental rights. Article 14 read with Article 19(1)(g) of the Constitution of India embodies the principle of non-discrimination in practising trade or business. However, this right is not absolute and is subject to restrictions imposed reasonably. The doctrine of level-playing field is an important concept embedded under Article 19(1)(g) of the Constitution of India, but is subject to public interest. The said doctrine provides space within which equally placed competitors are allowed to bid so as to subserve the larger public interest.

F. Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

23. In the present case, considering the hazardous environmental conditions in the NCR region, the respondent authority floated the tender with a pre-qualifying condition allowing only manufacturers located either in NCR region or within 100 km from the Truck Gate (main gate) of the power plant to participate in the tender

process. This ensures that the raw materials are procured from nearby areas such as Punjab, Haryana and NCR region. If manufacturers from outside this region were permitted, they might source biomass from their local areas rather than the targeted regions, defeating the objective of reducing stubble burning in NCR adjacent agricultural zones. Thus, the restriction serves the specific environmental goal of curbing local pollution.

24. This Court is of the view that the impugned conditions are tailor-made and incorporated with a specific motive for public interest and no material has been placed on record to show as to how the petitioner has been targeted for their exclusion in the tender process. There is no material to show that the impugned condition is designed to favour a particular bidder. For want of necessary particulars, we are not inclined to accept the submissions of the learned counsel for the petitioner.

25. It is contended by the learned counsel for the respondents that there are twelve firms in the fray which were selected and they had also placed the order for supplying of pellets. This means that, there were bidders who were interested in participating in the tender process and were also complying with the conditions of the tender of being manufacturers in close proximity as per the tender condition.

CONCLUSION

26. The tender condition is also in consonance with the policy of the Government. The purpose of incorporating such conditions can be clearly understood from the policy framed by the Government, followed by the advisory issued in this regard. The respondents, in its counter-

affidavit, has also averred that the purpose behind incorporating such stringent clause as a pre-qualifying condition of the tender is the distressing environmental condition in the NCR region. This indicates that the raison d'être of imposition of a stringent condition, that is, allowing only the existing pellet manufacturers having their plant location in NCR region or within 100 km from the truck gate of the power station to participate in the tender process is to reduce stubble burning by farmers which is the persistent and root cause for air pollution in the NCR region.

(Emphasis Added)

27. Ergo, the restrictive condition in the tender cannot be considered to be arbitrary and discriminatory. It is within the wisdom and discretion of the employer to determine the conditions/clauses that are best suited for the work to be performed in the public interest.

28. In the present case, respondent no.3 floated a tender dated July 10, 2024 for supply of biomass pellets at Harduaganj Thermal Power Station. Clause 3(i) of the tender imposes restrictions on participants to keep a tight rein on persistent obnoxious air condition in the NCR region. This clause is also at consensus with the revised Model Contract dated January 6, 2023 issued by the Ministry of Power, Government of India. It is the prerogative of the respondents to frame the terms and conditions of the tender in accordance with policy decisions. We, therefore, do not find any substance in the arguments raised on behalf of the petitioner.

29. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest. It is a well settled principle that judicial review in contractual matters is limited, particularly

when the decision of the tendering authority is bona fide and taken in the public interest.

30. This Court, being the guardian of fundamental rights is duty-bound to interfere only in cases when there is arbitrariness, irrationality, mala fide and biasness and not otherwise.

31. The essence of the law laid down in a catena of judgments referred to above emphasizes the need for judicial restraint and caution, and that only overwhelming public interest can justify judicial intervention in contractual matters involving the State instrumentalities. The court must acknowledge that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal.

32. The Court found no evidence of *mala fide* intent or partisanship aimed at excluding manufacturers outside the NCR region. Rather, the conditions were structured to advance the public interest by ensuring the effective and secure implementation of the Government's policy, which is crucial for public safety and welfare.

33. The writ petition is, accordingly, dismissed.

(2025) 4 ILRA 707
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 22.04.2025

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1002939 of 2001

Vinay Kumar	...Petitioner
Versus	
Collector/ D.M., Balrampur. & Ors.	...Respondents

Counsel for the Petitioner:

Sri Umesh Kumar Srivastava, Sri Mohd. Aslam Khan, Sri Shishir Chandra

Counsel for the Respondents:

C.S.C., Sri R.N. Gupta

Civil Law – Constitution of India, 1950 – Article 226 - Writ Petition – challenging the cancellation of allotment of land in year 2001 – order of allotment was passed in year 1986 - for construction of a residential house, by village LMC and further duly approved by SDM – thereafter, possession was delivered to the petitioner – petitioner spending Rs. 2,50,000/- over the construction of house – cancellation of allotment proceeding initiated – allotment was cancelled – writ petition - plea taken that the impugned order was passed without issuing any show-cause notice or opportunity of hearing – writ petition – at admission stage, court stayed the impugned order with direction to the authorities to initiate appropriate proceedings in accordance with law by affording due opportunity to the petitioner – court finds that, in pursuance to the interim order, the respondents did not initiate any such proceeding of passing fresh order – therefore, impugned order suffers from apparent illegality and is liable to be set aside – held, impugned order suffers from apparent illegality and is violative of principle of natural justice – Accordingly, the writ petition allowed – impugned order set-aside by giving liberty to the respondents to pass fresh order after giving opportunity of hearing to the petitioner in accordance with law. (Para no. 7, 9, 10, 11)

Writ Petition Allowed. (E-11)**List of referred Cases:** - No case referred

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri Mohd. Arif Khan, learned Senior Advocate assisted by Sri Mohd. Aslam Khan, learned counsel for the petitioner and Sri Rajiv Srivastava, learned Additional Chief Standing Counsel for the State-respondent.

2. Vide order of allotment dated 18.6.1986, an area of 0.03 decimal of other abadi site comprised in plot No.828-Ga M., situated in village Pandri, Pargana, Tehsil and District Balrampur was allotted to the petitioner by the Land Management Committee of the aforesaid village after following the prescribed procedure for construction of a residential house, which was duly approved by the Sub-Divisional Magistrate, Balrampur. The petitioner was delivered possession, over which he raised the construction of his residential house by spending Rs.2,50,000/-.

3. By means of the impugned order dated 15.6.2001, the allotment of land made in favour of the petitioner was cancelled without impleading him as a party in the case and without giving him any show-cause notice or opportunity of hearing.

4. Assailing the order impugned dated 15.6.2001, passed by the respondent No.1 contained as Annexure-1 to the writ petition, submission of petitioner's counsel is that the impugned order has been passed without notice and opportunity of hearing to the petitioner. Specific recital in this regard has been made in paragraph-2 of the writ petition.

5. In the counter affidavit filed by the respondent No.1 there is no denial in regard to the recital made in paragraph-2 of the writ petition by the petitioner.

6. While entertaining the writ petition, this Court passed an order on 29.10.2001, operative portion is being quoted below :-

"In view of the fact that the petitioner was not afforded any opportunity

prior to the passing of the impugned order of cancellation of allotment, the operation of the impugned order dated 15.6.2001 shall remain stayed till further orders of the court. However, it will be open to the concerned authority to initiate appropriate proceedings and pass orders after affording due opportunity to the petitioner in accordance with law. In the meantime, the residential house of the petitioner shall not be demolished."

7. While granting the interim order, it was noticed that no opportunity of hearing was afforded to the petitioner, while passing the impugned order of cancellation of allotment and the operation of the order was stayed till further orders and it was left open to the concerned authority to initiate appropriate proceeding and pass order after affording opportunity of hearing to the petitioner in accordance with law. It was also ordered that in the meantime, the residential house of the petitioner shall not be demolished.

8. In pursuance to the order of this Court, the respondents did not initiate proceeding of passing fresh order, after affording opportunity of hearing to the petitioner.

9. In view of the admission of non-grant of opportunity of hearing to the petitioner, the impugned order suffers from apparent illegality and is liable to be set aside. The interim order granted on 29.10.2001 also gave liberty to the respondents to pass a fresh order, after affording an opportunity of hearing to the petitioner, but the same has not been done.

10. In view of the admitted position in the matter that no notice nor opportunity of hearing was granted to the petitioner, the

impugned order suffers from apparent illegality and is violative of principles of natural justice.

11. Accordingly, the impugned order dated 15.6.2001 (Annexure-1 to the writ petition) is hereby set aside by giving liberty to the respondents to pass fresh order, after giving opportunity of hearing to the petitioner in accordance with law.

12. With the aforesaid observation and direction, the writ petition succeeds and is **allowed**.

(2025) 4 ILRA 709
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 28.04.2025

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Matr Under Article 227 No. 1281 of 2024

Hari Shankar Kushwaha ...Petitioner
Versus
A.D.J. E.C. Act. Lko. & Anr. ...Respondents

Counsel for the Petitioner:
 Adnan Ahmad

Counsel for the Respondents:
 Anurag Shukla

**Civil Law-Constitution of India, 1950-
 Article 227 - The Code of Civil Procedure,
 1908-Order 21 - Rule 97, 98 & 101-**
 Application under Order 21 Rule 97 CPC is available only to a stranger, who claims to be in possession of the properties in his rights which are independent and is a third person claiming right, title or interest in the property to seek restoration of the decretal property in contradiction to the powers under Order 21 Rule 35 which prescribes for removal of any person who is bound by the decree--- In the present case that the respondent tenant, having failed to establish any of his defenses taken in reply to

the SCC Suit, has tried one after the other tricks to avoid execution--- Proceedings under Order 21 Rule 97, 98 and 101 CPC not maintainable and were nothing but an abuse of the process of law--- Executing Court has erred in directing for framing of issues---Impugned order quashed.

Petition allowed. (Para 7 & 8) (E-15)

List of Cases referred:-

1. Brahmadeo Choudhary Vs Rishikesh Prasad Jaiswal & anr.(1997) 3 SCC 694
2. Shreenath & anr.Vs Rajesh & ors.(1998) 4 SCC 543
3. Silverline Forum Pvt. Ltd. Vs Rajiv Trust & anr.(1998) 3 SCC 723
4. NSS Narayan Sarma & ors.Vs Goldstone Exports (P) Ltd. & ors.(2002) 1 SCC 662
5. Samir Singh & anr.Vs Abdul Rab (2015) 1 SCC 379
6. Periyammal (dead) through LRs & ors.Vs V. Rajamani & anr.etc. (2025) Legal Eagle SC 274

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. The present petition has been filed by the petitioner challenging an order dated 20.02.2024 passed by the Additional District Judge, E.C. Act Court no.4 Lucknow in Misc. Case No.257 of 2023 (Jai Prakash Singh Vs. Hari Shankar Kushwaha) whereby directions were issued for framing the issues under Order 21 Rule 101 CPC. The petitioner is also sought the quashing of entire proceedings of Misc. Case No.257 of 2023 (Jai Prakash Singh Vs. Hari Shankar Kushwaha) under Order 21 Rule 97, 98 and 101 CPC pending before the Additional District Judge, EC Act, Court no.4. A further prayer has been sought seeking direction for concluding the

Execution Case No.23 of 2021 (Hari Shankar Kushwaha vs. Jai Prakash Singh).

2. The facts, in brief, are that the landlord, the petitioner herein, filed a SCC Suit for arrears of rent, eviction and damages against the tenant Jai Prakash Singh bearing SCC Suit No.26 of 2010. On 01.02.2011, Sri Jai Prakash Singh, the tenant, filed a written statement in which a ground was taken that he had lend a sum of Rs.50,000/- to the landlord and an agreement was also executed in between the parties being a notarized agreement. On 29.10.2013, the SCC Court dismissed the suit filed by the landlord against which a SCC Revision No.1 of 2014 was preferred and during the pendency of the revision, the court directed the verification of the signatures on the alleged agreement through an expert, in which it was revealed that the signatures on the alleged agreement were forged, as such, the SCC Revision No.1 of 2014 was allowed on 07.11.2016. The judgment of the SCC Court dated 29.10.2013 was set aside and the matter was remanded for deciding the suit expeditiously. Ultimately on 08.02.2021, the SCC Suit was decreed and a decree for eviction was passed, against which a SCC Revision No.5 of 2021 was filed and is pending before the Hon'ble High Court. It has been clarified by the High Court vide its order dated 02.09.2021 that there is no interim order pending and directions were also issued to the Executing Court to proceed for execution, which is said to be pending.

3. During the pendency of the execution, objections were initially filed under Section 47 of CPC by the tenant, the said are still said to be pending. In the said objection, prayer was to quash the judgment and decree dated 08.02.2021

passed in SCC Suit No.26 of 2010. The tenant thereafter filed an application under Order 21 Rule 97, 98 and 101 of CPC. In the said application, which is on record as Annexure no.10, the entire history of the case was pleaded and a prayer was made for setting aside the judgment and decree dated 08.02.2021 passed in SCC Suit No.26 of 2010. The petitioner filed objection and sought dismissal of the application which was registered as Misc. Case No.257 of 2023, however, no orders were passed on the said application and straightway an order came to be passed for framing of the issues under Order 21 Rule 101 CPC.

4. In the backdrop of the said facts, the contention of the counsel for the petitioner is that once the petitioner was a judgment debtor and had contested the entire suit, the application under Order 21 Rule 97 CPC at his instance was not maintainable and thus, the entire proceedings deserves to be quashed.

5. The counsel for the respondents, on the other hand, strenuously argues on the strength of the Order 21 Rule 97 CPC that the application is maintainable at the instance of any party. Reliance is placed upon the judgment of the Hon'ble Supreme Court in the cases of **Brahmadeo Choudhary vs. Rishikesh Prasad Jaiswal and another (1997) 3 SCC 694**; **Smt. Ved Kumari through her LRs Dr. Vijay Agarwal vs. Municipal Corporation of Delhi through its Commissioner (2023) Live Law (SC) 712**; **Shreenath and another vs. Rajesh and others (1998) 4 SCC 543**; **Sameer Singh and another vs. Abdul Rab and others (2015) 1 SCC 379**; **Jini Dhanrajgir and another vs. Shibu Mathew and another (2023) SCC Online SC 643**. The said judgments are

being pressed to argue that it is not necessary that a person should be stranger to the suit for filing and continuing of an application under Order 21 Rule 97 CPC.

6. The counsel for the landlord, on the other hand, places strong reliance on the judgment of the Supreme Court in the case of **Periyammal (dead) through LRs and others vs. V. Rajamani and another etc. (2025) Legal Eagle SC 274**.

7. Considering the argument raised at the bar and the judgment relied upon, the only question to be considered is whether the application under Order 21 Rule 97 CPC is maintainable at the instance of a person who has been held to be a tenant and who contested the proceedings was a judgment debtor. The said issue was extensively considered in the case of **Periyammal (dead) (supra)**. The Supreme Court recorded its analysis in paragraph (e) wherein the Supreme Court considered the scope of Section 47, Order 21 Rule 97, 98, 99, 100, 102 and 103 CPC. While interpreting the nature of the application under Order 21 Rule 97 CPC, the Supreme Court considered the judgment in the cases of **Brahmadeo Chaudhary (supra)**, **Shreenath (supra)**, **Silverline Forum Pvt. Ltd. vs. Rajiv Trust and another (1998) 3 SCC 723**, **NSS Narayan Sarma and others vs. Goldstone Exports (P) Ltd. and others (2002) 1 SCC 662** & **Samir Singh and another vs. Abdul Rab (2015) 1 SCC 379** and ultimately held that the application under Order 21 Rule 97 CPC is available only to a stranger, who claims to be in possession of the properties in his rights which are independent and is a third person claiming right, title or interest in the property to seek restoration of the decretal property in contradiction to the powers

under Order 21 Rule 35 which prescribes for removal of any person who is bound by the decree.

8. Considering and following the said judgments, the submissions made by the counsel for the petitioner merits acceptance and are accepted. It is also to be noticed in the present case that the respondent tenant, having failed to establish any of his defenses as taken in reply to the SCC Suit, has tried one after the other tricks to avoid execution. The proceedings under Order 21 Rule 97, 98 and 101 CPC were not maintainable at his instance and were nothing but an abuse of the process of law, as such, the Executing Court has erred in directing for framing of issues.

9. Thus, the order dated 20.02.2024 passed by the Executing Court as well as the application filed under Order 21 Rule 97, 98 and 101 CPC deserves to be quashed and is accordingly quashed.

10. The Executing Court is directed to execute the decree within a period of two months as held in the case of **Periyammal (dead) (supra)**. The executing court shall proceed to ensure that the vacant and peaceful possession of the suit property shall be handed over to the petitioner as a decree holder and if necessary, with the aid of the police. The said exercise shall be concluded within a period of two months from today.

11. The writ petition stands allowed in terms of the said order.

(2025) 4 ILRA 712
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 04.04.2025

BEFORE

THE HON'BLE SAURABH SRIVASTAVA, J.

Application U/S 482 No. 551 of 2025

Devendra Pandey ...Applicant
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Applicant:
Pankaj Kumar Gupta

Counsel for the Respondents:
G.A., Narendra Kumar Tiwari

Criminal Law - Indian Electricity Act, 2003 - Sections 135 & 149 - Against summon order - Quashing of - Applicant challenged proceedings which is primarily based on procedural illegality of implicating him in capacity of 'Manager' and instituting FIR against Institution under Electricity Act, 2003 - Such prosecution is not maintainable, as applicable provision is Section 149 of Act, which governs offences committed by group of person or association of individual, such as Committee of Management that runs educational institution, also covers offences under Sections 135, 136, and 138 - Hence, FIRs against such institution must proceed under Section 149 alone - Cognizance order dated 02.05.2024, summoning applicant as Manager of institution, is unsustainable as it ignores mandatory application of Section 149, and therefore quashed. (Para 6, 11, 14)

Application allowed. (E-13)

(Delivered by Hon'ble Saurabh Srivastava, J.)

Order on Exemption Application
No. Nil of 2025

1. Sri Narendra Kumar Tiwari, learned counsel appearing for opposite party nos. 2 and 3 preferred counter affidavit along with exemption application,

which is taken on record, for seeking exemption of personal appearance of the Officer who has been directed to appear in person vide order dated 09.01.2025, reasons mentioned in the application appears as justified.

2. Exemption Application is hereby allowed.

3. Officer concerned is hereby exempted from personal appearance.

Order on Application U/S 482 Cr.P.C.

1. Heard Sri Pankaj Kumar Gupta, learned counsel for the applicant, Sri Narendra Kumar Tiwari, learned counsel for opposite party nos. 2 and 3 and learned AGA for the State.

2. The entire proceeding has been put under challenge through instant application precisely on the grounds that the FIR which has been lodged at Case Crime No. 0215 of 2019 under Section 135 of the Indian Electricity Act, 2003 (hereinafter referred to as 'the Act of 2003') and after conducting detailed investigation, chargesheet has been preferred on dated 24.06.2020, whereupon cognizance of offence has been taken up by learned Court of Additional District and Session Judge, Court No. 9, Prayagraj on dated 02.05.2024 in pursuance to Section 135 of the Act of 2003.

3. Learned counsel for the applicant submitted that the FIR has been lodged against an Institution namely, Raj Narayan Pandey, P.G. College, Berui, Garapur, Tharwai, Prayagraj under Section 135 of the Act of 2003, but the same is contrary to the Act of 2003, wherein specific provision for offence, if any, committed by

companies which is further explained under Section 149(2)(a) of the Act of 2003 that 'Company' means a body corporate and includes a firm or other association of individuals; and under Section 149(2)(b) of the Act of 2003 that 'Director', in relation to a firm, means a partner in the firm.

4. Learned counsel for the applicant further submitted that Section 135 of the Act of 2003, wherein the applicant has been implicated solely deals with the theft of electricity if made by any individual, since the group of person or association has been clearly defined under Section 149 of the Act of 2003.

5. Learned counsel for the applicant submitted that chargesheet preferred by concerned investigating officer by way of implicating Devendra Pandey being the Manager of Raj Narayan Pandey, P.G. College, Berui, Garapur, Tharwai, Prayagraj which clearly shows that the implication of applicant is only being the Deputy Manager of the Institution which is clarified with the certificate issued by the Registrar Society of Registration which has been renewed from time to time and the same has been extended till 15.12.2025, wherein name of applicant has been reflected at serial no. 4 and the responsibility has been mentioned as '*Up-Mantri*'.

6. The arguments raised by learned counsel for the applicant regarding challenging the entire proceeding is solely based upon the procedure adopted by the prosecution by way of implicating the applicant under the capacity of 'Manager' and institution of FIR against the Institution i.e. Raj Narayan Pandey, P.G. College, Berui, Garapur, Tharwai, Prayagraj, specifically under Section 135 of the Act of

2003, which is not maintainable since the provision contained and mandated as per law is only the Section 149 of the Act of 2003, which deals with the offence, if any, committed by group of persons, association of individuals etc and the educational institution is undisputedly run by Committee of Management (group of persons, associations).

7. Per contra, Sri Narendra Kumar Tiwari, learned counsel for opposite party nos. 2 and 3 submitted that the offence of theft is defined under Section 135 of the Act of 2003 only and if in any case, the contention as raised by learned counsel for the applicant may be admitted, the authorities concerned shall be debarred from taking any request for compounding the offence in pursuance to Section 152 of the Act of 2003, wherein the offence of theft is compoundable by way of paying the dues along with compounding fee. It is further submitted by Sri Narendra Kumar Tiwari that the offence of electricity theft is available only under Section 135 of the Act of 2003 and not under Section 149 of the Act of 2003 and as such if in any case, the FIR has to be instituted i.e. only under Section 135 of the Act of 2003 and implication under Section 149 of the Act of 2003 will not be attracted at the time of institution of FIR against company/group of association of individuals/group of certain persons associated.

8. After hearing the rival submissions extended by learned counsel for the parties, it is necessary to examine the crystal clear wordings mentioned under Section 135 of the Act of 2003 which is reproduced here below:-

"Section 135. Theft of Electricity- (1) *Whoever, dishonestly,--(a)*

taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised, so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use-- (i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent

conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorised by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may

be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty-four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.]

(2) 2 [Any officer of the licensee or supplier as the case may be, authorised] in this behalf by the State Government may-
-(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity 3 [has been or is being], used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which 1 has been, or is being, used for unauthorised use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places

or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act."

9. Section 149 of the Act of 2003 which is also reproduced here below:-

"Section 149. Offences by companies.— (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly. Explanation.— For the purposes of this section—(a) "company" means a body corporate and

includes a firm or other association of individuals; and (b) "director", in relation to a firm, means a partner in the firm.

10. At the same time the arguments raised by Sri Narendra Kumar Tiwari, learned counsel for opposite party nos. 2 and 3 regarding implementation of Section 152 of the Act of 2003 which might be in shape of handcuffing the appropriate authorities to proceed if in case any FIR under Section 149 of the Act of 2003 will be instituted, and as such Section 152 of the Act of 2003 is also reproduced here below:-

"Section 152. Compounding Of Offences.— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Appropriate Government or any officer authorised by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:

Nature of Service	Rate at which the sum of money for compounding to be collected per Kilowatt (KW) /Horse Power (HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere (KVA) of contracted demand for High Tension (HT)
1. Industrial Service	twenty thousand rupees;
2. Commercial Service	ten thousand rupees;
3.	two thousand rupees;

<i>Agricultural Service</i>	
<i>4. Other Services</i>	<i>four thousand rupees :</i>

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) The Compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer."

11. By bare perusal of Section 135 of the Act of 2003, although there is no specific mention regarding individual or group of person, it relates only to the theft of electricity, but the clarification with regard to individual and group of certain people/association of individuals has been clarified in later section available under Section 149 of the Act of 2003 which is crystal clear the offences by the companies. The word 'offence' is available under Chapter XIV of the Act of 2003, wherein the 'theft of electricity' under Section 135 of the Act of 2003 and 'theft of electric lines and materials' under Section 136 of the Act of 2003 are the offences which is

further dealt under Section 138 of the Act of 2003 also and as such the offences mentioned under three sections i.e. Sections 135, 136 and 138 of the Act of 2003 are broadly mentioned only in one word under Section 149 of the Act of 2003 i.e. 'offences' which is plural in nature and capturing all the offences mentioned prior to Section 149 of the Act of 2003. The formation of the Act introduced by the legislation is almost crystal clear, in each and every law which has to be read from 'A to Z/1 to 100'. The reproduction of the same words need not to be dealt in each and every section and being the student of law, it is to be onus and duty of every person who is reading fine thread lines of the law available in the Act has to be carefully read in ascending order. The word 'offences' which is plural under Section 149 of the Act of 2003 deals with all the offences mentioned prior to Section 149 of the Act of 2003 which is available under Sections 135, 136 and 138 of the Act of 2003, meaning thereby the implication of companies/body corporate includes a firm or other association of individuals which is fully applicable in the instant matter that once an FIR has been lodged against an Institution which comes under the category of association of individuals directly attract Section 149 of the Act of 2003 only.

12. So far as the argument raised by Sri Narendra Kumar Tiwari, learned counsel for opposite party nos. 2 and 3 regarding impediment to exceed with Section 152 of the Act of 2003 is concerned, the same is not available and Section 152 of the Act of 2003 that the same shall be applicable only in respect of Section 135 of the Act of 2003. If that be so, the other sections mentioned as Sections 136 and 138 of the Act of 2003 shall be out of the ambit of Section 152 of the Act of

2003. The scope available for proceeding under Section 152 of the Act of 2003 attracts all the sections wherein the offence has been mentioned in the the Act of 2003 precisely under Sections 135, 136, 138 as well as 149 of the Act of 2003 also.

13. The institution of the FIR under Section 135 of the Act of 2003 was not in-consonance with mandate of law and proceed further in shape of preferring charge-sheet against the alleged Manager-applicant before concerned Court, specifically under Section 135 of the Act of 2003, whereupon cognizance has been taken up by learned court concerned is also not sustainable in the eye of law.

14. In view of aforementioned facts and circumstances, once the implication of the applicant being the 'Manager' of the Institution against which an FIR has been instituted is contrary to all cannons of legality and the attraction of Section 149 of the Act of 2003 has not been dealt with by learned court concerned while passing order dated 02.05.2024 through which cognizance of offence has been taken up while issuing summons to the applicant, the same is deserves to be quashed.

15. In the light of aforementioned discussions, the entire proceedings arising out of Case Crime No. 215 of 2019 under Section 135 of the Indian Electricity Act, 2003 are hereby **quashed** and **set-aside**.

16. The instant application u/s 482 Cr.P.C. stands **allowed** accordingly.

17. However, it is made clear that this order will not preclude the authorities concerned to proceed a fresh, if required

against the applicant under specific sections available under the Indian Electricity Act, 2003.

(2025) 4 ILRA 718

ORIGINAL JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 05.04.2025

BEFORE

THE HON'BLE RAJIV GUPTA, J.

THE HON'BLE SAMIT GOPAL, J.

Application U/S 482 No. 3099 of 2024

Abhishek Mishra @ Pintu

...Applicant

Versus

State of U.P. & Anr.

...Respondents

Counsel for the Applicant:

Sri Vijay Kumar Pandey

Counsel for the Respondents:

Sri Ashok Kumar Gupta, G.A., Sri Sunil Vashishth

(A) Criminal Law - Negotiable Instruments Act, 1881 - Sections 138 & 143 - Dismissal of complaint for want of prosecution - Reference to Larger Bench on maintainability of revision vs. appeal - The Code of criminal procedure, 1973 - Sections 203, 204, 256(1), 378(4) & 397 - Whether dismissal of complaint before issuance of summons amounts to acquittal - Where no summoning order under Section 204 Cr.P.C. is passed, dismissal of complaint is under Section 203 Cr.P.C., and not an acquittal under Section 256(1) Cr.P.C. - Section 256(1) Cr.P.C. not applicable where complaint dismissed prior to summoning stage under Section 203 Cr.P.C. - appeal under Section 378(4) Cr.P.C. does not lie where complaint dismissed under Section 203 Cr.P.C. - only remedy is revision - complaint dismissed before summons, pre-cognizance stage - Reference not answered as foundational facts did not attract the legal issue - Complaint dismissed under Section 203

Cr.P.C. before summoning does not amount to acquittal under Section 256 Cr.P.C. - remedy lies in revision, not appeal. (Para - 1,2,5,10,11,13)

Complaint under Section 138 N.I. Act dismissed for insufficient material before summoning - revisional court set aside order and remanded the matter - applicant challenged maintainability of revision, relying on coordinate Bench decision in *Vinay Kumar* case. **(Para - 4 to 8)**

HELD: - As the order dated 13.03.2019 is prior to issuance of summons and thus is an order passed under Section 203 Cr.P.C., stage of Section 256 Cr.P.C. has yet not arisen in the present matter. The question whether an order dismissing a complaint under Section 138 of the N.I. Act for want of prosecution will amount to acquittal under Section 256(1) Cr.P.C. and whether the same can be challenged in appeal under Section 378(4) Cr.P.C. or is an order revisable under Section 397 Cr.P.C. does not arise in the present case. **(Para -11)**

Reference needs no deliberation, returned to the appropriate Bench, and the matter directed to be listed before it. (E-7)

LIST OF CASES CITED: -

1. Vinay Kumar Vs St. of U.P., Criminal Revision No. 3426 of 2005

(Delivered by Hon'ble Samit Gopal, J.)

1. A reference has been made by learned Single Judge in paragraph 13 of an order dated 13.03.2024 which reads as under:-

"13. In this view of the matter, judicial propriety demands that this matter be referred to a Larger Bench to decide these questions:

(i) Whether the dismissal of complaint u/s 138 of the Act, 1881 for want of prosecution will amount to acquittal u/s 256(1) Cr.P.C., and same can be challenged in appeal u/s 378(4) Cr.P.C., or is that order reviseable u/s 397 Cr.P.C.?

(ii) Whether the case of Vinay Kumar (supra) has been correctly decided by holding that against the dismissal of complaint u/s 138 of the Act, 1881, appeal lies u/s 378(4) Cr.P.C. ,not the revision?"

2. Vide order dated 18.04.2024 Hon'ble The Chief Justice has constituted the present Larger Bench in the matter.

3. Heard Shri Vijay Kumar Pandey, learned counsel for the applicant, Shri Sunil Vashishth, Holding Brief of Shri Ashok Kumar Gupta, learned counsel for the O.P. No.2 and Shri Shashi Shekhar Tiwari & Shri Jitendra Kumar Jaiswal, learned counsels for the State/O.P. No.1 and perused the records.

4. The entire issue before the learned Single Judge was of challenge of an order dated 26.10.2019 passed by the Additional Sessions Judge / F.T.C. (Crime Against Women), Jaunpur in Criminal Revision No. 67 / 2019 (Shivnath Pandey Vs. Abhishek Mishra @ Pintu) and the order dated 18.08.2023 passed by the Additional Civil Judge (J.D.) / Judicial Magistrate-IIIrd, Jaunpur in Case No. 311 / 2022 (Shivnath Pandey Vs. Abhishek), under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the "N.I. Act") Police Station Shahganj, District Jaunpur.

5. Vide order dated 13.03.2019 a compliant filed by the complainant was dismissed by the Additional Chief Judicial Magistrate-IIInd, Jaunpur under Section 138 N.I. Act on the ground that matter has been pending since the year 2018 but despite passage of 01 year no arguments are being advanced for summoning. The records contain insufficient evidence and their does not appear any ground for proceeding. Thus, due to unavailability of sufficient

material, the complaint is liable to be dismissed. The Court thus dismissed the said complaint on the insufficiency of material.

6. Against the said order 13.03.2019 a Criminal Revision No. 67 / 2019 (Shivnath Pandey Vs. Abhishek Mishra @ Pintu) was filed which was allowed vide judgement & order dated 26.10.2019 and the impugned order dated 13.03.2019 therein was set-aside with a direction that the complainant to be afforded an opportunity of hearing and the matter be decided on its merit.

7. Subsequently vide order dated 18.08.2023 the accused-applicant was summoned for offence under Section 138 N.I. Act.

8. The said two orders were thus subject matter of challenge in the present petition.

9. The learned Single Judge passed an order dated 13.03.2024 by framing the aforesaid questions and referring the matter to a Larger Bench. The matter is thus before this Larger Bench. The order is quoted herein below:-

"1. Heard learned counsel for the applicant, Sri Ashok Kumar Gupta, learned counsel for opposite party no.2 and Sri Rajeev Kumar Sonkar, State Law Officer for the State.

2. The present 482 Cr.P.C. application has been filed to quash the entire proceedings of Case No.311 of 2022 (Old No.744 of 2018) (Shivnath Vs. Abhishek), under Section- 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act, 1881'), Police Station-Shahganj, District-Jaunpur, pending in the Court of learned Additional

Civil Judge (J.D.)/Judicial Magistrate Third, Jaunpur, as well as impugned order dated 26.10.2019.

3. The contention of learned counsel for the applicant is that the complaint of the opposite party no.2 was rejected by order dated 13.03.2019 for non-prosecution as well as for not producing any evidence despite giving repeated opportunities and against that order, revision was preferred by the opposite party no.2, which was allowed by order dated 26.10.2019, and the matter was remanded to the Court below to consider the same on merits. It is further submitted that the order of the revisional Court is erroneous as no revision was maintainable because the order dismissing the complaint amounts to acquittal and the same can be challenged in appeal under Section-378(4) of Cr.P.C. and revisional court has no jurisdiction to entertain the revision against that order. In support of his contention, learned counsel for the applicant has also relied upon the judgement of the coordinate Bench of this Court passed in Vinay Kumar Vs. State of U.P. in Criminal Revision No.3426 of 2005 decided on 04.09.2007.

4. Per contra, learned counsel for opposite party no.2 and State Law Officer has submitted that proceeding under the Act, 1881 is a summary proceeding and procedures of Cr.P.C. is not applicable in the proceeding of the Act, 1881. It was also submitted that u/s 143 Cr.P.C., it was explicitly mentioned that in the proceeding of the Act, 1881, Sections 262 to 265 of Cr.P.C. will be applicable, and provision of appeal is provided u/s 148 of the Act, 1881 against the conviction u/s 138 of the Act, 1881.

5. After considering the submission of parties and on perusal of the record, it is undisputed that proceeding

under the Act 1881 is summary proceeding, and Section-143 of the Act 1881, itself provides the procedure of the complaint under the Act 1881 and further provides that Sections 262 to 265 Cr.P.C. will be applicable as far as maybe even without adopting the strict procedure of summons cases. For ready reference, Section 143 of the Act 1881 is being quoted as under:

"143. Power of Court to try cases summarily.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the

following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint."

6. Similarly, the process for issuing summons and taking evidence was also provided in the Act, 1881 and provision of appeal is provided u/s 148 of the Act, 1881, against the order of conviction u/s 138 of the Act, 1881 with the caveat that notwithstanding anything contained in the Cr.P.C. Therefore, if a complaint is dismissed, that order will not be appealable u/s 148 of the Act, 1881. The only remedy available for the complaint is filing a revision.

7. From the perusal of the second proviso of Section-143 of the Act, 1881, it is clear, if the Magistrate thinks that the case is of such nature that a sentence of imprisonment exceeding one year may have to pass, or for any other reason, it is undesirable to try the summary. In that case, the Magistrate, after recording his reason, will proceed to hear the case as per the procedure provided for the summons case in Cr.P.C. Therefore, it is clear if the Magistrate has not recorded any reason to convert the trial from summary to summons case, and then the summary trial procedure will continue.

8. The Apex Court in the Expeditious Trial of Cases U/s 138 of N.I. Act, 1881 in RE Suo Motu Writ Petition (Crl.) No.2 of 2020, decided on 16.04.2021, also observed in paragraph no.24.1 that before converting a complaint case u/s 138 of the Act, 1881 from summary trial to summons case, the Magistrate has to record reasons and discuss the scheme of the Act, 1881 in para nos. 9 and 20 of the judgment. Paragraphs nos.9, 20, 24.1 of

the judgement of Expeditious Trial of Cases (supra) are being mentioned as under:

"9. Section 143 of the Act has been introduced in the year 2002 as a step-in aid for quick disposal of complaints filed under Section 138 of the Act. At this stage, it is necessary to refer to Chapter XXI of the Code which deals with summary trials. In a case tried summarily in which the accused does not plead guilty, it is sufficient for the Magistrate to record the substance of the evidence and deliver a judgment, containing a brief statement of reasons for his findings. There is a restriction that the procedure for summary trials under Section 262 is not to be applied for any sentence of imprisonment exceeding three months. However, Sections 262 to 265 of the Code were made applicable "as far as may be" for trial of an offence under Chapter XVII of the Act, notwithstanding anything contained in the Code. It is only in a case where the Magistrate is of the opinion that it may be necessary to sentence the accused for a term exceeding one year that the complaint shall be tried as a summons trial. From the responses of various High Courts, it is clear that the conversion by the trial courts of complaints under Section 138 from summary trial to summons trial is being done mechanically without reasons being recorded. The result of such conversion of complaints under Section 138 from summary trial to summons trial has been contributing to the delay in disposal of the cases. Further, the second proviso to Section 143 mandates that the Magistrate has to record an order spelling out the reasons for such conversion. The object of Section 143 of the Act is quick disposal of the complaints under Section 138 by following the procedure prescribed for summary trial under the Code, to the extent possible. The discretion conferred on the Magistrate by

the second proviso to Section 143 is to be exercised with due care and caution, after recording reasons for converting the trial of the complaint from summary trial to summons trial. Otherwise, the purpose for which Section 143 of the Act has been introduced would be defeated. We accept the suggestions made by the learned Amici Curiae in consultation with the High Courts. The High Courts may issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 from summary trial to summons trial in exercise of power under the second proviso to Section 143 of the Act.

*20. Section 143 of the Act mandates that the provisions of summary trial of the Code shall apply "as far as may be" to trials of complaints under Section 138. Section 258 of the Code empowers the Magistrate to stop the proceedings at any stage for reasons to be recorded in writing and pronounce a judgment of acquittal in any summons case instituted otherwise than upon complaint. Section 258 of the Code is not applicable to a summons case instituted on a complaint. Therefore, Section 258 cannot come into play in respect of the complaints filed under Section 138 of the Act. The judgment of this Court in *Meters & Instruments [Meters & Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC 560 : (2018) 1 SCC (Civ) 405 : (2018) 1 SCC (Cri) 477]* insofar as it conferred power on the trial court to discharge an accused is not good law. Support taken from the words "as far as may be" in Section 143 of the Act is inappropriate. The words "as far as may be" in Section 143 are used only in respect of applicability of Sections 262 to 265 of the Code and the summary procedure to be followed for trials under Chapter XVII. Conferring power on the court by reading certain words into provisions is*

impermissible. A Judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation [J. Frankfurter, Of Law and Men : Papers and Addresses of Felix Frankfurter.] . The Judge's duty is to interpret and apply the law, not to change it to meet the Judge's idea of what justice requires [Duport Steels Ltd. v. Sirs, (1980) 1 WLR 142 : (1980) 1 All ER 529 (HL)] . The court cannot add words to a statute or read words into it which are not there [Union of India v. Deoki Nandan Aggarwal, 1992 Supp (1) SCC 323 : 1992 SCC (L&S) 248] .

24.1. The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial."

9. Therefore, it is clear from the above legal position that unless this case is converted from summary trial to summons trial by the specific order of the Magistrate, procedure of summons trial mentioned in Chapter XX of Cr.P.C. cannot be adopted while trying a case as summary trial. Therefore, if the case is being tried strictly as a summary trial as per the Chapter XXI of Cr.P.C., then the procedure mentioned in Chapter XX of Cr.P.C. from Sections 251 to 259 of Cr.P.C. would not be applicable.

10. Therefore, this Court is of the view if a complaint u/s 138 of the Act, 1881 is dismissed for want of prosecution, then the same cannot be deemed to be acquittal u/s 256(1) of Cr.P.C. because Section 256(1) Cr.P.C. falls under the procedure of summons case, therefore, against the dismissal of the complaint, no appeal lies u/s 378(4) Cr.P.C. only the remedy against

the rejection of a complaint, whether on merit or for want of prosecution, is filing a revision.

11. Apex Court in the case of Expeditious Trial of Cases (supra) also observed that proceeding under the Act, 1881 is a summary proceeding and complete the procedure has been provided under the Act, 1881, therefore all provisions of Cr.P.C. are not applicable. So far as the judgement relied upon by learned counsel for the applicant is concerned, in that case, it is observed that dismissal of the complaint in the absence of the complainant will amount to acquittal of accused u/s 256(1) Cr.P.C. and that order can be challenged only in appeal under section 378(4) Cr.P.C., is contrary to the observations of the Hon'ble Supreme Court as well as the scheme of the Act, 1881.

12. Therefore, this Court respectfully disagreed with the coordinate Bench's judgement in Vinay Kumar's case (supra). Paragraph no.14 of the Vinay Kumar's case (supra) is being quoted as under:

"14) FROM the perusal of the aforesaid Section it is clear that if an order of acquittal has been passed a case instituted upon a complaint then on an application made before the High Court by the complainant the high Court can grant special leave to appeal from an order of acquittal. Thus in the present case against the dismissal of complaint which amounted to acquittal of accused complainant respondent No. 2 Sanjay kumar Dixit had got the right to file special leave to appeal under Section 378 (4) Cr. P. C. in this Court, which admittedly has not been done. Section 401 (4) Cr. P. C. provides that under the Code of Criminal Procedure if an appeal lies and no appeal is brought no proceeding by way of revision shall be entertained at the instance of the party who

could have appealed. The said sub-section is quoted below: high Courts powers of revision. 401. (4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed."

13. In this view of the matter, judicial propriety demands that this matter be referred to a Larger Bench to decide these questions:

(i) Whether the dismissal of complaint u/s 138 of the Act, 1881 for want of prosecution will amount to acquittal u/s 256(1) Cr.P.C., and same can be challenged in appeal u/s 378(4) Cr.P.C., or is that order reviseable u/s 397 Cr.P.C.?

(ii) Whether the case of Vinay Kumar (*supra*) has been correctly decided by holding that against the dismissal of complaint u/s 138 of the Act, 1881, appeal lies u/s 378(4) Cr.P.C., not the revision?

14. The office is directed to place the record of this case before the Hon'ble Chief Justice for appropriate orders.

15. List this case after the decision of the Larger Bench.

16. In the meantime, the proceedings of the trial court shall remain stayed."

10. At the very outset, it would be apt to quote certain provisions relevant to the matter which are as under:-

(A) Section 143 of the N.I. Act, 1881

"143. Power of Court to try cases summarily- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of

the said Code shall, as far as may be, apply to such trials:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint."

(B) Section 148 of the N.I. Act, 1881

"Power of Appellate Court to order payment pending appeal against conviction- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall

be a minimum of twenty percent of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

(C) Section 203 of the Code of Criminal Procedure, 1973

"203. Dismissal of complaint- If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

(D) Section 256 of the Code of Criminal Procedure, 1973

"256. Non-appearance or death of complainant- (1) If the summons has

been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of Sub-Section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death."

11. The reference and stress herein is given on the two provisions of the Code of Criminal Procedure. The difference between Section 203 Cr.P.C. and Section 256 Cr.P.C. is of the stage of passing of an order therein. Under Section 203 Cr.P.C. an order is passed prior to taking of cognizance and summoning whereas the exercise of power under Section 256 Cr.P.C. is subsequent to issuance of summons. The admitted position in the present matter is that the order dated 13.03.2019 passed by the Additional Chief Judicial Magistrate- IInd, Jaunpur is an order prior to issuance of summons and thus is an order passed under Section 203 Cr.P.C. The stage of Section 256 Cr.P.C. has yet not arisen in the present matter and thus the question whether an order dismissing a complaint under Section 138 of the N.I. Act for want of prosecution will amount to acquittal under Section 256 (1)

Cr.P.C. and whether the same can be challenged in appeal under Section 378 (4) Cr.P.C. or is an order revisable under Section 397 Cr.P.C. does not arise in the present case. The said question is the first question in the reference.

12. In so far as the second question challenging the correctness of the judgement of *Vinay Kumar Vs. State of U.P.: Criminal Revision No. 3426 of 2005, decided on 04.09.2007* by a learned Single Judge is concerned, does not have relevance in the present matter since in the said case although the complaint was dismissed in default vide order dated 05.02.2004 passed by the trial court concerned but the same was after the accused therein were summoned for offence under Section 138 of the N.I. Act, under Section 204 Cr.P.C. vide order dated 19.09.2002. The order thus therein was an order under Section 256 Cr.P.C. and not under Section 203 Cr.P.C. The second question thus also does not arise for consideration in the present matter.

13. The reference thus needs no deliberation on the issues in it and does not deserve to be answered.

14. The reference thus in the light of the above discussion is returned back to the appropriate Bench.

15. The matter is directed to be listed before the appropriate Bench having roster in the week commencing 15th April, 2025.

(2025) 4 ILRA 726
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 10.04.2025

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Application U/S 482 No. 4859 of 2013

Ramesh Kumar Srivastava & Anr.

...Applicants

Versus

State of U.P. & Anr.

...Respondents

Counsel for the Applicant:

Sanjay Kumar Srivastava

Counsel for the Respondents:

G.A.

Criminal Law -Criminal Procedure Code,1973-Section 482-Indian Penal Code,1860-Section 325,506-challenge to-summoning order-The case stemmed from allegations by the complainant that the applicant no. 2, Doctor had conducted a negligent surgery, leading to cancer and later both applicants allegedly attacked her with a motorcycle during her protest-However, the FIR was lodged after a delay of nearly a month, and subsequent departmental inquiry had exonerated the doctor, holding a private hospital responsible-The Court noted the absence of credible eyewitnesses, the lack of corroborating medical evidence, and the verified presence of the applicants elsewhere at the time of the alleged incident-The Court found that the FIR was filed with malafide intent after the complainant failed in earlier attempts to implicate the applicants through departmental channels-Appling principles from *State of Haryana Vs. Bhajan Lal and Prashant Bharti Vs. St. of NCT of Delhi*, the court held that the proceedings were malicious and constituted an abuse of the legal process.(Para 1 to 30)

The application is allowed. (E-6)

List of Cases cited:

1. *St. of Har. Vs Bhajan Lal* (1992) AIR 604

2. Prashant Bharti Vs. St. of NCT of Delhi
(2013) 9 SCC 293

(Delivered by Hon'ble Shree Prakash
Singh, J.)

1. Heard Sri Sanjay Kumar Srivastava, learned counsel for the applicants and Sri Nirmal Kumar Pandey, learned A.G.A. for the State-Respondent.

2. The instant application under section 482 Cr.P.C. has been filed with the prayer to quash the impugned orders dated 19.12.2007 and 22.7.2013 passed by the learned Chief Judicial Magistrate Lucknow in Case No. 17162/2007, State Vs Ramesh Kumar Srivastava and Others, as well as the impugned Chargesheet No. 202/207 dated 18.12.2007 under Section 325 and 506 I.P.C., Case Crime no. 77/2007, Police Station-Kotwali Hazratganj, district-Lucknow.

3. From perusal of the ordersheet, it reveals that the notice was issued to the opposite party no. 2 on 08-10-2013 and an interim protection of permanent nature was also granted in favour of the applicants in the same order. The registry reported on 06-12-2013 while mentioning that as per the report of the Chief Judicial Magistrate, Lucknow dated 18-11-2013, the opposite party no. 2 namely, Smt. Sheela Gupta died on 23-06-2009 while suffering with cancer. The report reveals that the Chief Judicial Magistrate, Lucknow has recorded the statement of the husband of the opposite party no. 2 namely, Yogesh Chandra Gupta, the statement of the Head Constable, Sunil Chandra, has also been recorded regarding the death of opposite party no. 2.

4. This matter is arising out of a police case and the state government has filed it's Counter Affidavit on 07-01-2014.

5. The factual matrix of the case are that the first information report was lodged on 08-02-2007 at 20.10 Hrs. regarding the incident allegedly committed on 15-01-2007. It is narrated that Dr. Rajesh Kumar Srivastava, the applicant no. 2, conducted the operation in a careless and negligent manner at Prathmik Swasthya Kendra, Malihabad, district-Lucknow, whereupon the malignancy was developed in the body of the opposite party no. 2. Further alleged that when the informant/opposite party no. 2 was sitting on 'Dharna' for compensation and was returning from the lavatory, both the applicants hit her with a motorcycle, with an intention to kill her and they also threatened her to quit 'Dharna' or to face dire consequences, as a result whereof, she fell down on her left elbow, whereafter the people lifted her and she went under treatment in K.G.M.U., Lucknow, wherein her left elbow was found fractured and that was plastered for six weeks.

6. Contention of learned counsel for the applicants is that the first information report was lodged by delay of about two months, from the date of the alleged incident and no plausible explanation is given thereof and further in a very hurriedly manner, within 10 days of lodging of the first information report, the Investigating Officer, without collecting sufficient evidence, filed the chargesheet. He submits that the husband of the opposite party no. 2, namely Y.C. Gupta, Ram Gopal Bhurji and two other witnesses, whose statements were recorded, were never seen the incident and they all are allegedly hear the occurrence of incident.

7. He submits that the applicants had no knowledge of lodging of the first information report and filing of the chargesheet and as soon as it came into

their knowledge, they submitted an application for further investigation while appending the enquiry report conducted by Dr. M.K.Gupta, the then Dy. C.M.O., the reply dated 28-07-2006 given by the applicant no. 1 to the notice of the informant, the certificate dated 22-02-2007 given by the Superintendent, Samudayik Swasthya Kendra, the cause list of the High Court, showing several cases of the applicant no. 1 listed in the High Court on 15-01-2007 i.e. the date of the alleged incident, affidavit of Kashi Nath Shukla, Advocate, affidavit of S.K.Ojha, Advocate, affidavit of Raj Kumar Dwivedi, Advocate and affidavit of Farukh, Advocate and on the aforesaid application, the Circle Officer while not satisfying with the investigation conducted by the first Investigating Officer, returned the chargesheet with an order for further investigation, while appointing another investigating officer and enclosed the application given by the applicants for further investigation. He added that the statements of the defence witnesses were also recorded by the later Investigating Officer and the chargesheet has been filed while ignoring the evidences placed by the applicants. Further submitted that the learned trial court concerned without application of mind, has passed the impugned order on 19-12-2007 while summoning the applicants.

8. It is further argued that prior to lodging the first information report, a false complaint was given against the applicant no. 2, namely, Dr. Rajesh Kumar Srivastava to the CMO concerned whereafter, an enquiry was got conducted and the Enquiry Officer submitted the report on 29-08-2006, wherein it was found that there is no evidence, which could prove that Dr. Rajesh Kumar Srivastava had conducted the operation of the opposite party no. 2

and thus, the enquiry against the applicant no. 2 was dropped but the opposite party no. 2 under impression that the applicant no. 1 is the brother of the applicant no. 2 and is a practicing advocate, would do pairavi in the matter, therefore, without any cogent piece of evidence, he has also been hatched in a criminal conspiracy. He submits that once the opposite party no. 2 had failed to extort the applicant no. 2, she coined another false and concocted story against the applicants, so that she could falsely implicate them and the purpose which could not be suffice by making a complaint against the applicant no. 2, could be otherwise gained by lodging the first information report against them.

9. He further submitted that the applicants have taken specific plea that the applicant no. 2 was posted as the then Medical Officer in P.H.C., Malihabad and was on an emergency duty from 14-01-2007 to 15-01-2007 and thereafter, he was on Pulse Polio Duty and the duty period has been certified by the Superintendent of P.H.C., Malihabad and the statement of the Superintendent of P.H.C., Malihabad, has also been recorded in Parcha SCD-I on 25-03-2007. He also submits that the applicant no. 1, could not have been present on the alleged place of incident on 15-01-2007 as he was present at the premises of High Court as he is an advocate and his several cases were fixed for hearing, but, the Investigating Officer, ignoring the statement of four ocular witnesses, namely, Mr. Kashi Nath Shukla, Mr. S.K.Ojha, Mr. Raj Kumar Dwivedi, and Mr. Farukh, Advocate, has also erroneously filed the chargesheet against the applicant no. 1.

10. Adding his argument, he submits that the informant is said to have sustained injuries on her elbow, which according to

her own statement, was caused by falling down and that may be occurred on her own, as had there been any intention of the applicants for hitting the opposite party no. 2 by running over her with a motorcycle, she certainly, would have got more serious injuries, more so, there is no medical report to sustain the allegation of the informant that she was suffering with malignancy.

11. He further submitted that there is specific statement that the victim could not note down the number of the motorcycle, which can be a natural course, but, since, the place, where the alleged incident had occurred, is a public place and there is no eye witness of the same, whereas one of the witness namely, Ram Gopal Bhurji, has stated that informant and her husband told him that the persons riding on the motorcycle were the applicants and as such, he is also not an ocular witness of the incident.

12. Concluding his arguments, he submits that the applicants are the law abiding citizens and they were never involved in any criminal activity as there is no previous criminal antecedent of them. Further submission is that the first information is lodged against the applicants, when the opposite party no. 2 had failed in her malicious and malafide intention to extort money from the applicant no. 2 as her complaint was turned down by the enquiry officer and in such senerio feeling her to be failed in getting the money from the applicant no. 2, the other rigorous mode is adopted by the opposite party no. 2 while lodging the first information report, which is totally malafide and with an intention to harass the applicants. He added that the State has also failed to deny the specific averments made in the application with respect to malafide

criminal proceedings initiated against the applicants. Therefore, submission is that the whole criminal proceedings against the applicants are liable to be quashed.

13. Contradicting the aforesaid contentions of learned counsel for the applicants, learned A.G.A. appearing for the State has submitted that in the first information report, the applicants are named and the investigation has twice been conducted as the chargesheet was filed by the first Investigating Officer and subsequently, an application was submitted by the present applicants before the Circle Officer appending therein the statements of the witnesses and the other documents and thereafter, the matter was directed to be further investigated while appointing another Investigating Officer, who after conducting the thorough enquiry in the matter and while recording the statements of all the witnesses, filed the chargesheet. He next added that there could be no reason otherwise to name the applicants for committing the offence, by the opposite party no. 2. He also submits that the learned trial court while considering all the evidences including the statements of all the witnesses, have issued summons against the applicants and therefore, there is no erroneousness in the summoning order as well as in the chargesheet. Thus, submission is that the instant application filed by the applicants may be dismissed.

14. Having heard learned counsels for the parties and after perusal of the material placed on record, it transpires that initially the complaint dated 25.7.2006 was made by the opposite party no. 2 before the authorities of the health department, whereafter, the Chief Medical Officer, Lucknow appointed Dr. M.K. Gupta, the then Dy. Chief Medical Officer, (J.D.-

Grade) as an enquiry officer and after thorough enquiry, the enquiry report was submitted on 28/29-08-2006 before the Chief Medical Officer, wherein it is concluded that there is no evidence against the applicant no. 2, Dr. Rajesh Kumar Srivastava that he had conducted the operation of the informant, whereas the matter pertains to one 'Isha Hospital' and therefore, the negligence, if any, is of the private hospital namely, 'Isha Hospital' and therefore, the enquiry was closed. It seems that when the enquiry was closed and the opposite party no. 2, had failed to succeed in her purpose, she lodged the first information report on 08-02-2007 while alleging the incident of 15-01-2007, though there is no explanation of the delay, wherein it is alleged that the applicants came at the 'Dharna Place' of the opposite party no. 2 and hit her with the motorcycle, where both the applicants were riders, resulting the opposite party no. 2, fallen down and led a fracture in her hand. In fact having at glance the whole scenario, this is not understandable that for what reason and motive, the applicants would be intended to commit such offence.

15. It is also evident that the place where the incident is said to have occurred, is a public place, but there is no public eye witness of the incident, whereas, one of the witness namely, Ram Gopal Bhurji, who supported the version of the prosecution, is also not an ocular witness of the incident and he on the basis of receiving the information from the husband of the opposite party no. 2, has deposed before the police.

16. Further specific plea has been taken by the applicants that the applicant no. 2 was on an emergency duty, from 14-01-2007 to 15-01-2007 and thereafter, he

was on Pulse Polio Duty, which fact has been certified by the Superintendent, P.H.C., Malihabad and his statement has also been recorded, but, this fact has not been denied anywhere in the Counter Affidavit filed on behalf of the State-respondent. Further, with respect to presence of the applicant no. 1, who is a practicing lawyer of this court since last more than 30 years, having a good reputation, is supported by four other witnesses that the applicant no. 1 was present in the High Court on 15-01-2007 as there were several cases of the applicant no. 1 fixed for hearing, but, this fact seems to be ignored by the Investigating Officer as well as the learned trial court while issuing the summons. Further this fact has also not been denied by the State in its Counter Affidavit.

17. This court is also aware of the settled law that the plea of ali-bi, could be considered at the time of the trial, nevertheless, apparently, once there are four witnesses with respect to applicant no. 1 that on 15-01-2007, he was present in the premises of the High Court, but, the Investigating Officer, did not consider the same while filing the chargesheet against him as it is not only the statement of the applicant no.1/accused, but, that too, is supported by the version of four eye witnesses and their statements were also recorded by the Investigating Officer and therefore, this fact has become more particular and important regarding accusation in the instant matter.

18. As long as the applicant no. 2, who is a prestigious doctor, is concerned, was also present on duty at P.H.C., Malihabad, as the statement recorded by the Investigating Officer of the Superintendent of the P.H.C., Malihabad, as

he was on duty from 14-01-2007 to 15-01-2007 and later on, he was on Pulse Polio Duty and therefore, it is not understandable as to why the Investigating Officer was so adamant to discard the statement of the Superintendent of the P.H.C., Malihabad.

19. This court has also noticed the fact that if the informant would have been struck down by the motorcycle with an intention to kill her, certainly, she could have sustained other injuries apart from the fracture and therefore, if the whole story is channelised, it is conclusive that once the Departmental Enquiry Officer submitted his report after concluding the enquiry and did not find involvement of the applicant no. 2 in the matter and further once the legal notice of the applicant no. 2, was replied by the applicant no. 1, the first information report has been lodged while concocting the false and baseless story against them.

20. Time and again, the scope and ambit of section 482 Cr.P.C. has been agitated and elaborately explained/interpreted by the Hon'ble Apex Court regarding the intervenience for quashing of the criminal proceedings.

21. The celebrating Judgment regarding the exercise of powers under section 482 Cr.P.C. for quashing of the criminal proceedings attended with malafide or malice, is rendered in the case of **State of Haryana Vs Bhajan Lal**, reported in **1992, AIR 604**. The Hon'ble Supreme Court in paragraph no. 102 of the Judgment, has enumerated 7 categories of the cases, where powers under section 482 Cr.P.C.

can be exercised, which are given as follows :-

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

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

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

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

22. The Hon'ble Apex Court has concisely framed seven guidelines and particularly, the present case is squarely covered with point no. 7, wherein it has been held that if a criminal proceeding is hit by malafide or malicious or instituted with ulterior motive for hatching an accused in a criminal proceeding due to private or personal grudge, the same cannot be permitted to proceed.

23. In so far as the present case is concerned, it is prima-facie apparent that there being without any cogent reason or

evidence, the opposite party no.2 moved an application to the Chief Medical Officer with the allegation that because of the operation conducted by the applicant no. 2, she had suffered with malignancy, though there is no medical report submitted in support of her complaint and when an enquiry was conducted, it was found that the complaint is false against the applicant no. 2 and thereafter, the first information report has been lodged, while hatching the applicants in a criminal conspiracy for personal grudge.

24. Further one of the prosecution witness, though, he is not an eye witness, on receiving the information, has deposed his testimony, which is also unreliable, as is not supported or corroborated with any evidence and therefore, the facts and circumstances of the present matter is indicative that the first information report has been lodged with a malafide and malicious intention, which is squarely covered with the ratio of the Judgment of the Hon'ble Apex Court in the case of **Bhajan Lal(Supra)**.

25. Hon'ble the Apex Court in the case of **Prashant Bharti Vs State of NCT of Delhi**, reported in **(2013) 9 SCC,293** has held that for coming to a conclusion for quashing of the criminal proceedings under section 482 of the Cr.P.C., the following questions shall be kept in the mind of a Judge.

"1. Whether the material relied upon by the accused is sound, reasonable and indubitable, i.e. material is of sterling and in impeccable quality?

2. Whether the material relied upon by the accused is sufficient to reject and over rule the factual assertions contained in the complaint, i.e. material is

such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusation as false?

3. Whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or that the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

4. Whether proceeding with the trial would result in an abuse, of process of the Court and hence, would not serve the end of Justice?"

26. It is trite law that it would not only be sufficient for the court to look into the averments made in the first information report/complaint alone to find out whether the necessary ingredients to constitute the alleged offence are disclosed, but, the court owes a duty to look into the other attending circumstances emerging from the record of the case over and above the averments and if it is required, the court with due care and caution, would try to read in between the lines. So far as the present case is concerned, the background of the circumstances indicates that the allegations levelled in the first information report, seem to be with a motive to wreaking vengeance and malafide.

27. Accordingly, this court finds that the material, which is relied upon by the applicants/accused persons, is sound and reasonable and the material, which is placed, would persuade a reasonable person to dismiss and condemn the factual basis. Further, even the prosecution has not refuted the specific pleadings and grounds raised for quashing of the criminal proceedings against the applicants in the Counter Affidavit and therefore, this court is of the considered opinion that the trial would result in a gross abuse of process of

the law and would not serve the ends of justice.

28. In view of the aforesaid submissions and discussions, there is sufficient ground for quashing of the impugned summoning order as well as the entire criminal proceedings of the case.

29. Consequently, the whole criminal proceedings including the impugned orders dated 19.12.2007 and 22.7.2013 passed by the learned Chief Judicial Magistrate Lucknow in Case No. 17162/2007, State Vs Ramesh Kumar Srivastava and Others, as well as the impugned Chargesheet No. 202/207 dated 18.12.2007 under Section 325 and 506 I.P.C., Case Crime no. 77/2007, Police Station-Kotwali Hazratganj, district-Lucknow, are hereby quashed.

30. Resultantly, the application under section 482 Cr.P.C. is *allowed*.

31. The registry is directed to send a copy of this order to the trial court concerned, forthwith.

(2025) 4 ILRA 733
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 21.04.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482 No. 8370 of 2024

Danish Khan		...Applicant
	Versus	
State of U.P. & Anr.		...Respondents

Counsel for the Applicant:
 Anuuj Taandon

Counsel for the Respondents:

G.A., Kuldeep Srivastava, Rohit Tripathi

Criminal Law - The Prevention of Money-Laundering Act, 2002 - Section 44 (1) - Indian Penal Code, 1860 - Sections 419, 420, 467, 468, 471 & 120-B - Code of Criminal Procedure, 1973 - Sections 323 & 325 - Transfer of case - Validity - ED filed Complaint before Sessions Judge, based on FIR lodged by ATS for offences - Applicant is accused in said FIRs but not named in ED complaint - Case was committed to Sessions Court on 03.02.2016, later transferred to Special PMLA Court upon its creation - Applicant's plea to transfer trial from Special PMLA Court to Magistrate rejected - Even if offence exceeds Magistrate's sentencing powers, Magistrate must conduct trial, record evidence and if higher sentence is warranted, refer case to Chief Judicial Magistrate for committal to Sessions Court - Thus, trial by Magistrate does not bar maximum punishment under law - Applicant's claim that trial by Magistrate limits punishment to seven years is misconceived and transfer of trial to Special Court does not cause prejudice - Impugned order lacks merit, dismissed. (Para 3, 4, 5, 14, 15, 17)

Application dismissed. (E-13)

List of Cases cited:

1. Vijay Madan Lal Chaudhary Vs U.O.I.: (2023) 12 SCC 1, (Para 264)

2. Rana Ayyub Vs Directorate of Enforcement, (2023) 4 SCC 357, (Para 28, 30, 31)

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Anuuj Taandon, the learned counsel for the applicant and Sri Kuldeep Srivastava, the learned counsel for the respondent-Directorate of Enforcement.

2. By means of the instant application filed under Section 528 BNSS, the

applicant has challenged validity of an order dated 03.07.2024 passed by the Special Judge, Anti Corruption, CBI West/ED, Lucknow in complaint No. 2/2025 whereby an application filed by the applicant for transferring the case from Special Judge under PMLA Act to the Court of Magistrate has been rejected.

3. On 28.03.2014 the Directorate of Enforcement filed complaint no. 1/2014 arising out of ECIR/15/PMLA/LZO/2012 in the Court of Session Judge, Lucknow. The aforesaid complaint has been filed against seven persons but the applicant has not been made an accused in the complaint. The complaint has been filed on the basis of scheduled offences regarding which FIRs No. 1/2011, 2/2011 and 3/2011 have been lodged by Anti Terrorist Squad (ATS), U.P. Police, Lucknow on 17.08.2011 at Police Station ATS for offences under Sections 419, 420, 467, 468, 471, 120-B IPC in which the applicant is also an accused person.

4. The charge sheet regarding scheduled offence were filed before the Additional Chief Judicial Magistrate and on 03.02.2016, the First Additional Chief Judicial Magistrate, Lucknow passed an order committing the case to the Session Court as at that point of time, the Sessions Judge, Lucknow was the designated special court for trial of offence under Section 45 PMLA Act. Subsequently after creation of special court in PMLA, the trial has been transferred to the Special Judge, PMLA.

5. On 24.05.2024, the applicant filed an application seeking transfer of trial of the scheduled offence from the court of Special Court, PMLA to the court of Magistrate which application has been

rejected by the impugned order dated 03.07.2024.

6. It is also relevant to note that the case was committed to the Special Court way back in the year 2016, the applicant has been participating in the trial since then. The application for transfer of case to the court of magistrate has only been filed in the year 2024.

7. The learned counsel for the applicant submitted that the reason for filing an application is a judgment of the Hon'ble Supreme Court **Vijay Madan Lal Chaudhary v. Union of India**: (2023) 12 SCC 1, wherein the Hon'ble Supreme Court has held that: -

“264. The petitioners may be justified in making grievance that the provision though permits the Special Court to proceed with the trial in respect of scheduled offence, yet it may be oppressive as against the accused who is not charged with the offence of money laundering but only scheduled offence. For, he may be denied of opportunity of one appeal or revision, as the case may be before the higher forum. Such a grievance can certainly be looked into by the Special Court if an application is moved by the authority authorised. Since we have held that the provision is only to bestow enabling power in the Special Court, it must follow that the Special Court will examine the request of the authority authorised for transfer of trial of predicate offence to itself on case-to-case basis. Similarly, request for trial of offence under another special statute, such as the PC Act, the NDPS Act, etc. can also be considered by the Special Court on case-to-case basis after examining all aspects of the matter.”

8. Assailing validity of the impugned order dated 03.07.2024 the learned counsel for the applicant has submitted that although the applicant is an accused in scheduled offence, he is not an accused in the complaint filed by the ED under PMLA. As he is not an accused under PMLA, his case cannot be tried by the special court under provisions of PMLA. He has submitted that trial of the case relating to the scheduled offence by the Special Court under PMLA would cause serious prejudice to the applicant as his right of appeal will vanish.

9. Before dealing with this submission of the learned Counsel for the applicant. It would be appropriate to have a look at the provision contained in Section 44(1) of the PMLA, which reads as follows: -

“44. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) an offence punishable under Section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or;

(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under Section 3, without the accused being committed to it for trial:

Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of

such complaint, the said authority shall submit a closure report before the Special Court; or

(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a Court of Session.

Explanation.—For the removal of doubts, it is clarified that—

(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.”

After considering the provision contained in Section 44(1) of the PMLA, the Hon'ble Supreme Court held in **Rana**

Ayyub v. Directorate of Enforcement, (2023) 4 SCC 357, that: -

“28. Therefore, it is clear that the trial of the scheduled offence should take place in the Special Court which has taken cognizance of the offence of money-laundering. In other words, the trial of the scheduled offence, insofar as the question of territorial jurisdiction is concerned, should follow the trial of the offence of money-laundering and not vice versa.

** * **

30. A careful dissection of clauses (a) and (c) of sub-section (1) of Section 44 shows that they confer primacy upon the Special Court constituted under Section 43(1) of the PMLA. These two clauses contain two rules, namely: (i) that the offence punishable under PMLA as well as a scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence of money-laundering has been committed; and (ii) that if cognizance has been taken by one Court, in respect of the scheduled offence and cognizance has been taken in respect of the offence of money-laundering by the Special Court, the Court trying the scheduled offence shall commit it to the Special Court trying the offence of money-laundering.

31. It is only because of the Special Court constituted under Section 43(1) being conferred primacy that Section 44(1) begins with the words “notwithstanding anything contained in the Code of Criminal Procedure”. Though PMLA contains a non obstante clause in relation to the CrPC, both in Section 44(1) and in Section 45(1), there are two other provisions where the Code of Criminal Procedure is specifically declared to apply to the proceedings before a Special Court. Section 46(1) specifically makes the

provisions of the CrPC applicable to proceedings before a Special Court. Similarly, Section 65 of the PMLA makes the provisions of CrPC apply to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the Act.”

10. In the impugned order dated 03.07.2024, the trial court has relied upon the aforesaid law laid down by the Hon’ble Supreme Court in the case of **Rana Ayyub** (Supra).

11. Even if the applicant is not an accused in the case relating to money laundering but the other co-accused persons in the scheduled offence are accused in the case relating to money laundering, the trial court has rightly come to a conclusion that trial of the applicant should be held in the Special Court as the trial of other co-accused persons has to be conducted by the Special Court under the PMLA.

12. The second ground urged by the learned counsel for the applicant is that in case the scheduled offences are tried by the Court of Additional Chief Judicial Magistrate, in case of his conviction he can only be punished with imprisonment for a period upto 7 years only whereas in case of trial by the Special Court, he may be inflicted a punishment of imprisonment for a period upto his life.

13. The relevant statutory provision in this regard are contained in Sections 323 and 325 Cr.P.C., which provide as follows:
-

“323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.—If, in any inquiry into an

offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made

* * *

325. Procedure when Magistrate cannot pass sentence sufficiently severe.—

(1) Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond under Section 106, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate.

(2) When more accused than one are being tried together, and the Magistrate considers it necessary to proceed under sub-section (1), in regard to any of such accused, he shall forward all the accused, who are in his opinion guilty, to the Chief Judicial Magistrate.

(3) The Chief Judicial Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law.

14. Even where an offence carries a maximum punishment beyond the powers

of a Magistrate, the Magistrate has to proceed with the trial, record evidence, form an opinion that the accused is guilty and thereafter form an opinion that the accused should be given a punishment higher than that which he is empowered to inflict. Thereafter that he can submit the proceedings to the Chief Judicial Magistrate, who may commit the proceedings to the Court of Sessions. Therefore, trial of the offence by a Magistrate does not mean that the accused cannot be inflicted with the maximum punishment for the offence prescribed by law.

15. Therefore, the submission of learned counsel for the applicant that if the case is tried by the Magistrate, the applicant can be punished with a sentence of imprisonment up to seven years only and transfer of trial to the special court would prejudice the applicant as in that case he may be awarded a punishment of seven years is misconceived.

16. No other submission was advanced by the learned Counsel for the applicant.

17. In view of the foregoing discussion, no case for any interference in the impugned order dated is made out. The application under Section 528 BNSS lacks merit and the same is *dismissed*.

(2025) 4 ILRA 738

**APPELLATE JURISDICTION
CRIMINAL SIDE**

DATED: LUCKNOW 01.04.2025

BEFORE

THE HON'BLE MANISH MATHUR, J.

Criminal Misc Anticipatory Bail Application u/s
438 CR.P.C. No. 118 of 2025

Tatheer Jafri & Ors.

...Applicants

Versus

State of U.P.

...Respondent

Counsel for the Applicants:

Anjani Kumar Mishra, Nadeem Murtaza,
Shashank Tilhari

Counsel for the Respondent:

G.A.

Criminal Law -Criminal Procedure Code,1973-Section 438-BNSS,2023-Section 482-U.P. Gangsters and Anti Social Activities(Prevention) Act,1986-Maintainability-The applicant sought anticipatory bail in connection with a case registered under Gangster act-The State opposed the application , citing the U.P. Amendment to the CrPC,1973 which barred anticipatory bail in Gangster Act cases-the application was not maintainable since the chargsheet and bailable warrants were issued before the BNSS 2023 came into effect on 1st july 2024-The Court rejected the objection, holding that the second bailable warrant issued on 2nd july 2024(post enforcement of BNSS 2023) constituted a fresh cause of action and anticipatory bail would be governed by section 482 BNSS 2023 which permits such applications-Relying on the Deepu Vs. St. of UP and Eera Vs. St., the court emphasized that anticipatory bail is a beneficial provision linked to Article 21 and must be interpreted broadly-Finding only one previous case against the applicants, in which bail was earlier granted, the Court granted anticipatory bail subject to condition-Thus, Anticipatory bail application is maintainable under BNSS 2023.(Para 1 to 24)

The application is allowed. (E-6)

List of Cases cited:

1. Deepu & ors. Vs St. of U.P. & ors. (Cri.M.W.P. No. 12287 of 2024)

2. Eera Vs St. (NCT of Delhi) & anr. (2017) 15 SCC 133

3. M. Ravindran Vs Intelligence Officer, Dir. of Revenue Intelligence (2021) 2 SCC 485

(Delivered by Hon'ble Manish Mathur, J.)

1. Heard Mr. Nadeem Murtaza and Mr. Anjani Kumar Mishra, learned counsel for applicants and Mr. Ranvijay Singh, learned Additional Government Advocate appearing on behalf of opposite party no.1.

2. First Anticipatory Bail Application has been filed with regard to Case Crime no.632 of 2023, under Section 3(1) of U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986, P.S. Kotwali Nagar, District Barabanki.

3. Mr. Ranvijay Singh, learned AGA, at the very outset, has raised a preliminary objection regarding maintainability of this anticipatory bail application. He submits that the FIR in question has been registered in the year 2023 with a single case having been shown as Case Crime No. 102 of 2021 against the applicants under Sections 419, 420, 467, 468, 471, 379, 504, 506 IPC in District Barabanki. He further submits that charge sheet in the said case had been filed on 11.2.2024 with summoning order being issued on 25.4.2024 and the first bailable warrant was issued on 30.5.2024 whereas second bailable warrant was issued on 2.7.2024. He has adverted to The Code of Criminal Procedure (U.P. Amendment) Bill, 2022, particularly Section 2 thereof to submit that under the aforesaid provision, an anticipatory bail application is not maintainable with regard to U.P. Gangsters and Anti Social Activities (Prevention) Act,

1986. It is, therefore, submitted that since at the time of filing of charge sheet, taking cognizance by the Trial Court and issuance of bailable warrant, the Bharatiya Nagarik Suraksha Sanhita (BNSS 2023) had not come into force, with the same coming into force from 1.7.2024, the case of applicants would be governed by the said notification whereby the present anticipatory bail application is not maintainable.

4. Mr. Nadeem Murtaza, learned counsel for applicants has refuted submissions advanced by learned AGA with the submission that under the BNSS, 2023, provision for anticipatory bail has been clearly indicated under Section 482 Cr.P.C. and would apply when any person has reason to believe that he may be arrested for an accusation of having committed a non bailable offence. It is, therefore, submitted that the date of filing of charge sheet and issuance of summoning order by the Trial Court would be irrelevant, since it is only the apprehension of arrest which would be relevant. Moreover, since apprehension of arrest in the present case also pertains to the second bailable warrant, which was issued on 2.7.2024, i.e., after the enactment of BNSS, 2023, the present anticipatory bail application is maintainable.

5. Learned counsel for applicants has placed reliance upon a Division Bench Judgement of this Court in the case of **Deepu and others Vs. State of U.P. and others (Criminal Misc. Writ Petition No. 12287 of 2024)**.

6. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is discernible that at the time of filing of charge sheet, issuance of summoning order

and issuance of first bailable warrant, the provisions of BNSS, 2023 had not come into application and the applicants case, at that time was to be governed by the Code of Criminal Procedure (U.P. Amendment) Bill, 2022 whereby the anticipatory bail applications were specifically barred with regard to provisions of Gangster Act.

7. However, it is also evident that subsequent to implementation of BNSS, 2023 on 1.7.2024, a second bailable warrant was issued on 2.7.2024.

8. It is admitted by learned AGA that no fresh prohibition as indicated in the Code of Criminal Procedure (U.P. Amendment) Bill, 2022 has subsequently been notified with regard to BNSS, 2023.

9. A perusal of Section 482 BNSS, 2023 indicates that it provides a mechanism for grant of anticipatory bail. Sub section 1 of the aforesaid Section clearly indicates that such an application would be maintainable when a person has reason to believe that he may be arrested.

10. Upon application of the said provision in the present facts and circumstances, such an apprehension of applicants clearly came into force at the time of issuance of first bailable warrant on 30.5.2024. It is, however, also relevant that the second bailable warrant was issued against applicants on 2.7.2024. It is also an admitted fact that applicants have not yet been arrested in terms of either of the two bailable warrants.

11. The wordings of Section 482 BNSS, 2023 do not indicate any aspect as to when a person would have reason to believe that he may be arrested.

12. It is relevant that Section 438 Cr.P.C., regarding provision of anticipatory bail, was omitted for the State of U.P. by U.P. Act No. 16 of 1976 and has thereafter been reincorporated by means of U.P. Act No. 4 of 2019. The statement of objects and reasons for such reincorporation is that there was a continuous demand for its revival for which writ petitions had also been filed before this Court. The State Law Commission also in its third report in 2009 recommended revival of the said provisions, which were also reiterated by a committee constituted under chairmanship of Principal Secretary to the Government of U.P., Home Department.

13. The aforesaid statement of objects and reasons clearly indicates the continuous demand for reincorporation of provisions of anticipatory bail which are directly relatable to Article 21 of the Constitution of India. The purpose as indicated in the statement of objects and reasons and recommendations for revival of provisions of anticipatory bail clearly are to safeguard the life and liberty of the accused who should not be arrested merely on the basis of allegations leveled against them in a first information report unless and until there is some cogent evidence against them.

14. The Hon'ble Supreme Court in the case of **EERA Vs. State (NCT of Delhi) and another** (2017) 15 SCC 133 has adverted to purposive interpretation of a statute in the following manner:"

"41. On a proper analysis of the aforesaid authority, it is clear as crystal that when two constructions are reasonably possible, preference should go to one which helps to carry out the beneficent purpose of the Act; and that apart, the said

interpretation should not unduly expand the scope of a provision. Thus, the Court has to be careful and cautious while adopting an alternative reasonable interpretation. The acceptability of the alternative reasonable construction should be within the permissible ambit of the Act. To elaborate, introduction of theory of balance cannot be on thin air and in any case, the courts, bent with the idea to engulf a concept within the statutory parameters, should not pave the path of expansion that the provision by so stretch of examination envisages.

47. In *Deepak Mahajans*, the Court referred to a passage from *Maxwell on Interpretation of Statutes*, 10th Edn., at p. 229 which is extracted below: (SCC□ p. 454, para 25)

"25. ... 'Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.'

The Court also referred to various other decisions and finally ruled that it is permissible for courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and

the legislative exercise and its scope and object may not become futile. As the aforesaid statement would show that the Court has been inclined to adopt a functional approach to arrive at the legislative intention. Needless to emphasise, there has to be a necessity to do so.

64. I have referred to the aforesaid authorities to highlight that legislative intention and the purpose of the legislation regard being had to the fact that context has to be appositely appreciated. It is the foremost duty of the Court while construing a provision to ascertain the intention of the legislature, for it is an accepted principle that the legislature expresses itself with use of correct words and in the absence of any ambiguity or the resultant consequence does not lead to any absurdity, there is no room to look for any other aid in the name of creativity. There is no quarrel over the proposition that the method of purposive construction has been adopted keeping in view the text and the context of the legislation, the mischief it intends to obliterate and the fundamental intention of the legislature when it comes to social welfare legislations. If the purpose is defeated, absurd result is arrived at. The Court need not be miserly and should have the broad attitude to take recourse to in supplying a word wherever necessary. Authorities referred to hereinabove encompass various legislations wherein the legislature intended to cover various fields and address the issues. While interpreting a social welfare or beneficent legislation one has to be guided by the "colour", "content" and the "context of statutes" and if it involves human rights, the conceptions of Procrustean justice and Lilliputian hollowness approach should be abandoned. The Judge has to release himself from the chains of strict linguistic interpretation and

pave the path that serves the soul of the legislative intention and in that event, he becomes a real creative constructionist Judge.

65. I have perceived the approach in Hindustan Lever Ltd. and Deepak Mahajan, Pratap Singh and many others. I have also analysed where the Court has declined to follow the said approach as in R.M.D. Chamarbaugwalla and other decisions. The Court has evolved the principle that the legislative intention must be gatherable from the text, content and context of the statute and the purposive approach should help and enhance the functional principle of the enactment. That apart, if an interpretation is likely to cause inconvenience, it should be avoided, and further personal notion or belief of the Judge as regards the intention of the makers of the statute should not be thought of. And, needless to say, for adopting the purposive approach there must exist the necessity. The Judge, assuming the role of creatively constructionist personality, should not wear any hat of any colour to suit his thought and idea and drive his thinking process to wrestle with words stretching beyond a permissible or acceptable limit. That has the potentiality to cause violence to the language used by the legislature. Quite apart from, the Court can take aid of casus omissus, only in a case of clear necessity and further it should be discerned from the four corners of the statute. If the meaning is intelligible, the said principle has no entry. It cannot be a ready tool in the hands of a Judge to introduce as and what he desires."

15. Learned counsel for the applicants has placed reliance on paragraph 17.9 of the judgement rendered by the Hon'ble Supreme Court in the case of M. Ravindran Vs. Intelligence Officer, Directorate of

Revenue Intelligence reported in (2021) 2 SCC 485 which reads as under:

"17.9. Additionally, it is well-settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused."

16. Upon applicability of the aforesaid judgments in the present facts and circumstances of the case, it is evident that provision of anticipatory bail is in the nature of a beneficial provision in order to prevent a person being taken into custody merely on the basis of an accusation made in the first information report. It is also evident that the purpose of a provision of statute is required to be given wide amplitude in order to provide effective interpretation of such a statute instead of stifling the said provision.

17. In view of the aforementioned definitions of law as laid down by the Hon'ble Supreme Court, it is evident that the provisions of anticipatory bail as indicated in Section 482 of the BNSS, 2023 are required to be given widest amplitude for their effective implementation, particularly in light of the maxim that a person is assumed to be innocent unless proved guilty.

18. In the present case, since it is evident that the applicants were not taken into custody in terms of the first bailable warrant dated 30.5.2024, the apprehension

of applicants for being taken into custody would, in the considered opinion of this Court, be a continuing cause of action pertaining to such apprehension particularly, since they have not been taken into custody even after issuance of second bailable warrant dated 2.7.2024.

19. The aforesaid aspect has also been considered by a Division Bench of this Court in terms of Section 531(2)(a) BNSS, 2023 in the case of Deepu (Supra) in the following manner:

"16. On the basis of above analysis, this Court is also summarising the law regarding effect of repealing the IPC and Cr.P.C. by BNS and BNSS respectively and same is being mentioned as below:

(i) If an FIR is registered on or after 1.7.2024 for the offence committed prior to 1.7.2024, then FIR would be registered under the provisions of IPC but the investigation will continue as per BNSS.

(ii) In the pending investigation on 01.07.2024 (on the date of commencement of New Criminal Laws), investigation will continue as per the Cr.P.C. till the cognizance is taken on the police report and if any direction is made for further investigation by the competent Court then same will continue as per the Cr.P.C.;

(iii) The cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS and all the subsequent proceeding including enquiry, trial or appeal would be conducted as per the procedure of BNSS.

(iv) Section 531(2)(a) of BNSS saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or application is commenced after 01.07.2024, the same

will be proceeded as per the procedure of BNSS.

(v) The pending trial on 01.07.2024, if concluded on or after 01.07.2024 then appeal or revision against the judgement passed in such a trial will be as per the BNSS. However, if any application is filed in appeal, which was pending on 01.07.2024 then the procedure of Cr.P.C. will apply.

(vi) If the criminal proceeding or chargesheet is challenged before the High Court on or after 01.07.2024, where the investigation was conducted as per Cr.P.C. then same will be filed u/s 528 of BNSS not u/s 482 Cr.P.C."

20. The aforesaid provision of Section 531 as taken into consideration by Division Bench of this Court also indicates that repeal of earlier provisions would save only pending investigation, trial, appeal, application and enquiry. It, therefore, naturally follows that the repeal clause would save only the applications which were pending as on the date of implementation of BNSS, 2023 and since in the present case, no anticipatory bail application had been filed prior to enforcement of BNSS, 2023, the aforesaid provision of repeal and saving clause would not apply in the present case which would in fact be governed by BNSS, 2023.

21. In view of the aforesaid discussions, the preliminary objection raised regarding maintainability of the present anticipatory bail application is hereby **rejected**.

22. On the merits of issue, a perusal of gangchart clearly indicates that only a single case indicating involvement of applicants in Case Crime No. 102 of 2021, as indicated hereinabove, in which, this

Court had initially granted interim anticipatory bail to the applicants vide order dated 3.3.2023 passed in Crl. Misc. Anticipatory Bail Application No. 650 of 2023 and the said order was thereafter made absolute vide order dated 19.7.2023 and the anticipatory bail application was allowed. It is also relevant that earlier this Court had granted protection to the applicants vide order dated 19.6.2023 in Crl. Misc. Writ Petition No. 4726 of 2023 which, however, was dismissed as withdrawn vide order dated 5.12.2024 due to filing of charge sheet.

23. In view of the above, it is provided that in the event of arrest, the applicants **Tatheer Jafri (in FIR-Tatheer Jafri @ Allika), Roshani Rizvi and Sayyad Naseem** shall be released on anticipatory bail in aforesaid Case Crime number on their furnishing a personal bond with two sureties each in the like amount to the satisfaction of the arresting officer/investigating officer/S.H.O. concerned with the following conditions:-

(1) The applicant(s) shall cooperate in the investigation and they will not influence the witnesses.

(2) The accused-applicant(s) will remain present as and when the arresting officer/I.O./S.H.O. concerned call(s) for investigation/interrogation.

(3) The applicant(s) shall not leave India without previous permission of the Court.

(4) In case of default, it would be open for the investigating agency to move application for vacation of this interim protection.

24. The application stands **disposed of.**

(2025) 4 ILRA 744
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 09.04.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Misc Bail Application No. 8027 of 2024

Rajeev Yadav @ Rinku **...Applicant**
Versus
State of U.P. **...Respondent**

Counsel for the Applicant:

Karunesh Singh, Arun Sinha, Ram Chandra Singh, Vijay Pratap Singh

Counsel for the Respondents:

G.A., Rina Pandey, Sanjay Shankar Pandey

Criminal Law - Criminal Procedure Code, 1973-Section 439- Indian Penal Code, 1860-Section 302/34-The applicant sought bail regarding the murder of the deceased-The prosecution primarily relied on the custodial confessional statement of a co-accused and a disputed dying declaration inferred from a witness statement under section 161 CrPC- The only material directly linking the applicant was the co-accused's confession, which is not sufficient alone for conviction-Santosh Yadav's statement, claimed to be a dying declaration, lacked crucial details such as timing and direct threat from the applicant-The court found that the statement did not specifically implicate the applicant, nor was it proximate in time or content to the deceased's death, thus affecting its evidentiary weight-The court also held that subsequent FIR alleging witness threats did not involve the applicant directly-Questions of admissibility and evidentiary value should be examined during the trial-Bail could be granted subject to conditions.(Para 1 to 26)

The application is allowed. (E-6)

List of Cases cited:

1. Pakala Narayana Swami Vs Emperor (1939)
41 Bom LR 428

2. Irfan Vs St. of U.P.(2023) SCC OnLine SC
1060

(Delivered by Hon'ble Subhash Vidyarthi,
J.)

1. Heard Sri Arun Sinha, the learned counsel for the applicant, Sri Jayant Singh Tomar, learned Additional Government Advocate-I for the State, Shri Sanjay Shankar Pandey, learned counsel for the informant-complainant, and perused the records.

2. The learned Counsel for the applicant has filed 'Rejoinder affidavit/reply to the complainant's supplementary affidavit' which is taken on record.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 063 of 2024, under Section 302/34 I.P.C. registered at Police Station Cantt., District Ayodhya.

4. The aforesaid case has been registered on the basis of an F.I.R. lodged on 26.02.2024 at 04:58 hours, stating that the informant was told by some unnamed villagers in the night of 26.02.2024 at 12:30 hours that his 25 years' old son had met with an accident near house of Ram Karan Yadav. The injured was taken to a hospital where the doctor told that he had died due to gun-shot injury.

5. The post-mortem examination report mentions lacerated entry wounds on back of chest, waist, as well as left arm and lacerated exit wound on left

arm. The cause of death has been opined to be shock and hemorrhage as a result of ante-mortem firearm injuries.

6. In the statement of the informant recorded under Section 161 Cr.P.C., he reiterated the F.I.R. version.

7. On 01.03.2024, the investigating officer recorded statement of one Sunil Yadav, who stated that Ritesh Yadav and the applicant Rajeev Yadav had come to him and they had told that they had killed Vishal Yadav. They stated that the police was suspecting their involvement in commission of the offence and was searching for them and they requested the said witness to save them. The police claimed that on the basis of aforesaid information, when the police party apprehended the applicant and co-accused Ritesh Yadav, the accused persons fired gun-shots towards the police personnel, but no police person received any injury in the incident. The co-accused Ritesh Yadav suffered a gun-shot injury on his leg due to retaliatory firing.

8. In his custodial confessional statement recorded in that case, Ritesh Yadav alleged involvement of the applicant also in the present case.

9. In para-25 of the affidavit filed in support of the bail application, the applicant's involvement in ten other criminal cases has been disclosed. In four cases the applicant has been granted bail. In four cases, he has been implicated after his arrest in the present case and two cases under the Gangsters Act have been registered on the basis of the applicant's involvement in the other cases.

10. The learned Counsel for the applicant submitted that apart from the custodial confessional statement of the co-accused Ritesh Yadav, there is no other material to connect the applicant with commission of the alleged offence.

11. Sri. Jayant Singh Tomar, the learned A.G.A.-I opposed the bail application and he has submitted that the applicant's involvement in commission of the offence has been established during investigation and a charge-sheet has been submitted against him. However, he could not dispute the submission of the learned Counsel for the applicant that the only material against the applicant is the custodial confessional statement of the co-accused Ritesh Yadav.

12. Sri Sanjay Shankar Pandey, learned counsel for the informant, has vehemently opposed the bail application and he submitted that the deceased had given a dying-declaration implicating the applicant. As per him, the dying-declaration can be inferred from statement of the informant's son Santosh Yadav recorded by the investigating officer, which has been annexed along with the bail application as well as along with the counter affidavit filed by the State. He stated that Sandeep Yadav, son of Chandradev Yadav had telephonically informed Vinod Yadav that Vishal Yadav had met with an accident. This witness further stated that this information had been given to Vinod Yadav by Naveen Gaur by making a phone call. In spite of a query made by the Court to the learned counsel for the informant to explain this discrepancy in the statement as to whether the information of the incident was given to Vinod Yadav by Sandeep Yadav or Naveen Gaur, the learned counsel for the informant could not give any reply. Santosh

Yadav further stated that upon receipt of this information, he had gone to the spot along with his brother Akash and father Ram Bali Yadav (the informant) and found his brother lying there. Santosh Yadav took him to the district hospital where the doctor told that the victim had died due to gunshot injury. Thereafter, the FIR was lodged.

13. Santosh Yadav further stated that his father was involved in business of land with Ritesh Yadav. His brother Vishal Yadav also used to accompany his father Rambali Yadav (the informant). Rambali Yadav and Ritesh Yadav had entered into an agreement regarding land of Smt. Poonam Devi in the year 2021 which was subject to a family litigation. The litigation was decided in favour of Smt. Poonam Devi in the month of January. Meanwhile, price of the land had increased and Ritesh Yadav wanted to get a sale-deed executed in his own favour, which was opposed by Vishal Yadav. Vishal Yadav had told his brother Santosh Yadav that Ritesh Yadav had threatened him but Santosh Yadav had not given any importance to this information.

14. The learned counsel for the informant has stated that the aforesaid statement of Santosh Yadav wherein he stated that the deceased had informed him that Ritesh Yadav had threatened him, amounts to his dying-declaration.

15. The statutory provision regarding dying declarations is contained in Section 32(1) of the Evidence Act, which reads as follows: -

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.— Statements, written or verbal, of relevant

facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:—

(1) When it relates to cause of death.—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.”

16. In reply to the Court's query that the statement of Santosh Yadav does not make a mention as to when such a statement had been made by the deceased and whether the statement which was not made in close proximity of the death of the victim or while he was apprehending his death, can be treated to be his dying declaration, the learned Counsel for the informant submitted that the law in this regard had been settled in the case of *Pakala Narain Swamy*. However, he did not provide a copy of the judgment relied upon by him and he even could not give citation of the judgment.

17. This is not the proper manner to place reliance on a case-law before a Court. PART III of the Allahabad High Court Rules contains provisions regarding Criminal Jurisdiction. Chapter XVIII falling in Part III of the Rules deals with

Proceedings Other Than Original Trials. Rule 3(2) falling in Chapter XVIII of the Allahabad High Court Rules provides that: -

“If the advocates are relying upon any judgement, they must have three photocopies thereof ready, two for the Judges and one for the other side.”

18. An Advocate appearing before the High Court must be well versed with the Rules of the High Court and must comply with the same. Even otherwise, when the Courts are over burdened with cases, it should be the endeavor of the Advocates appearing before the Courts – who are officers of the Court, to render assistance by advancing submissions in a precise and concise manner so as to prevent wastage of precious time of the Court. Relying upon a case-law without providing a photocopy of the same to the Court and without even providing its citation, does not serve as a proper assistance in delivery of justice.

19. Sri. Arun Sinha has provided citation of the judgment relied upon by Sri. Shanjay Shankar Pandey, which is “**Pakala Narayana Swami Vs. Emperor:** (1939) 41 BomLR 428”. The facts of **Pakala Narayana Swami** were that on March 20, 1937, the deceased man had received an unsigned letter inviting him to come that day or next day to Berhampur. The widow of the deceased said that on that day her husband had showed her a letter and said that he was going to Berhampur as the appellant's wife had written to him and told him to go and receive payment of his due. The deceased left his house on Sunday, March 21, in time to catch the train for Berhampur. On Tuesday, March 23, his body was found in the train at Puri. The admission of this statement of the

deceased's wife was challenged in appeal. The first question framed by the Court was whether the statement of the widow, that on March 20 the deceased had told her that he was going to Berhampur as the accused's wife had written and told him to go and receive payment of his dues, was admissible under Section 32(1) of the Indian Evidence Act, 1872. The Bombay High Court held that: -

*"The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction: **general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible.** But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused. "Circumstances of the transaction" is a phrase, no doubt, that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant facts. It is on the other hand narrower than "res gest". Circumstances must have some proximate relation to the actual occurrence : though as for instance in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose."*

(Emphasis added)

20. In **Irfan v. State of U.P.**, 2023 SCC OnLine SC 1060, the Hon'ble Supreme Court has considered the law relating to dying declarations and has referred to numerous precedents on the point. The Hon'ble Supreme Court has drawn the following conclusions:-

"62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility:—

(i) Whether the person making the statement was in expectation of death?

(ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"

(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?

(vi) Whether, the dying declarant had opportunity to clearly observe the incident?

(vii) Whether, the dying declaration has been consistent throughout?

(viii) Whether, the dying declaration in itself is a manifestation/fiction of the dying person's imagination of what he thinks transpired?

(ix) *Whether, the dying declaration was itself voluntary?*

(x) *In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?*

(xi) *Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?*

63. *It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.*

64. It is unsafe to record the conviction on the basis of a dying declaration alone in the cases where suspicion, like the case on hand is raised, as regards the correctness of the dying declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence. The evidence and material available on record must be properly weighed in each case to arrive at an appropriate conclusion...

(Emphasis added)

21. When we examine the facts of the present case in light of the law laid down by the Hon'ble Supreme Court in view of the aforesaid law laid down by the Hon'ble Supreme Court, what comes to light is that the statement of Santosh Yadav that Vishal Yadav had told him that Ritesh Yadav had threatened him but Santosh Yadav had not given any importance to this information,

does not disclose as to when was the threat extended by co-accused Ritesh Yadav and when had Vishal Yadav told it to Santosh Yadav. The threat had not been extended by the applicant. The threat was not to kill Vishal Yadav. Even after coming to know about the threat, Santosh Yadav himself had not given any importance to it. These facts adversely affect the weight of the so called dying declaration.

22. The questions regarding admissibility, relevancy and weight of the evidence would be better left to be dealt with by the trial Court, but since submissions have been advanced by the learned Counsel for the informant on these points, merely this much is being observed that for the purpose of deciding the bail application, it is relevant to be noted that witness Santosh Yadav is the brother of the deceased and informant's son. He has stated in his statement recorded that he had reached the spot of occurrence along with his father. The FIR was lodged by his father afterwards. This witness did not disclose the fact that the deceased was threatened by co-accused- Ritesh Yadav prior to lodging of the FIR and this fact has been disclosed for the first time while recording his statement under Section 161 Cr.P.C. This statement does not make even a mention of applicant's name.

23. Therefore, I am of the considered view that the statement of Santosh Yadav recorded under Section 161 Cr.P.C. does not make out a case for rejection of the bail application of the applicant.

24. The learned counsel for the informant further submitted that the accused persons are threatening the witnesses of the present case and in this regard FIR No.0070 of 2025 has been

lodged in Police Station Pura Kalander, District Ayodhya under Sections 351(3) B.N.S. alleging that a witness in the present case, Suneel Yadav received a phone call on 09.01.2025 from some unknown person who introduced himself as Ritesh who threatened the said person not to give evidence in the matter. The Telephone call is said to have been received on 09.01.2025, whereas the FIR has been lodged on 09.02.2025. The FIR makes no mention of the applicant's name and there is no allegation that the phone call had been made at the behest of the applicant. The exact conversation that took place in that phone call has not been reproduced in the F.I.R. Therefore, I am of the considered view that lodging of the aforesaid FIR a month after receipt of the alleged phone call, does not make any difference while considering the bail application of the applicant.

25. Having considered all the aforesaid facts and circumstances of the case, I am of the view that the aforesaid facts are sufficient for making out a case for enlargement of the applicant on bail in the aforesaid crime. However, it is clarified that the observations made in this order would not affect the outcome of the trial.

26. Let the applicant- **Rajeev Yadav alias Rinku** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of magistrate/court concerned, subject to following conditions: -

(i) the applicant shall not tamper with the prosecution evidence;

(ii) the applicant shall not pressurize the prosecution witnesses;

(iii) the applicant shall appear on each and every date fixed by the trial court, unless his appearance is exempted by the learned trial court.

(2025) 4 ILRA 750
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 09.04.2025

BEFORE

THE HON'BLE KRISHAN PAHAL, J.

Criminal Misc Bail Application No. 9861 of 2025

Arun Kumar Mishra	...Applicant
Versus	
State of U.P.	...Respondent

Counsel for the Applicant:

Sri Nitin Chandra Mishra, Sri R.B. Tripathi, Sri Anoop Trivedi (Sr. Adv.)

Counsel for the Respondents:

G.A., Sri Devendra Singh

Criminal Law – Indian Penal Code, 1860 - Sections 313 & 377 - Bail – Allegation of rape on false promise of marriage – Consent – Adult prosecutrix – Delay of five months in FIR – Relationship admitted to be consensual – Admitted deletion of charges under Sections 313 & 377 I.P.C. – Disputed marital status – Prima facie no intention to deceive from inception – Courts not to criminalise failed relationships – Law does not enforce all aspects of morality – Bail granted. (Paras 5, 30 to 42)

HELD:

This case is reflective of a broader societal shift, where the sanctity and solemnity once associated with intimate relationships have seen a marked decline. The prevalence of transient and uncommitted relationships, often formed and dissolved at will, raises critical questions about individual responsibility and the misuse of legal provisions, especially when such

relationships turn sour. It is increasingly observed that personal fallouts and emotional discord are being given a criminal colour, through the invocation of penal laws, particularly in the aftermath of failed intimate relationships. (Para 31)

The instant FIR, instituted after the relationship between the applicant and the victim fell apart, appears to be a product of such emotional aftermath rather than a bona fide grievance of criminal wrongdoing. The timing and circumstances surrounding the filing of the complaint suggest a retaliatory motive rather than a genuine pursuit of justice. (Para 32)

Not all socially or ethically questionable actions warrant legal intervention. It also reflects a foundational principle in jurisprudence — the law does not enforce all aspects of morality. (Para 33)

The well-known principle of "Presumption of Innocence Unless Proven Guilty," gives rise to the concept of bail as a rule and imprisonment as an exception. (Para 37)

It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA. (Para 41)

Application allowed. (E-14)

List of Cases cited:

1. Sheikh Arif Vs The St. of Mah. & anr., 2024 INSC 70

2. Rajnish Singh @ Soni Vs St. of U.P. & anr., 2025 INSC 308

3. SLP (Crl.) No.1889/2024 (Nitin B. Nikhare Vs The St. of Mah. & anr.)

4. Pramod Suryabhan Pawar Vs St. of Mah. & anr., 2019 (9) SCC 608

5. Ansaar Mohammad Vs St. of Raj. & anr., 2022 SCC OnLine SC 886

6. Niranjana Singh & anr. Vs Prabhakar Rajaram Kharote & ors., AIR 1980 SC 785

7. Prabhakar Tewari Vs St. of U.P. & anr., 2020 (11) SCC 648

8. Satender Kumar Antil Vs Central Bureau of Investigation & ors., 2022 INSC 690

9. Manish Sisodia Vs Directorate of Enforcement, 2024 INSC 595

(Delivered by Hon'ble Krishan Pahal, J.)

1. List has been revised.

2. Heard Sri Anup Triwedi, learned Senior Advocate assisted by Sri Nitin Chandra Mishra, learned counsel for the applicant and Sri Devendra Singh, learned counsel for the informant as well as Sri Sunil Kumar, learned A.G.A. for the State and perused the record.

3. Applicant seeks bail in Case No.3227/IX/24 (State vs. Arun Kumar Mishra), arising out of Case Crime No.0035 of 2024, under Sections 323, 376, 420, 504, 506 I.P.C., Police Station- Mahila Thana, District- Banda, during the pendency of trial.

PROSECUTION STORY:

4. The informant joined the Old Rajendra Nagar, New Delhi Branch of Yes Bank as Relationship Manager. The applicant is stated to be an account holder in the said bank. He is stated to have offered the victim/informant the job of his personal assistant in his company for a salary of Rs.75,000/- per month along with accommodation and other perks. The informant joined the company of the

applicant after resigning from the bank on 2.1.2024.

5. On 12.1.2024 at about 09:30 p.m., the applicant is stated to have suddenly come to the house of the informant alongwith cold coffee and stated that he has got a huge profit in the company, as such, he shall give her gifts. After consuming the said coffee, the victim is stated to have got intoxicated, as such, the applicant disrobed her completely and committed rape with her as she could not resist being intoxicated by the said spiked coffee. The applicant is even stated to have video recorded the said act and subsequently started blackmailing her.

6. On 13.1.2024, the applicant took the victim by flight to Mumbai and got a room booked in Taj Hotel on the basis of her Aadhar Card. On 15.1.2024 the applicant took her to somewhere else and got her to sign on some papers and conducted Saptapadi and added vermilion to her forehead. On 16.1.2024 the duo returned to Delhi and the rape and unnatural offence continued thereafter.

7. On 17.2.2024, the applicant is stated to have come to the house of her aunt at Baberu, district Banda and committed rape with her by showing an indecent video of her and asked her to come alongwith him to Delhi where he shall marry her as he has divorced his wife and she was forced to go alongwith him to Delhi.

8. On 20.2.2024, the informant told the applicant that she was pregnant. On 4.3.2024, she was informed by the first wife of the applicant that he already has married three women prior to the informant and had children from each of them.

9. The victim was again forced by the applicant to come to Golden Tulip Hotel, Lucknow on 28.3.2024 and was raped again. The applicant is stated to have hit the victim, thereby, leading to termination of her pregnancy. The applicant is even stated to have taken possession of all the educational documents in original alongwith her clothes and ornaments and had promised to marry her in January, 2024.

10. The informant is stated to have gone to her parental home on 29.4.2024 to prepare for the said marriage, but subsequently, the applicant is stated to have refused to comply with the said promise of marriage telephonically and informed her that he had forged certain documents and had shown her marriage to have been solemnized at Arya Samaj Temple. The applicant is even stated to have retained her salary.

ARGUMENTS ON BEHALF OF APPLICANT:

11. The applicant is absolutely innocent and has been falsely implicated in the present case.

12. The FIR is delayed by about six months and there is no explanation of the said delay caused. The victim failed to report the matter at the time of first consensual relationship established in January, 2024.

13. The applicant had challenged the first information report before this Court by filing Criminal Misc. Writ Petition No.10952 of 2024, whereby he was granted interim protection vide order dated 1.7.2024.

14. The victim has given contradictory statements U/s 161 & 164 Cr.P.C. to the version of the FIR.

15. The Investigating Officer has exonerated the applicant of offences of Sections 313 and 377 I.P.C., as such, the prosecution story stands falsified, as there is no evidence on record regarding miscarriage and unnatural offence.

16. It is clear that victim was in relationship with the applicant. The Whatsapp chats between them have been filed as Annexure-5 to the affidavit filed with bail application. The victim had visited several places with the applicant, namely, Mumbai, Shirdi and stayed at several hotels booked jointly in the name of applicant and herself. The details of the journey including air tickets and hotel bookings have been filed as Annexure-6 to the affidavit filed with bail application.

17. The informant herein got instituted an FIR No.753 of 2024, under Sections 70, 308(5), 351(3), 123 and 115(2) B.N.S. at Police Station Kotwali Nagar, District Banda through her friend and the Investigating Officer was pleased to file closure report in the said case. Although a protest petition was filed by the said informant in that case.

18. It is true that applicant is a married person and he fell in love with the victim and established corporeal relationship with her. The victim is a major lady aged about 30 years and applicant is aged about 42 years, as such, the said relationship was consensual one. It is true that the said relationship is not legitimate, but it is not a case of rape either. The offence may fall within the category of Section 494 I.P.C. only,

which is triable by Magistrate of First Class.

19. The instant case may fall within the category of immorality, but it cannot be termed as penal, which implies that the act in question might be considered unethical or wrong by societal or moral standards, but it does not necessarily violate any law that prescribes a legal punishment.

20. The allegations that applicant had married three women earlier on are false.

21. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length.

22. The applicant has no other criminal antecedent to his credit except one case instituted against him at district Banda at the behest of informant in the instant case. The applicant is languishing in jail since 8.1.2025. The applicant is ready to cooperate with trial. In case, the applicant is released on bail, he will not misuse the liberty of bail

23. Much reliance has been placed on paragraphs 12 & 13 in the judgment of the Supreme Court passed in ***Sheikh Arif vs. The State of Maharashtra and Another***¹, which read as under:-

"12) If this material, which is a part of the investigation papers, is perused carefully, it is obvious that the physical relationship between the appellant and the second respondent was consensual, at least

from 2013 to 2017. The fact that they were engaged was admitted by the second respondent. The fact that in 2011, the appellant proposed her and in 2017, there was engagement is accepted by the second respondent. In fact, she participated in the engagement ceremony without any protest. However, she has denied that her marriage was solemnised with the appellant. Taking the prosecution case as correct, it is not possible to accept that the second respondent maintained a physical relationship only because the appellant had given a promise of marriage.

13) Thus, in our view, the continuation of the prosecution in the present case will be a gross abuse of the process of law. Therefore, no purpose will be served by continuing the prosecution."

24. Reliance has also been placed on paragraphs 34 & 35 in the judgment of the Supreme Court passed in **Rajnish Singh @ Soni vs. State of U.P. and Another**², which read as under:-

"34. It is trite that there is a distinction between rape and consensual intercourse. This Court in **Deepak Gulati v. State of Haryana, (2013) 7 SCC 675** differentiated between a mere breach of promise and not fulfilling a false promise and held that an accused will only be liable if the Courts concludes that his intentions are mala fide and he has clandestine motives. The relevant extract is reproduced hereinbelow: -

"21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the

court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

...

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception

of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

(emphasis supplied)

35. It is, therefore, clear that the accused is not liable for the offence of rape if the victim has wilfully agreed to maintain sexual relations. The Court has also recognised that a prosecutrix can agree to have sexual intercourse on account of her love and passion for the accused."

25. Reliance has also been placed on paragraphs 6, 7 & 8 in the judgment of the Supreme Court passed in **SLP (Crl.) No.1889/2024 (Nitin B. Nikhare vs. The State of Maharashtra and Another)**, which read as under:-

6. This Court in a catena of judgments has held that the mere fact that physical relations were established pursuant to a promise to marry will not amount to a rape in every case. In order for the offence of rape to be made out, two conditions need to be satisfied i.e. that the promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intention of fulfilling said promise from the very beginning, and that the false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. [See: **Pramod Suryabhan Pawar v. The State of Maharashtra and Ors.** (2019) 9 SCC 608; **Mahesh Damu Khare v. The**

State of Maharashtra and Ors. 2024 SCC OnLine SC 347]

7. From a perusal of the record, it is clear that this was a case of a consensual relationship from the beginning. Even if the case of the prosecutrix is accepted, it does not appear that the initial promise to marry was in bad faith. It was 3 only the subsequent circumstances that prevented fulfilment of alleged false promise to marry. Resultantly, the relationship turned sour which has given rise to the present FIR. Further, in view of the material on record, we do not see this as a case where provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act can be attracted.

8. Hence, the entire criminal proceedings initiated against the appellant are nothing but an abuse of the process of law. In our opinion the High Court should have exercised its inherent power under Section 482 of the Code of Criminal Procedure to quash the proceedings."

ARGUMENTS ON BEHALF OF STATE/OPPOSITE PARTY:

26. It is argued by learned counsel for the informant that the applicant is already married to three other ladies and is a casanova and is used to luring different women into consensual relationships. The statements of two other ladies in addition to his wife have been recorded by the Investigating Officer who have categorically stated that applicant was married to one XXXX and subsequent to it married two other ladies and had children from each of them.

27. The applicant is a rich person and he has misused his money and clout,

thereby, ruined the life of the victim/informant in the instant case.

28. The victim is about 25 years old and applicant had forged the marriage certificate purported to have been solemnized at Arya Samaj Mandir, Greater Noida, Gautam Buddha Nagar. This Court had ordered for a detailed inquiry against the persons running the said temple, as such, the applicant is not entitled for bail, having forged the said documents of marriage.

29. It is further argued that in Case Crime No.753 of 2024 instituted against the applicant at police station Kotwali Nagar, district Banda, the C.J.M. concerned was pleased to order for further investigation in the case and observed that complete investigation undertaken earlier was tainted.

CONCLUSION:

30. In the present case, it is imperative to bring to the fore the changing dynamics and depleting standards of sexual relationships in contemporary society. The victim, with full and conscious knowledge of the applicant's previous marital history—having been married thrice before, chose to establish a corporeal relationship with him. This relationship, while mutual and consensual during its subsistence, did not conform to the traditionally accepted institution of marriage or any form of legally recognized union. While the emotional and romantic dynamics may not appear traditionally polyamorous, the relationship is consensual and involves two mature individuals the alleged victim, approximately 25 years old, and the applicant, about 42.

31. This case is reflective of a broader societal shift, where the sanctity and solemnity once associated with intimate relationships have seen a marked decline. The prevalence of transient and uncommitted relationships, often formed and dissolved at will, raises critical questions about individual responsibility and the misuse of legal provisions, especially when such relationships turn sour. It is increasingly observed that personal fallouts and emotional discord are being given a criminal colour, through the invocation of penal laws, particularly in the aftermath of failed intimate relationships.

32. The instant FIR, instituted after the relationship between the applicant and the victim fell apart, appears to be a product of such emotional aftermath rather than a bona fide grievance of criminal wrongdoing. The timing and circumstances surrounding the filing of the complaint suggest a retaliatory motive rather than a genuine pursuit of justice.

33. Not all socially or ethically questionable actions warrant legal intervention. It also reflects a foundational principle in jurisprudence — the law does not enforce all aspects of morality.

34. The Supreme Court in case of *Pramod Suryabhan Pawar vs. State of Maharashtra and Another*³ and *Ansaar Mohammad vs. State of Rajasthan and Another*⁴ has stated that entering into any kind of corporeal relationship with a person on the false promise to marry cannot be termed as rape.

35. In light of the judgement of the Supreme Court passed in *Niranjan Singh*

*and another vs Prabhakar Rajaram Kharote and others*⁵, this Court has avoided detailed examination of the evidence and elaborate documentation of the merits of the case as no party should have the impression that his case has been prejudiced. A prima facie satisfaction of case is needed but it is not the same as an exhaustive exploration of the merits in the order itself.

36. The Supreme Court in *Prabhakar Tewari Vs. State of U.P. and another*⁶ has observed that pendency of several criminal cases against an accused itself cannot be a basis for refusal of bail, if otherwise his case of bail is made out.

37. The well-known principle of "*Presumption of Innocence Unless Proven Guilty*," gives rise to the concept of bail as a rule and imprisonment as an exception.

38. A person's right to life and liberty, guaranteed by Article 21 of the Indian Constitution, cannot be taken away simply because the person is accused of committing an offence until the guilt is established beyond a reasonable doubt. Article 21 of the Indian Constitution states that no one's life or personal liberty may be taken away unless the procedure established by law is followed, and the procedure must be just and reasonable. The said principle has been recapitulated by the Supreme Court in *Satender Kumar Antil Vs. Central Bureau of Investigation and Ors.*⁷.

39. Reiterating the aforesaid view the Supreme Court in the case of *Manish Sisodia Vs. Directorate of Enforcement*⁸ has again emphasised that the very well-settled principle of law that bail is not to be withheld as a

punishment is not to be forgotten. It is high time that the Courts should recognize the principle that "bail is a rule and jail is an exception".

40. Learned AGA could not bring forth any exceptional circumstances which would warrant denial of bail to the applicant.

41. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA.

42. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, taking into consideration that it is also admitted to both the parties that Sections 313 & 377 I.P.C. have been deleted coupled by the fact that FIR is delayed by about five months and the victim being a well qualified lady, the case law referred and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

43. Let the applicant- **Arun Kumar Mishra** involved in aforementioned case crime number be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions.

(i) *The applicant shall not tamper with evidence.*

(ii) *The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C./351 B.N.S.S. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.*

44. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

45. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(2025) 4 ILRA 758

**APPELLATE JURISDICTION
CRIMINAL SIDE**

DATED: ALLAHABAD 09.04.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Criminal Misc Bail Application No. 25993 of 2024

Smt. Rekha		...Applicant
	Versus	
State of U.P.		...Respondent

Counsel for the Applicant:
Rahul Upadhyay

Counsel for the Respondents:
G.A., R.P.S. Chauhan

Criminal Law – Constitution of India, 1950 – Article 1950 - Bail – Incarceration of mother with minor child – Child's right to education, development, and dignity – Art. 21-A of Constitution – Article 15 (3), 39€, 39(f), and 47 of the Constitution of India- "Default confinement" of minor due to rejection of mother's bail – Legal obligation of St. and Courts to protect rights of jail-residing children – Juvenile Justice (Care and Protection of Children) Act 2015- Legal Services Authorities Act 1987-Right of Children to Free and Compulsory Education Act 2009-UP Jail Manual 2022-Model Prison Manual, 2016– Comprehensive directions issued for welfare, schooling, and individual care plans of children in jail – Court's power under bail jurisdiction extends to enforce constitutional mandates for child welfare – Directive to ensure education of children in jail outside prison premises – Rights of children not to be sacrificed due to parental custody – Children are entitled to holistic development, not custodial upbringing-Bail application of mother dismissed-Trial expedited. (Paras 8, 9, 12, 13, 18, 24, 25, 26, 34, 40, 41, 44, 56, 63, 71, 82, 87, 94, and 114)

HELD:

Fair administration of justice in bail jurisdiction commands this Court to ensure that adverse consequences accruing to the child as a result of rejection of the bail application of their parent (mother in this case) are mitigated and the rights of minor children of inmates residing in jails are protected. (Para 8)

Constitutional status of this Court is not denuded in bail jurisdiction. While exercising bail jurisdiction various legal issues may arise for consideration in the facts and circumstances of a case which directly impact fair administration of justice. The Court is possessed of jurisdiction to determine such issues as per law while deciding bail applications. (Para 9)

The applicant has been identified as the principal offender who murdered her minor step child and threw his body in a tank situated in the house. The dead body was recovered at the pointing out of the applicant. The applicant had the motive to commit the offence. The offence is grave. There is likelihood that the applicant had committed the offence. At this stage, no case for bail is made out. (Para 94)

Application allowed. (E-14)

List of Cases cited:

1. Ramu Vs St. of U.P., 2024 SCC OnLine All 4618
2. Anil Gaur @ Sonu @ Sonu Tomar Vs St. of U.P., 2022 SCC OnLine All 623
3. Junaid Vs St. of U.P., 2021 (6) ADJ 511
4. Aman Vs St. of U.P., 2023 (8) ADJ 523
5. Bhanwar Singh @ Karamvir Vs St. of U.P., 2023 SCC OnLine All 734
6. Noor Alam Vs St. of U.P., 2024 (5) ADJ 766
7. Anurudh Vs St. of UP, 2024 (8) ADJ 469
8. Avinash Mehrotra Vs U.O.I. & ors., 2009 (6) SCC 398
9. Pratap Singh Vs St. of Jharkhand, 2005 (3) SCC 551
10. Rajiv Kumar Vs St. of U.P., 2019 (4) ADJ 316
11. M.C. Mehta Vs St. of T.N., 1996 (6) SCC 756
12. In Re: Right to Privacy of Adolescents, 2024 SCC OnLine SC 2055
13. Sheela Barse Vs Children's Aid Society, 1987 (3) SCC 50
14. Lakshmi Kant Pandey Vs U.O.I., 1984 (2) SCC 244

15. R. D. Upadhyay Vs St. of A.P., 2007 (15) SCC 337

16. Jan Adalat, Centre of ParaLegal Services and Legal Aid A Society Vs St. of Maharashtra, Through Secretary, Home Development Department, 2017 SCC OnLine Bom 239

17. Babul Khan Vs St. of Karn., 2020 SCC OnLine Kar 3438

18. Sumpurnanand Vs St. of U.P. reported at 2018 (11) ADJ 550

19. Oil and Natural Gas Commission & anr. Vs Collector of Central Excise, 1995 Supp (4) SCC 541

20. Oil & Natural Gas Commission Vs Collector of Central Excise, 2004 (6) SCC 437

21. Elizabeth Jacob Vs District Collector, Idukki & ors., 2008 (15) SCC 166

22. Society for enlightenment and voluntary Action & anr. Vs U.O.I., 2024 SCC OnLine SC 2922

23. Junaid Vs St. of UP, 2021 (6) ADJ 511

24. The New India Assurance Company Limited Vs Sri Yamin & ors., 2023 (10) ADJ 421

25. Junaid Vs St. of U.P. & anr., 2021 SCC OnLine All 463

26. Rajendra Prasad Vs St. of U.P., Criminal Misc. Bail Application No. 30292 of 2024

27. Jitendra Vs St. of U.P., Criminal Misc. Bail Application No. 9126 of 2023

(Delivered by Hon'ble Ajay Bhanot, J.)

Ref: Criminal Misc. Correction Application No. 2 of 2025

Heard.

Correction application is allowed.

Necessary correction has been incorporated in the order dated 20.01.2025. The correct order shall read as under:

The judgement is being structured in the following conceptual framework to facilitate the discussion:

I	Introduction												
II	Submissions of learned counsels for the parties												
III	Legal issues arising in this case & Bail Jurisdiction												
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I. Introduction

1. Rights of children who get confined to jail with their parents consequent to rejection of bail of the latter arise for consideration in this case (apart from other grounds for bail).

II. Submissions of learned counsels for the parties

2. Shri Rahul Upadhyay, learned counsel for the applicant made the following submissions:

i. The applicant's daughter who is 5 years of age is residing with her in prison after her incarceration. The rights of the applicant's child flowing from Article 21-A of the Constitution of India read with other beneficial legislations are being violated on account of her confinement in prison.

ii. The prison does not have requisite support systems to ensure the holistic growth of the minor child as contemplated in the aforesaid provisions of law.

iii. In view of the above the jail stay will cast a shadow on the child's life and mar her future.

iv. The applicant is entitled to bail on this ground alone.

Submissions on behalf of State

3. Shri Ashok Mehta, learned Additional Advocate General assisted by Shri Paritosh Kumar Malviya, learned AGA-I made the following submissions:

I. The State Government have an unconditional commitment to provide a congenial environment and build adequate support systems as contemplated under the Constitution and in various beneficial legislations for children who reside in jail consequent to imprisonment of their ⁵ parent.
II. The State Government shall make all endeavours to realize the fundamental rights of the said class of children as enunciated in holdings of constitutional courts and the rights vested by applicable statutory enactments.
III. The State are conscious of the fact that all children including those who are residing in jail with their parents need to be nurtured into dutiful citizens of the country. IV. Referencing the affidavit filed on behalf of the State it is contended that the State

Government will create the proper infrastructure, activate statutory support systems and provide all facilities to children as directed earlier by this Court by order dated 01.10.2024. The State Government are taking steps to comply with the said directions; and are not an adversarial party to this litigation. Though it was fairly submitted that full coordination and cooperation between different departments is taking time.

III. Legal Issues arising in this case & Bail Jurisdiction

4. The 5 year old daughter of the applicant is entirely dependant on her. Denial of bail to the applicant in the instant case will cause the five year old child to perforce reside in the jail premises with her. Family circumstances and social roots are among the criteria which are factored in while deciding the bail application of an accused.

5. The collateral damage inflicted upon a child as a result of denial of bail to their⁶ parent becomes most significant when the child has to reside in prison with the accused parent. The Court cannot shut its eyes to the plight of such children consequent to their confinement in jail by default.

6. Every parent has a duty to ensure the well-being, education and well rounded development of their child. However, parents cannot fulfil these obligations if they are imprisoned. Each child has a fundamental right to education, and an environment conducive to their development as a dutiful citizen of the country. Neglect of rights of children who suffer from such default confinement in jail will reflect the failure of the State and inadequacy of the judicial process. Deprivation of rights of these children will put a question mark on the ability of the State and the capacity of the judicial process to uphold the constitution and the laws. Avoiding such germane issues which squarely arise for consideration in bail jurisdiction will amount to abdication of judicial functions. Such course has been abjured by good and consistent authorities in point.

7. Fair administration of justice in bail jurisdiction commands this Court to ensure that adverse consequences accruing to the child as a result of rejection of the bail application of their parent (mother in this case) are mitigated and the rights of minor children of inmates residing in jails are protected.

8. Constitutional status of this Court is not denuded in bail jurisdiction. While exercising bail jurisdiction various legal issues may arise for consideration in the facts and circumstances of a case which directly impact fair administration of justice. The Court is possessed of jurisdiction to determine such issues as per law while deciding bail applications.

9. Determining such issues in accordance with law for dispensing fair justice in bail jurisdiction is enjoined by

various authorities of this Court. [Ref: **Ramu Vs. State of U.P.**⁸, **Anil Gaur @ Sonu @ Sonu Tomar v. State of U.P.**⁹, **Junaid Vs State of U.P.**¹⁰, **Aman Vs. State of U.P.**¹¹, **Bhanwar Singh @ Karamvir Vs. State of U.P.**¹², **Noor Alam Vs. State of U.P.**¹³ and **Anurudh vs State Of UP**¹⁴]

Rights of Children : Constitutional provisions & Statutory and Legal Frameworks

IV(A). General

10. Children hold Nature's promise of unquenchable optimism in a world riven by constant strife. Children are the most precious asset of humankind but also the most vulnerable segment of human species. The children have always been regarded a separate class in law.

IV (B). Constitution and Children

11. The constitution makers acknowledged that children are the most precious assets of the nation, and understood the special needs of children. A distinct space for children was created in the Constitution. Various provisions devoted to children in the Constitution attest the paramount place accorded to the welfare of children in our Constitutional scheme.

12. The relevant provisions of the Constitution of the India in this regard are extracted hereunder:

I. Article 15 (3) of the Constitution of India enables the State Government to make special provisions for children:

"15(3) Nothing in this article shall prevent the State from making any special provision for women and children."

II. Free and compulsory education for children is mentioned as a directive principle for formation of State Policy. Article 45 of the Constitution of India states thus:

"45. Provision for free and compulsory education for children: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

III. Article 21-A of the Constitution of India elevates the rights of education of children between 6-14 of age to a fundamental right.

"21(A) The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

IV. Article 47 of the Constitution of India reads:

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health: The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

V. Article 39(e) and Article 39(f) of the Constitution of India contemplate a role of the State to protect children against the

scourge of exploitation and to create opportunities and facilities for children to develop into worthy citizens.

"39(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

39 (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

IV(C). Children : Education and Holistic Development

"If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be"

~Thomas Jefferson

13. Education is the bulwark of a nation's freedom and the engine of economic prosperity. Education has assured the preservation of the human species, and guarantees the advancement of human civilization.

14. Education is not only book learning imparted in a classroom to secure employment. The concept of education is wide enough to embrace various aspects of human existence and touches every facet of human life. The ability of the homo sapiens to understand and evolve themselves by knowing their place and relation to the universe around them is also comprised in education.

15. Education contemplates a holistic environment which is congenial to the growth of human faculties along the lines of excellence. Inculcation of healthy

lifestyle habits, development of robust ethical values and character, and imbibing of vocational and academic knowledge form part of a vision of education of any nation ruled by law.

16. Education is the primary instrument to achieve our constitutional vision. Sarvepalli Radhakrishnan's view that "The aim of government is not so much efficiency as education is true for all times" is a guiding factor in the nation's governance. Right of education was incorporated as a fundamental right under Article 21A of the Constitution of India to realize our constitutional goals succinctly depicted in the Preamble. The legislature also created comprehensive frameworks and detailed mechanisms for realizing the fundamental right to education by enacting the Right to Education Act, 2009.

17. Children of jail inmates who reside with the latter in prisons live in conditions of confinement. The prison does not provide an environment for holistic development and impedes the growth of a well rounded personality. The children are cut off from the real world and are unable to mix freely with their age group. They are also susceptible to negative influences in jail. Jail environment is not congenial for the education of this class of children. Infact the right to education guaranteed to children by Article 21A of the Constitution of India, and vested in them by Right to Education Act, 2009 can be effectively negated by the limiting conditions of jails.

18. The sacred place of education in constitutional scheme and the pressing necessity of providing the same to the children of prisoners was elaborated thus by the Supreme Court in **Avinash**

Mehrotra Vs. Union of India and others¹⁵:

"28. Education occupies a sacred place within our Constitution and culture...

30. In the years since the inclusion of Article 21-A, we have clarified that the right to education attaches to the individual as an inalienable human right. We have traced the broad scope of this right in R.D. Upadhyay v. State of A.P. [(2007) 15 SCC 337 : AIR 2006 SC 1946] holding that the State must provide education to all children in all places, even in prisons, to the children of prisoners. We have also affirmed the inviolability of the right to education.

(emphasis supplied)

32. Education remains essential to the life of the individual, as much as health and dignity, and the State must provide it, comprehensively and completely, in order to satisfy its highest duty to citizens.

33. Unlike other fundamental rights, the right to education places a burden not only on the State, but also on the parent or guardian of every child, and on the child herself. Article 21-A, which reads as follows, places one obligation primarily on the State:

"21-A. Right to education.—The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

(emphasis supplied)

IV(D). International Instruments

19. The consensus of comity of nations to improve the lives of children is

depicted in international instruments of law relating to the rights of the children.

20. While acknowledging the applicability of international law to the Juvenile Justice legislation, the Supreme Court in **Pratap Singh Vs. State of Jharkhand**¹⁶ held as under:

"63. The legislation relating to juvenile justice should be construed as a step for resolution of the problem of juvenile justice which was one of tragic human interest which cuts across national boundaries. The said Act has not only to be read in terms of the Rules but also the Universal Declaration of Human Rights and the United Nations Standard Minimum Rules for the Protection of Juveniles."

21. This Court in **Rajiv Kumar Vs. State of U.P.**¹⁷ had noted the development of international law and the convergence of international legal values in various international instruments:

"38. The condition of children in conflict with law engaged the concerns of the world community. The concerns were put in the consciousness of the international community by the adoption of the Beijing Rules in 1985 and the UN Standard Minimum Rules for Administration of Juvenile Justice.

39. The United Nations Standard Minimum Rules For The Administration of Juvenile Justice is a document which reflects the consensus of international opinion and convergence of values amongst civilized nations. Infact, the United Nations Standard Minimum Rules For The Administration of Juvenile Justice is a statement of universal values. The Juvenile Justice Acts in India trace their origin to the

aforesaid international standards and other UN Conventions on the subject. As will be seen the courts have readily incorporated the international treaties and conventions into the corpus of our case law jurisprudence."

22. Reference can also be profitably be made to the judgment rendered by Supreme Court in **M.C. Mehta Vs. State of T.N.**¹⁸ :

"17. It would be apposite to apprise ourselves also about our commitment to world community. For the case at hand it would be enough to note that India has accepted the Convention on the Rights of the Child, which was concluded by the UN General Assembly on 20-11-1989. This Convention affirms that children's rights require special protection and it aims, not only to provide such protection, but also to ensure the continuous improvement in the situation of children all over the world, as well as their development and education in conditions of peace and security. Thus, the Convention not only protects the child's civil and political right, but also extends protection to child's economic, social, cultural and humanitarian rights."

V. Children in Jail : Invisible Trial and caged childhood— A Study

23. Various expert bodies have investigated the condition of children of inmates residing in jails. A leading study in this regard was conducted by **Tata Institute of Social Sciences, Mumbai**¹⁹. The relevant part of the said study revealing how jail environment wreaks havoc in the psyche of children, and blights their lives is extracted hereinunder:

Caged childhood: Children inside the prison with mothers

Just living is not enough... one must have sunshine, freedom, and a little flower.

Hans Christian Andersen

Contact with the adult criminal justice system can be detrimental to children and families. Living in custody amongst women accused or convicted for committing various crimes can never be normal for any child of the tender age of six years or below. The prison environment is just not conducive for the holistic development of children. Many children who are born in prison never experience a normal family life, sometimes till the permitted age of six years. The confinement of children along with their mothers leads to the confinement of their psyche. Due to prolonged stay in a negative and custodial environment, the socialisation patterns of these children get severely affected. The only image of male figures is that of authoritative police and prison officials. They are unaware of the concept of a home, as normal children understand it. The effect of their environment on their psyche is so strong that boys may be found impersonating and talking like the female gender, having grown up only among women confined in the female ward. Unusual sights, like that of stray animals on the road (seen on the way to court with the mother) are frightening to them. There are common instances of children getting frequently transferred (due to overcrowding) with their mothers from one prison to another, which leads to their uprooting and unsettling. Such children become violent and aggressive, or alternatively, show withdrawn behaviour in prison. They also become victims of physical beatings by their mothers who sometimes take out their frustrations on their loved ones.

VI. Statutory Framework

24. Statutory frameworks which regulate and govern the rights of vulnerable children and applicable to this case include Juvenile Justice (Care and Protection of Children) Act 2015²⁰, Legal Services Authorities Act 1987, Right of Children to Free and Compulsory Education Act 2009²¹, UP Jail Manual 2022, and Model Prison Manual, 2016.

VI (A). Juvenile Justice (Care and Protection of Children) Act, 2015

25. The JJ Act is a comprehensive enactment provides for identification of children who belong to marginalized classes or are otherwise in need of care and protection. The enactment also creates authorities and mechanisms for bringing the rights of children to fruition.

26. Parents who are in jail are unable to take measures for well being of their children. The said class of children are within the ambit of Section 2(14) (v) of JJ Act:

“**Section 2 (14)** "child in need of care and protection" means a child—

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

Section 2 (22) "Committee" means Child Welfare Committee constituted under section 27

Section 2(21) "child care institution" means Children Home, open shelter, observation home, special home, place of safety, Specialised Adoption Agency and a fit facility recognised under

this Act for providing care and protection to children, who are in need of such services;”

27. Section 30 of the JJ Act prescribes the functions and responsibilities of Child Welfare Committee²². The legislative intent of the provision is also to bring the aforesaid category of children within the scope of the duties of CWC:

“Section 30- The functions and responsibilities of the Committee shall include—

(i) taking cognizance of and receiving the children produced before it;

(ii) conducting inquiry on all issues relating to and affecting the safety and well-being of the children under this Act;

(iii) directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organisations to conduct social investigation and submit a report before the Committee;

(iv) conducting inquiry for declaring fit persons for care of children in need of care and protection;

(v) directing placement of a child in foster care;

(vi) ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or child's homes or fit facility in this regard;

(vii) selecting registered institution for placement of each child requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution;

(viii) conducting at least two inspection visits per month of residential

facilities for children in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government;

(ix) certifying the execution of the surrender deed by the parents and ensuring that they are given time to reconsider their decision as well as making all efforts to keep the family together;

(x) ensuring that all efforts are made for restoration of abandoned or lost children to their families following due process, as may be prescribed;

(xi) declaration of orphan, abandoned and surrendered child as legally free for adoption after due inquiry;

(xii) taking suo motu cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee, provided that such decision is taken by at least three members;

(xiii) taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012);

(xiv) dealing with cases referred by the Board under sub-section (2) of section 17;

(xv) co-ordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government;

(xvi) in case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the District Child Protection Unit or labour

department or childline services, as the case may be;

(xvii) accessing appropriate legal services for children;

(xviii) such other functions and responsibilities, as may be prescribed.”

28. Section 31 of the JJ Act contemplates production of children in need of care before the CWC. Children of prisoners who live in jails with the latter are also liable to be produced before the CWC. Jail authorities and the police authorities fall within the description of “any public servant” under the provision.

“31. Production before Committee.—

(1) Any child in need of care and protection may be produced before the Committee by any of the following persons, namely:—

(i) any police officer or special juvenile police unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit or inspector appointed under any labour law for the time being in force;

(ii) any public servant;

(iii) Childline Services or any voluntary or non-governmental organisation or any agency as may be recognised by the State Government;

(iv) Child Welfare Officer or probation officer;

(v) any social worker or a public spirited citizen;

(vi) by the child himself; or

(vii) any nurse, doctor or management of a nursing home, hospital or maternity home: Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.

(2) The State Government may make rules consistent with this Act, to provide for the manner of submitting the report to the Committee and the manner of sending and entrusting the child to children’s home or fit facility or fit person, as the case may be, during the period of the inquiry.”

29. The nature orders to be passed by the CWC are enumerated in Section 37 of the JJ Act:

“37. Orders passed regarding a child in need of care and protection.—

(1) The Committee on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report 1 [***] and taking into account the child’s wishes in case the child is sufficiently mature to take a view, pass one or more of the following orders, namely:—

(a) declaration that a child is in need of care and protection;

(b) restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker;

(c) placement of the child in Children’s Home or fit facility or Specialised Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child;

(d) placement of the child with fit person for long term or temporary care;

(e) foster care orders under section 44;

(f) sponsorship orders under section 45;

(g) directions to persons or institutions or facilities in whose care the child is placed, regarding care, protection and rehabilitation of the child, including directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need-based counselling, occupational therapy or behaviour modification therapy, skill training, legal aid, educational services, and other developmental activities, as required, as well as follow-up and coordination with the District Child Protection Unit or State Government and other agencies;

(h) declaration that the child is legally free for adoption under section 38.

(2) The Committee may also pass orders for—

(i) declaration of fit persons for foster care;

(ii) getting after care support under section 46 of the Act; or

(iii) any other order related to any other function as may be prescribed”

30. The functions of CWC were set forth by the Supreme Court in **In Re: Right to Privacy of Adolescents**²³ as under:

“28.2 If a child is residing with a person who has injured, exploited or abused the child or has violated any other law for the time being in force meant for the protection of the child, the said child becomes a child in need of care and protection. Thus, if a child who is a victim of an offence under the POCSO Act is residing with the accused, the child becomes a child in need of care and protection. Even a child who has a parent or guardian and if such parent or guardian

is found to be unfit to take care of the child, in such a case, the child is covered by the definition under sub-section (14) of Section 2 of the JJ Act. Therefore, the CWC has to exercise the power to provide basic needs and protection to such children in need of care and protection.

29.1 Under clause (vi) of Section 30, it is the duty of the CWC to ensure care, protection, appropriate rehabilitation or restoration of children in need of care and protection based on the child's individual care plan. The CWC cannot wait till the children in need of care and protection are produced before it. Under clause (xii) of Section 30, the CWC must take suo motu cognizance of the cases and reach out to the children in need of care and protection. What is important here is clause (xiii) of Section 30, which mandates that it is the duty of the CWC to take action for the rehabilitation of sexually abused children who are children in need of care and protection.”

VI (B). Right of Children to Free and Compulsory Education Act, 2009

31. The Right to Education Act, 2009 which was enacted in the aftermath of Article 21A of the Constitution of India is the legal instrument to carry out the constitutional intent of providing for free and compulsory education to all children in the country.

32. Some of the provisions of the Right to Education Act, 2009 relevant to this case shall now be discussed.

33. The children who reside with their parents in jail also suffer from various disadvantages owing to their special and adverse circumstances. The said children

come within the category of Section 2(d) of Right to Education Act, 2009:

“2 (d) "child belonging to disadvantaged group" means [a child with disability or] a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification;

34. Section 3 vests the right of free and compulsory education in children:

Section 3. Right of child to free and compulsory education.

[(1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.]

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.

(3) A child with disability referred to in sub-clause (A) of clause (ee) of section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and a child referred to in sub-clauses (B) and (C) of clause (ee) of section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities

(Equal Opportunities, Protection of Rights and Full Participation) Act, 1995:

Provided that a child with "multiple disabilities" referred to in clause (h) and a child with "severe disability" referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) may also have the right to opt for home-based education.]”

35. Section 4 of Right to Education Act, 2009 contains special provisions for children who are not admitted to or have not completed elementary education:

“Section 4. Special provisions for children not admitted to, or who have not completed, elementary education-

Where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age:

Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time-limits, as may be prescribed:

Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.”

36. Section 13 of Right to Education Act, 2009 directs no capitation fee and provide for screening procedure for admission:

“Section 13 No capitation fee and screening procedure for admission.

(1) No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure.

(2) Any school or person, if in contravention of the provisions of sub-section (1),--

(a) receives capitation fee, shall be punishable with fine which may extend to ten times the capitation fee charged;

(b) subjects a child to screening procedure, shall be punishable with fine which may extend to twenty-five thousand rupees for the first contravention and fifty thousand rupees for each subsequent contraventions.”

37. Section 14 of Right to Education Act, 2009 mandates that no child shall be denied admission in school for lack of age proof:

“Section 14. Proof of age for admission.

(1) For the purposes of admission to elementary education, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886) or on the basis of such other document, as may be prescribed.

(2) No child shall be denied admission in a school for lack of age proof.”

38. Section 15 of Right to Education Act, 2009 visualizes admission of the child even after the commencement of the academic year.

“Section 15. No denial of admission.

A child shall be admitted in a school at the commencement of the academic year or within such extended period as may be prescribed:

Provided that no child shall be denied admission if such admission is sought subsequent to the extended period:

Provided further that any child admitted after the extended period shall complete his studies in such manner as may be prescribed by the appropriate Government.”

39. The constitutional right guaranteed under Article 21-A of the Constitution of India and the right to education vested in children by virtue of the Right to Education Act, 2009 apply with full force to children who are residing in jail with their inmate parents. The said children of jail inmates are fully entitled to quality education as their more fortunately circumstanced counterparts. The State Government as well as local authorities are bound by law to realize the right to education of the aforesaid children.

40. The State have to discharge the imperative constitutional obligations and mandatory statutory functions to create support systems for children in jails to facilitate the realization of their constitutional and statutory rights to education. The Courts have to observe their sacrosanct duty to uphold the rights of the children including the right to education.

41. Activities in kindergartens and play schools are critical to the growth of children in those formative years. Professionally designed pedagogy and activities in such play schools and kindergartens influence toddlers in a big

way. Activity based learning created by experts for little learners can contribute to their physical development, mental growth and emotional stability. Learning and activities of this nature enhances the meaning of life for children in that age group. Children shall also be admitted to preschool/kindergarten/play schools/primary schools as per their eligibility by the State authorities/local administration. The schools shall be located outside of the jail premises.

VI (C). Uttar Pradesh Jail Manual, 2022

42. The welfare of the children who remain in jail with their mothers' is protected in UP Jail Manual, 2022. The Jail Manual enshrines their rights and casts a duty upon the jail authorities to uphold the aforesaid rights:

“335. Children born in jail

(a) As far as possible and provided that the female prisoner has a suitable option, the Superintendent shall apprise the concerned court, and shall send the report of the fact accompanied with the medical statement, in order to enable the court to consider the possibility of releasing the pregnant prisoner on bail.

(b) Births in prison, shall be registered in the local birth registration office but the fact that the child has been born in the prison shall not be recorded in the certificate. Only the address of the locality shall be mentioned.

(c) As far as circumstances permit, all facilities for the naming rites (Namkaran Sanskar) of children born in prison shall be extended.

(d) Religious rites may be allowed to be performed for the child so

born, on the expenses borne by the parent.

(e) A child shall not be treated as an undertrial or a convict while in jail.”

336. Children to be allowed to remain with their mothers

In special circumstance the Superintendent shall allow mother in prison to keep her children with her in jail without court orders till they attain the age of six years.

337. Cases in which a child cannot be kept in a jail

(a) When a child has achieved the age of 6 years or a female prisoner dies and leaves behind a child, the Superintendent shall inform the District Magistrate concerned who shall arrange for the proper care of the child. If the concerned relative (s) are unwilling to support the child, the District Magistrate shall either place the child in an approved institution or a home run by the State Social Welfare Department.

(b) Children kept under the protective custody in an institution or a home run by department of social welfare shall be allowed to meet the mother at least once a week. The Director, social welfare department, shall ensure that such children are brought to the prison for this purpose on the dates fixed by the Superintendent.

339. Care of children

(a) There shall be a crèche and a nursery attached to the prison where the children of women prisoners shall be looked after. Children below three years of age shall be allowed in the crèche and those between three and six years shall be looked

after in the nursery. The prison authorities shall preferably run the said crèche and nursery in the prison premises.

(b) The children of female prisoners living in the jail shall be given proper education and recreational opportunities. While their mothers are at work in jail, the children shall be kept in a creche or a nursery under the charge of a female head warder or a female warder. The facility of the crèche or a nursery may be extended to children of warders and other female prison staff.

(c) Children of prisoners shall have the right to visitation.

(d) Children shall be regularly examined by the Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts of each child shall be kept in the records. Extra clothing, diet and medical treatment, if required, shall be provided for.

(e) In the event of a woman prisoner falling ill, alternate arrangements to look after her children shall be made.

(f) Children between the age group of 4 to 6 years shall be admitted to an educational institution outside prison after obtaining the consent of the mother and proper arrangement and conveyance shall be made on the Government expenses charged on appropriate budget head.”

43. Rule 339 (f) of UP Jail Manual, 2022 has to be read in consonance with the Right of Children to Free and Compulsory Education Act, 2009 and Article 21-A. Even parents cannot deny education to their children who are staying in jail. Refusal of consent of the parents to admit the said children in school will be violative of Article 21-A of the Constitution and the RTE Act. Denial of consent by inmate parents to admit their child to

school will be void. Every child who is residing in jail with their²⁴ parents will be compulsorily admitted to school in light of Article 21-A of the Constitution of India and RTE Act and the directions in this judgement. The parents of the child will be informed that the right to education vested by Article 21-A and RTE Act and the directions in this judgement are inviolable.

VI (D). The Model Prison Manual, 2016

44. The Model Prison Manual, 2016 also contains various provisions for the protection and holistic growth of children even in trying circumstances of jail life:

“26.36 Children kept under protective custody in a home of the Department of Social Welfare shall be allowed to meet their mothers at least once a week. The Director, Social Welfare Department will ensure that such children are brought to the prison on the dates fixed for this purpose by the Superintendent of Prison.

Guidelines issued by the Supreme Court for children of women prisoners (R.D. Upadhyay v. State of A.P, AIR 2006 SC 1946)

>A jail must have adequate facilities for prenatal and post-natal care for female prisoners as well as their children.

>Gynaecological examination of female prisoners shall be performed in the District Government Hospital. Proper prenatal and post-natal care shall be provided to the prisoner as per medical advice

> As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual

offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility,

>Pregnant women in jails should be able to give birth outside the prison facility (except in some extreme cases), so as to ensure that the new-born is given proper care.

>The fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned

> Within the prisons, children should be able to have access to food, shelter medical assistance when required, education and a recreational space.

>Children shall be regularly examined by the lady Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts regarding each child shall be kept in the records. Extra clothing, diet and so on may also be provided on the recommendation of the Medical Officer.

> Women can keep their children with them until the children reach the age of six. Then they should be handed over to welfare institutions maintained by the Social Welfare Department, preferably within the same city or town.

>The child can remain in such an institution until the mother is released or the child is capable of earning a livelihood.

>Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet their mother at least once a week. The Director, Social Welfare Department, shall ensure that such children are brought to the prison for this purpose on the date fixed by the Superintendent of Prisons

>The State Legal Services Authorities shall take necessary measures to periodically inspect jails to monitor that the directions regarding children and mothers are complied with in letter and spirit.

Welfare of the children of the Women Prisoners

26.37 Prison administration should ensure holistic development of children of inmates confined in the prisons. To the extent possible, prison administration shall strive to create a suitable environment for children's upbringing which is as close as possible to that of a child outside prison. The Board of visitors shall inspect these facilities at regular intervals."

45. The other provisions of Model Prison Manual, 2016 of relevance pertain to education of children and diet:

Education

"26.38 The children of women prisoners living in the prison shall be given proper education and recreational opportunities. There shall be a well-equipped creche and a nursery school attached to a prison for women where the children of women prisoners shall be looked after while the mothers work in prison. Children below three years of age shall be allowed in the creche and those between three and six years shall be looked after in the nursery school. These facilities may also be extended to the children of warders and other female prison staff.

26.39 The creche and nursery school shall be run by the prison administration preferably outside the prison with the assistance of NGOs or state welfare services. In the event the prison administration considers it difficult to run a crèche, arrangements should be made to send the children to a privately run crèche

under proper security. The transportation charges involved in the process and crèche fee shall be borne by the prison administration.

26.40 Children in prison shall be provided with adequate clothing suiting the local climatic requirements. For this the State/UT Government shall lay down appropriate scales. Articles, like diapers and others as required, should be provided to women prisoners who are caring for their infant children.

26.41 In addition to regular requirement, two cakes of 150 grams each of soaps/detergent shall be provided to women prisoners with children.

Diet/Food:

26.42 Scales of diet for children shall be decided keeping in view the calorific requirements of growing children as per medical norms and climatic conditions. Separate utensils of suitable size and material should also be provided to each mother prisoner for feeding her child.

26.43 In the event a woman prisoner with children falls ill, alternative arrangements should be made by the prison staff for looking after any children falling under her care.

Health care

26.44 Adequate health facilities shall be provided to children of women prisoners (in collaboration with community health services), Children shall be regularly examined by a Lady Medical Officer to monitor their physical growth who shall also be vaccinated for various diseases including polio and small-pox at the appropriate time. Extra clothing and diet may also be provided to such children on the written recommendations of the Medical Officer."

VI (E). Legal Services Authorities Act 1987

46. Legal Services Authorities Act, 1987 vests the right of legal services and legal aid in various eligible classes of citizens. The relevant provisions for the purposes of this instant controversy are extracted hereinunder:

"2 (c) "legal service" includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter;

12-Criteria for giving legal services:-

(c) a woman or a child;

13. Entitlement of legal services.

(1) Persons who satisfy all or any of the criteria specified in section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a prima facie case to prosecute or to defend.

(2) An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit."

47. Secretary, District Legal Services Authority (DLSA hereinafter) of the respective districts have to provide necessary legal aid whether by way of legal advice or counsel to the parents of the said category of children to apprise them of rights and entitlements of children. Secretary, DLSA of respective districts shall also alert the statutory authorities about their obligations to realize the rights

of the said children as discussed in this judgement.

VI (F). Constitutional law discourse : Case Laws

48. The rights of children were embedded in constitutional law discourse in **Sheela Barse v. Children's Aid Society**²⁵, wherein the Supreme Court observed as under:

“5. Children are the citizens of the future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens depends the future of the country. In recent years, this position has been well realised. In 1959, the Declaration of all the rights of the child was adopted by the General Assembly of the United Nations and in Article 24 of the International Covenant on Civil and Political Rights, 1966. The importance of the child has been appropriately recognised. India as a party to these international Charters having ratified the Declarations, it is an obligation of the Government of India as also the State machinery to implement the same in the proper way.”

49. Similarly the Supreme Court in **Lakshmi Kant Pandey Vs. Union of India**²⁶ while interpreting the rights of children in the backdrop of constitutional provisions underscored the importance of children as national assets of supreme value, and underlined the need for the State to create conditions to protect children from abuse and provide an environment for growth with dignity:

“6. It is obvious that in a civilized society the importance of child welfare cannot be over-emphasized, because the

welfare of the entire community, its growth and development, depend on the health and well-being of its children. Children are a “supremely important national asset” and the future well-being of the nation depends on how its children grow and develop. The great poet Milton put it admirably when he said: “Child shows the man as morning shows the day” and the Study Team on Social Welfare said much to the same effect when it observed that “the physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages”. The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into fullness of physical and vital energy and the utmost breath, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation. Now obviously children need special protection because of their tender age and physique, mental immaturity and incapacity to look after themselves. That is why there is a growing realisation in every part of the globe that children must be brought up in an atmosphere of love and affection and under the tender care and attention of parents so that they may be able to attain full emotional, intellectual and spiritual stability and maturity and acquire self-confidence and self-respect and a balanced view of life with full appreciation and realisation of the role which they have to play in the nation building process without which the nation cannot develop and attain real prosperity because a large segment of the society would then be left out of the developmental process. In India this consciousness is reflected in the provisions enacted in the Constitution. clause (3) of Article 15 enables the State to make special provisions inter alia for children and Article

24 provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Clauses (e) and (f) of Article 39 provide that the State shall direct its policy towards securing inter alia that the tender age of children is not abused, that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength and that children are given facility to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. These constitutional provisions reflect the great anxiety of the constitution makers to protect and safeguard the interest and welfare of children in the country. The Government of India has also in pursuance of these constitutional provisions evolved a National Policy for the Welfare of Children. This Policy starts with a goal-oriented preambulatory introduction

(emphasis supplied)

“The nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.”

The National Policy sets out the measures which the Government of India proposes to adopt towards attainment of the objectives set out in the preambulatory introduction and they include measures

designed to protect children against neglect, cruelty and exploitation and to strengthen family ties “so that full potentialities of growth of children are realised within the normal family neighbourhood and community environment”. The National Policy also lays down priority in programme formation and it gives fairly high priority to maintenance, education and training of orphan and destitute children. There is also provision made in the National Policy for constitution of a National Children's Board and pursuant to this provision, the Government of India has constituted the National Children's Board with the Prime Minister as the chair-person. It is the function of the National Children's Board to provide a focus for planning and review and proper co-ordination of the multiplicity of services striving to meet the needs of children and to ensure at different levels continuous planning, review and co-ordination of all the essential services. The National Policy also stresses the vital role which the voluntary organisations have to play in the field of education, health, recreation and social welfare services for children and declares that it shall be the endeavour of State to encourage and strengthen such voluntary organisations.

7. There has been equally great concern for the welfare of children at the international level culminating in the Declaration of the Rights of the Child adopted by the General Assembly of the United Nations on November 20, 1959. The Declaration in its Preamble points out that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”, and that “mankind owes to the child the best it has to give” and proceeds to formulate several Principles of which the

following are material for our present purpose:

“Principle 2.—The child shall enjoy special protection and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose the best interests of the child shall be the paramount consideration.

Principle 6.—The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and in any case in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Principle 9.—The child shall be protected against all forms of neglect, cruelty and exploitation. e shall not be the subject of traffic, in any form.

Principle 10.—The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood and in full consciousness that his energy and talents should be devoted to the service of his fellow men.”

50. The Supreme Court in **R. D. Upadhyay v. State of A.P.**²⁷, while

considering the plight of children living with their inmate parents issued following directions:

“45. In light of various reports referred to above, affidavits of various State Governments, Union Territories, the Union of India and submissions made, we issue the following guidelines:

1. A child shall not be treated as an undertrial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.

3. Childbirth in prison:

(a) As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility.

(b) Births in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned.

(c) As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.

4. Female prisoners and their children:

(a) Female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years.

(b) No female prisoner shall be allowed to keep a child who has completed the age of six years. Upon reaching the age of six years, the child shall be handed over

to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimise undue hardships on both mother and child due to physical distance.

(c) Such children shall be kept in protective custody until their mother is released or the child attains such age as to earn his/her own livelihood.

(d) Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet their mother at least once a week. The Director, Social Welfare Department, shall ensure that such children are brought to the prison for this purpose on the date fixed by the Superintendent of Prisons.

(e) When a female prisoner dies and leaves behind a child, the Superintendent shall inform the District Magistrate concerned and he shall arrange for the proper care of the child. Should the relative(s) concerned be unwilling to support the child, the District Magistrate shall either place the child in an approved institution/home run by the State Social Welfare Department or hand the child over to a responsible person for care and maintenance.

5. Food, clothing, medical care and shelter:

(a) Children in jail shall be provided with adequate clothing suiting the local climatic requirement for which the State/UT Government shall lay down the scales.

(b) State/UT Governments shall lay down dietary scales for children keeping in view the calorific

requirements of growing children as per medical norms.

(c) A permanent arrangement needs to be evolved in all jails, to provide separate food with ingredients to take care of the nutritional needs of children who reside in them on a regular basis.

(d) Separate utensils of suitable size and material should also be provided to each mother prisoner for using to feed her child.

(e) Clean drinking water must be provided to the children. This water must be periodically checked.

(f) Children shall be regularly examined by the lady Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts regarding each child shall be kept in the records. Extra clothing, diet and so on may also be provided on the recommendation of the Medical Officer.

(g) In the event of a woman prisoner falling ill, alternative arrangements for looking after any children falling under her care must be made by the jail staff.

(h) Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.

(i) Children of prisoners shall have the right of visitation.

(j) The Prison Superintendent shall be empowered in special cases and where circumstances warrant admitting children of women prisoners to prison without court orders provided such children are below 6 years of age.

6. Education and recreation for children of female prisoners:

(a) The children of female prisoners living in the jails shall be given proper education and recreational opportunities and while their mothers are at

work in jail, the children shall be kept in crèches under the charge of a matron/female warder. This facility will also be extended to children of warders and other female prison staff.

(b) There shall be a crèche and a nursery attached to the prison for women where the children of women prisoners will be looked after. Children below three years of age shall be allowed in the crèche and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said crèche and nursery outside the prison premises.

7. In many States, small children are living in sub-jails that are not at all equipped to keep small children. Women prisoners with children should not be kept in such sub-jails, unless proper facilities can be ensured which would make for a conducive environment there, for proper biological, psychological and social growth.

(emphasis supplied)

8. The stay of children in crowded barracks amidst women convicts, undertrials, offenders relating to all types of crimes including violent crimes is certainly harmful for the development of their personality. Therefore, children deserve to be separated from such environments on a priority basis.

(emphasis supplied)

51. The Bombay High Court in **Jan Adalat, Centre of Para-Legal Services and Legal Aid A Society Vs. State of Maharashtra, Through Secretary, Home Development Department**²⁸ invoked R.D. Upadhyay (supra) and issued the following directions in regard to prisoners in Maharashtra:

“38..(h) As regards the children staying with their respective mothers in Jail, necessary arrangement for their benefit shall be made in terms of the directions of the Apex Court and as observed in Paragraph No. 23 of the Judgment within a period of six months from today;

(i) The State Government shall evolve a Scheme for ensuring that the women prisoners are able to meet their minor children (who are not staying with them) at frequent intervals. Formulation of such Scheme will be necessary as the persons or the institutions having the custody of the children may not encourage them to meet their respective mothers. If necessary amendment may be proposed to the Maharashtra Prisons (Facilities to the Prisoners) Rules, 1962”.

52. The Karnataka High Court in **Babul Khan Vs. State of Karnataka**²⁹ made the following observations as regards rights of children. Though the observations were made in regard to children of foreign nationals, they are applicable to this case as well:

“96. If the child belonged to a foreign national and where both the parents or one of the parent particularly mother is in jail, then necessary steps should be taken in lieu of the law that, the child must always enjoy all the rights as set forth in the United Nations declaration of the rights of the Child whether it is outside or inside the jail without distinction or discrimination on account of race, colour, language, origin of political or other national or social by birth or other status. Further, the child shall enjoy the special protection and shall be given opportunities and facilities by law and other means to

enable it to develop physically, mentally and socially in a healthy and normal manner with dignity. The child is also entitled to receive education which shall be free and compulsory at least in the elementary stages even if the child happens to be in the jail or detention center along with its mother. The concerned states while framing the laws particularly in Detention Centers, shall respect the right of the child, who is actually separated from one or both the parents and the State should make arrangement to safeguard the interest of such child.”

Article 21 and Children

53. This Court while examining the scope and constitutional law holdings of the meaning of “life” under Article 21 of the Constitution of India in **Sumpurnanand Vs. State of U.P. reported at 2018 (11) ADJ 550** held as under:

“32. The probe into the purpose of life has traditionally been the province of the philosophers. The framers of the constitution, brought the word "life" in the ambit of the constitution. Constitutional law put the meaning of life in the domain of the courts. "Life" is very much the concern of the courts. The search for the meaning of life is the business of the courts. Indeed, the discovery of the meaning of life is central to realizing the fundamental rights guaranteed under the Constitution.

33. The enquiry of the courts into the meaning of life was guided by law and logic and controlled by reason and precedent, but bent to no authority save the mandate of the constitution and the conscience of the court. Ultimately, the meaning of life was given by life itself. All

facets of life and its realities touched the courts. It was for the courts to touch life in all its facets and to feel its reality. Life reveals its true meaning to those whose thoughts are noble and deeds are righteous and to those who live selflessly.

34. The courts in India, knew early on that understanding the significance of life was the key to providing the security of justice. While interpreting Article 21 of the Constitution of India, the Hon'ble Supreme Court, embraced life in all its breadth and profundity and eschewed a narrow interpretation. The law laid down by the Hon'ble Supreme Court while construing Article 21 of the Constitution of India brought a citizen's reputation within its sweep.

35. A defining moment came when the Hon'ble Supreme Court, liberated life from the fetters of mere physical existence. While examining the meaning of life under Article 21 of the Constitution of India, the Hon'ble Supreme Court added meaning to life in the case of *Olga Tellis v. Bombay Municipal Corpn.* Reported at (1985) 3 SCC 545 held thus:

"As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely,

that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That

is the context in which it was said by Douglas, J. in *Baksey* [347 US 442, 472 : 98 L Ed 829 (1954)] that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in *Munn v. Illinois* [(1877) 94 US 113] means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in *Kharak Singh v. State of U.P.* [AIR 1963 SC 1295 : (1964) 1 SCR 332 : (1963) 2 Cri LJ 329]."

54. Article 21 was set on a course of constantly expanding boundaries and the ambit of life was progressively enlarged.

55. The meaning of life for children as contemplated in Article 21 of the Constitution of India has to be understood in a nuanced manner. Regard has to be paid to various constitutional provisions relating to children, the holdings of constitutional courts and international instruments to which India is a party.

56. Article 39 of the Constitution of India as seen earlier in **Lakshmi Kant Pandey (supra)** has become the basis of various policies of the government in respect of children. In fact Article 39 (e) & (f) of Constitution of India is now irretrievably entrenched in Article 21 of the Constitution of India and plays a critical role in determining the meaning of life for children. Article 39 (e) & (f) of the Constitution of India contain not merely

Directive Principles of State Policy but enshrine mandatory tenets of State action for the benefit of children.

57. Article 21 of the Constitution of India contemplates a congenial environment and support systems for children which foster the growth of a well rounded personality, are conducive to development of exemplary character traits, apart from good health and wellness. Educational needs and intellectual advancement of children clearly come within the ambit of Article 21 of the Constitution. Prison walls cannot obstruct the onrush of the fruits of Article 21 for children. At the cost of repetition it is stated that the State has to create an environment and build support systems which facilitate access of children to their rights under Article 21 and 21-A of the Constitution of India.

58. Learning environment and support systems flowing from Article 21 of the Constitution of India have to be age appropriate and sensitive to circumstances in their development and nuanced in their application to children. The aforesaid environment and support systems are irrevocable entitlements of children of inmates residing with the latter in jails. The protective armour of Article 21 of the Constitution of India entails insulation of said category of children from negative influences in the jails, and also envisages their holistic development and balanced growth of children.

59. Life of a child under Article 21 will not be defined by the adverse circumstances presented by fortuitous events, but their³⁰ right to life will be determined by the luminous mandate of Article 21 and Article 21-A of the

Constitution of India propounded in constitutional law.

VII (A). Child Protection System: Duties of Stakeholders : Directions

60. Relevant statutory provisions become activated and the respective statutory and State authorities are immediately triggered into action, the moment a child is confined to prison by default after the arrest of their³¹ parents.

61. Each child is unique. Children are not units in a crowd. Every child in distress is a victim of peculiar adversities. The baleful influence of jail environment on the said category of children are externalities (circumstances which are not caused by them and over which they have no control). Nature endows children with special gifts and potentialities which are peculiar to each child. Influences which negatively impact a child's psychology have to be addressed in facts of each case. Potentialities which a child possesses have to be nurtured to their full stature on a child to child basis. Individual care of this nature is the essence of the child rights jurisprudence as evolved by the legislatures and the courts alike. The aforesaid object can be achieved by preparing an individual care plan for every child who is lodged in prison after the incarceration of their³² parent.

62. Various authorities have been created under the JJ Act and other legal instruments to uphold the rights of children who reside in prisons consequent to incarceration of their parents. The police, Child Welfare Committee, District Legal Services Authorities, medical authorities, education authorities, district administration are enjoined to provide the

entitlements and support systems to children by virtue of constitutional law holdings and statutory enactments. Duties are also imposed on jail authorities under the Jail Manual and pronouncements of constitutional courts. The said authorities are liable to cooperate with each other in attaining the constitutional and statutory goals for the benefit of children.

63. Duties of the authorities in regard to the aforesaid class of children and corresponding directions to be executed by them are set out in the succeeding paragraphs:

VII A (I). The State Government

64. Principal Secretary, Women and Child Development, Government of U.P. has to ensure that the State executes following directions:

I. To create a structured programme/scheme with supporting infrastructure for education, health, wellness and holistic development of children of inmates who reside with latter in jails and to protect them for negative influences resulting from the stay in jail.

II. The aforesaid programme shall be created in consultation and coordination with different departments of the State Government like Education Department, Health Department, other relevant departments and expert institutions.

III. The aforesaid programme shall cater to all aspects related to the lives of the said class of children. Few exemplars of activities and support systems to be included in the said programme are:

- a. Health and Nutrition of children;
- b. Exposure of children to sunlight and fresh air;

c. Educational needs including admission to preschool/kindergarten schools and primary schools in the facts and circumstances of each case. The schools shall not be located in the prison premises;

d. Creative pursuits, outdoor activities and access to playgrounds. Existence of separate spaces in prisons for children;

e. Programme for emotional and psychological development of children;

f. Maximizing interaction and activities of the said children in schools with their schoolmates;

g. Exclude negative influences and prevent contact with other prisoners. Areas where children reside should not be accessed by other prisoners;

h. Development of appropriate pedagogy of children of this category;

i. Attachment with CCIs for evening activities;

j. Appointment of mentor teachers.

The aforesaid activities are illustrative in nature, and not the exhaustive list of elements of the said programme. The programme shall also be compliant with constitutional law holdings discussed in this judgement and relevant statutory provisions.

IV. It is open to the State Government to enlarge the list of activities and support systems as and when required. Other ministries and authorities including the ministries/departments of Law, Jails, Education, Medical and Health and any other department of the state as may be required shall fully cooperate with the Department of Women and Child Development, Government of U.P.

V. The State Government may also consult with NIMHANS, Bangalore and other expert institutions and universities for

development of the aforesaid programme for children.

VI. To implement relevant provisions of the Jail Manual.

VII. To support development of individual child care plans and facilitate their implementation.

VIII. Regular oversight of implementation of the directions at State and district level and creation of a system of accountability at various levels.

VII A (II). District Administration

65. District Administration of respective districts shall execute the following directions:

I. Respective authorities of the local administration shall implement the programme framed by the State Government in compliance of the directions in this judgement.

II. To ensure admission of children in preschool/kindergarten/primary school in the facts of each case.

III. To aid the development and execution of individual child care plans by the DPO.

VIIA (III) Jail Department

66. Principal Secretary, Department of Jail, Director General (Prisons), as well as Jail Authorities of district jails shall execute the following directions:

I. The concerned jail authorities shall inform the CWC about the child confined to jail consequent to the imprisonment of their parent. The jail authorities shall also provide access to CWC to the child who is residing in jail. The child shall be produced before the CWC.

II. The children shall reside with their respective parents in separate barracks which should be effectively separated/barricaded from other prisoners. It shall be ensured that the children have no contact with other prisoners.

III. The jail authorities in coordination with the local administration shall ensure admission of the children to preschool/kindergarten/playschool/primary school in the facts of each case. The said schools shall not be located in the jail premises.

IV. The jail authorities shall provide access to playgrounds and other support systems to the said class of children to participate in outdoor activities and creative pursuits with other children of their age group outside the jail premises.

V. Creches shall be maintained in the jail premises where children of the aforesaid classes are residing.

VI. Jail Authorities shall ensure to provide quality medical care and proper nutrition to children who are lodged in jail after the imprisonment of the latter.

VII. Jail Authorities to implement the policy of the State Government which will be developed in pursuance to the directions given earlier.

VIII. To support the implementation of individual child care programmes.

IX. To implement the provisions relating to children in the Jail Manual/Model Jail Manual.

VII A (IV) Police Authorities

67. The police authorities of respective districts to execute the following directions:

I. Local police authorities to promptly inform the CWC and DPO about

the child who is lodged in jail after the arrest of the parent.

II. Inform the court hearing the bail application about production of the child before the CWC.

VII A (V) Child Welfare Committee

68. The CWC of respective districts to execute the following directions:

(1) To visit jails and investigate the conditions of children residing in jails with their parents.

(2) CWC shall promptly frame a report regarding the status of the child and shall also make findings in regard to various relevant aspects including the following parameters:

- A. Health,
- B. Education facilities
- C. Overall development,
- D. Insulation from other prisoners
- E. Compliance of the directions in this judgement

F. Execution of the scheme of government made in pursuance of this judgement.

G. Implementation of the individual child care plan to be created by District Probationary Officer.

(3) CWC shall submit the aforesaid report to the court at the hearing of bail application of the parent of the child.

(4) CWC shall also submit the said report to respective State authorities and authorities of district administration.

(5) Submit reports before competent authorities to ensure that children above 6 years who are residing with their parents (under trials/convicts) in jails are sent to Observation Homes.

(6) CWC shall examine each case of children below 6 years.

VIIA (VI) District Probationary Officers

69. The DPOs of respective districts to execute the following directions:

(i) To create individual care plan for holistic development of each child in prison residing with their³⁴ parent in jail, after consultation with experts.

(ii) The individual care plan shall include various parameters including the following:

- A. Health
- B. Nutrition Plan
- C. Exposure to sunlight and fresh air
- D. Education
- E. Sports, extra-curricular and creative activities
- F. Overall well rounded development
- G. Maximum interface of the children with their school mates and other children of their age outside the jail premises.

H. Appointment of mentor teacher at school

These activities are only exemplars and not exhaustive.

(iii) The individual care plan shall provide or shielding the child from negative influences in jails, and prevent contact of the child with other prisoners.

(iv) Implement the plan in coordination with government authorities at the local level.

VII.B Training of Stakeholders/respective department of the State Government for framing individual care plans for each child:

70. Constant supervision and regular training of stakeholders is the key

to prevent the violation of rights of children who are lodged in prisons with their parents, and are indispensable for realizing the rights of the said class of children as discussed in this judgement.

71. Respective departments of the State Government shall organize regular training programmes for following stakeholders to sensitize the latter of their duties and to build their capacities to execute the directions in this judgement:

1. Police
2. CWC
3. Jail Authorities
4. District Probationary Officers – DPOs in particular will need special training for drawing up Child Care Plans
5. Medical authorities

VII (C) Response of the State Government and achieving concert between different departments

72. The affidavit filed on behalf of Principal Secretary (Women and Child Development) Government of UP, Lucknow discloses that proper cooperation and coordination between various departments of the State has not been achieved. Lack of coordination and cooperation between various State departments is obstructing the implementation of law and delaying the realization of rights of children in jails. This situation cannot go on and has to be addressed squarely and promptly.

73. Experience of governance shows that at times departments act in silos which causes impediments in achieving policy objectives. Consequences of lack of coordination

between departments has also engaged the attention of the Supreme Court.

74. While dealing with issues of inter departmental cohesion and the need for inter departmental concert the Supreme Court in **Oil and Natural Gas Commission and Another Vs. Collector of Central Excise**³⁵, directed the setting of an interdepartmental committee:

“3. We direct that the Government of India shall set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

4. It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with.”

75. Subsequently **Oil & Natural Gas Commission Vs. Collector of Central Excise**³⁶ held as under:

“3. The purpose of setting up this High-Powered Committee was to ensure that, as far as possible, the controversies between a Ministry and a Ministry of the Government of India, a Ministry and a public sector undertaking of the Government of India and between public sector undertakings themselves are resolved by recourse to the High-Powered Committee and that time-consuming and expensive litigation is avoided.”

76. The need for for inter-departmental cooperation and coordination for efficient functioning of government was also emphasized in **Elizabeth Jacob Vs. District Collector, Idukki and others**³⁷:

“19. This case demonstrates, though in a very limited manner, the lack of cooperation and coordination between government departments. All departments should function in the interest of the public and for public good. Merely because a particular department or an authority functions under a particular statute, it does not follow that they should or could ignore the provisions of other statutes. Interdepartmental cooperation and coordination is vital for the smooth and successful functioning of the Government. But unfortunately there is thriving interdepartmental rivalries and a mutual non-caring attitude towards the functioning of other departments and enforcement of other statutes. Non-cooperation between the Revenue Department and the Forest Department, the Revenue Department and the Mines and Minerals Department, the Forest Department and the Mines and Minerals Department, are too well known. Unless immediate and serious steps are taken for improving the coordination, cooperation and understanding among various departments, offenders will escape,

violators will walk away, national resources will be swindled, and public interest will suffer. Be that as it may.”

77. The Supreme Court in **Society for enlightenment and voluntary Action and Anr vs Union of India**³⁸ held as under:

“3. Convergence and Continuity of Services

3.1. The Chief Secretaries of all States/UTs shall designate an appropriate authority who shall ensure the convergence of services across various government departments and agencies to create a cohesive support system for vulnerable and at-risk communities. This includes:

3.1.1. Regular inter-departmental meetings to coordinate efforts and resources among education, health, social welfare, and law enforcement sectors to address the multifaceted nature of child marriage; and

3.1.2. Establishing community-based resource centres that provide information and support related to education, legal rights, and social services to families at risk of child marriage.”

78. Synergy in policy and concert in action between various government departments is an imperative necessity to realize the rights of children. Having perused the affidavit filed by Principal Secretary (Women and Child Development) Government of UP, Lucknow, and the judgments in **Society for enlightenment and voluntary Action (Supra)**, **Oil & Natural Gas Commission (Supra)**, **Elizabeth Jacob (Supra)** this Court is of the definite opinion that coordination among various departments of the State Government namely Child and Women Welfare, Health, Police, Jails, Basic

Education can only be attained by directing the Chief Secretary, to convene a meeting of the heads of the said departments and any other relevant departments and frame a policy for implementation of child rights as discussed in this judgement.

79. Accordingly the Chief Secretary, Government of U.P. is directed to execute the following directions:

A. To call for a meeting of various Principal Secretaries and other responsible officials of different ministries including Women and Child Development, Law, Jails, Education, Health, DGP. Other ministries and authorities may also be called if deemed appropriate. The Committee of the different departments shall have proper coordination to ensure timely preparation of the scheme and infrastructure for welfare, education, holistic development and realization of rights of children of the aforesaid class as discussed in this judgement. The Department of Women and Child Development shall be the nodal ministry to execute this task.

B. The process shall be concluded within a period of two months from the date of receipt of a certified copy of this order.

80. Shri Ashok Mehta, learned Additional Advocate General shall cause the copies of this judgement to be served upon respective heads of departments (as mentioned above) and advise them on the compliance of the above directions.

VIII. Implementation of Law and Role of Courts : Junaid Vs. State of UP. and Rajendra Prasad Vs. State of U.P.

81. Constitutional oversight on the rights of children is perpetual, and the courts are permanent guardians of children. A old writer made the following observations as regards the role of law and duties of instruments of law towards children:

“The law protects their persons, preserves their rights and estates, excuseth their laches and assists them in their pleadings, the judges are their counsellors, the jury are their servants and law is their guardian.”

82. The child rights jurisprudence as embedded in the Constitution of India, international instruments, statutes and judicial precedents as applicable to the current controversy converge on these first principles:

(1) Recognition of the vulnerability of children to abuse and exploitation, the inability of children to resist or rise over their circumstances, and incapacity of children to defend themselves against abuse or unhealthy influences.

(2) Duty of the State to provide a protective environment and support systems for shielding children from unhealthy influences and exploitation and to foster their well rounded growth and holistic education.

(3) Affirmation of the obligations of the courts to realize childrens' rights.

83. Rights of children of prisoners who are residing with them in jails are traceable to multiple statutes and legal instruments. Diverse statutes and multiple agencies do not manifest disparate legislative aims. This Court faced with a similar situation blended the statutes to

realize a common legislative intent in **Junaid Vs. State of UP**³⁹ held as under:

“58. What then is the task of the Court? The task of the Court is to achieve the overarching and underlying legislative intent by integrating the various statutes into an unified legal framework. This requires corraling up the assortment of statutory bodies under a single legal umbrella, establishing synergy in aims, and ensuring concert in action of said authorities.”

84. This Court in **The New India Assurance Company Limited Vs. Sri Yamin and others**⁴⁰ realized the overreaching legislative aim permeating several enactments by blending the statutes:

“48. M.V. Act and E.C. Act are separate statutes which cover distinct fields and envisage proceedings in different tribunals. However, diversity of statutes does not necessarily depict disparate legislative intendments and multiplicity of forums cannot cause denial of legal entitlements. Comparative examination of the statutes made in the preceding paragraphs also manifests the overlapping areas of operation of the two enactments. The overarching congruency of purpose and the underlying similarity of objects of the two statutes evidenced in the common fields of operation can be achieved by an integrated interpretation of the enactments. Provisions of one statute and authorities thereunder can be applied by analogy to the other enactment to realise the legislative intent of the latter.

49. Integrated approach of statutory construction will ensure that the claimants are not denied their legal entitlements under the enactments merely because one forum is chosen in preference to proceedings under the other Act.

Integrated interpretation will entail a composite reading of the statutes and conflated application of analogous judicial authorities. The statutes will be read as part of an extended legislative scheme to the extent of their overlapping and consistent fields of operation.

50. Now the caution. Before invoking the integrated method of statutory interpretation certain prerequisites have to be established and while applying it various limitations have to be observed. Firstly, it has to be established for a fact that the claimants had a right to equally approach either of the two tribunals under the respective statutes. Secondly, the legal entitlements of the claimants have to be affirmed in the facts of a case. Thirdly this line of enquiry shall be applied only in common and overlapping areas of the statutes. Lastly this method of construction shall not extend to provisions which disclose a contrary intent or fields which are covered by specific provisions under the respective enactments.

51. The endeavour of the Court should be to realise the statutory intent of both enactments by benefiting the claimants without prejudice to other party. The Court cannot depart from any express provisions or Act in a manner contrary to the statutory scheme of either enactment.”

85. Responsibility is cast on the courts/magistrates considering the bail applications of prisoners to uphold the rights of their children who reside in jails with the latter.

86. The rights and entitlements of said class of children as discussed earlier can be realized at the stage of bails and during the trials only by bringing the concerned statutory authorities like Child Welfare Committee (CWC), medical

authorities, police authorities, and relevant district authorities, jail authorities within the scope of the jurisdiction of the learned courts (including magistrates and trial courts) hearing bail applications. The Courts have to alert the said authorities of their duties towards the said class of children. The said authorities shall remain accountable to the courts (including magistrates and trial courts) for the purposes of implementing the rights of the aforesaid children as propounded in the preceding discussion during the course of bail proceedings of their parents. The courts have to ensure that the authorities discharge their statutory duties and that beneficent provisions of law for children are enforced.

87. During the bail hearing, the said authorities namely the police and CWC have to respectively apprise the court about the manner in which the rights of children of the accused as determined in this judgment have been implemented. The courts are under an obligation of law to examine the said reports, make relevant enquiries from the said competent authorities, and record their satisfaction as regards implementation of the rights of the children of prisoners who are staying in jail. The court can issue appropriate directions to the authorities to implement the rights of the said class of children as expounded in this judgement.

88. The narrative can be fortified by authorities in point. In **Junaid v. State of U.P. and another**⁴¹, wherein it was held:

"42. However, the said judgments are not entirely bereft of precedential value for Allahabad High Court. The application has to be nuanced. It has to be stated that the said judgments of Delhi High Court and

Bombay High Court enrich legal debate, and elevate the concerns of child rights to the conscience of the court. The judgments have sensitized the process of law and ameliorated the plight of child victims by acknowledging the responsibilities of the courts and making the CWC, Legal Services Authorities and police officials accountable to courts in bail applications. These recognizable principles of law can be clearly distilled from Reena Jha (supra), Miss G (supra), Arjun Kishanrao Malge (supra)."

89. Similarly this Court in **Rajendra Prasad Vs. State of U.P.**⁴² while dealing with child victims made the following observations to remove all impediments which come in the way of realization of child rights during legal proceedings:

"9. Various authorities have been created under the POCSO Act to uphold the rights of victims. The said authorities like police, Child Welfare Committee, District Legal Services Authorities, medical authorities, district administration are enjoined by the statute to provide the entitlements under the POCSO Act to victims like support persons, medical specialists, legal aid, beneficial schemes of the government and so on. Responsibility is cast on the courts/magistrates considering the bail applications in POCSO offences to ensure that entitlements of the victims are provided and the rights conferred by the said enactment are enforced. Faithful execution of the said responsibilities will ameliorate the disadvantages faced by child victims in legal proceedings.

10. The rights and entitlements of the victims under the POCSO Act can be realized at the stage of bails and during the trials only by bringing the concerned

statutory authorities like Child Welfare Committee (C.W.C.), medical authorities and the police authorities within the scope of the jurisdiction of the learned magistrates/learned trial courts. The said authorities shall remain accountable to the learned magistrates/trial courts for the purposes of implementing the rights of the aforesaid victims during the course of various legal proceedings including bails. The said authorities have to apprise the trial court about the manner in which the rights of victims under the POCSO Act have been implemented. The learned trial courts are under an obligation of law to consider the said reports, make relevant enquiries from the said competent authorities and record their satisfaction as regards access of victims to their entitlements and support systems under the POCSO Act.

13. The reports depicting compliance of the above parameters and details of the facilities and support systems provided to the child victims as per law shall be submitted by the Child Welfare Committee (CWC) and the police respectively before the court at the hearing of the bail applications. The learned trial courts shall examine the aforesaid reports at the time of hearing of the bail applications and if required shall issue appropriate directions.”

IX. Order in bail application

A. Merits of bail & directions to expedite trial

90. This is the first bail application.

91. By means of this bail application the applicant has prayed to be enlarged on bail in Case Crime No. 0590 of 2023 at Police Station - Modi Nagar,

District Ghaziabad, under Sections 363, 302, 201 IPC. The applicant is in jail since 16.10.2023.

92. The bail application of the applicant was rejected by the trial court on 14.05.2024.

93. The applicant has been identified as the principal offender who murdered her minor step child and threw his body in a tank situated in the house. The dead body was recovered at the pointing out of the applicant. The applicant had the motive to commit the offence. The offence is grave. There is likelihood that the applicant had committed the offence. At this stage, no case for bail is made out.

94. Without going into the merits of the case, the bail application is dismissed.

95. Learned counsel for the applicant contends that the trial is moving at a snail's pace and shows no sign of early conclusion. The prosecution is deliberately delaying the conduct of the trial to prolong the incarceration of the applicant. Various other aspects delaying the trial have also been highlighted including the failure of the trial court to faithfully implement the mandate of Section 309 Cr.P.C. Other bottlenecks which cause delay in trials in the State of U.P. like failure of the police to promptly serve the summons and execute coercive measures issued by the trial court to compel the appearance of the witnesses have also been brought to the notice of the Court. Learned counsel's submissions are well founded and are liable to be addressed.

96. Considering the gravity of the offence, interest of justice will be served by

directing the learned trial court to expedite the trial.

97. Though no specific time frame to conclude the trial has been set out in the Cr.P.C., yet the legislative intent of Section 309 Cr.P.C. is explicit. The scheme of the provision clearly shows that the legislative intent is to conclude the trial in an expeditious time frame. In the facts of this case, the learned trial court shall make all endeavours to conclude the trial expeditiously. Preferably the trial court shall set for itself a reasonable time frame to conclude the trial say one year from the date of receipt of a certified copy of this order.

98. The trial court has also to be conscious of the rights of the accused persons and is under obligation of law to ensure that all expeditious, necessary and coercive measures as per law are adopted to ensure the presence of witnesses. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/counsel.

99. All witnesses and counsels are directed to cooperate with the trial proceedings.

100. The learned trial court shall issue summons by regular process as per Section 62 Cr.P.C. and also by registered post as provided under Section 69 Cr.P.C. to expedite the trial.

101. The learned trial court shall promptly take out all strict coercive measures against all the witnesses in accordance with law who

fail to appear in the trial proceeding. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/counsel.

102. The police authorities shall ensure that warrants or any coercive measures as per law taken out by the learned trial court to ensure that the attendance of the witnesses are promptly executed.

103. Deputy Commissioner of Police, Ghaziabad shall file an affidavit before the trial court on the date fixed regarding status of execution of the warrants/service of summons taken out by the learned trial court.

104. The delay in the trials caused by the failure of the police authorities to serve summons or execute coercive measures to compel the appearance of witnesses at the trial despite a statutory mandate, is an issue of grave concern. The said issue had arisen for consideration before this Court in **Bhanwar Singh @ Karamvir Vs. State of U.P.**⁴³ & **Jitendra v. State of U.P.**⁴⁴ This Court in Bhanwar Singh @ Karamvir (supra) & Jitendra (supra) had issued certain directions to the police authorities regarding their statutory duty to promptly serve summons and execute coercive processes to compel the appearance of witnesses.

105. The Director General of Police, Government of U.P. as well as Principal Secretary (Home), Government of U.P. had taken out

relevant orders in compliance of judgements in **Bhanwar Singh @ Karamvir (supra) & Jitendra (supra)** and nominated the Senior Superintendent of Police of the concerned districts as the nodal officials for implementing the said judgments.

106. The counsels as well as the learned trial court are directed to comply with the directions issued by this Court in **Noor Alam Vs. State of U.P.**⁴⁵ In case any strike happens during the course of the trial, the learned trial court is directed to ensure full compliance of the directions issued in **Noor Alam (supra)** to prevent delay in the trial.

107. In case the police authorities are failing to comply with the directions issued by this Court in **Bhanwar Singh @ Karamvir (supra) & Jitendra (supra)** and do not implement the said directions of the Director General of Police, Government of U.P. & the Home Secretary, Government of U.P. in regard to service of summons and execution of coercive measures to compel the appearance of witnesses, the learned trial court shall direct the concerned Senior Superintendent of Police to file an affidavit in this regard.

108. The learned trial court shall be under an obligation to examine whether the judgements of this Court in **Bhanwar Singh @ Karamvir (supra) & Jitendra (supra)** as well as directions of Director General of Police, Government of U.P. & the Home Secretary, Government of U.P. issued in compliance thereof have been implemented or not and to take appropriate action as per law.

109. The learned trial court shall also take appropriate measures in law after receipt of such affidavit which may include summoning the concerned officials in person.

110. It is further directed that in case any accused person who has been enlarged on bail does not cooperate in the trial or adopts dilatory tactics, the learned trial court shall record a finding to this effect and cancel the bail without recourse to this Court.

111. The trial judge shall submit a fortnightly report on the progress of trial and the steps taken to comply with this order to the learned District Judge.

112. A copy of this order shall also be communicated to the learned trial judge through the learned District Judge, Ghaziabad as well as Deputy Commissioner of Police, Ghaziabad by the Registrar (Compliance) by E-mail.

IX (B). Directions to create a child care plan and realize the rights of the applicant's minor child

113. Directions are issued to the District Magistrate, Jail Superintendents, CWC of district Ghaziabad to ensure that the rights and entitlements of the minor child of the applicant are realized by taking appropriate steps as directed in this judgement. In particular it shall be ensured that child is admitted to a school which is situated outside the jail premises. The child shall not have any contact with other prisoners (except her mother) and parents of similarly situated children who are residing in jail.

114. Ms. Richa Upadhyay, Additional District Judge/Secretary, DLSA, Gautam Budh Nagar shall in coordination with District Probationary Officer, Ghaziabad prepare an individual child care plan for the daughter of the applicant in light of this judgement. The child care plan shall be prepared within two months from the date of receipt of a copy of this order after due consultation with various authorities and experts.

115. The State Government to provide necessary support to Ms. Richa Upadhyay, HJS/Secretary, DLSA, Gautam Budh Nagar and the District Probationary Officer, Ghaziabad to accomplish this task. Copy of the said individual child care plan shall be provided to the jail authorities, CWC and BSA. The District Magistrate, Ghaziabad shall also ensure that the aforesaid child care plan is duly implemented by the concerned authorities of the local administration.

116. The CWC, Ghaziabad shall prepare a regular report regarding implementation of the aforesaid plan and submit a report to the concerned authorities.

X. Circulation of copies for compliance

117. Learned Additional Advocate General to ensure service of copy of this judgement for necessary compliance upon the following authorities:

- i. Principal Secretary, Women and Child Development, Government of U.P.
- ii. Principal Secretary, Law/Legal Remembrancer, Government of U.P.
- iii. Director General of Police, Government of UP

- iv. Principal Secretary, (Prisons), Government of UP
- v. Principal Secretary (Basic Education), Government of UP
- vi. Principal Secretary, Health and Medical Education, Government of UP
- vii. CWC members in all districts
- viii. District Jail Superintendents of all district jails
- ix. Police Chiefs of all districts
- x. District Probationary Officers of all districts
- xi. Director, JTRI, Lucknow
- xii. District Magistrate, Ghaziabad

118. Registrar General to ensure that a copy of this order is provided to Ms. Richa Upadhyay, Additional District Judge/Secretary, DLSA, Gautam Budh Nagar.

119. A copy of this order translated in Hindi to be served to the applicant.

(2025) 4 ILRA 795
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.04.2025

BEFORE

THE HON'BLE KRISHAN PAHAL, J.

Criminal Misc Bail Application No. 40524 of 2024

Amarjeet Pandey ...Applicant
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Applicant:
Sri Devottam Pandey, Sri Mrityunjay Singh

Counsel for the Respondents:
G.A.

Criminal law- Bail – Applicant arrested U/S 137(2), 61(2), 65(1) B.N.S. and 3/4(2) POCSO Act Minor girl enticed – POCSO Act – Consent – Contradictory St.ments of victim – FIR delayed – Victim declared herself adult in 180 B.N.S.S. St.ment – Ossification test not conducted – No injury or medical corroboration – Victim accompanied applicant voluntarily to another St. – Promise of marriage – Bail granted – Red tape and systemic failure in age determination process deprecated – Directions issued to health and police authorities. (Paras 5,15, 16, 17, 18, 20 and 32)

HELD:

In light of the judgement of the Supreme Court passed in Niranjn Singh & anr. Vs Prabhakar Rajaram Kharote & ors. AIR 1980 SC 785 this Court has avoided detailed examination of the evidence and elaborate documentation of the merits of the case as no party should have the impression that his case has been prejudiced. A prima facie satisfaction of case is needed but it is not the same as an exhaustive exploration of the merits in the order itself. (Para 15)

The well-known principle of "Presumption of Innocence Unless Proven Guilty," gives rise to the concept of bail as a rule and imprisonment as an exception. (Para 16)

It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA. (Para 20)

Application allowed. (E-14)

List of Cases cited:

1. Niranjn Singh & anr. Vs Prabhakar Rajaram Kharote & ors. AIR 1980 SC 785

2. Satender Kumar Antil Vs Central Bureau of Investigation & ors., 2022 INSC 690
3. Manish Sisodia Vs Directorate of Enforcement 2024 INSC 595

(Delivered by Hon'ble Krishan Pahal, J.)

1. List has been revised.
2. Affidavit of compliance filed by learned A.G.A. today, is taken on record.
3. As informed by learned A.G.A., notice to the informant has been served on 4.11.2024.
4. Heard Sri Mrityunjay Singh, learned Advocate holding brief for Sri Devottam Pandey, learned counsel for the applicant and Sri V.K.S. Parmar, learned A.G.A. for the State and perused the material placed on record.

5. Applicant seeks bail in Case Crime No. 197 of 2024, U/S 137(2), 61(2), 65(1) B.N.S. and 3/4(2) POCSO Act, Police Station Gadwar, District Ballia, during the pendency of trial.

PROSECUTION STORY:

6. The FIR was instituted by the informant stating that his 16-year old daughter had left for college on 10.9.2024 at 9.00 am and did not return till the evening. After taking up frantic search, it was revealed that the applicant in collusion with the co-accused person Rikhimuni Pandey had enticed away his minor daughter.

ARGUMENTS ON BEHALF OF THE APPLICANT:

7. The applicant is absolutely innocent and has been falsely implicated in

the present case with a view to cause unnecessary harassment and to victimize him. He has nothing to do with the said offence.

8. The FIR is delayed by four days and there is no explanation of the said delay caused.

9. The victim is the consenting party, as is evident from her statement recorded u/s 183 B.N.S.S., whereby she has categorically stated that she was in love with the applicant. She has also stated that the applicant had promised to marry her, as such, she left her house in the morning of 10.9.2024 at about 10.00 am and went with the applicant to Gujarat and stayed there in the house of his maternal uncle. She had established corporeal relationship with the applicant on the said promise of marriage only.

10. The victim in her statement recorded u/s 180 B.N.S.S. has categorically stated that she is 18 years old and she had left her house after being scolded by her parents. The said statement is contradictory to the FIR and her statement recorded u/s 183 B.N.S.S.

11. There is no medical corroboration of the incident, as the victim had not sustained any injury, whatsoever.

12. The applicant alongwith his maternal aunt and uncle had taken her back to her native place after coming to know about the instant FIR. She has further stated that her parents are also ready to marry her off.

13. There is no criminal history of the applicant. The applicant is

languishing in jail since 25.9.2024. In case, the applicant is released on bail, he will not misuse the liberty of bail.

ARGUMENTS ON BEHALF OF INFORMANT/STATE:

14. The bail application has been opposed but the fact that there is no criminal history of the applicant has not been disputed.

CONCLUSION:

15. In light of the judgement of the Supreme Court passed in *Niranjan Singh and another vs. Prabhakar Rajaram Kharote and others AIR 1980 SC 785* this Court has avoided detailed examination of the evidence and elaborate documentation of the merits of the case as no party should have the impression that his case has been prejudiced. A prima facie satisfaction of case is needed but it is not the same as an exhaustive exploration of the merits in the order itself.

16. The well-known principle of "Presumption of Innocence Unless Proven Guilty," gives rise to the concept of bail as a rule and imprisonment as an exception.

17. A person's right to life and liberty, guaranteed by Article 21 of the Indian Constitution, cannot be taken away simply because the person is accused of committing an offence until the guilt is established beyond a reasonable doubt. Article 21 of the Indian Constitution states that no one's life or personal liberty may be taken away unless the procedure established by law is followed, and the procedure must be just and reasonable. The

said principle has been recapitulated by the Supreme Court in *Satender Kumar Antil Vs. Central Bureau of Investigation and Ors.*, 2022 INSC 690.

18. Reiterating the aforesaid view the Supreme Court in the case of *Manish Sisodia Vs. Directorate of Enforcement* 2024 INSC 595 has again emphasized that the very well-settled principle of law that bail is not to be withheld as a punishment is not to be forgotten. It is high time that the Courts should recognize the principle that ?bail is a rule and jail is an exception?.

19. Learned AGA could not bring forth any exceptional circumstances which would warrant denial of bail to the applicant.

20. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA.

21. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, the applicant having no criminal history, the fact that the victim had stated herself to be 18 years old in her statement recorded u/s 180 B.N.S.S. before the investigating officer and also the fact that she is the consenting party as per her statement recorded u/s 183 B.N.S.S., and also taking note of the fact that the victim had gone with the applicant all the way to Gujarat and stayed there and did not raise any alarm during the said sojourn, coupled by the fact that the victim has not sustained

any injuries, whatsoever, and despite efforts, the ossification test of the victim could not be conducted, without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

22. Let the applicant- **Amarjeet Pandey** involved in aforementioned case crime number be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions.

(i) The applicant shall not tamper with evidence.

(ii) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C./351 B.N.S.S. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

23. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

24. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

OSSIFICATION TEST REPORT:

25. This Court vide its order dated 10.2.2025 had directed the C.M.O. to constitute a medical board to conduct ossification test of the victim, so as to ascertain her age. C.M.O., Ballia, did not comply with the said order, as such, on 4.3.2025, a reminder was sent to him to comply with the said order dated 10.2.2025. This case was again taken up on 19.3.2025. Learned A.G.A. had submitted that the C.M.O. Ballia, has reported that despite several letters being sent to the S.H.O. concerned, the victim is not being produced before him for the ossification test, as such, earlier orders dated 10.2.2025 and 4.3.2025 could not be complied with.

26. The office report indicates that the learned C.J.M. has informed that the victim is in Kolkata, West Bengal with her paternal aunt, as such, her ossification test could not be conducted.

27. As per the said compliance affidavit filed by learned A.G.A., the victim was taken to District Hospital, Mau on 5.3.2025 and her X-ray report was prepared there. The said X-ray report has been annexed as Annexure-2 to the compliance affidavit. The informant had categorically stated to the S.H.O. on 17.3.2025 that he shall not take his daughter further for any medical examination and he had given an application to him to the effect, as the victim is living in Himachal Pradesh.

28. The lady constable and one S.I. had gone to the office of the C.M.O. Ballia on 9.3.2025 with the X-ray report but the C.M.O. concerned refused to give the ossification test report on account of non-availability of the victim before him.

29. The aforesaid averments made in the compliance affidavit indicates that the

authorities are not serious in getting the orders of the High Court complied. The red tape approach is but evident from the attitude of the authorities at large, as such, with a heavy heart, this Court has no other option but to dispose of the instant bail application without the said ossification test report. There is no documentary evidence to indicate the age of the victim.

30. The victim was taken from Ballia to Mau for her X-ray report but the ossification test was not completed the same day. The victim was asked to be present before the C.M.O. on a subsequent date. The said callous approach is deprecated, as the proceedings ought to have been completed the same day.

31. The said matter regarding non-availability of radiologist at Ballia, which causes hardship to the poor victims, is being dealt with separately by this Court in Criminal Misc. Bail Application No. 19345 of 2024 (Prakash Kumar Gupta vs. State of U.P. & 3 others).

32. It has come to the attention of this Court that there exists a disturbing pattern in the manner in which the age of individuals, particularly in criminal proceedings, is being misrepresented and inadequately verified. The issue has multiple dimensions involving litigants, law enforcement, and the health department, all contributing to a systemic failure.

1. Fudging of Date of Birth by Litigants:

This Court has observed with concern that some litigants are intentionally manipulating their date of birth in order to obtain favourable legal outcomes, such as

being declared a juvenile. This malpractice undermines the integrity of the justice delivery system and calls for stricter scrutiny and penalties for submission of false documents.

2. Failure of Police Authorities in Age Verification:

Despite clear provisions under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 which mandates that the age of a person claiming to be a juvenile must primarily be determined on the basis of documentary evidence law enforcement agencies routinely fail to conduct proper age verification by ossification test in the absence of such documents. This laxity reflects a serious neglect of statutory duty and results in miscarriage of justice.

3. Inaction by Health Department Due to Lack of Radiologists/Infrastructure etc.:

In cases where documentary evidence is unavailable, the Act allows for medical tests to determine age. However, in the district of Ballia, such procedures are rendered impossible due to the absence of a qualified Radiologist since long. This lapse in healthcare infrastructure not only delays justice but also affects the credibility of the juvenile justice system.

Recommendations:

The above situation reveals a chain of administrative and procedural failures. It is imperative that:

(i) For developing a mechanism for stringent verification of documents submitted for age determination, the police is directed to strictly adhere to Section 94

of The Juvenile Justice (Care and Protection of Children) Act, 2015 and be trained accordingly.

(ii) Immediate steps be taken by the Health Department to appoint or depute at least one Radiologist in the district of Ballia to ensure compliance with the provisions of the Act.

Failure to address these issues may lead to continued abuse of legal provisions intended to protect genuinely vulnerable juveniles, thereby eroding public trust in the justice system.

33. Let a copy of this order be sent to the Principal Secretary for Medical Health and Family Welfare, Uttar Pradesh forthwith.

(2025) 4 ILRA 800

**ORIGINAL JURISDICTION
CRIMINAL SIDE**

DATED: ALLAHABAD 21.04.2025

BEFORE

**THE HON'BLE ARUN KUMAR SINGH
DESHWAL, J.**

Application U/S 528 BNSS No. 44720 of 2024

Nisha Kushwaha **...Applicant**
Versus
State of U.P. & Anr. **...Respondents**

Counsel for the Applicant:
Ronak Chaturvedi

Counsel for the Respondents:
G.A.

(A) Criminal Law - Cognizance - Magistrate's Power to Add or subtract any section - Code of Criminal Procedure, 1973 - Sections 190(1)(b), 204, 216, 218 & 228 - Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 210 - Indian Penal Code, 1860 - Sections 376/511, 406, 354, 498-A,

323, 504 & 506 - Dowry Prohibition Act - Sections 3/4, Magistrate, while taking cognizance u/s 190(1)(b) Cr.P.C., can take cognizance of all offences constituted by the facts reported by the police which also include the offences which are not mentioned in the charge-sheet - Not bound by Investigating Officer's conclusion - may take independent decision regarding cognizance of an offence on the basis of material available with the police report - Constitution Bench in *Dharam Pal* held Magistrate can issue process on basis of police report though accused not named - Magistrate has discretion under S.190(1)(b) CrPC/210 BNSS to take cognizance beyond IO's conclusions.(Para - 10,14,18,19,22,23)

Applicant lodged an FIR under Sections 498-A, 354, 323, 504, 506 IPC and Sections 3/4 of Dowry Prohibition Act - On submission of charge-sheet - she filed a protest petition seeking cognizance under Sections 376/511 and 406 IPC based on her statement u/s 164 Cr.P.C. - Magistrate rejected her plea citing lack of prima facie material - Present application under Section 528 BNSS was filed challenging that order.(Para - 2,3,4,24)

HELD: - Magistrate can take cognizance of an offence based on the police report's material, regardless of the Investigating Officer's opinion. This power includes (i) Summoning unnamed accused persons. (ii) Taking cognizance of offences under different sections than those mentioned in the charge-sheet. (iii) Dropping sections if there's insufficient material in the report. Court does not find any illegality in the impugned order passed by the learned Magistrate by which it refused to take cognizance of the offence u/s 376, 511 and 406 I.P.C. .(Para - 22,25)

Application U/S 528 BNSS dismissed. (E-7)

LIST OF CASES CITED: -

1. Pramatha Nath Mukherjee Vs St. of W.B., 1960 SCC Online SC 76

2. Dharam Pal & ors.Vs St. of Har. & anr.,(2014) 3 SCC 306
3. Nahar Singh Vs St. of U.P. & anr., (2022) 5 SCC 295

4. Balveer Singh & Anr. Vs St. of Raj. & anr., (2016) 6 SCC 680

5. St. of Guj. Vs Girish Radhakrishnan Varde, (2014) 3 SCC 659

6. Dablu Kujur Vs St. of Jhark.,(2024) 6 SCC 758

7. Sadab Vs St. of U.P. & anr., 2023 SCC Online All 30

8. Fakhruddin Ahmad Vs St. of Uttaranchal & anr., (2008) 17 SCC 157

9. Kishun Singh Vs St. of Bihar,(1993) 2 SCC 16

10. Ranjit Singh Vs St. of Punj., (1998) 7 SCC 149

11. U.T. of Ladakh Vs J&K National Conference, INSC 2023 (804)

(Delivered by Hon'ble Arun Kumar Singh Deshwal, J.)

1. Heard Sri Ronak Chaturvedi, learned counsel for the applicant and Sri Pankaj Saxena, learned A.G.A. for the State.

2. The present application has been filed to partly set aside the order rejecting the protest petition dated 23.11.2024 passed by Judicial Magistrate/Civil Judge (J.D.), FTC, (CAW), Jhansi in Case No. 25936 of 2024 (Misc. Case No. 839 of 2024) (State Vs. Gaurav and others) arising out of Case Crime No. 5 of 2024 u/s 498-A, 354, 323, 504, 506 I.P.C. and 3/4 of Dowry Prohibition Act, Police Station- Mahila Thana, District-Jhansi, by

which application for taking cognizance u/s 406, 376/511 I.P.C. has been rejected.

3. The issue involved in this case is that an F.I.R. was lodged by the applicant against opposite party no. 2 and other co-accused persons on 16.01.2024 u/s 498-A, 354, 323, 504, 506 I.P.C. and 3/4 of Dowry Prohibition Act. The police, after investigation, has submitted a charge-sheet against opposite party no. 2 u/s 498-A, 354, 323, 504, 506 I.P.C. and 3/4 of Dowry Prohibition Act while the charge-sheet was filed against other co-accused, Gaurav and Smt. Meera u/s 498-A, 323, 504 I.P.C. and 3/4 of Dowry Prohibition Act. The present applicant, who is the first informant, had filed a protest petition with the plea that in her statement, she made a specific allegation of an attempt to rape and non-returning of her streedhan by the opposite party no. 2, therefore, cognizance might also be taken u/s 376/511 and 406 I.P.C. This application was rejected by the learned Magistrate by the impugned order, which is under challenge.

4. Learned counsel for the applicant has submitted that while taking cognizance of the chargesheet, the Magistrate is not bound by the conclusion of the Investigating Officer. In support of his arguments, he has relied upon the judgement of Apex Court in the case of **Pramatha Nath Mukherjee Vs. State of West Bengal, 1960 SCC Online SC 76**, judgement in the case of **Dharam Pal and others Vs. State of Haryana and Another, (2014) 3 SCC 306**, judgement in the case of **Nahar Singh Vs. State of Uttar Pradesh and Another, (2022) 5 SCC 295** and judgement in the case of **Balveer Singh and Another Vs. State of Rajasthan and Another, (2016) 6 SCC 680**. It is further submitted by learned

counsel for the applicant that u/s 190(1)(b) of Cr.P.C., the Magistrate can take cognizance on the basis of fact available on the record with the police report. Therefore, the Magistrate, on the basis of material, can add or subtract the offence if material shows that the offence under other sections is also made out.

5. Per contra, Sri Pankaj Saxena, learned A.G.A. for the State has vehemently opposed the prayer on the ground that the Apex Court in the case of **State of Gujarat Vs. Girish Radhakrishnan Varde, (2014) 3 SCC 659** clearly observed in paragraphs nos.13, 14 and 16 that if charge-sheet is filed under certain sections then the Magistrate cannot include or add any section which is not mentioned in the charge-sheet. It is further submitted by learned A.G.A. that even in paragraph no. 36 of judgement in the case of **Dharam Pal (supra)**, it is clearly observed by the Apex Court that if after receiving the police report, Magistrate is satisfied with the prima facie case then he has to proceed on the basis of police report itself. It is also submitted that the issue in **Dharam Pal (supra)** was whether the Magistrate can take cognizance against the person who was mentioned as accused in the column of accused in the charge-sheet but in the present case, the issue is different whether the Magistrate can add or subtract any section after receiving the charge-sheet. Therefore, the case of **Dharam Pal (supra)** is not directly applicable to the present case.

6. Learned A.G.A. has also relied upon the recent judgement of Apex Court in the case of **Dablu Kujur Vs. State of Jharkhand, (2024) 6 SCC 758** wherein the Apex Court in paragraphs nos. 13 and 14 has observed that once the police report is

submitted, the Magistrate can accept the report and take cognizance of the offence and issue process, but if he disagrees, he can direct for further investigation, or he may discharge the accused or drop the proceeding. Therefore, the Apex Court clearly observed in this case that at the time of taking cognizance, the Magistrate has to decide whether, on the basis of the charge-sheet, the offence appears to have been committed or not with regard to the offence under particular sections.

7. Learned A.G.A. has also submitted that the issues in the case of **Girish Radhakrishnan Varde (supra)** and in the case of **Dharam Pal (supra)** are totally different. Therefore, the judgement delivered by the coordinate Bench in the case of **Sadab Vs. State of U.P. and another, 2023 SCC Online All 30** while delivering the judgement in the case of **Girish Radhakrishnan Varde (supra)**, the Apex Court did not consider the judgement of **Dharam Pal (supra)**, appears not to be correct as the issue was totally different in both the cases.

8. After hearing the submissions of learned counsel for the parties and perusal of record, the question which arises for determination is whether the Magistrate at the time of taking cognizance can add or subtract any section regarding offences on the basis of material available along with the charge-sheet?

9. The Apex Court, in the case of **Girish Radhakrishnan Varde (supra)** has decided the issue that the Magistrate at the time of taking cognizance cannot add or subtract the section mentioned in the charge-sheet and further observed that in case the relevant section has not been mentioned despite availability of material

on record then proper course is consideration of this issue at the time of framing of charge u/s 216, 218 or 228 Cr.P.C. Paragraph nos. 14 and 15 of **Girish Radhakrishnan Varde (supra)** is being quoted as under:-

14. But if a case is registered by the police based on the FIR registered at the police station under Section 154 CrPC and not by way of a complaint under Section 190(1)(a) CrPC before the Magistrate, obviously the magisterial enquiry cannot be held in regard to the FIR which had been registered as it is the investigating agency of the police which alone is legally entitled to conduct the investigation and, thereafter, submit the charge-sheet unless of course a complaint before the Magistrate is also lodged where the procedure prescribed for complaint cases would be applicable. In a police case, however after submission of the charge-sheet, the matter goes to the Magistrate for forming an opinion as to whether it is a fit case for taking cognizance and committing the matter for trial in a case which is lodged before the police by way of FIR and the Magistrate cannot exclude or include any section into the charge-sheet after investigation has been completed and charge-sheet has been submitted by the police.

15. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which

constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offences into the charge-sheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the Magistrate before whom the matter comes up for taking cognizance after submission of the charge-sheet and as already stated, the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under Sections 216, 218 or under Section 228 CrPC as the case may be which means that after submission of the charge-sheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the charge-sheet.

10. The Apex Court, in its earlier judgement of two Benches of Apex Court in the case of **Pramatha Nath Mukherjee (supra)**, has specifically held that the Magistrate, while taking cognizance u/s 190(1)(b) Cr.P.C., can take cognizance of all offences constituted by the facts reported by the police which also include

the offences which are not mentioned in the charge-sheet. Paragraph nos. 3 and 4 of **Pramatha Nath Mukherjee (supra)** is being quoted as follows:-

3. *It is quite clear that in deciding whether action shall be taken by him under sub-section (2) or sub-section (3) of Section 251-A the Magistrate has to form an opinion whether there is any ground for presuming that an accused has committed an offence triable under Chapter XXI or there is no such ground. When his opinion is that there is ground for a presumption that the accused has committed an offence punishable under Chapter XXI which the Magistrate is competent to try and which could be adequately punished by him he shall proceed with the trial. But when he forms the opinion that there is no ground for presuming that an offence punishable under Chapter XXI has been committed by the accused his duty is to discharge the accused. The real question is, when an order of discharge is made by the Magistrate in exercise of the powers under sub-section (2) of Section 251-A is the discharge in respect of all the offences which the facts mentioned in the police report would make out? The answer must be in the negative. When the Magistrate makes an order under Section 251-A(2) he does so as, after having considered whether the charge made in the police report of the offences triable under Chapter XXI is groundless he is of opinion that the charge in respect of such offence is groundless; but the order of discharge has reference only to such offences mentioned in the charge-sheet as are triable under Chapter XXI. It very often happens that the facts mentioned in the charge-sheet constitute one or more offences triable under Chapter XXI as warrant cases and also one or more other offences triable under Chapter XX. The*

order of discharge being only in respect of the offences triable under Chapter XXI does not affect in any way the position that charges of offences triable under Chapter XX also are contained in the police report.

4. But, says the learned counsel for the appellant, the Magistrate cannot proceed with the trial of these other offences triable under Chapter XX because no cognizance has been taken of such other offences. He contends that only after a fresh complaint has been made in respect of these offences triable under Chapter XX that the Magistrate can take cognizance and then proceed to try them after following the procedure prescribed by law. This argument ignores the fact that when a Magistrate takes cognizance of offences under Section 190(1)(b) CrPC, he takes cognizance of all offences constituted by the facts reported by the police officer and not only of some of such offences. For example, if the facts mentioned in the police report constitute an offence under Section 379 IPC as also one under Section 426 IPC the Magistrate can take cognizance not only of the offence under Section 379 but also of the offence under Section 426. In the present case the police report stated facts which constituted an offence under Section 332 IPC but these facts necessarily constitute also a minor offence under Section 323 IPC. The Magistrate when he took cognizance under Section 190(1)(b) CrPC of the offence under Section 332 IPC cannot but have taken cognizance also of the minor offence under Section 323 IPC. Consequently, even after the order of discharge was made in respect of the offence under Section 332 IPC the minor offence under Section 323 of which he had also taken cognizance remained for trial as there was no indication to the contrary. That being an offence triable under Chapter XX CrPC the

Magistrate rightly followed the procedure under Chapter XX.

11. The process of taking cognizance has been mentioned u/s 190 Cr.P.C. (corresponding Section 210 B.N.S.S.), which prescribes that the Magistrate can take cognizance either on complaint or on police report or on the information received from any other person other than police officer or upon his own knowledge. Section 210 B.N.S.S. is being quoted as follows :- .

Section 210 in Bharatiya Nagarik Suraksha Sanhita, 2023

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts, including any complaint filed by a person authorised under any special law, which constitutes such offence;

(b) upon a police report (submitted in any mode including electronic mode) of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

12. The Magistrate at the time of taking cognizance on any of the three modes mentioned in Section 190 Cr.P.C. makes an opinion that there is sufficient ground for proceeding, then he issues process, i.e. summons/warrant u/s 204 Cr.P.C. for the appearance of the accused.

In the present case, we are concerned with only 190(1)(b) Cr.P.C. regarding cognizance of police reports.

13. From the perusal of Section 190(1)(b) Cr.P.C., it is clear that the Magistrate takes cognizance of any offence on the basis of the fact mentioned in the police report.

14. In the case of **Fakhruddin Ahmad Vs. State of Uttaranchal and Another, (2008) 17 SCC 157**, the Apex Court observed that when the police report is submitted before the Magistrate, the Magistrate is not bound by the opinion of the Investigating Officer, and he may take cognizance of any offence on the basis of material available with police report irrespective of the view expressed by the police in their report and decide whether an offence has been made out or not. Paragraph no. 12 of **Fakhruddin Ahmad (supra)** is being quoted as under:-

12. Thus, it is trite that the Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion in this behalf, irrespective of the view expressed by the police in their report and decide whether an offence has been made out or not. This is because the purpose of the police report under Section 173(2) of the Code, which will contain the facts discovered or unearthed by the police as well as the conclusion drawn by the police therefrom is primarily to enable the Magistrate to satisfy himself whether on the basis of the report and the material referred therein, a case for cognizance is made out or not.

15. The judgement of **Girish Radhakrishnan Varde (supra)** was

delivered by the Apex Court on 25.11.2013 but prior to the delivery of this judgement, the Constitution Bench of Apex Court had also delivered its judgement in the case of **Dharam Pal (supra)** on 18.07.2013, wherein the Apex Court observed that the Magistrate, after receiving the police report, may disagree with the same and issue process and summon against the accused on the basis of material available with police report and take cognizance of offence and summon the person as accused though his name was not mentioned in the charge-sheet as accused but in column 2 of the report. It is further observed by the Constitution Bench that if the Magistrate decides to proceed against a person though he was not nominated as an accused by the police then the Magistrate would have to proceed on the basis of police report itself. Paragraph nos. 35, 36, 39, 40 of **Dharam Pal (supra)** are quoted as under:-

35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) CrPC. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.

36. This brings us to the third question as to the procedure to be followed by the Magistrate if he was satisfied that a

prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decided to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Sessions Court.

39. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Sessions Judge.

40. In that view of the matter, we have no hesitation in agreeing with the views expressed in *Kishun Singh* case [*Kishun Singh v. State of Bihar*, (1993) 2 SCC 16 : 1993 SCC (Cri) 470]

that the Sessions Court has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Sessions Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.

16. In the case of **Dharam Pal (supra)**, three Judge Bench, on finding the judgement of **Kishun Singh Vs. State of Bihar, (1993) 2 SCC 16** conflicting with the judgement of **Ranjit Singh Vs. State of Punjab, (1998) 7 SCC 149** regarding authority of Magistrate u/s 193 Cr.P.C. in the case triable by Sessions Court, referred the matter to larger Bench. Thereafter, a Constitution Bench was formed, which framed six questions as mentioned in paragraph no. 7 of *Dharam Pal (supra)* which is as follows :-

7. The questions which require the consideration of the Constitution Bench are as follows:

7.1. Does the Committing Magistrate have any other role to play after committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session?

7.2. If the Magistrate disagrees with the police report and is convinced that a case had also been made out for trial against the persons who had been placed in column 2 of the report, does he have the jurisdiction to issue summons against them also in order to include their names, along with Nafe Singh, to stand trial

in connection with the case made out in the police report?

7.3. Having decided to issue summons against the appellants, was the Magistrate required to follow the procedure of a complaint case and to take evidence before committing them to the Court of Session to stand trial or whether he was justified in issuing summons against them without following such procedure?

7.4. Can the Sessions Judge issue summons under Section 193 CrPC as a court of original jurisdiction?

7.5. Upon the case being committed to the Court of Session, could the Sessions Judge issue summons separately under Section 193 of the Code or would he have to wait till the stage under Section 319 of the Code was reached in order to take recourse thereto?

7.6. Was Ranjit Singh case [Ranjit Singh v. State of Punjab, (1998) 7 SCC 149 : 1998 SCC (Cri) 1554] , which set aside the decision in Kishun Singh case [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] , rightly decided or not?

17. The Constitution Bench finally held that decision in Kishun Singh (supra) is correct and decision in Ranjit Singh (supra) does not lay down correct law in respect of power of Sessions Court after committal of case to it.

18. The judgement of the Constitution Bench of Dharam Pal (supra) was also considered in the case of Balveer Singh (supra) wherein it was observed that the Magistrate, after receiving the police report, can take cognizance of an offence on the basis of material available with the police report even if the same is not mentioned in the

charge-sheet. Paragraph no. 12 of Balveer Singh (supra) is being quoted as under:-

12. In view of the aforesaid provisions, the question that arises is as to whether the Magistrate can take cognizance of an offence which is triable by the Court of Session or he is to simply commit the case to the Court of Session, after completion of committal proceedings as it is the Court of Session which is competent to try such cases. On the one hand, Section 190 of the Code empowers the Magistrate to "take cognizance of any offence" which gives an impression that such Magistrate can take cognizance even of an offence which is triable by the Court of Session. On the other hand, when the case is committed to the Court of Session by the Magistrate, Section 193 of the Code stipulates that the Court of Session shall take cognizance "as a court of original jurisdiction" which shows that the cognizance is taken by the Court of Session as a court of original jurisdiction and, thus, it is the first time the cognizance is taken and any order passed by the Magistrate while committing the case to the Court of Session did not amount to taking cognizance of the offence which is triable by the Court of Session.

19. The Apex Court again, in the case of **Nahar Singh (supra)** after considering the five Judge Bench judgement of **Dharam Pal (supra)** as well as **Balveer Singh (supra)** observed that on receiving the police report, the Magistrate is not bound by the opinion of the Investigating Officer mentioned in the charge-sheet. He can independently apply his mind to the material available with the police report and take cognizance of an offence even against the person who was neither

mentioned as an accused nor mentioned in column 2 of police report, and it was further observed that it is the duty of the Magistrate to bring a person to trial against whom there is material in the police report. Paragraphs nos. 25, 26 and 27 of **Nahar Singh (supra)** are being quoted as under:-

25. *Jurisdiction of the Magistrate to take cognizance of an offence triable by a Court of Session is not in controversy before us. The course open to a Magistrate on submission of a police report has been discussed in Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159]. In para 39 of the Report in Dharam Pal case [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159], such power or jurisdiction of the Magistrate has been spelt out. We have quoted this passage earlier in this judgment.*

26. *The other difference so far as this case is concerned in relation to the factual basis on which the decision of the Constitution Bench in Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] as also the judgment in Raghubans Dubey [Raghubans Dubey v. State of Bihar, (1967) 2 SCR 423 : AIR 1967 SC 1167] were delivered is that in both these cases, the names of the persons arraigned as accused had figured in Column (2) of the charge-sheet. This Column, as it appears from the judgment in Raghubans Dubey [Raghubans Dubey v. State of Bihar, (1967) 2 SCR 423 : AIR 1967 SC 1167], records the name of a person under the heading “not sent up”. In that case, the person concerned was named in the FIR. But that factor, by itself, in our opinion ought not to be considered as a reason for the Court in not summoning an accused not named in the FIR and whose name also*

does not feature in charge-sheet at all. These judgments were delivered in cases where the names of the persons sought to be arraigned as accused appeared in Column (2) of the police report. In our opinion, the legal proposition laid down while dealing with this point was not confined to the power to summon those persons only, whose names featured in Column (2) of the charge-sheet.

27. *In Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159], the second point formulated (para 7.2) related to persons named in Column (2), but the issue before the Constitution Bench related to that category of persons only. This is the position of law enunciated in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] and Raghubans Dubey [Raghubans Dubey v. State of Bihar, (1967) 2 SCR 423 : AIR 1967 SC 1167]. In the latter authority, the duty of the Court taking cognizance of an offence has been held “to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons”. Such duty to proceed against other persons cannot be held to be confined to only those whose names figure in Column (2) of the charge-sheet.*

20. So far as the judgement of the Apex Court in **Girish Radhakrishnan Varde (supra)** is concerned, that judgement appears to have been passed without considering the earlier judgment of the Apex Court in the case of **Pramatha Nath Mukherjee (supra)** as well as constitutional Bench judgement in the case of **Dharam Pal (supra)**. The law is well settled that the judgement of a larger Bench

would be binding. Similarly, the Apex Court in the case of **Union Territory of Ladakh Vs. Jammu and Kashmir National Conference, INSC 2023 (804)** has also observed that in case of conflicting judgements of equal Bench on an issue then the judgement that is earlier in time, will be binding. Therefore, judgement in the case of **Pramatha Nath Mukherjee (supra)** would be binding.

21. This issue was also considered by coordinate Bench of this Court in the case of **Sadab (supra)**. In that case, His Lordship Hon'ble Sameer Jain, J. also observed that Constitution Bench of the case of **Dharam Pal (supra)** was not placed before the Bench hearing the case of **Girish Radhakrishnan Varde (supra)**. Therefore, in view of the Constitution Bench judgment of **Dharam Pal (supra)**, concerned Magistrate has jurisdiction to take cognizance of any offence on the basis of material available with the police report though section of that offence may not be mentioned in the charge-sheet.

22. From the above analysis, it is clear that after receiving the police report, the Magistrate can exercise its power u/s 190(1)(b) Cr.P.C. and take cognizance of any offence against a person on the basis of material available with the police report without being influenced by the opinion of the Investigating Officer. This power of the Magistrate at the time of taking cognizance includes summoning the person who was not named as an accused in the police report, cognizance of an offence under a particular section(s) even though that section has not been mentioned in the charge-sheet or dropping a section by not taking cognizance in that section on the ground

that there is no material in the police report regarding that offence.

23. In the judgement of **Dablu Kujur (supra)** relied upon by the learned A.G.A., the Apex Court also observed that at the time of taking cognizance after receiving the police report, the Magistrate may disagree with the report and may take cognizance and issue process against any person. That judgement also further supports that Magistrate is not bound by the opinion of the Investigating Officer and may take independent decision regarding cognizance of an offence on the basis of material available with the police report. Paragraphs nos. 13 and 14 of **Dablu Kujur (supra)** are being quoted as under:-

13. We are more concerned with Section 173(2) as we have found that the investigating officers while submitting the charge-sheet/police report do not comply with the requirements of the said provision. Though it is true that the form of the report to be submitted under Section 173(2) has to be prescribed by the State Government and each State Government has its own Police Manual to be followed by the police officers while discharging their duty, the mandatory requirements required to be complied with by such officers in the police report/charge-sheet are laid down in Section 173, more particularly sub-section (2) thereof.

14. It may be noted that though there are various reports required to be submitted by the police in charge of the police station before, during and after the investigation as contemplated in Chapter XII CrPC, it is only the report forwarded by the police officer to the Magistrate under sub-section (2) of Section 173 CrPC that can form the basis for the competent court for taking cognizance thereupon. A charge-

sheet is nothing but a final report of the police officer under Section 173(2)CrPC It is an opinion or intimation of the investigating officer to the court concerned that on the material collected during the course of investigation, an offence appears to have been committed by the particular person or persons, or that no offence appears to have been committed.

24. Coming back to the facts of the case in hand, from the perusal of the impugned order, it is clear that while passing the same, learned Magistrate has considered the statement of complainant u/s 161 and 164 Cr.P.C. The opposite party no. 2 in her statement u/s 161 Cr.P.C. made allegation of outraging the modesty against her father-in-law but in her statement u/s 164 Cr.P.C., she made allegation of attempt to rape against her father-in-law with further allegation that same could be verified from CCTV camera footage but neither the police has recovered the CCTV camera footage nor the first informant has given the same to the police. In such circumstances, the Magistrate took cognizance u/s 354 Cr.P.C. on the basis of an uncontroverted allegation. Similarly, there is no allegation of beating against the sister-in-law. The only allegation against them is that they used to taunt her. So far as not taking cognizance u/s 406 I.P.C. is concerned, from the perusal of statement u/s 161 and 164 of opposite party no. 2, there is no such allegation which prima facie attracts the offence u/s 406 I.P.C.

25. Therefore, this Court does not find any illegality in the impugned order passed by the learned Magistrate by

which it refused to take cognizance of the offence u/s 376, 511 and 406 I.P.C.

26. Accordingly, the present application is dismissed.

(2025) 4 ILRA 811
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 09.04.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Criminal Appeal No. 275 of 1986

Bandu Ram

...

...Appellant

Versus

State of U.P.

...Respondent

Counsel for the Appellant:

Sri R.N. Lal, Sri Akshay Kumar Shukla, Sri Gaurav Singh, Sri Ravindra Pal Singh Kashyap

Counsel for the Respondent:

A.G.A.

(A) Criminal Law - Murder - Appeal against conviction - Extra-Judicial Confession - Indian Penal Code, 1860 - Section 302 - Evidence Act, 1872 - Sections 8 & 27 - The Code of criminal procedure, 1973 - Sections 161 & 313 - Extra-judicial confession voluntarily made to village Chowkidar and supported by recovery of weapon with human blood - Evidence of hostile witnesses admissible to the extent found credible - Hostile witnesses' partial reliability upheld - Adverse inference drawn from refusal to give specimen signature - Hostile witness - Extra-judicial confession - Adverse inference - Conviction can be sustained on extra-judicial confession corroborated by

recovery and conduct of accused. (Para -4, 6, 7, 20, 43-48,54,55,56,59-61)

Accused admitted killing his wife over suspicion of character - handed over weapon to police - confession corroborated by forensic evidence - prompt FIR lodged by Chowkidar (P.W.-1) - who later turned hostile. (Para - 4-7, 20, 47, 60)

HELD: -Accused's extra-judicial confession, recovery of blood-stained weapon and refusal to provide specimen signature corroborated guilt. Hostile witnesses' usable testimony relied upon. Conviction under Section 302 IPC upheld. (Para -59-61)

Criminal appeal dismissed. (E-7)**LIST OF CASES CITED: -**

1. Surya Baksh Singh Vs St. of U.P., (2014) 14 SCC 222
2. Jai Prakash Singh Vs St. Of Bihar & anr. , (2012) 4 SCC 379
3. Pradeep Narayan Madgaonkar & ors. Vs St. of Maha., 1995 (4) SCC 255
4. Karamjit Singh Vs St. (Delhi Administration), (2003) 5 SCC 291
5. Girja Prasad Vs St. of M.P. (2007) 7 SCC 625
6. Prakash Chand Vs St. (Delhi Administration), (1979) 3 SCC 90
7. A.N. Venkatesh Vs St. of Karn., (2005) 7 SCC 714
8. Ashwani Kumar @ Ashu & anr. Vs St. Of Punj., (2015) 6 SCC 308
9. Som Dutt Vs St. of Punj., 2019 SCC Online P&H 759
10. Bhagwan Dass Vs St. (NCT of Delhi), (2011) 6 SCC 396
11. Rajesh Yadav & anr. Etc. Vs St. of U.P. (2022) 12 SCC 200
12. Digamber Vs St. of Maha., 2023 SCC Online SC 531

(Delivered by Hon'ble Praveen Kumar Giri, J.)

1. While reserving the judgement on 20.03.2025, this Court has passed the following order:

“1. List revised. No one appears on behalf of the appellant to press the present appeal.

2. Vide order dated 29.07.2024, Shri Anurag Mishra, Advocate was appointed as Amicus Curiae to argue the matter and he has also obtained the paper-book.

3. As per the latest office report, the sole surviving appellant has been served through his daughter-in-law.

4. We find that vide order dated 05.02.2024, when no one appears for the appellant,ailable warrant was issued against the appellant.

5. As per office report dated 04.03.2024, the appellant has appeared before the lower court and later released on bail.

6. Today, again no one one appears for the appellant including the Amicus Curiae even though notice has been served.

7. In **Surya Baksh Singh vs. State of Uttar Pradesh, (2014) 14 SCC 222**, the Hon'ble Apex Court has held that it is always not necessary to adjourn the matter in case both appellants or his counsels/lawyers are absent and the Court can decide the appeal on merits after perusal of the record and the judgement of the trial Court. It has further been observed that if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation. It has also been observed that appointment of Amicus Curiae is also on the discretion of the court.

In paragraph 26 of the said judgement, it was held that it is always not essential for the High Court to appoint Amicus Curiae, paragraphs 24 and 26 of the said judgement whereof are quoted as under:

“24. It seems to us that it is necessary for the Appellate Court which is confronted with the absence of the convict as well as his Counsel, to immediately proceed against the persons who stood surety at the time when the convict was granted bail, as this may lead to his discovery and production in Court. If even this exercise fails to locate and bring forth the convict, the Appellate Court is empowered to dismiss the appeal. We fully and respectfully concur with the recent elucidation of the law, profound yet perspicuous, in *K.S. Panduranga v. State of Karnataka*, (2013) 3 SCC 721. After a comprehensive analysis of previous decisions our learned Brother had distilled the legal position into six propositions:

19.1. that the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. that the Court is not bound to adjourn the matter if both the Appellant or his Counsel/lawyer are absent;

19.3. that the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. that it can dispose of the appeal after perusing the record and judgment of the trial court.

19.5. that if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the Appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. that if the case is decided on merits in the absence of the Appellant, the higher court can remedy the situation.

25 ...

26. Reverting back to the facts of the present case a perusal of the impugned order makes it abundantly evident that the High Court has considered the case in all its complexities. The argument that the High Court was duty-bound to appoint an amicus curiae is not legally sound. Panduranga correctly considers *Mohd. Sukur Ali v. State of Assam* (1996) 4 SCC 729 as per incuriam, inasmuch as the latter mandates the appointment of an amicus curiae and is thus irreconcilable with *Bani Singh vs. State of U.P.* (1996) 4 SCC 720. In the case in hand the High Court has manifestly discussed the evidence that have been led, and finding it of probative value, has come to the conclusion that the conviction is above Appellate reproach correction and interference. In view of the analysis of the law the contention raised before us that it was essential for the High Court to have appointed an amicus curiae is wholly untenable. The High Court has duly undertaken the curial responsibility that fastens upon the Appellate Court, and cannot be faulted on the approach adopted by it. In this respect, we find no error.?”

(Emphasis supplied)

8. Under such circumstances, we proceed to consider the present appeal on merits with the help of Shri Amit Sinha, learned AGA-I for the State.

9. Judgment Reserved.”

2. We have carefully perused the record and judgment of the trial court and have heard Shri Amit Sinha, learned AGA-I in support of the prosecution case.

3. The present appeal has been filed challenging the judgment and order dated

20.01.1986 passed by Sri B.K. Srivastava, Sessions Judge, Rampur in Sessions Trial No.122 of 1985 arising out of Case Crime No. 249 under Section 302 IPC at Police Station- Shahjad Nagar, District- Rampur, convicting and sentencing the appellant Bandu Ram to life imprisonment under Section 302 IPC.

4. **Prosecution story**, in brief is that the village Chowkidar Sumeri (complainant) who is neighbour of accused Bandu Ram, on 17.12.1984, at about 10:00 A.M., hearing the noise of hot talks between the accused and his wife, he went to the house of the accused and came to know that the couple had gone to their field to see something located in their field. Being the village Chowkidar, he went towards the field to see the couple then at about 11:00 P.M., the accused met him on the way outside the village who was coming from his field. The complainant enquired about his wife. Thereupon, the accused told him that his wife was of bad character and had sold the ornaments of the house, hence, he had killed her in the field. Thereafter, the complainant along with some villagers went to the field and saw the dead body of the deceased Ram Shri lying near puyal. After this the complainant went to the police station to lodge the report of the incident.

5. The alleged incident of murder occurred on 17.12.1984 at about 11:00 P.M. in the field of the accused and on 18.12.1984 at 01:00 A.M. (night), on the oral information of the village Chowkidar, prompt first information report was lodged as Case Crime No. 249 under Section 302 IPC at Police Station- Shahjad Nagar, District- Rampur.

6. Head Constable Prempal Singh (P.W.-6) prepared the check report and its entry was also duly made in the G.D. being its carbon copy. The Check FIR was signed by the village Chowkidar.

7. On 18.12.1984, at about 02:30 A.M., the husband of the deceased reached at the police station and produced a signed report admitting guilt about killing of his wife. He handed over the blood stained sharp edged weapon i.e. Gandasa as well as country made pistol along with two live cartridge and four empty cartridge to the police.

8. On the same date i.e. 18.12.1984, police prepared memo in respect of handing over of weapon as well as two live cartridge and four empty cartridge along with one country-made pistol. Police also found blood stains on the clothes worn by the accused-husband, therefore, the clothes were also taken in the custody by the police and its memo was prepared. Sweater, Kamij, Payjama, and blood stained sharp edged weapon, Gandasa were sent to the Forensic Science Laboratory for ascertaining the human blood.

9. On the same date i.e. 18.12.1984, the Investigating Officer i.e. P.W.-7 reached on the spot and found that dead body of Ram Shri was lying in the field.

10. On the same date i.e. 18.12.1984, the Investigating Officer (P.W.-7) recorded the statement of Head Constable, Prempal Singh (P.W.-6) who had scribed the F.I.R. and had also recorded the statements of informant Sumeri (Chowkidar), Sewa Ram (P.W.-3) and Hotey Lal (P.W.-4) under Section 161 Cr.P.C.

11. On the same date i.e. 18.12.1984, in the early morning at 07:00 A.M., the Investigating Officer prepared Panchayatnama mentioning that proper light was not in the night, therefore, Panchayatnama was prepared in the morning in presence of witnesses Aangan Lal, Sewa Ram, Hotey Lal and Dal Chand and in the Panchayatnama, it has been mentioned that the first information report was lodged by P.W.-1 Sumeri (Chowkidar).

12. On the same date i.e. 18.12.1984, the police collected blood stained earth along with blood stained blouse, dhoti, peti coat, braid, earring, brass ring, pair of toe ring, copper amulet and bangles (in pieces) and the same were sent to forensic science laboratory and in the Forensic Science Laboratory Report/Serological Report, it has been found that there was human blood on these items.

13. On the same date i.e. 18.12.1984, the Investigating Officer prepared topographical report (Ext. Ka-6) of the field where the dead body of the deceased was lying.

14. On the same date i.e. 18.12.1984, post-mortem was conducted on the dead body of the deceased by Dr. B.M. Saxena and following injuries were found on the dead body of the deceased:

“1- Incised wound 20 cm x 10 cm into bone deep over left side neck. All the vessels and muscles are cut underneath the injury.

2- Incised wound 2 cm x 0.5 cm into scalp deep over right side head, 10 cm above right eye brow.

3- Incised wound 3 cm x 0.5 cm into muscle over right angle of jaw.

4- Incised wound 6 cm x 4 cm into muscle over back of left shoulder.

5- Incised wound 2 cm x 0.5 cm into muscle deep over back of left forearm middle.

6- Incised wound 2 cm x 0.5 cm into skin deep over back of left elbow joint

7- Incised wound 3 cm x 0.5 cm into muscle deep over left palm.”

The Doctor had opined that the cause of death was shock and hemorrhage as a result of ante mortem injuries.

15. The investigation was completed by the Investigating Officer and charge-sheet under Section 302 IPC has been submitted against the accused-appellant, Bandu Ram, husband of the deceased.

16. Learned Judicial Magistrate took cognizance on the charge-sheet and committed the case to the court of Session after compliance of Section 207 Cr.P.C.

17. Learned Sessions Judge framed charges under Section 302 IPC against the accused-appellant. The accused denied the charges framed against him and sought trial.

18. The prosecution, in order to prove its case, has examined 8 witnesses namely, PW-1 Sumeri (complainant); PW-2 Kripal, villager/neighbourer of the accused; PW-3, Sewa Ram, villager/neighbourer of the accused; PW-4, Hotey Lal, villager/neighbourer of the accused; P.W.-5 Akhatar, owner of the tea-stall located nearby the police station; P.W.-6 Head constable/Head Moharir Prempal Singh; P.W.-7 S.O. Yogendra Pal Ahlawat and P.W.-8 Constable Genda Singh.

19. In addition to the aforesaid, the prosecution produced certain documents, which were exhibited during the trial as (i) First Information Report as Ext. Ka.1 (ii) Written Report as Ext. Ka.26 (iii) Recovery Memo of country-made pistol, live and empty cartridges and blood stained 'Gandasa' as Ext. Ka.3 (iv) Recovery Memo of blood stained clothes as Ext. Ka.4 (v) Recovery Memo of 'Hawai Chappal' as Ext. Ka.7 (vi) Recovery Memo of blood stained and plain puwal as Ext. Ka.8 (vii) Recovery Memo of blood stained and plain earth as Ext. Ka.9 (viii) Recovery Memo of ornaments as Ext. Ka.17-A (ix) Statement of Sumeri as Ext. Ka.19 (x) Statement of Shoba Ram as Ext. Ka.20 (xi) P.M. Report as Ext. Ka. 21 (xii) Report of Vidhi Vigyan Prayogshala as Ext. Ka. 22 (xiii) Panchayatnama as Ext. Ka. 10 (xiv) Charge-sheet (Mool) as Ext. Ka. 18 (xv) Affidavit of Maharaj Singh as Ext. Ka. 23 (xvi) Affidavit of Lalta Prasad as Ext. Ka. 24 (xvii) Affidavit of Hetram Singh as Ext. Ka. 25.

20. Sumeri (P.W.-1) who is the informant of the present case, in his statement recorded under Section 161 Cr.P.C., on 18.12.1984, stated that he heard his neighbour Bandu Ram (appellant) and his wife arguing on some point and when he went to their house, he found that they had gone to their field later when he went to the field to look for them, in the way at about 11:00 A.M. he saw Bandu Ram was returning then he accosted the appellant and enquired about his wife. Thereupon appellant told him that his wife was of bad character and had sold the ornaments of the house hence, he had killed her in the field.

However, when he was called to depose, he had not supported the prosecution version and turned hostile.

21. Kripal (P.W.-2) has deposed that he had last seen the deceased in the company of the accused. This witness had heard the appellant telling the Chowkidar that he had killed his wife. Relevant extracts of his deposition reads as under:

“बांदू राम हाजिर अदालत को जानता हूँ इसकी बीबी मृतका रामश्री को भी जानता था। चाज 9,10 महीने हुये 17-12-84 की बात है कि रात में करीब 10 बजे मे मूलचन्द्र के मकान के पिछवारे झाड़ा फिरने गया था तब बांदू और उसकी औरत को साथ-साथ अताई नगर की तरफ जाते देखा था उधर ही बांदू का खेत है। थोड़ी देर बाद उसी तरफ से मैंने हाय की चीख सुनी। तभी चोकीदार सुम्मेरी सोभा राम और छोटे लाल उसी और जाते दिखे तभी बांदू राम उधर से गडासा लिये हुये आया चोकीदार ने इस्से पूछा कि तू अपनी बीबी को साथ लेकर गया था वह कहा है तो इसने बचाया कि उस साली को मार आया।

यह सुनकर सुम्मेरी बगैरा लाश की ओर चले गये और बांदू भाग गया। बांदू के अपनी पत्नी से ताल्लुकात खुशगवार नहीं थे लडाईं रहेती थी, मै रजा टेक्स्टाइल्स मे काम करता हूँ डियूटी से छूटकर 7,8 बजे गाव आया था मेरा पेट ठीक नहीं था इस लिये मै रात मे झाड़ा फिरने गया था। बांदू घटना के समय व अब भी शिवा पेपर मिल धमोरा मे काम करता है।”

In cross-examination, this witness withstood to his earlier statement.

22. Sewa Ram (P.W.-3), in his statement under Section 161 Cr.P.C., had stated that Chowkidar Sumeri, who is from our village called us to go towards the fields. Thereafter, I along with Hotey went towards the field and on the way, we met Bandu Ram. Sumeri enquired the appellant about his wife, he told that I have killed my wife. She is lying on straw in the field. It was known that yesterday evening Bandu Ram and his wife had a fight over something and their dispute has been going on since before. Bandu Ram was holding Gandasa and a pistol in his hand that time.

However, when this witness appeared to depose in the court, he had also not

supported the prosecution version and turned hostile.

23. Hotey Lal (P.W.-4), who was also the witness of Panchayatnama, had deposed as under:

“ बांदू राम मुलजिम हाजिर अदालत को जानता हूँ यह हमारे गांव का है इसकी बीबी रामश्री को भी जानता था। रामश्री का कत्ल करीब 10 महीने हुये होगया। कत्ल की रात सुम्मेरी चौकीदार मेरे घर पर आया और मुझे व सेवा राम को लेकर गश्त लगाने को चला। जब हम लोग मूल चन्द्र के मकान के पिछवाड़े पहुँचे तो सामने से बांदू राम मुलजिम हाजिर अदालत हाथ में मैं गंडासा लिये हुये आता दिखाई दिया तब सुम्मेरी जो हम लोगो मे सब से आगे था ने बांदू राम को रोका। पूछने पर उसने बताया कि वह अपनी औरत का कत्ल करके आ रहा है और बताया कि लाश अपने चक मे पयाल के ढेर मे डाल आया है यह बताकर बांदू राम चला गया। हम लोग फिर बांदू के खेत पर गये वहां पर बांदू की औरत की लाश पड़ी थी उसके एक पैर मे हवाई चप्पल पहनी हुई थी ओर एक चप्पल अलग पड़ी हुई थी। मैने वहां पर और कुछ नही देखी।

बांदू राम की इसकी औरत से पटती नही थी खूब झगडा होता था मेरा घर पास मे है मै बराबर झगडा सुनता था उसके लिये खाना भी नही बनाती थी यह खुद बनाता था। रामश्री की लाश का दरोगाजी मे पचायतनामा तइयार किया था। उसमे मै गवाह था। ”

24. Akhtar (P.W.-5), claims to have a tea-stall near the police station. He deposed that he had seen the accused-appellant going to the police station with Gandasa. He had also stated that he did not know the accused by name.

25. Head Constable Prempal Singh (P.W.-6), in his deposition proved that the F.I.R. was lodged by Sumeri (P.W.-1) and he prepared the other Fards. Further, he deposed about the production of the written report by the accused along with blood-stained Gandasa, country made pistol, two live cartridges and four empty cartridges.

26. S.O. Yogendra Pal Singh Ahlawat (P.W.-7), Investigating Officer of the case,

deposed about the entire work done during the course of investigation. He deposed, on 18.12.1984, I was posted as Police Station Incharge at Police Station- Shahjahan Nagar. On that day at 01:A.M. Sumeri Chowkidar lodged an F.I.R. (Ext. Ka-1) of the incident in my presence. Head Constable Prempal wrote the report. Thereafter I along with SI Atar Singh and other officials left for the village Atai Nagar, where I found the dead body of Ram Shri lying in the field of the accused but due to lack of sufficient light, I could not make the Panchayatnama of the dead body in the night. I have taken the statement of Hotey Lal and Sewa Ram at spot. I got the Panchayatnama of the dead body done through SI Atar Singh in morning and I had prepared the site plan (Ex. Ka- 6). The dead body was lying on the puyal, there was blood and a pair of slippers lying nearby, I had taken the blood stained earth, puyal and plain soil from the spot in custody and marked them as Ex. 14 to 17. Dead body of the deceased was sent for the post mortem along with copy of Check report and relevant documents. Then I came to know that the accused was in the police station and he had to be questioned. After reaching the police station, I took the statement of the accused. Then I took the statements of Head Constable Prempal, Constable Genda Singh and Constable Rajveer Singh and P.W.-5 Akhtar and another. Then I went back from the police station to the place of the incident and stayed there for the night.

27. This witness further deposed that in the morning on 18.12.1984 at about 8:30 A.M., he took statements from a few people in the neighbourhood and took into custody blouse, dhoti, petticoat, braid, earring, ring, pair of toe rings, amulet and bangles (in pieces) found on the body of the deceased and marked them as Ex. 5 to

13. The clothes of the accused and Gandasa etc. were sent to the Chemical examiner for examination and he had not found any overwriting in the thumb impression of Sumeri (P.W.-1) in the Check Report. In cross-examination, he withstood the depositions made in the examination-in-chief. This witness even denied a suggestion put to him that he had obtained the thumb impression on a white paper and thereafter he had himself written the report of Sumeri.

28. Genda Singh (P.W.-8) stated that he was present at the police station, when the accused surrendered along with blood-stained Gandasa. He has also stated about taking in possession the blood-stained clothes of the accused.

29. After prosecution evidence was completed, the accused was put to question under Section 313 of Cr.P.C. wherein the accused appellant had stated that he was falsely implicated, the witnesses which were produced had given false statements.

30. At the end of the trial, after hearing the arguments on behalf of prosecution and the defence, the Trial Court convicted the accused-appellant as above.

31. The ground as taken before the trial court is that in the morning following the night of occurrence, appellant was sleeping in his Baithak, when he was awakened by the policemen, who told him that his wife had been killed and the policemen further asked him to name the culprit. As he had shown his inability to give out the name of the culprit, the policemen falsely implicated

him. He has further alleged that his relations with his wife were quite cordial.

32. Before the trial court, it was also pleaded by the accused that F.I.R. has not been proved and motive has also not been proved.

33. Further ground taken before the learned trial court is that the order of conviction is not sustainable as the P.W.-1, Chowkidar/Complainant and P.W.-3, Sewa Ram have not supported the prosecution case and were declared hostile. There is no eye-witness of the alleged incident and prosecution has falsely implicated the appellant. The case is based on the extra judicial confession which is a very weak piece of evidence and is not sustainable in the eye of law. The learned Sessions Judge has misread the evidence adduced in favour of the prosecution and the prosecution has failed to prove its case beyond all reasonable doubts.

34. The ground taken in the memo of appeal is that the conviction and the sentence is against the weight of the evidence on record; in contrary to law; and is too severe.

35. Per contra, learned A.G.A. has submitted that it is a case of filing prompt F.I.R. and extra-judicial confession made by the accused-appellant not only before the police personnel but also before the P.W.-1, P.W.-3 and P.W.-4. He further submits that accused was last seen in between 10 to 11 P.M. on 17.12.1984 in the company of the deceased. Accused-appellant was immediately seen coming out from the field after the incident. Thereafter, he made extra-judicial confession to P.W.-1 about killing his wife. In the report of Chemical Examiner, it has been found that

the blood stain was found on the clothes of the accused tallied with those found on the clothes of the deceased.

36. Learned AGA further submitted that the couple was not on good terms with each other. The accused-appellant has also doubt about the character of his wife. Hotey Lal (P.W.-4) has also deposed about the strained relations of the accused with his wife. On the date of incident i.e. 17.12.1984, the couple were arguing on some point and later they went to locate some thing in the field where, the accused had killed his wife.

37. We find that the incident occurred at 11:00 P.M. at the night of 17.12.1984 in respect of murder of wife of the convicted appellant and prompt F.I.R. was lodged by the Village Chowkidar, after a gap of about two hours i.e. at 1:00 A.M at night of 18.12.1984. The first information report was lodged on the basis of oral Tehreer/report but thumb impression of the informant was obtained and the same was proved by the Head Constable/Scribe of the F.I.R.

38. In respect of promptly lodged F.I.R., the Supreme Court in **Jai Prakash Singh v. State Of Bihar And Another , (2012) 4 SCC 379, in paragraph No. 12,** has observed as under:

12. The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as

the names of eye- witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it looses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations.

Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question. (Vide: Thulia Kali v. The State of Tamil Nadu, AIR 1973 SC 501; State of Punjab v. Surja Ram, AIR 1995 SC 2413; Girish Yadav & Ors. v. State of M.P., (1996) 8 SCC 186; and Takdir Samsuddin Sheikh v. State of Gujarat & Anr., AIR 2012 SC 37).

39. On 18.12.1984, the accused-appellant also gave an application at the police station and handed over a country made pistol along with a blood stained Gandasa which were alleged to be used in the commission of crime. The Gandasa along with other items were sent to the forensic examination by the Investigation Officer. In Forensic Science Laboratory Report (FSL), it had come that there is human blood on the Gandasa. The weapon of offence was handed over to the police by the accused at 2.30 A.M. in the night, therefore, there was no possibility of any witness present in the police station, therefore, police is the genuine witness of the memo of recovery of the country made pistol of 12 Bore along with two live cartridges and four empty cartridge and blood stained sickle (Gandasa). On fard baramadgi, there is also signature of the accused-appellant and

Constable Genda Singh (P.W.-8) and Head Constable Prempal Singh (P.W.-6).

40. So far as the reliability of the evidence of police personnel are concerned, the Apex Court in **Pradeep Narayan Madgaonkar & others v. State of Maharashtra, 1995 (4) SCC 255, in paragraph No.11**, has held as under :

“The evidence of the official (police) witnesses cannot be discarded merely on the ground that they belong to the police force and are, either interested in the investigation of the prosecuting agency but prudence dictates that their evidence needs to be subjected to strict scrutiny and as far as possible corroboration of their evidence in materials particulars should be sought. Their desire to see the success of the case based on their investigation, requires greater care to appreciate their testimony.”

41. In **Karamjit Singh vs. State (Delhi Administration), (2003) 5 SCC 291, in paragraph No.8** Hon’ble Supreme court has observed that :

“ The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down ”

42. In **Girja Prasad v. State of M.P. (2007) 7 SCC 625** Hon’ble Supreme Court in paragraph No.25, observed as under:

“It is well-settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a Court of Law may not base conviction solely on the evidence of Complainant or a Police Official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a Police Official as any other person. No infirmity attaches to the testimony of Police Officials merely because they belong to Police Force. There is no rule of law which lays down that no conviction can be recorded on the testimony of Police Officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the Court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.”

43. In the Instant case handing over of weapon used in the commission of crime before the police officials is treated as conduct under Section 8 of the Evidence Act.

44. Section 8 of the Evidence Act is quoted below:

“Section 8: Motive, preparation and previous or subsequent conduct.

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1. -- The word conduct in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. -- When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant."

45. In **Prakash Chand v. State (Delhi Administration)**, (1979) 3 SCC 90, the Hon'ble Supreme Court in paragraph No. 8 has held as under:

*" 8. There is a clear distinction between The conduct of a person against whom an offence is alleged, which is admissible under **Section 8 of the Evidence Act**, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police officer in the course of an investigating which is hit by Section 162 Criminal Procedure Code. What is excluded by Section 162 Criminal Procedure Code is the statement made to a Police officer in the course of investigation and not the evidence relating to the conduct*

of an accused person (not amounting to a statement) when confronted or questioned by a Police officer during (1) A.I.R.. 1969 A.P. 271. the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a Police officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act "

46. In **A.N. Venkatesh v. State of Karnataka**, (2005) 7 SCC 714, The Apex Court in paragraph No. 9, has held as Under:

*"9. By virtue of **Section 8 of the Evidence Act**, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simplicitor, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in **Prakash Chand Vs. State** (AIR 1979 SC 400). Even if we hold that the disclosure statement made by the accused appellants(Ex. P14 and P15) is not admissible under **Section 27 of the Evidence Act**, still it is relevant under Section 8. The evidence of the investigating officer and PWs 1, 2, 7 and PW4 the spot*

*mazhar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under **Section 8 of the Evidence Act.***”

47. The husband (appellant) himself had not lodged the F.I.R. in respect of murder of his wife rather he went to the police station, gave an application confessing his guilt and put his signature and when another signature was asked by PW-7 to compare his signature for the purpose of proving the document, the appellant refused to give his specimen. Therefore, **adverse inference** may be drawn against the accused-appellant. The post conduct of the appellant is also proving the case that he had not lodged the F.I.R. himself rather he promptly reached the police station along with weapon used in commission of the crime and had given the application dated 18.12.1984. The serological report also shows that there was human blood on the weapon and there is no occasion to the police to procure human blood in the night and send it for forensic examination and in forensic test, human blood was found on the clothes of the accused-appellant as well as on the weapon.

48. In **Ashwani Kumar Alias Ashu And Another v. State Of Panjab, (2015) 6 SCC 308**, in paragraph No.19, hon'ble Supreme Court has observed that “Refusal on the part of the accused to give his specimen handwriting must lead to **adverse inference** against him. While the recovery of weapon and the bloodstained items are

other circumstances leading to complete corroboration.”

The relevant paragraph of the aforesaid judgement is quoted hereinunder :

“19. The prosecution had made the witness available for test identification but the concerned accused had refused to participate in the test. Though there was no reason for such refusal and **adverse inference** could be drawn against the accused, we still looked for other corroborating material which is available in the form of extra judicial confession as deposed to by PW-7 Jasbir Singh and the incident which had happened at the dhaba of pahlwan as spoken by PW-5 Jagdeep Singh and PW-6 Harjeet Singh. The fact that a photograph of Jassi (Ext.P-38) was recovered pursuant to disclosure statement by Ashwani Kumar is another circumstance. That photograph (Ext.P-38) was recovered from Bolara Farm which was under the control of Anil Kumar. The description of Jassi in Gurumukhi on the back side of the photograph is crucial. **Refusal on part of Ashwani Kumar to give his specimen hand writing must lead to adverse inference against him.** The recovery of weapon, namely, kirpan which according to the doctor could have resulted in the injuries suffered by PW-15 Sukhwinder Singh and Jassi and the blood-stained seat cover are other circumstances lending complete corroboration. The communication by Ashwani Kumar and Anil Kumar with the number in Canada which itself was the source for the fax-message Ext.PAO is another circumstance. All these circumstances stand proved and clearly point in the direction of the guilt of Ashwani Kumar and Anil Kumar and additionally lend complete support to the testimony of and identification by PW 15

Sukhwinder Singh. The courts below were therefore perfectly justified in finding Ashwani Kumar and Anil Kumar guilty of the offences under Sections 364/307 and 302 IPC."

49. In **Som Dutt v. State of Punjab, 2019 SCC Online P&H 759**, in paragraph No.10, the High court of Punjab & Haryana held that "refusing to give specimen writings, just to conceal their guilt, therefore, the court below have rightly drawn the **adverse inference** against the petitioners".

50. The Panchayatnama was conducted on 18.12.1984 in the morning at 8.30 A.M. and, in the Panchayatnama, it has also been mentioned that the first information report was lodged for the first time in the police station by PW-1, Sumeri (Village – Chowkidar), and the Panchayatnama was conducted after lodging the F.I.R. as Case Crime No. 221 of 1984 under Section 302 of IPC.

51. Hotey Lal (PW-4), though was not an eye-witness of the incident, but he was the witness of Panchayatnama and had supported the prosecution story as his statement under Section 161 Cr.P.C. was recorded in the night by the Investigating Officer wherein he disclosed that extra-judicial confession was made by the accused-appellant.

52. The Investigating Officer was also examined in the court as PW-7. He deposed that the F.I.R. was lodged **promptly**, he reached at the spot and recorded the statement of Hotey Lal on the same night and stated that the Panchayatnama could not be completed due to insufficient light. Thus, the deposition of PW-4 cannot be discarded as his statement under Section

161 Cr.P.C. was recorded in the night and he was also the witness of Panchayatnama.

53. PW-1, though was declared hostile and not supported the prosecution version but on his narration in the night, **prompt** F.I.R. was scribed by the Head Moharir who was examined as PW-6. Chowkidar (P.W.-3) of the village, is under obligation to give information of any incident took place in the village to the police station concerned.

54. So far as the the reliability of the statements/depositions of hostile witnesses are concerned, the Apex Court in **Bhagwan Dass v. State (NCT of Delhi), (2011) 6 SCC 396, in paragraph No. 18** has observed as under :

*" 18. No doubt Smt. Dhilllo Devi was declared hostile by the prosecution as she resiled from her earlier statement to the E police. However, as observed in **State: vs. Ram Prasad Mishra & Anr. : ,***

"7. ...The evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but can be subjected to close scrutiny and the F portion of the evidence which is consistent with the case of the prosecution or defence may be accepted."

*Similarly in **Sheikh Zakir vs. State of Bihar AIR 1983 SC 911** this Court held :*

"15. ... It is not quite strange that some witnesses do turn hostile but that by itself would not prevent a court from finding an accused guilty if there is otherwise acceptable evidence in support of the conviction."

55. In **Rajesh Yadav and another Etc. v. State of U.P. (2022) 12 SCC 200**, hon'ble Apex Court has dealt with the

evidentiality value of hostile witnesses. The relevant paragraphs are being reproduced herein as under;

“23. On the law laid down in dealing with the testimony of a witness over an issue, we would like to place reliance on the decision of this Court in *C. Muniappan v. State of T.N.*, (2010) 9 SCC 567:

“81. It is settled legal proposition that:

“6. ... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.” (*Vide Bhagwan Singh v. State of Haryana*, (1976) 1 SCC 389, *Rabindra Kumar Dey v. State of Orissa*, (1976) 4 SCC 233, *Syad Akbar v. State of Karnataka*, (1980) 1 SCC 30 and *Khujji v. State of M.P.*, (1991) 3 SCC 627, SCC p. 635, para 6.)

82. In *State of U.P. v. Ramesh Prasad Misra* [(1996) 10 SCC 360: 1996 SCC (Cri) 1278] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde v. State of Maharashtra* [(2002) 7 SCC 543: 2003 SCC (Cri) 112], *Gagan Kanojia v. State of Punjab* [(2006) 13 SCC 516: (2008) 1 SCC (Cri) 109], *Radha Mohan Singh v. State of U.P.* [(2006) 2 SCC 450: (2006) 1 SCC (Cri) 661], *Sarvesh Narain Shukla v.*

Daroga Singh [(2007) 13 SCC 360: (2009) 1 SCC (Cri) 188] and *Subbu Singh v. State* [(2009) 6 SCC 462: (2009) 2 SCC (Cri) 1106].

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses.” *Vide Sohrab v. State of M.P.*, [(1972) 3 SCC 751 : (1972) SCC (Cri) 819 : AIR 1972 SC 2020], *State of U.P. v. M.K. Anthony*, [(1985) 1 SCC 505 : 1985 SCC (Cri) 105], *Bharwada Bhoginbhai Hirjibhai v. State of Gujrat*, [(1983) 3 SCC

217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753], *State of Rajasthan v. Om Prakash*, [(2007) 12 SCC 381 : (2008) 1 SCC (Cri) 411], *Prithu v. State of H.P.*, [(2009) 11 SCC 585 : (2009) 3 SCC (Cri) 1502], *State of U.P. v. Santosh Kumar*, [(2009) 9 SCC 626 : (2010) 1 SCC (Cri) 88] and *State v. Saravanan*, [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580].

56. After perusal of the entire record, it reveals that **prompt** F.I.R. was lodged for the first time in the police station by P.W.-1 Sumair (hostile witness). The accused-appellant after committing the murder made extra-judicial confession not only before the police but also before P.W.-1, P.W.-3 and P.W.-4 that he has committed murder of his wife with the Gandasa. On the next day of incident at 02:30 A.M. (morning), the accused-appellant reached police station and handed over the Gandasa along with one country-made pistol and two live cartridge narrating the motive in writing to the police why he has committed murder. Blood stain was found not only on the Gandasa but also on the cloth worn by the accused-appellant and the same were taken by the police and were sent to the Forensic Laboratory and in the Forensic Report/Serological Report, it has come that there was human blood on these items.

57. In **Digamber v State of Maharashtra, 2023 SCC Online SC 531**, the Apex court in paragraph No. 26 has observed as under:

26. ‘‘Though the **extra-judicial** confession of the accused- Digambar cannot be taken into consideration, however, his conduct of going to the Police Station and surrendering before the Police can certainly be taken into consideration in view of Section 8 of the Indian Evidence

Act, 1872 (hereinafter referred to as ‘‘the Indian Evidence Act’’)’’

58. In **Bhagwan Dass (supra)**, Hon’ble Apex Court has observed as under:

‘‘15. The mother of the accused, Smt. Dhillo Devi stated before the police that her son (the accused) had told her that he had killed Seema. No doubt a statement to the police is ordinarily not admissible in evidence in view of Section 162(1) Cr.PC, but as mentioned in the proviso to Section 162(1) Cr.PC it can be used to contradict the testimony of a witness. Smt. Dhillo Devi also appeared as a witness before the trial court, and in her cross examination, she was confronted with her statement to the police to whom she had stated that her son (the accused) had told her that he had killed Seema. On being so confronted with her statement to the police she denied that she had made such statement.

16. We are of the opinion that the statement of Smt. Dhillo Devi to the police can be taken into consideration in view of the proviso to Section 162(1) Cr.PC, and her subsequent denial in court is not believable because she obviously had afterthoughts and wanted to save her son (the accused) from punishment. In fact in her statement to the police she had stated that the dead body of Seema was removed from the bed and placed on the floor. When she was confronted with this statement in the court she denied that she had made such statement before the police. We are of the opinion that her statement to the police can be taken into consideration in view of the proviso of Section 162(1) Cr.PC.

17. In our opinion the statement of the accused to his mother Smt. Dhillo Devi is an extra-judicial confession. In a very recent case this Court in *Kulvinder*

Singh & Anr. vs. State of Haryana Criminal Appeal No.916 of 2005 decided on 11.4.2011 referred to the earlier decision of this Court in State of Rajasthan vs. Raja Ram (2003) 8 SCC 180, where it was held (vide para 10) :

"An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touch-stone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility."

59. Though P.W.-1 and P.W.-3 has been declared hostile but the Chowkidar was duty bound to lodge F.I.R. and in the night, the I.O. has recorded the statement of P.W.-4 mentioning that due to improper light, Panchayatnama could not be taken in the night, therefore, it was conducted in the early morning and in the Panchayatnama, it has been mentioned that the first information report was lodged by P.W.-1, Sumeri Chowkidar.

60. It transpires that though prompt F.I.R. was lodged by P.W.-1 but later on he turned hostile so even he has **turned hostile**, looking to the **post conduct** and accused-appellant's **extra-judicial confession** and **handing over** of the blood stained weapon and blood stained cloth worn by the accused-appellant and the same were corroborated **in the Forensic Report** as well as refusal of accused-appellant to give signature to P.W.-6, Head constable/Head Moharir Prempal Singh, and extra-judicial confession made in writing before the police make **adverse inference** against the accused-appellant, thus, there is no infirmity in the judgment of the trial court.

61. Present appeal lacks merit and is, accordingly, **dismissed**. The conviction of surviving appellant- Bandu Ram is confirmed.

62. Since the surviving appellant-Bandu Ram is on bail, his bail bonds are cancelled and the sureties are discharged. He is directed to surrender before the court concerned within three weeks to undergo the punishment awarded.

63. Lower court record be sent to the concerned Court forthwith.

64. Let a copy of this order be communicated by the Registrar (Compliance) to the Court concerned for compliance and to proceed in accordance with law in case the accused fails to surrender.

(2025) 4 ILRA 827
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 28.04.2025

BEFORE

THE HON'BLE VIVEK KUMAR BIRLA, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Criminal Appeal No. 345 of 1984

Dheer Singh & Anr. ... Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:

Sri Sumit Goyal, Sri Rajrshi Gupta, Sri Rijwan,
 Sri Dileep Kumar (Sr. Adv.)

Counsel for the Respondent:

D.G.A., Sri Anurag Pathak

(A) Criminal Law - Murder - Direct evidence - Appeal from conviction - Intentional homicide using tractor - Indian Penal Code, 1860 - Sections 302 & 302/34 - Crushed victim under tractor wheels - Evidence of injured and independent eyewitness corroborated by medical and expert evidence - Common intention - Related Witness - Medical Corroboration - *Motive established- Ocular vs. Medical evidence* - Direct and cogent ocular and medical evidence proved guilt beyond reasonable doubt - Injured witness testimony has higher evidentiary value - related witness not inherently unreliable - Conviction under Section 302 IPC can be sustained where the prosecution case is supported by reliable injured eyewitness testimony, promptly lodged FIR, and medical and site

inspection evidence. (Para - 4,12,31,35,43-47)

Litigation regarding passage (rasta) was ongoing between complainant and accused - confrontation occurred where Mangat (deceased) was assaulted - complainant was also injured - While returning from police station after lodging report, accused and Yashpal followed on a tractor - Accused drove the tractor over deceased on exhortation of Yashpal - resulting in his death - FIR lodged promptly and medical/post-mortem evidence corroborated ocular version.(Para - 4, 5, 6, 12, 13, 31)

HELD: - Appellant was found guilty of intentionally driving tractor over deceased after prior enmity and assault.

Ocular evidence of injured and independent witnesses corroborated by post-mortem and expert opinion. Conviction under Section 302 IPC upheld. Accused directed to surrender and serve out sentence. (Para - 44-48)

Criminal appeal dismissed. (E-7)

LIST OF CASES CITED: -

1. Krishna Mochi & ors. Vs St. of Bihar, (2002) 6 SCC 81
2. Masalti Vs St. of U.P., AIR 1965 SC 202
3. Darya Singh Vs St. of Punj., AIR 1965 SC 328
4. Appabhai & anr. Vs St. of Guj., AIR 1988 SC 696
5. St. of A.P. Vs S. Rayappa & ors., (2006) 4 SCC 512
6. Pulicherla Nagaraju @ Nagaraja Reddy Vs St. of A.P., (2006) 11 SCC 444
7. Satbir Singh & ors. Vs St. of U.P., (2009) 13 SCC 790
8. Jayabalan Vs U.T. of Pondicherry, 2010 (68) ACC 308 (SC)
9. Dharnidhar Vs St. of U.P., (2010) 7 SCC 759

10. Baban Shankar Daphal & ors. Vs The St. of Maha., 2025 SCC Online SC 137

11. Shahaja @ Shahajan Ismail Mohd. Vs St. of Maha., (2023) 12 SCC 558

12. Pahalwan Singh & ors. Vs St. of U.P., 2020 (6) ALJ 166

13. Kaptan Singh Vs St. of UP, 2020 (1) ADJ 106 (DB)

14. Neeraj Sharma Vs St. of Chhattisgarh, (2024) 3 SCC 125

(Delivered by Hon'ble Vivek Kumar Birla, J.)

1. Heard Shri Dilip Kumar, learned Senior Counsel assisted by Shri Rijwan, learned counsel for the sole surviving appellant Dheer Singh as well as Shri Ghanshyam Kumar, learned AGA for the State of U.P. and perused the record.

2. Present Criminal Appeal has been filed against the judgment and order dated 31.01.1984, passed by learned Sessions Judge, Saharanpur in Sessions Trial No.112 of 1982, convicting and sentencing the appellant no.1-Dheer Singh under section 302 IPC and appellant no.2 Yashpal under section 302/34 IPC to undergo imprisonment for life to both the appellants.

3. Vide order dated 31.07.2018 the appeal stood abated in respect of appellant no.2-Yashpal. Now the appeal is surviving only in respect of appellant no.1- Dheer Singh.

4. Prosecution story in brief is that a litigation was going on between the complainant and the accused Dheer Singh with regard to passage (Rasta). On 13.10.1981 at about 8 a.m. one Kantu,

Vikram, Dharam Pal and one Banwari, who is stated to be the brother-in-law of Dharam Pal, tried to block the said way, which was resented by the deceased Mangat, whereupon Kantu, father of the accused Dheer Singh, caught-hold of Mangat and Dharampal and Banwari assaulted him with Lathis and when the complainant-Ramphal tried to save him, Vikram assaulted him with 'Kulhari' and Dharam Pal assaulted him with a Lathi. Complainant and the deceased Mangat raised an alarm, which invited Megh Raj, Pahal Singh, Suresh and a number of other persons, who saved them. Complainant-Ramphal and the deceased Mangat came to their house and thereafter left for the Police Station to lodge the report. When they reached near the plot of Shyam Singh, at about 8-30 a.m. the accused Dheer Singh and Yashpal came there on a tractor, which was being driven by accused Dheer Singh. Accused Yashpal is said to have exhorted Dheer Singh to run the tractor over Mangat so that he may be taught a lesson for lodging the report. Accused Dheer Singh then drove the tractor towards Mangat who turned towards south towards the plot of Shyam Singh to save himself but Mangat was crushed by the tractor. The complainant claims to have saved himself by going towards the North of the road. Mangat was crushed by the tractor and died on the spot. This incident is said to have been seen by Pitamber and Sethpal. Complainant-Ramphal then went to village Khatkaheri, lying at a distance of half a kilometre from there and wrote the report. It was said that Prem Singh, brother of the complainant-Ramphal also reached the spot in a tractor and thereafter both of them went to the Police Station, Rampur, where the first information report was lodged at 9-30 a.m.

on the same day by Head Constable Tejpal Singh, who prepared the chik-report and registered the case in the General Diary.

5. Investigation of this case were entrusted to Sri Balkishore, Sub Inspector, who was present at the time the case was registered in the police station. He alongwith Head Constable-Tejpal Singh left for the scene of occurrence. He found the dead body of the deceased Mangat lying in the plot of Shyam Singh. He prepared the Panchayatnama (Ex. Ka-5), Diagram (Ex.Ka-6) and Challan of the dead body (Ex. Ka-7). He wrote a letter (Ex.Ka-8) for the post-mortem examination of the dead body and sent the same for post-mortem examination through Constables Daya Ram and Kartar Singh.

6. Dr. J. G. Garg conducted the post-mortem examination of the dead body. He found the following ante-mortem injuries on the dead body:-

i. Contusion 6 cm x 4 cm on back and right side of skull.

ii. Incised wound horizontal 2.5 cm long, cutting upper 1/3rd part of ear and separating it.

iii. Abraded contused area 9 cm x 7 cm on front of right shoulder.

iv. Contusion 7 cm x 2 cm on front of right upper arm, upper-half part and oblique.

v. Abraded contusion in an area of 4 cm x 3 cm on front of left shoulder.

vi. Contusion 8 cm x 1.5 cm vertical on left upper part, upper 1/4th part.

vii. Contusion 9 cm x 2 cm on left lower and outer quadrant.

viii. Contused area 12 cm x 5 cm on front of left thigh upper 1/2 part.

ix. Contusion 7 cm x 2 cm on front of right thigh horizontal and lower 1/3rd part.

x. Contused area 11 cm x 9 cm on front of right knee upper part and thigh about 2. cm below injury No.9.

xi. Incised wound 6 cm x 2 cm x muscle deep (2.5 cm deep) on medial aspect of right leg on upper 1/3rd part.

xii. Contused area 12 cm x 8 cm on front of left knee upper half and thigh lower part.

xiii. Abrasion 2.5 cm x 2 cm on front of left leg upper 1/3rd part.

7. In the opinion of Dr. J. G. Garg, the deceased Mangat had died as a result of the injuries sustained by him on his head.

8. Thereafter investigation was started by the Investigating Officer and after concluding the same a charge-sheet was submitted against the accused persons. The accused pleaded not guilty to the charge and denied to have murdered Mangat. They claim to have been falsely implicated due to enmity and Party-Bandi.

9. The prosecution has examined as many as 7 witnesses, namely, P.W.1- Ramphal, the complainant, and P.W.2- Pitamber Singh were the alleged eye-witnesses of the incident. P.W.3- Head Constable Tejpal has prepared the chick report and registered the case in the general diary. He has also proved the other relevant G.D. entries. P.W.4- Sri Balkishore has initially investigated the case. He has also proved the charge-sheet against the accused. P.W.5- Dr. J.G. Garg has conducted the post-mortem of the dead body of the deceased Mangat while P.W.6 Dr. Satish Kumar had medically examined Ramphal with regard to the incident which

is stated to have taken place at 8 a.m. P.W.7-Head Constable Sahukar Singh had conducted the technical examination of the tractor. Dr. Krishna Kumar Singhal Expert appeared as CW-1 to give expert medical opinion.

10. The prosecution has also submitted documentary evidence, which were marked as Exhibit Ka-1-Written Report, Exhibit Ka-2-First Information Report, Exhibit Ka-3-General Diary, Exhibit Ka-5-Panchayatnama, Exhibit Ka-6-Diagram, Exhibit Ka-7-Challan of the dead body, Exhibit Ka-8-Letter for the post mortem examination written by P.W.4, Exhibit Ka-9-Memo, Exhibit Ka-10-Recovery Memo of Cycle Atlas, Exhibit Ka-11-Site Plan Exhibit Ka-12-Chargesheet Mool, Exhibit Ka-13, Post Mortem Report, Exhibit Ka-14-Injury Report.

11. Undisputed fact is that accused-Dheer Singh was the nephew of the accused Yashpal. Both the accused and the complainant- Ramphal, who is son of the deceased- Mangat belong to one family. They were descendants of one Hoshiar Singh. Accused Yashpal was one of the nephews and accused Dheer Singh was one of the grandsons of deceased Mangat by family relationship. A litigation was also going on between the family members of the deceased and the accused with regard to passage (Rasta).

12. Before proceeding further it may be noted that in the first information report dated 13.10.1981 there is a reference of two incidents. One, that had taken place at about 8.00 am when Kantu, Vikram, Dharam Pal and one Banwari, who is stated to be the brother-in-law of Dharam Pal, tried to block the passage in respect whereof a dispute was pending

between the parties for quite sometime and litigation was also going on. Allegation is that in the aforesaid incident, Kantu, father of accused Dheer Singh, caught-hold of Mangat, father of the informant, and Dharampal and Banwari assaulted him with Lathis and when the complainant- Ramphal tried to save him, Vikram, who was holding axe in his hand, assaulted Ramphal on his shoulder and Dharam Pal also attacked him with a Lathi. On raising alarm certain persons came there and on seeing them accused persons ran away from the spot. The second incident mentioned in the first information report (with which we are concerned in the present appeal), is the incident that had taken place at 8.30 am when the informant Ramphal and his father-Mangat were going to police station for lodging the first information report about the incident that had taken place at 8.00 am and when they reached near the plot of Shyam Singh, accused Dheer Singh and Yashpal came there on a tractor, which was being driven by accused Dheer Singh. Mangat who was riding his bicycle was dashed from behind by the tractor and was crushed under the wheels of the tractor and died on the spot. In so far as the first incident which had allegedly taken place at 8.00 am, criminal prosecution on Kantu, Vikram, Dharam Pal, had taken place under section 323/34 and 324/34 IPC in Criminal Case No.2664 of 1999 wherein the examination in chief of PW-1, Ramphal who is the informant herein was recorded but thereafter he did not turn up for cross examination and no one appeared from the prosecution side on various dates fixed for recording of the prosecution evidence. In absence of prosecution evidence the accused persons were acquitted for want of prosecution by the

judgment and order dated 28.02.2001 passed by learned Additional Chief Judicial Magistrate, Saharanpur.

13. Shri Dilip Kumar, learned Senior Counsel has produced a certified copy of the aforesaid judgment obtained in the year 2001 itself, after perusal whereof the same was returned to learned Senior Counsel after retaining photocopy of the same. On the basis of said judgment he sought to submit that as the prosecution had not pressed the criminal prosecution in the alleged first incident that has taken place on the same day about half an hour prior to the present incident hence, the prosecution story in the present case is not worth belief.

14. On merit, learned Senior Counsel at the very outset, fairly admitted that the tractor dashed the deceased- Mangat is not in dispute. He, however, submits that the incident is purely accidental in nature and the surviving appellant Dheer Singh has been wrongly convicted and punished under Section 302 IPC. The judgment is contrary to law and is based on wholly incorrect appreciation of evidence on record.

15. Elaborating his argument, he has drawn the attention to the medical report, ante mortem injuries at page 77 of the paper book, which reflects that as many as 13 injuries were suffered by the deceased. It is submitted that only injury no.1 on the head of the deceased is fatal and that there was no crush injury on the dead body of the deceased, which clearly shows that the ocular evidence is incorrect and concocted and is not corroborated by the medical evidence. Attention in this regard was drawn to the statement of PW-1-Ramphal, wherein, he had stated that accused Dheer Singh was driving the tractor and accused

Yashpal (now deceased) was sitting on the mudguard of tractor and on the instigation of Yashpal, Dheer Singh speeded up the tractor and hit Mangat father of the complainant from behind. Mangat after being hit by the tractor fell down in the field of Shyam Singh thereafter accused Dheer Singh with the intention to kill Mangat ran over the tractor over him. Attention was also drawn to statement of Dr. J.G. Garg, who had conducted the post mortem to contend that as per his cross examination there was no crushing injury on the dead body of the deceased and in his opinion the deceased died because of head injury. He has further drawn the attention to the statement of PW-5 that in case the tractor ran over the deceased there is every possibility of fracture in his bone. It is submitted that although there were as many as 13 injuries, however, there was no fracture and cause of death as opined by the Doctor was head injury. The submission, therefore, is that the eye witness account of PW-1-Ramphal who is the son of the deceased is concocted and cannot form basis for conviction of the appellant.

16. He further contended that it is only for this reason initially the first information report was registered under section 304 IPC, which was subsequently converted under section 302 IPC. It was also submitted that even the expert opinion given by CW-1, Dr. Krishna Kumar Singhal reflects that no definite opinion about the deceased having been crushed under the wheels of the tractor was expressed by him, who has deposed as CW-1 after having been summoned by the court. It is highlighted that even the expert has not given any definite opinion as to whether if the deceased is crushed under the wheels of the tractor the bone may or may not get fractured. Submission,

therefore, is that although it is not proved that deceased died because of crushing under the wheels of the tractor. Submission, therefore, is that it is not in dispute that tractor dashed the deceased, however, injuries suffered by the deceased is only accidental in nature and no case of conviction under section 302 IPC is made out on perusal of the evidence on record. During course of argument learned Senior Counsel has taken us through the statement of the witnesses, post mortem report, statement of Doctor conducting the post mortem and the expert opinion report. The site plan was also placed before us. Argument was also made that first information report was not in existence when the panchnama was prepared by the Investigating Officer and therefore, the entire prosecution story is faulty and baseless.

17. Lastly, it is submitted that no case for conviction under section 302 IPC is made out on appreciation of evidence and although not admitted but at the worst an offence may have been committed under section 304 IPC. Submission, therefore, is that the sole surviving appellant Dheer Singh is liable to be acquitted from charges under section 302 IPC.

18. Per contra, Shri Ghanshyam Kumar, learned AGA for the State Respondents submits that in respect of the first incident admittedly criminal prosecution had taken place and it is quite apparent that the examination-in-chief of PW-1-Ramphal, who is the informant herein, had also been recorded in that criminal prosecution, however, acquittal was for want of prosecution as having been convicted of the charge under section 302 IPC the prosecution side did not pursue the criminal prosecution in respect of offence

under Section 323/34 and 324/34 IPC, therefore, acquittal in the aforesaid criminal prosecution is of no consequence. He further submitted that it is a case of prompt FIR. The second incident had taken place at 8.30 am whereas the first information report was lodged at 9.30 am on the same day and the distance of police station is 4 miles. He submits that the ocular evidence is intact to the effect that the deceased was dashed by the tractor, which was driven by accused, Dheer Singh. This fact is also admitted by learned Senior Counsel appearing for the appellant and further the ocular evidence is to the effect that when the deceased fell down in the field of Shyam Singh, the tractor was taken down towards him and he was crushed under the wheels of the tractor. Submission, therefore is that clearly there was intention to kill Mangat and incident is not at all accidental in nature. He submits that undisputedly, there was enmity between the parties and just half an hour before the present incident, first incident had taken place at about 8.00 am wherein the deceased and the informant both were beaten by the accused persons who are directly related to the present accused. It was also pointed out one proceeding under section 133 Cr.P.C. was also pending between the parties.

19. By drawing attention to Post Mortem Report, statement of PW-5-J.G. Garg, statement of expert, CW-1-Dr. Krishna Kumar Singhal he submitted that medical evidence clearly supports the ocular version. The doctor who had conducted the post mortem had clearly stated that injuries could have been caused by crushing under the wheels of the tractor. The expert report is also not contrary to the medical evidence. He submitted that in any case the eye-witness account will have preference over the medical report and the

informant is the injured witness who had suffered injuries in the first incident which had taken place just half an hour before the present incident and it was also submitted that Pitambar Singh, PW-2 is independent eye witness and the presence of PW-1 and PW-2 is not disputed. It was also pointed out that to satisfy itself the learned Sessions Judge had conducted spot inspection and found the site plan prepared by the Investigating Officer to be in order and proper and to remove any doubt the court had also called for expert opinion and expert-Dr. Krishna Kumar Singhal had appeared and submitted his report and proved his report by appearing him as CW-1 and his opinion to the effect that the said injury could have been caused by crushing under wheels of the tractor. Submission, therefore, is that it clearly proved beyond any shadow of doubt that there was an intention to kill the deceased and offence have committed under section 302 IPC. The surviving appellant Dheer Singh himself was driving the tractor and, therefore, there is no illegality or infirmity in the judgment of conviction.

20. We have considered the rival submissions and perused the records.

21. Before proceeding further, it would be appropriate to refer to various relevant judgements of Hon'ble Apex Court as well as of this Court.

22. In **Krishna Mochi and others vs. State of Bihar**, (2002) 6 SCC 81, the Hon'ble Apex Court laid emphasis on realistic approach to be adopted by the criminal courts while appreciating evidence in criminal trial, paragraph 32 whereof is quoted as under:

"32. The court while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. I find that in recent times the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same are boulders, the court should not make an attempt to jump over the same. These days when crime is looming large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have become much more. Now the maxim "let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practice, changing the world over and courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals". I find that this Court in recent times has conscientiously taken notice of these facts from time to time....."

(Emphasis supplied)

23. In **Masalti vs. State of U.P.**, AIR 1965 SC 202, Hon'ble Apex Court in paragraph 14 observed as under:

"14. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. ... The mechanical rejection of such evidence on

the sole ground that it is partisan would invariably lead to failure of justice."

(Emphasis supplied)

24. In **Darya Singh vs. State of Punjab**, AIR 1965 SC 328, the Hon'ble Apex Court has also taken the view that related witness does not necessarily mean or is equivalent to an interested witness. A witness may be called interested only when he or she derives some benefit from the result of litigation; a decree in a civil case, or in seeing a person punished in a criminal trial, paragraph 6 whereof is quoted as under:

"6. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars."

25. In **Appabhai and another vs. State of Gujarat**, AIR 1988 SC 696, the Hon'ble Apex Court in paragraph 11 observed as under:

"11.....Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the

prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner....."

(Emphasis supplied)

26. Similar view has been taken in **State of A.P. vs. S. Ravappa and others**, (2006) 4 SCC 512 wherein it has been observed that it is now almost a fashion that public is reluctant to appear and depose before the court especially in criminal cases and the cases for that reason itself are dragged for years and years, paragraph 6 whereof is quoted as under:

"6.....by now, it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons."

(Emphasis supplied)

27. In **Pulicherla Nagaraju @ Nagaraja Reddy v. State of AP**, (2006) 11

SCC 444, the Hon'ble Apex Court in paragraph 16 has held as under:

"16. In this case, we find that the trial court had rejected the evidence of PW1 and PW2 merely because they were interested witnesses being the brother and father of the deceased. But it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or closely related to the deceased, if it is otherwise found to be trustworthy and credible. It only requires scrutiny with more care and caution, so that neither the guilty escape nor the innocent wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, it can be acted upon. If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted."

(Emphasis supplied)

28. In **Satbir Singh and others vs. State of U.P.**, (2009) 13 SCC 790, the Hon'ble Apex Court in paragraph 26 held as under:

"26. It is now a well-settled principle of law that only because the witnesses are not independent ones may not by itself be a ground to discard the prosecution case. If the prosecution case has been supported by the witnesses and no cogent reason has been shown to discredit their statements, a judgment of conviction can certainly be based thereupon

(Emphasis supplied)

29. In **Jayabalan vs. U.T. of Pondicherry**, 2010 (68) ACC 308 (SC),

the Hon'ble Apex Court in paragraph 21 held as under:

"21. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

(Emphasis supplied)

30. In **Dharnidhar vs. State of U.P.**, (2010) 7 SCC 759, the Hon'ble Apex Court held that there is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case, paragraphs 12 and 13 whereof is quoted as under:

"12. There is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In the case of Jayabalan v. U.T. of Pondicherry [(2010)1 SCC 199], this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person

closely related to the victim. The Court held as under:

" 23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.

.....

13. Similar view was taken by this Court in *Ram Bharosey v. State of U.P.* [AIR 2010 SC 917], where the Court stated the dictum of law that a close relative of the deceased does not, *per se*, become an interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the Court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown overboard, but has to be examined carefully before accepting the same.

14. In the light of the above judgments, it is clear that the statements of the alleged interested witnesses can be safely relied upon by the Court in support of the prosecution's story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons, who are closely related to the deceased. When their

statements find corroboration by other witnesses, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then we see no reason why the statement of so called 'interested witnesses' cannot be relied upon by the Court."

(Emphasis supplied)

31. In a very recent judgement rendered by Hon'ble Apex Court in **Baban Shankar Daphal and others vs. The State of Maharashtra**, 2025 SCC Online SC 137 in respect of testimony of witness which should not be discarded merely because of relation with victim, the Hon'ble Apex Court has, in paragraphs 27 and 28, held as under:

"27. One of the contentions of the learned counsel for the appellants is that the eyewitnesses to the incident were all closely related to the deceased and for prudence the prosecution ought to have examined some other independent eyewitness as well who were present at the time of the unfortunate incident. This was also the view taken by the Trial Court, but the High Court has correctly rejected such an approach and held that merely because there were some more independent witnesses also, who had reached the place of incident, the evidence of the relatives cannot be disbelieved. The law nowhere states that the evidence of the interested witness should be discarded altogether. The law only warrants that their evidence should be scrutinized with care and caution. It has been held by this Court in the catena of judgments that merely if a witness is a relative, their testimony cannot be discarded on that ground alone.

28. In criminal cases, the credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinized. However, being a relative does not automatically render a witness "interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the victim. Courts must assess the reliability, consistency, and coherence of their statements rather than labelling them as untrustworthy.

(Emphasis supplied)

32. In a recent judgement rendered by Hon'ble Apex Court in **Shahaja @ Shahajan Ismail Mohd. vs. State of Maharashtra**, (2023) 12 SCC 558 has observed that the appreciation of ocular evidence is a hard task and has summed up the judicially evolved principles for appreciation of ocular evidence in a criminal case, paragraphs 29 and 30 whereof is quoted as under:

"29. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

29.1 While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly

keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

29.2. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

29.3 When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

29.4. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

29.5. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

29.6. By and large a witness cannot be expected to possess a

photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

29.7. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

29.8. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

29.9. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

29.10. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.]

29.11. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

29.12. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up

details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

29.13. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

[See *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, 1983 Cri LJ 1096 : AIR 1983 SC 753, *Leela Ram v. State of Haryana*, AIR 1999 SC 3717, and *Tahsildar Singh v. State of UP*, AIR 1959 SC 1012]

30. To put it simply, in assessing the value of the evidence of the eye-witnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or puts forward a positive case which is

inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.”

(Emphasis supplied)

33. Paragraph 48 of **Pahalwan Singh and others vs. State of U.P.**, 2020 (6) ALJ 166 is quoted under:

“48. Thus, in view of aforementioned decisions of the Supreme Court, it is now a settled position of law that the statements of the interested witnesses can be safely relied upon by the court in support of the prosecution story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons who are closely related to the deceased. When their statements find corroboration by other evidence, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then there is no reason as to why the statement of so-called 'interested witnesses' cannot be relied upon by the Court. It would be hard to believe that the close relatives shall leave the real culprit and shall implicate innocent persons falsely simply because they have enmity with the accused persons.

(Emphasis supplied)

34. Insofar as the testimony of injured witness is concerned, this Court in **Kaptan Singh vs. State of UP**, 2020 (1) ADJ 106 (DB) has, in paragraph 20, observed as under:

“20. Close scrutiny of the evidence shows that the statements of (PW-1) Vimla Devi and (PW-2) Ram Singar

Pandey are clear, cogent and credible. They have been subjected to cross-examination, but they remained stick to the prosecution version and no such fact, contradiction or inconsistency could emerge, so as to create any doubt about their testimony. Keeping in view the fact that after incident, deceased as well as injured were taken to hospital and were admitted there and that on the same night deceased Ram Niwas Rao has succumbed to injuries, it is apparent that the first information report of the incident was lodged without any undue delay. Version of (PW-1) Vimla Devi finds corroboration from testimony of (PW-2) Ram Singar Pandey and is fully consistent with medical evidence. It is also to be kept in mind that (PW-2) Ram Singar Pandey has himself sustained injuries in the same incident. In Jarnail Singh v. State of Punjab, (2009) 9SCC 719, the Supreme Court reiterated the special evidentiary status accorded to the testimony of an injured accused. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case, the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon. Similar view was expressed in the case of Krishan v. State of Haryana, (2006) 12 SCC 459. Hon'ble Supreme Court in Criminal Appeal Nos. 513-514 of 2014 Baleshwar Mahto and another v. State of Bihar and another, decided on 9.1.2017, has reiterated the law as under :

"28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is

generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.

"Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh v. State of Bihar* [(1973) 3 SCC 881:1973 SCC (Cri) 563:AIR 1972 SC 2593], *Malkhan Singh v. State of U.P.* [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12], *Machhi Singh v. State of Punjab* [(1983) 3 SCC 470 : 1983 SCC (Cri) 681], *Appabhai v. State of Gujarat* [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696], *Bonkya v. State of Maharashtra* [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113], *Bhag Singh* [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163], *Mohar v. State of U.P.* [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606b-c), *Dinesh Kumar v. State of Rajasthan* [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472], *Vishnu v. State of Rajasthan* [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302], *Annareddy Sambasiva Reddy v. State of A.P.* [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] and *Balraje v. State of Maharashtra* [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] 29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab* [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107], where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

"28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa v.*

State of Karnataka [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

In *State of U.P. v. Kishan Chand* [(2004) 7 SCC 629 : 2004 SCC (Cri) 2021] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana* [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the Courts below."

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein." In this very judgment, relationship between

the medical evidence and ocular evidence was also discussed, based on number of earlier precedents, as under: "33. In State of Haryana v. Bhagirath [(1999) 5 SCC 96 : 1999 SCC (Cri) 658] it was held as follows: (SCC p. 101, para 15)

"15. The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the Court. If the opinion is bereft of logic or objectivity, the Court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the Court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject."

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not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

(Emphasis supplied)

35. In a recent judgement rendered by Hon'ble Apex Court in **Neeraj Sharma vs. State of Chhattisgarh**, (2024) 3 SCC 125 in respect of importance of injured witness in a criminal trial, the Hon'ble Apex Court has, in paragraphs 22 and 23, held as under:

"22. The importance of injured witness in a criminal trial cannot be over stated. Unless there are compelling circumstances or evidence placed by the defence to doubt such a witness, this has to be accepted as an extremely valuable evidence in a criminal Trial.

23. In the case of Balu Sudam Khalde v. State of Maharashtra 2023 SCC OnLine SC 355 this Court summed up the principles which are to be kept in mind when appreciating the evidence of an injured eye-witness. This court held as follows:

"26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”

(Emphasis supplied)

36. On perusal of records, we find that it is not in dispute that prior to the present incident that had taken place at 8.30 am, the first incident had taken place at 8.00 am, wherein Mangat (now deceased) and his son Ramphal, who is the informant herein, had suffered injuries. The spot of both the incident is different. The present incident had taken place when the injured father and son were going to police station for reporting the incident. Accused Dheer Singh and Yashpal Singh, who were directly related to the accused of the first incident came there on tractor, and Dheer Singh while driving tractor dashed the deceased from behind, who was riding his bicycle. Father of the informant fell down in the field of Shyam Singh which is about

2-3 feet deep. We may take note of the fact that learned Sessions judge has conducted spot inspection on 17.08.1983 and found that the Site Plan prepared by the Investigating Officer is in order and correct. To remove his doubt after going through the medical evidence and assertions and arguments raised before him he had called for report from medical expert Doctor Krishna Kumar Singhal, who has submitted his report and also appeared as CW-1 and proved his report.

37. At this stage, we may also take note of the judgment passed in respect of the first incident (taken place at 8.00 am), in which Kantu his son Vikram and cousin Dharmpal were involved, whereas in the present case Dheer Singh, the appellant herein who is son of Kantu and Yashpal (now deceased), brother of Dharmpal are accused. Allegation is that when the accused of first incident assaulted the deceased and the informant with lathi and kulhari they were going to report the first incident to the police station. Accused Dheer Singh and Yashpal Singh came to the spot on tractor. Tractor was being driven by the appellant Dheer Singh, who dashed Mangat, father of the informant from behind. At this stage, we may also take note of the fact that criminal prosecution had taken place in respect of the first incident as well. It is also not in dispute that the informant was also injured in the first incident and was also medically examined. The injury report is also on record, therefore, he is natural and also injured eye witness of the incident whose presence on the spot could not be disputed or disproved by the defence. Further, there is an independent eye witness, namely, PW-2, Pitambar Singh, whose name has been mentioned in the first information report itself which was promptly lodged within

one hour of the second incident, which had taken place when both injured father and son were going to report the first incident (at 8.00 am) to the police and the distance of police station was about four miles. Therefore, the first information report was lodged promptly and even the defence has failed to dislodge the presence of injured witness.

38. We have also gone through the statements and the cross-examinations of witnesses carefully. In so far as the medical evidence is concerned, we find that the stand taken by the prosecution regarding the manner in which the incident had taken place could not be dislodged as both PW-5-Dr. J.G. Garg and expert CW-1-Dr. Krishna Kumar Singhal remained intact. In so far as the ocular evidence is concerned, PW-1-Ramphal had clearly proved the pending litigation under section 133 Cr.P.C. that the dispute was in respect of raising wall on a passage against which the deceased side was granted injunction in civil proceeding. Both eye witnesses PW-1-Ramphal and PW-2-Pitambar Singh have also proved the site where the incident had taken place and clearly stated that the field of Shyam Singh is about 2-3 feet deep from the road as the same was used for brick kiln and that the tractor can easily go into that. The learned Sessions Judge conducted the spot inspection and the site plan was found to be correctly prepared.

39. Learned Senior Counsel for the accused-appellant had argued before this Court that in the first incident the deceased had not suffered any bleeding injury and it is only in the second incident he has suffered bleeding injury and had argued that such injuries could not have been caused by crushing under the wheels of tractor as PW-1 has stated that after bicycle

having been dashed by the tractor the deceased fell in the field of Shyam Singh and that as per the post mortem report and PW-5-Dr. J.G. Garg there was no crushing injury and the cause of death is head injury.

40. To examine the substance in the aforesaid argument of learned Senior Counsel coupled with the statement of PW-1, we have seen the ante mortem injuries suffered by the deceased. PW-5- Dr. J.G. Garg, who had conducted the post mortem of the deceased, had clearly stated that the deceased was bleeding from mouth, nose and both the ears and the fatal injury, according to him, was head injury. He clearly opined that the injuries suffered by the deceased could have been suffered by having been dashed by the tractor and by crushing under the wheels of the tractor as well. In his cross examination, he has only opined that there is possibility of bone fracture when crushed under the tractor wheels but no definite opinion was expressed by him. Simultaneously, he has also noticed the fact that cloth (kurta) of the deceased was having mud on it. We have also carefully gone through the report of expert CW-1- Dr. Krishna Kumar Singhal, who has also clearly recorded that the injuries could have been caused on the body of the deceased which was lying on the soft soil of paddy field by crushing under the front wheel of tractor without there being any fracture. He had also opined that if the deceased is crushed under the rear wheel of the tractor the bone may or may not be fractured. He had also opined that sharp edged injuries could have been caused because of material/garbage that may be lying in the field. He had further opined that 13 injuries that were suffered by the deceased could have been suffered by him; firstly, because of beating by lathi and thereafter, having been dashed his

bicycle by the tractor and falling on the ground and thereafter by crushing under the wheels of tractor as reflected in the post mortem report.

41. On cross-examination CW-1-Expert had opined that lacerated wound could give the impression of an incised wound if a magnifying glass was not used at the time of the examination of those injures. In his cross-examination he had proved and explained his report in respect of injury no.2 and 11. He further states that he had conducted experiment on naked bone but the flesh on the bone protects the bone.

42. We, at this stage, cannot ignore the fact that the deceased was a farmer and was living in rural area and under normal living status and circumstances must be having robust health and as the incident had taken place on the soft soil, he may not have suffered bone fracture.

43. We therefore, find nothing so exceptional in the medical report; statement of PW-5-Dr. J.G. Garg, who conducted the post-mortem; expert opinion of CW-1-Dr. Krishna Kumar Singhal; ocular evidence of two eye witnesses, namely, PW-1-Ramphal and PW-2-Pitamber Singh, out of which one is naturally present on the spot and was also injured just half an hour before the incident to reject the prosecution case. As held by the Hon'ble Apex Court as referred above, testimony of PW-1-Ramphal cannot be rejected merely because he is a related witness. He is a natural injured witness present on the spot. The other eye witness, PW-2-Pitambar Singh is the independent witness, whose name figured in the first information report, which was lodged very promptly within an hour from the second incident whereas the distance of police

station was about four kilometres. PW-2 has no reason to falsely implicate the accused as the defence has not given any evidence which may even suggest any interest contrary to each other for which PW-2 may be interested in their conviction.

44. A perusal of the site plan, which was duly verified by the presiding officer himself by making spot inspection, also clearly corroborated the eye witnesses account of two injured witnesses. The site plan clearly reflected dotted line of the paddy crops and there were marks of the tyres of the tractor and as the direction in which the accused were proceeding was too high, the tractor was reversed and they ran away from the spot. Ocular evidence is to the effect that after the deceased, who was riding his bicycle was dashed from behind fell down in the field of Shyam Singh which is about 2-3 feet deep from the road, the tractor was also taken down in the field of Shyam Singh and was reversed. Therefore, we find that the ocular evidence proved beyond doubt that the tractor was taken down in the field of Shyam Singh where the deceased had fallen down after being hit by the tractor from behind and was deliberately crushed under the wheels of the tractor.

45. Although it is a case of direct evidence and motive takes back stage, still strong motive is also present and proved in the present case.

46. In first incident, the father and the son both were injured in which different accused persons, namely Kantu, Vikram, Dharampal and Banwari were involved. In the second incident, accused Dheer Singh, son of Kantu, was involved alongwith other persons, therefore, there was every motive and intention to prevent the deceased and

his son from lodging police report of the first incident and co-accused Yashpal had played the role of exhortation which also could not be dislodged by the defence side. Thus the accused has clearly committed culpable homicide amounting to murder punished under section 302 IPC and that the intention to kill the deceased was proved beyond any shadow of doubt by leading ocular evidence of PW-1 and PW-2, medical evidence and the expert opinion.

47. At this stage, we have also perused the trial court judgment and find that the reasoning given by the trial court is perfectly just and proper and we, on our own appreciation of evidence on record, find no merit in the present appeal and the same is accordingly dismissed. The conviction of surviving appellant Dheer Singh is confirmed.

48. While reserving the order we have stayed the execution of the Non Bailable Warrants issued against the appellant- Dheer Singh vide order dated 20.03.2025. Since the appeal has been dismissed and conviction and sentence awarded by the trial court has been confirmed by us, his bail bonds are cancelled and sureties are discharged. The Chief Judicial Magistrate, Saharanpur is directed to take the appellant Dheer Singh into custody and send him to jail to serve out the sentence awarded by the trial court and confirmed by us.

49. Let a copy of this order be communicated by the Registrar (Compliance) to the Chief Judicial Magistrate concerned for compliance within a week.

50. The Chief Judicial Magistrate, Saharanpur is also directed to send his

compliance report within one month to this Court.

51. Lower court record be sent to the concerned Court forthwith.

(2025) 4 ILRA 845
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 07.04.2025

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Criminal Appeal No. 442 of 2013
 And Crl. Appl. 772 of 2013 & 789 of 2013

Ibrahim		...Appellant
	Versus	
State of U.P.		...Respondent

Counsel for the Appellant:

Sri Amit Daga, Sri Yogesh Srivastava, Sri Ajay Kumar Mishra

Counsel for the Respondent:

Govt. Advocate

Criminal Law - Code of Criminal Procedure, 1973 - Section 374 - The Evidence Act, 1872 - Section 106-Conviction

under Sections 147, 302 read with Section 149 of IPC and sentence of life imprisonment by the Trial Court---Burden to show as to what happened after the accused persons taken the deceased to their house and subsequently the dead bodies were recovered from the house of the appellants would shift on the accused as these facts were only within the knowledge of accused and they failed to discharge the burden u/s 106 of the Evidence Act---There was no question from the side of the defence as to whether it is a case of strangulation or hanging. In the post-mortem report, both hyoid bone were fractured and the defence has admitted that both the deceased were murdered---It is established law that a man can tell a lie but circumstances cannot. Even the witnesses who later on turned hostile have admitted that both

the deceased person were killed. Though they have deposed that some unknown persons had killed the deceased but they have not attributed any motive on those unknown persons for killing the deceased. The accused had sufficient motive as they felt dishonoured because of the love affair of their daughter/sister with deceased-Sarafat and, therefore, they killed both of them.

That once the examination-in-chief as well as cross examination of the witnesses are already recorded and their evidence is complete, thereafter, if charges are altered/amended/added, the Trial Court should restrain itself from permitting the *de novo* trial so as to enable the said witnesses to discard their earlier depositions. In such circumstances, the Trial Court should permit the witnesses to depose only with respect to the altered/amended/ added charges---The impugned judgment of conviction and order of sentence are confirmed. **(Para 43, 54, 60 to 64)**

Appeals dismissed. (E-15)

List of Cases referred -:

1. Trimukh Maroti Kirkan Vs St. of Mah., (2006)10 SCC 681
2. Willi (William) Slaney Vs St. of M.P., 1955 SCC OnLine SC 34
3. Madhusudan & ors.Vs St. of M. P., 2024 SCC OnLine SC 4035
4. Rajesh Yadav & anr.Vs St. of U.P., (2022) 12 SCC 200
5. Bhagwan Dass Vs St. of (N.C.T.) of Delhi, (2011) 6 SCC 396

(Delivered by Hon'ble Praveen Kumar Giri, J.)

1. Heard Sri Ajay Kumar Mishra, learned counsel for the accused-appellants, Sri Prem Shankar Prasad, learned A.G.A. for the State-respondent and perused the record.

2. The above noted appeals have been filed against the judgment of conviction dated 7.1.2013 and the order of sentence dated 8.1.2013 passed by Special Judge (Prevention of Corruption Act), Meerut, in Sessions Trial No.358 of 2006 (State vs. Ibrahim and others) wherein the Trial Court has convicted accused-appellants under Sections 147, 302 read with Section 149 of IPC and sentenced them to life imprisonment under Section 302 read with Section 149 of IPC with fine of Rs.10,000/- , in case of default in payment of fine, further to undergo one year imprisonment and for two years' imprisonment under Section 147 of IPC.

3. The Trial Court's record is received and paper books are ready. With the assistance of learned counsel for the parties, the entire evidence is re-scrutinized and re-appreciated.

4. The prosecution story is that informant- Raees Ahmad, brother of deceased-Sharafat, had given a written report at the concerned police station stating therein that the house of accused-Ibrahim is in front of his house. Accused-Ibrahim and his family members complained to the informant that his brother, Sharafat, had an illicit relationship with his daughter, Soni, therefore, the informant must send his brother out of village otherwise they would face dire consequences. On these facts, informant proposed marriage of his brother with Soni but the accused-appellants denied the proposal and kept a grudge against the informant's family. Thereafter, on 05.02.2006, accused-Ibrahim along with his six sons and two other persons, carrying guns, sticks and axes came assaulting their daughter/sister, Soni, and abducted Sharafat

from his home. Thereafter, they killed Sharafat.

5. The informant regarding incident dated 05.02.2006 which occurred at about 11:00 P.M. (Night) lodged a First Information Report on 06.02.2006 at 02:30 A.M. (night) while police station was at a distance of about of 6 KM.

6. The First Information Report was lodged as Case Crime No. 16 of 2006 under Sections 147, 148, 149, 302 IPC at Police Station- Bahsuma, District- Meerut.

7. The First Information Report was lodged against Ibrahim (father of deceased-Soni) and his six sons, namely, Farukh, Mussarat, Ayub, Sannuar, Kayoom, Shaukin and two unknown persons in presence of eye-witnesses i.e. informant namely, Anvar, Liyaqat Ali, Yameen, Jiju. The incident took place at night and was seen in the artificial lights i.e. Gas Lamp and Torch Light as mentioned in the F.I.R. The place of occurrence is inside the house of the accused-appellants.

8. The motive was that deceased-Sharafat was having illicit relation with the daughter of the informant, Soni, which was diminishing the reputation of the accused-appellants, who happened to be neighbours of the informant.

9. S.I. Resham Singh (P.W.-4) reached on the spot and found two dead bodies which were of Soni and Sarafat, in the house of the accuse-appellants. He prepared panchayatnama/inquest report of deceased-Sharafat on 06.02.2006 at 03:30 A.M. (night) in artificial light in presence of witnesses namely, Ehsan, Jijudin, Shyam Lal Pradhan, Mahkar Singh and Mustkeem. In the panchayatnama/Inquest

Report, the dead body was shown to have been found inside the room of the house of the accused-appellants and in the opinion of the witnesses of the panchayatnama/inquest report, deceased-Sharafat died due to injuries caused on the person of Sharafat.

10. This witness (PW-4) also prepared panchayatnama/inquest report of deceased-Soni on 06.02.2006 at 05:15 A.M. in presence of the witnesses of the panchayatnama and in the opinion of the witnesses, deceased-Soni died due to assault and throttling.

11. Devendra Kumar (PW-9), the Investigating Officer, recorded the statement of Constable Prem Singh (P.W.-5) who was the writer of chick F.I.R., under Section 161 Cr.P.C. while P.W.-5 deposed during trial that contents of the chick F.I.R. were written by him as per the written and signed report given to the police by the the informant.

12. The Investigating Officer (PW-9) on 06.02.2006 prepared site plan/Naksha Nazari as dead body of deceased-Soni was found on the bed/cot lying at place "A" i.e. inside room of the house of the accused-appellants, while dead body of deceased-Sharafat was found lying at place "B" which was also inside room of the same house of the accused-appellants.

13. The I.O./P.W.-9 on 06.02.2006 arrested accused Farukh and Musarrat and, from their possession, the I.O. recovered/discovered two sticks and one tippet (chunni) and mentioned in the recovery memo that the public due to fear refused to be the witnesses of the recovery memo.

14. The post-mortem was conducted by the Doctor P.W.-3, Dr. S.P. Singh on 06.02.2006 at 04:30 P.M. on the person of deceased Soni aged about 16 years. Both her hyoid bones were fractured with following external injuries:

“(1) Ligature mark on front of neck 22 cm x 1 cm, 3 cm away from rt ear 6 cm below to chin, 7 cm below to left ear.

(2) Multiple abraded contusion in an area of 3 cm x 2 cm on front of center part of forehead

lips lightly cyanosed

Both hyoid bones fractured

Both lungs blooded

Cause of death asphyxia as a result of ante-mortem hanging”

15. Dr. S.P. Singh (PW-3) in his deposition mentioned cause of her death as under :

“मृतक की मृत्यु 05.02.06 को रात्रि 11 बजे उसके शरीर पर आई चोटो के कारण होना संभव था। उसकी मृत्यु दम घुटने से हुई थी। Ligature mark किसी रस्सी अथवा उसी प्रकार की किसी वस्तु में आना संभव है।”

16. The post-mortem of deceased-Sharafat, aged about 22 years, was also conducted by Dr. S.P. Singh (P.W.-3) on 06.02.2006 at 05:00 P.M. and in the post-mortem report, he has mentioned that there are fracture of 2 to 11 ribs (right side), right lungs lacerated with following external injuries :

“(1) Bleeding from nose and mouth

(2) Abraded contusion 4 cm x 3 cm on left eyelid.

(3) Contusion 4 cm x 3 cm on right eyelid.

(4) Abrasion 1 cm x 15 cm on upper part left chick just below the the left eye.

(5) Multiple abrasion on front of chest 26 cm x 30 cm of measurement

(6) Contusion 6 cm x 2 cm on upper lip

(7) Multiple abraded contusion 16 x 8 on front side of left thigh.

(8) Contusion 6 cm x 6 cm on right thigh

Cause of death haemorrhage and shock.”

17. Dr. S.P. Singh (PW-3) deposed in the court. Relevant extracts of his deposition read as under :

“आन्तरिक परीक्षण

सीधी पसलियां 2 से 11 नम्बर तक की फ्रेकचर्ड। फेफड़े की झिल्ली प्लूरा खून से लथपथ था। वायां फेफड़ा नार्मल था। पैरीटोनियल खून में लथपथ थी। कैविटी में 500 ml खून मौजूद था। दांत 16/16 थे। ईशो फेगस नार्मल थी। अमामाशय में 100 ग्राम अधपचा खाना मौजूद था। छोटी बड़ी आंतों में गैस व मल भरा हुआ था। लीवर 1300 ग्राम लैसरेटेड था। पित्ताशय आधा भरा हुआ था। पैंक्रियाज नार्मल था और पेल था। प्लीहा 80 ग्राम पेल था। किडनी 250 ग्राम पेल। मूत्राशय खाली था।

मृत्यु का कारण

मृतक की मृत्यु खून के अधिक बह जाने व बेहोशी के कारण हुई थी।

मृतक के शरीर की सभी चोटे कुंद आलो अर्थात् लाठी डंडो से आना संभव है। मृतक के शरीर पर आयी चोटे मृत्यु के लिए पर्याप्त थी तथा 05.02.06 में रात्रि 11 बजे इन चोटो का आना संभव था। शव विच्छेदन रिपोर्ट शव विच्छेदन के समय मेरे द्वारा तैयार की गई थी। मेरे लेख व हस्ताक्षर में है। प्रदर्श क-2 डाला गया।”

18. The I.O./P.W.-9 after investigation prepared and submitted charge-sheet under Sections 147, 148, 149, 302 IPC against all seven named accused-appellants implicated in the F.I.R. The Judicial Magistrate took cognizance and thereafter committed the

case to the court of learned Sessions Judge after compliance of Section 207 Cr.P.C.

19. The case was registered as S.T. No. 358 of 2006 (State vs. Ibrahim and others) under Sections 147, 148, 302, 149; Police Station Bahsuma, District- Meerut but the learned Trial Court only framed charges under Sections 147, 302/149 IPC on 17.08.2006. The accused-appellants pleaded not guilty and sought trial.

20. The prosecution, in order to prove its case, has adduced many documentary evidence, namely, F.I.R. (Ex.Ka.17), Written Report (Ex.Ka-1), Recovery Memo of Danda & Lungi (Ex.Ka-16), Postmortem Report of deceased Soni (Ex.Ka-3), Postmortem Report of deceased Sarafat (Ex. Ka-2), Panchayatnama of Sarafat (Ex. Ka-4), Panchayatnama of deceased Soni (Ex. Ka-10), Charge-sheet (Ex. Ka-20) & Site Plan (Ex.Ka-19) and has examined as many as 9 witnesses namely, PW-1, Raees Ahmad, PW-2, Anwar; PW-3, Dr. D.P. Singh; PW-4, Resham Singh; PW-5, Prem Singh; PW-6, Jiju; PW-7, Liyakat Ali; PW-8, Yameen; and PW-9, Devendra Kumar.

21. After completion of Examination-in-chief and cross-examination of P.W.-1 and P.W.-2, the then Presiding Officer amended charges on 21.05.2010 under Sections 504 and 506 IPC and instead of permitting deposition with respect to Sections 504 and 506 IPC, allowed de novo trial i.e. under Sections 147, 149/302, 504 and 506 IPC.

22. The examination-in-chief and cross-examination of P.W.-1 and 2 was recorded on 6.6.2009, 12.1.2009, 21.1.2009 & 4.3.2009. Till then, they had supported the prosecution case. On 7.6.2010 & 14.12.2011, just after the charges were

amended i.e., on 21.5.2010, they were once again called to depose and then they became hostile.

23. Raees Ahmed (PW-1), the informant of the case in hand, on 6.1.2009 deposed as under :

“साक्षी रईस अहमद एस/ओ नजरे खां आयु करीब 41 वर्ष आर/ओ ग्राम अकबरपुर सादात थाना बहसूमा जिला मेरठ सशपथ ब्यान किया कि मुल्जिमान इब्राहिम, फारुख, मुसरत, अय्यूब, सनवर, कय्यूम व शौकीन सभी हमारे गांव के रहने वाले है दि० 5.2.06 को रात्रि 11 बजे उपरोक्त सभी मुल्जिमान दो अज्ञात व्यक्तियों के साथ जिन्हे सामने आने पर पहचान सकता हूं। कट्टे, लाठी डन्डे व बल्लम लिये हुये अपनी लडकी सोनी को पीटते हुये तथा यह कहते हुये आये कि साली तेरे शराफत से गलत सम्बन्ध है। आज तुम्हारी राड काटनी है। और मेरे भाई शराफत को घर से जबरदस्ती पीटते हुये हथियारो के बल पर ले गये। अपने घर मे शराफत व सोनी दोनो को ले गये थे। उस दिन दिन मे भी ये मुल्जिमान काना फूसी हमारे घर के आस पास कर रहे थे।

शराफत व सोनी को (का०फटा) हुये ले जाते हुये गैस व टार्च की रोशनी मे हमने देखा है। मौके पर अनवर, लियाकत, यामीन, जीजू आदि ने यह वाका गैस व टार्च की रोशनी में पूरा देखा है। सभी मुल्जिमान ने मेरे भाई शराफत को अपने घर मे ले जाकर हत्या कर दी। तथा सोनी की भी हत्या कर दी थी।

थाने में रिपोर्ट दर्ज कराते समय तक हमने सोनी का शव नहीं देखा था। इस कारण सोनी की हत्या का जिक्र एफ० आई० आर० मेरी तहरीर मे नहीं है।

इब्राहिम का मकान बिलकुल हमारे घर के सामने है। यह हमारी बिरादरी का है। घटना से करीब दस दिन पहले इब्राहिम व उसके परिवार वालो ने हमसे शिकायत की थी। कि तुम्हारे शराफत के हमारी लडकी सोनी से गलत सम्बन्ध है। तुम लोग शराफत को गांव से बाहर भेज दो वरना इसका गलत अन्जाम होगा।

इस पर हमने अपने शराफत के निकाह का प्रस्ताव उनकी लडकी सोनी से निकाह करने का रखा था जो इन्होंने नहीं माना। और इब्राहिम का परिवार हमारे परिवार से रंजिश मानने लगा था।

गवाह ने पत्रावली ने कागज सं० 536 को देखकर कहा कि यह तहरीर मैने गांव मे कुंवर मुसरत अली एस / ओ फजलूल रहमान अपने गांव वाले से गांव मे ही लिखायी थी। मुझे मुसरत (का० फटा) ने तहरीर को पढकर सुना दिया (का० फटा) सुनकर व देखकर इस पर मैने (का०फटा) अपने हस्ताक्षर किये थे। इस पर मुसरत अली के भी हस्ताक्षर है। इस पर प्रदर्शक - 1 डाला गया।

इस तहरीर को लेकर थाने गया था और तहरीर देकर थाना (का० फटा) पर मुकदमा कायम कराया था। (का० फटा) सभी मुलजिमान मेरे भाई शरा (का० फटा) को हमारे घर के अन्दर से ही पीटते हुए (का० फटा) ले गये थे।

मुलजिमान इब्राहिम, (का० फटा), मुसरत, अय्यूब, कय्यूम व शौकीन अदालत में हाजिर है। अभियुक्त सनवर को नाबालिग घोषित करने के सम्बन्ध में न्यायालय में कार्यवाही लम्बित है। इस कारण सनवर अदालत में उपस्थित नहीं है।"

24. This witness remained consistent in his cross examination dated 12.1.2009. The relevant extracts of his depositions read as under :

"मुलजिमान छः भाई है। फारूख, मुसरत, अय्यूब, सनवर, कय्यूम व शौकीन है। ये सभी इब्राहिम के बेटे हैं। मैं इन सभी सातो व्यक्तियों को अभियुक्त बनाया है।

मैं फजलुरहमान को जानता हूँ। ये मेरे खानदान के हैं। इनके बेटे कुंवर मुसरत अली है। और कुंवर मुसरत अली ने मेरी तहरीर लिखी है। मैं स्वयं तहरीर नहीं लिखी है। मैं लिखना पढ़ना जानता हूँ। इस घटना के सम्बन्ध में पुलिस ने मेरा बयान रिपोर्ट लिखाते समय थाने पर ही लिया था। मेरा बयान रात्रि में ढाई बजे के लगभग लिया था। थाने पर मेरे एक जगह दस्तखत कराये थे। चिक उसे कहते हैं जो रिपोर्ट की नकल होती है। मुझे पहले से पता था कि रिपोर्ट की नकल को चिक कहते हैं। मुझे याद नहीं कि किस कि कागज पर थाने पर मेरे हस्ताक्षर कराये थे। थाने में मैं आधा घन्टा रहा था। जिस समय मैं थाने गया था उस समय दरोगा व थानाध्यक्ष नहीं थे। दीवान जी मौजूद थे। मैं घटना दीवान जी को बतायी थी। दीवान जी ने मेरी बतायी हुयी घटना को नहीं लिखा था। उन्होंने कहा कि दरोगा जी को उठाता हूँ तब रिपोर्ट लिखेंगे। दरोगा जी दो चार मिनट बाद ही थाने पर आ गये थे। दरोगा जी को भी मैंने घटना बतायी थी। दरोगा जी ने जो मैंने घटना बतायी थी वह लिखी थी। इसके बाद तहरीर मैंने दीवान जी को दे दी थी।

थाने पर मैं, अहसान, नवला तीन ही लोग गये थे। हम लोग ट्रैक्टर से गये थे। हमारे गांव से थाना करीब छः किलोमीटर की दूरी पर है। हम लोग थाना सवा दो बजे के करीब पहुंच गये थे। मेरे गांव से थाने तक सड़क पक्की है कुछ सड़क टूटी हुयी थी। मेरे गांव से थाना बहसूमा ट्रैक्टर से जाने पर करीब 15 20 मिनट का समय लगता है। हम अपने गांव से बहसूमा थाने जाने में करीब आधा घन्टे का समय लग गया था। घटना के समय मेरे गांव में टेलीफोन लगे थे। मेरे व मेरे भाई के पास में उस समय कोई मोबाईल फोन नहीं था। हमारे गांव में घटना के समय चौकीदार रहता था।

फारूख मुलजिम के घर का दरवाजा ठीक हमारे सामने वाले रास्ते में खुलता है। फारूख मुलजिम के सदर दरवाजे पर घटना के समय लोहे के किवाड चढ़े हुये थे।"

25. On 27.01.2009, further cross examination of this witness was done, the relevant extracts of the depositions are read as under :

"मैं यह बात अपनी एफ०आई०आर० में नहीं लिखायी थी कि ये घटना मैंने भी अपने आँखों से देखी थी। ये मुझ याद नहीं है कि मैंने दरोगा जी को यह बात बतायी थी या नहीं कि घटना मेरे सामने हुयी थी। गवाह से जब ये प्रश्न पूछा गया कि तुमने घटना के सम्बन्ध में पहली बार यह बताया कि घटना तुम्हारे सामने की है और आज न्यायालय में तुमने पहली बार घटना का चशमदीद साक्षी होने के बारे में बताया है तो गवाह ने कहा कि ये प्रश्न मेरी समझ में नहीं आया।

मैंने दरोगा जी को अपने बयानों में यह बात बताई थी कि रिपोर्ट मैंने गाँव में लिखायी थी तो गवाह ने कहा कि यदि मेरे बयान में यह बात नहीं लिखी तो मैं इसकी कोई वजह नहीं बता सकता। यदि दरोगा जी ने मेरे बयानों में मेरे द्वारा घटना देखने वाली बात नहीं लिखी तो मैं उसकी कोई वजह नहीं बता सकता। घटना के समय हम सातो भाई एक ही परिवार में व एक ही घर में इकट्ठा रहते थे।

मुलजिमान में से इब्राहिम पर बल्लम, फारूख व मुसरत पर डण्डे, अय्यूब सनवर, शौकीन कय्यूम पर लाठिया थी और अज्ञात व्यक्तियों पर कट्टे थे। मैंने यह बात कि किस अभियुक्त पर हथियार था मैंने एफ०आई०आर० में नहीं लिखायी थी। मैंने दरोगा जी को अपने बयानों में यह बात बतायी थी कि किस व्यक्ति पर क्या हथियार था यदि दरोगा जी ने मेरे बयानों में यह बातें नहीं लिखी तो मैं इसकी कोई वजह नहीं बता सकता। घटना स्थल पर मौके पर किसी भी व्यक्ति ने फायर नहीं किया था।

घटना वाले रोज घटना के समय से पूर्व सात बजे हम लोगों ने खाना खा लिया था। शराफत (मृतक) ने भी सात बजे खाना खा लिया था। मुझे यह याद नहीं है कि खाना शाकाहारी खाया था या नहीं। मेरा भाई शराफत तन्दुरस्त था उसे कोई बीमारी नहीं थी।

मुलजिमान सोनी को पीटते हुये व गाली देते हुये अपने घर से हमारे घर पर आये थे। हमारे मकान का सदर दरवाजा लगा हुआ था। उसमें किवाड नहीं थे। सोनी को मेरे सामने मुलजिमान लाठी डण्डों से मारपीट नहीं कर रहे थे। सोनी का घूँसों से सनवर कय्यूम ने मारा था। कितने घूँसे मारे थे मैं नहीं बता सकता। मेरा भाई शराफत मृतक उस समय जाग रहा था। और मेरे भाई शराफत को मुलजिमान पकड़कर जबरदस्ती ले गये और सोनी को

भी ले गये थे। और दोनों को घर के अन्दर ले जाकर अपने घर का सदर दरवाजा बन्द कर लिया था।

मकान के अन्दर से खाने के बाद किस कमरे में बन्द किया था मैं नहीं बता सकता हम लोग सदर दरवाजे से बाहर थे। मुलजिमान मेरे घर पर पाँच छः मिनट तक रहे होंगे। हम लोग मुलजिमान को जब ये लोग मेरे भाई को ले जा रहे थे डर गये थे। इसलिये कोई आपत्ति नहीं की थी और न ही छुड़ाने का प्रयास किया था। उसके बाद हम गांव में दो ढाई घन्टे मौजूद रहे। हमने मुलजिमान द्वारा मेरे भाई को उठाकर ले जाने की बात ग्राम प्रधान व चौकीदार से नहीं की थी। स्वयं कहा कि मुझे याद नहीं है।

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सोना मृतका के शरीर से खून नहीं निकल रहा था।

वादशाही, इब्राहिम की पत्नि है। यह बात सही है कि बादशाही की रिपोर्ट पर थाना बहसूमा में मेरे पिता नजरे, मेरे, मेरे भाई मोहम्मद अहसान, शौकत सहादत, गुलबहार व तैमूर के खिलाफ, सोनी की हत्या हम लोगों द्वारा किये जाने के सम्बन्ध में हमारे विरुद्ध लिखायी थी। स्वयं कहा कि झूठी रिपोर्ट बचाव में लिखायी थी। मुझे हमारे जानकारी नहीं है कि सोनी की हत्या का मुकदमा हमारे खिलाफ सी० जे०एम० न्यायालय में चल रहा है अथवा नहीं।

घटना के समय मेरे भाई मोहम्मद की उम्र 36 वर्ष, एहसान की 38 वर्ष, शौकत की 32 वर्ष, सदाकत की 28 वर्ष, गुलबहार की 18 वर्ष, तैमूर की 14 वर्ष आयु थी। मैंने दौरान विवेचना दरोगा जी को गैस का लालटेन व टार्च जिसकी रोशनी मे घटना देखी थी। दिखायी थी। घटना स्थल का नक्शा दरोगाजी ने मेरी निशानदेही पर बनाया था। घटना वाली रात को ही नक्शा बनाया था। पुलिस को मैंने वह जगह दिखा दी थी जहां गैस की लालटेन जल रही थी। यदि पुलिस ने नक्शे में गैस की लालटेन जलने की जगह नहीं दिखायी तो मैं इसकी कोई वजह नहीं बता सकता।

मैंने पुलिस को अपने द्वारा व गवाहान के द्वारा खडे होने की स्थिति जहाँ से हमने घटना देखी थी, बता दी थी। यदि पुलिस ने नक्शा नजरी में हमारे खडे होने की स्थिति जहाँ से हमने घटना देखी थी नक्शा नजरी में नहीं दिखायी है तो मैं इसकी कोई वजह नहीं बता सकता।

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ये कहना भी गलत है कि हम आठो व्यक्ति जब सोनी को उठाकर ले जाने लगे तो बादशाही, शाब्बो, सहना व हमदीद जो सोनी की माँ है, ने हमारी इस हरकत का विरोध किया सोनी छूटकर भागने लगी तो हम आठो व्यक्तियों ने सोनी को मारपीट लाठी डण्डो व लात घूसों से किया हो।"

26. On 21.5.2010, additional charges were framed under Sections 504 & 506

against the accused-appellants and de novo trial was permitted by the Trial Court. Pursuant to that when this witness was recalled on 7.6.2010, he deposed that on 5.2.2006 at about 11.00 PM, about 8-9 unknown miscreants carrying lathi, country-made pistol, danda & ballam came to his house. They had covered their face. They took out Sarafat and threatened us of dire consequences. He further deposed that when he came out of the house, the dead body of deceased Sarafat and Soni, were lying on the brick road (khadanza). The persons who were present there had told him that some unknown miscreants had killed Soni by throttling and Sarafat by beating. In cross examination also he deposed that some unknown miscreants had committed the murder of deceased Soni & Sarafat. This witness were declared hostile.

27. Anwar (PW-2) who was also an eyewitness to the incident. The relevant extracts of his depositions of examination-in-chief as well as the cross examination are as under :

“4.3.09

साक्षी अनवर एस/ओ इनायत अली आयु 52 वर्ष आर/ओ ग्राम अकवरपुर सादाब थाना बहसूमा जिला मेरठ

सशपथ बयान किया कि दि० 5/6.02.06 की रात्रि ग्यारह बजे मैं नजरे के मकान पर बैठा हुआ था। शोर सुनकर मैं नजरे के मकान से उठकर उसकी गैलरी में आया। वहाँ गैलरी में शराफत, रईस व लियाकत बैठे थे। इब्राहिम व उसके छः लड़के फारूख, मुसिरत, अय्यूब, कय्यम, सनवर व शौकीन आये। शोर करते हुये गाली गलौच करते हुये सोनी को मारपीट करते हुये आये। इनके हाथों में बल्लम व लाठी डण्डे थे। दो अज्ञात अंजान आदमी थे जिनके हाथ में तमन्चे थे। मुलजिमान सोनी को पीटते हुये कह रहे थे कि तेरे शराफत से नाजायज सम्बन्ध है। आज तुम दोनों को मौत के घाट उतार देगे। ये सभी लोगों शराफत को जबरदस्ती उठाकर इब्राहिम के घर अन्दर ले गये थे। सोनी को भी साथ ले गये थे। मेरे साथ जीजू व यामीन भी घटना स्थल पर आ गये थे। उन्होंने भी सारा वाका देखा है। हम सभी ने यह वाका गैस की लालटेन व टार्च की रोशनी में देखा था।

फिर इब्राहीम के मकान से मुलजिमान सभी ने सदर दरवाजा बन्द करके अपने मकान में शराफत व सोनी की पीट-पीट कर हत्या कर दी। हाजिर अदालत मुलजिमान इब्राहीम व उसके लडके फारूख, मुसरत, शौकीन, अय्यूब व कय्यूम को देखकर कहा कि इन्होंने दो अंजान व सन्नवर के साथ मिलकर शराफत व सोनी की हत्या की थी।

.....XXX.....Cross
examination by all the accused

इस घटना के बारे में दरोगा जी ने मेरे से तीन दिन बाद पूछताछ की थी। ये पूछताछ मेरे से नजरे के मकान पर की थी। कितने बजे की थी समय नहीं बता सकता। घटना होने के बाद जब तक मेरा बयान दरोगा जी ने लिया तब तक मैं गांव में रहा था। मैंने दरोगा जी को अपने बयान में यह बात बता दी थी कि मैं नजरे के मकान से उठकर उसकी गैलरी में आया। यदि दरोगा जी ने यह बात मेरे बयान में नहीं लिखी तो मैं इसकी कोई वजह नहीं बता सकता।

जहाँ मैं बैठा था वहाँ से नजरे की गैलरी चार पाँच गज होगी दोनों मिली हथी है। मैं शराफत, रईस व लियाकत के पास नहीं बैठा था। दो अज्ञात लोगों पर तमन्चे थे। मैंने दरोगा जी को अपने बयान में यह बात नहीं बतायी थी कि आज तुम दोनों को मौत के घाट उतार देगे।

मैंने दरोगा जी को अपने बयान में यह बात बतायी थी कि ये सभी लोग शराफत को उठाकर इब्राहिम के घर के अन्दर ले गये थे। यदि दरोगा जी ने यह बात मेरे बयान में नहीं लिखी तो मैं इसकी कोई वजह नहीं बता सकता।

मैंने दरोगा जी को यह बात भी बतायी थी कि सोनी को भी साथ ले गये थे। यदि दरोगा जी ने मेरे बयान में यह बात नहीं लिखी तो मैं इसकी कोई वजह नहीं बता सकता।

मैंने दरोगा जी को यह बात भी बतायी थी कि जीजू व यामीन भी घटना स्थल पर आ गये थे यदि दरोगा जी ने यह बात मेरे बयान में नहीं लिखी है तो मैं इसकी कोई वजह नहीं बता सकता।

मैंने दरोगा जी को अपने बयान में यह बात बतायी थी कि हम सभी ने यह वाका गैस का लालटेन व टार्च की रोशनी में देखा था यदि दरोगा जी ने यह बात मेरे बयान में नहीं लिखी तो मैं इसकी कोई वजह नहीं बता सकता।

मैंने दरोगा जी को अपने बयान में यह बात बता दी थी कि फिर इब्राहीम के मकान में सदर दरवाजा बन्द करके सभी ने शराफत व सोनी की पीट पीट कर हत्या कर दी थी। यदि दरोगा जी ने मेरे बयान में उक्त बातें नहीं लिखी तो मैं इसकी कोई वजह नहीं बता सकता। मेरे बयान में दरोगा जी ने हत्या करने वाली बात लिखी है।

दो अज्ञात व्यक्तियों को मैंने देखा था। मैंने दरोगा जी को यह बयान नहीं दिया था कि दो व्यक्ति अज्ञात मैंने नहीं देखे थे। यदि दरोगा जी ने मेरे बयान में यह बात लिखी है तो मैं इसकी कोई वजह नहीं बता सकता।

मुलजिम फारूख का कोई मकान गाँव में नहीं है। जिस मकान में मुलजिमान दो मृतकों को अपने साथ लेकर गये थे उस मकान का एक ही दरवाजा है। जिससे आ जा सकते हैं। इसी दरवाजे पर किवाड लगे थे जो मुलजिमान ने बन्द कर लिये थे।

जब सोनी को लेकर मुलजिमान आये थे उस समय सोनी की लाठी डन्डो से मारपीट नहीं कर रहे थे हाथ से थप्पड़ मार रहे थे। मेरे सामने सोनी के साथ मुलजिमान ने लाठी-डन्डो से मारपीट नहीं की थी। मेरे सामने मुलजिमान ने शराफत के साथ गैलरी में मारपीट नहीं की थी केवल कट्टे लगाये थे। मैंने यह बात अपने बयान में दरोगा जी को बता दी थी कि मुलजिमान ने शराफत को कट्टे लगाये थे। यदि दरोगा जी ने मेरे बयान में शराफत को कट्टे लगाने वाल बात नहीं लिखी तो मैं इसकी कोई वजह नहीं बता सकता।

मैंने दरोगा जी ने जब मेरे से पूछताछ की गयी थी उस समय मैंने जिस टार्च की रोशनी में घटना देखी थी टार्च दिखा दी थी। जिस समय मुलजिमान आये उस समय नजरे के घर में रईस, लियाकत व शराफत मौजूद थे बाकी लोग नहीं थे। बाकी उसके लडके अपने घरों में होंगे। मैंने मौके पर बाकी को नहीं देखा। इनकी औरते व बच्चे घरों पर होंगे मैंने नहीं देखा।

मुलजिमान शराफत के घर पर पाँच छः मिनट तक रहे थे। इन पाँच छः मिनट में काफी शोर शराबा होता रहा। शोर शराबा के दौरान नजरे की दो चार पड़ोसी आ गये थे। उनमें से जिनके नाम सेठ, मौसम अली, रज्जाक व (sic) आ गये थे। ये लोग अपने मकान में चले गये और मैं अपने मकान में घुस गया। रईस व बाकी लोग कहाँ गये मुझे पता नहीं है। जब पुलिस आयी थी मैं अपने घर थी से बाहर निकला था। पुलिस रत को तीन-सवा तीन बजे आयी थी। पुलिस के सामने मैं गया था। पुलिस सुबह के सात सवा सात बजे तक रही थी। और अपने साथ लाश कार से (काफटा) से ले गयी थी "

28. This witness was also recalled after amendment of charges under Sections 504 & 506 of IPC and turned hostile.

29. Dr. S.P. Singh (PW-3) who conducted the post-mortem of both the deceased was cross examined by the accused-appellants and he withstood the depositions made in the examination-in-chief.

30. SI Resham Singh (PW-4) deposed on oath that on 6.2.2006 he was posted as Sub Inspector at Bahsuma Police Station. On that day, FIR No.16 of 2006 under Sections 147,148,149,302 IPC against

accused persons was registered, investigation of which was taken up by S.H.O. himself. He reached the spot with the police force, prepared the Panchayatnama of deceased Sharafat and Soni upon the orders of senior officers. Panchayatnama of deceased Sharafat was in front of him which was in his handwriting and signature, he had appointed panchas and had obtained signatures of panchas which was exhibited as Exhibit Ka-4. All the papers related to this Panchayatnama were in his handwriting and signature. The witness on seeing the letter R.I, letter CMO, challan dead body, form number 13, photo dead body and sample stamp, said that all these were prepared at the time of Panchayatnama and were exhibited as Exhibits Ka-5 to Ka-9. This witness further stated that the dead body was sealed, on the spot and sample stamp was taken and the dead body was handed over to Constable Satpal Singh and Constable Brahm Singh. After this he filled the Panchayatnama of deceased Soni which is Exhibit Ka-10, and seeing the letter R.I, letter CMO, challan dead body, form number 13, photo dead body and sample stamp on the spot itself, he said that all these were prepared at the time of Panchayatnama and were exhibited as Exhibits Ka-11 to Ka-15. Both the dead bodies were handed over to Constable Satpal Singh and Constable Brahm Singh. Thereafter, this witness along with S.O. and other police officials went in search of the accused and surrounded the accused Farukh and Mursarat and caught them. From the possession of accused Farukh, they recovered the popular stick (danda) and blue coloured scarf of deceased Soni which was used in the murder. These were sealed and stamped on the spot. The S.O. wrote the recovery memo, on which all of them got their signatures done. The signatures

and thumb impressions of the accused were also taken on the same. This witness identified this report as being in the writing and signature of Devendra Kumar. This was exhibited as Exhibit Ka-16. The witness further stated about the blue coloured chunni that it is the same chunni which was recovered from the possession of accused Farukh, with which accused Farukh had stated that he had killed deceased-Soni. The chunni was exhibited as Exhibit-1 and the bundle of cloth as Exhibit-2 and yellow coloured chunni was exhibited as Exhibit-3.

31. PW-5, Constable Prem Singh, was a formal witness. He deposed that he had recorded the chick F.I.R. No. 15 of 2006 which was in his handwriting and signature on which Ex. Ka-17 was given.

32. Jiju (PW-6) deposed on oath that accused Ibrahim, Farukh, Mussarat, Ayub, Sannuar, Kayoom and Shaukeen who were present in the court had not killed Sharafat and Soni rather 13 to 14 unknown miscreants had killed Sharafat and Soni. The same miscreants had come with guns, axes and sticks in their hands with intent to loot and when Sharafat resisted, they killed him. This witness further deposed that some miscreants were dragging the girl Soni. When the family members tried to stop them, Soni was also killed by them. On hearing the noise, there was a stampede in the village, so the miscreants ran away without looting. The dead bodies of Sharafat and Soni were lying on the brick road (khadanja). This witness was declared hostile by the prosecution.

33. Liaquat Ali (PW-7) and Yamin (PW-8) had also deposed on the line of PW-6 and were declared hostile.

34. SI Devendra Kumar (PW-9)
deposed as under :

"आज दिनांक 19.07.12 को साक्षी देवेन्द्र कुमार एस०आई० थाना कोतवाली देहात जिला बुलन्दशहर को शपथ दिलाई गयी शपथपूर्वक कथन किया कि

दिनांक 06.02.2006 को मैं थाना बहलूमा पर उपरोक्त पद पर तैनात था। मैं बतौर एस०ओ० तैनात था। उस दिन मु०अ०सं० 16/06 अर्न्तगत धारा 147/148/149/302 आई.पी. सी. बनाम फारूख आदि थाना पर मेरी मौजूदगी में थाना पर कायम हुआ था। जिसकी विवेचना मेरे द्वारा ग्रहण की गयी थी। थाना कार्यालय से नकल रपट व नकल चिक व अन्य कागजात लेकर विवेचना में मसकूर हुआ। उस दिन वादी की तहरीर की नकल जीडी में अंकित की। जीडी की नकल तथा वादी रईस अहमद का ब्यान मेरे द्वारा अंकित किया गया तथा उसी दिन एफआईआर लेखक सी/प्रेम सिंह का ब्यान अंकित किया तथा थाने से रवाना होकर घटना स्थल पर आकर वादी की मौजूदगी में उसकी निशान देही पर घटना स्थल का निरीक्षण कर नक्शा नजरी तैयार किया। नक्शा नजरी पत्रावली पर कागज संख्या अ/9 है। मेरे सामने है जो मेरे लेख व हस्ताक्षर में है। इसमें खसरा दर्ज है। अपना लेख व हस्ताक्षर शनाख्त करता हूँ। इस पर प्रदर्श क-19 डाला गया। उसी दिन अभियुक्त फारूख व मुर्सरत को गिरफ्तार किया था। जिसमें अभियुक्त फारूख के कब्जे से लकड़ी का एक डन्डा जो हत्या में प्रयोग किया गया था। व एक चुनरी नीले रंग की बरामद हुई। तथा अभियुक्त मुर्सरत के कब्जे से हत्या में प्रयुक्त एक मोटा डन्डा लकड़ी का बरामद हुआ था मौके पर ही बरामदगी की फर्द तैयार की गयी। फर्द पत्रावली पर मेरे सामने प्रदर्श क 16 है। मेरे लेख व हस्ताक्षर में है। अपना लेख व हस्ताक्षर शनाख्त करता हूँ। उसी दिन अभियुक्त फारूख व मुर्सरत के ब्यान अंकित किये। दिनांक 07.02.06 को मृतक शराफत व मृतिका सोनी की पोस्ट मार्टम रिपोर्ट प्राप्त हुई। मृतक शराफत के शरीर पर आठ चोटें पाई गयीं और मृत्यु का कारण शॉक एण्ड हेमरेज था। मृतिका सोनी के शरीर पर तीन चोटें पाई गयी थी मृत्यु का कारण दम घुटने से और शरीर पर आई चोटों के कारण था। थाने पर मौजूद फर्द बरामदगी के गवाह रेशम सिंह का ब्यान दर्ज किया। व उसी दिन एचसीपी रोहताश दत्त शर्मा सी/ गजेन्द्र सिंह, सी/मुकेश के बयानात अंकित किये।

दिनांक 08.02.06 को वादी के लड़के लियाकत का ब्यान अंकित किया व तहरीर लेखक मुर्सरत अली का ब्यान अंकित किया।

दिनांक 09.02.06 को पुनः वादी के मकान ग्राम अकबरपुर आया। जहां पर गवाहान जीजू व अनवर का

बयानात अंकित किया तथा वहाँ पर गवाह यशपाल सिंह के बयानात अंकित किये। दिनांक 15.02.06 को मुखबिर की सूचना पर अभियुक्त सनव्वर, शौकीन कययूम को डीपीएम स्कूल के पास से गिरफ्तार की। और तीनों के बयानात अंकित किये।

दिनांक 16.02.06 को मुखबिर की सूचना पर अभियुक्त अययूब को अमरपाल के ईट के भट्टे के पास से बहलूमा रोड पर गिरफ्तार किया तथा थाना होकर उनके बयान अंकित किये।

दिनांक 18.02.06 को मृतक शराफत व मृतिका सोनी के पंचायत नामा के गवाहान अहसान, श्यामलाल जीजू के बयानात अंकित किये।

दिनांक 22.02.06 को पंचान गवाहान महकार सिंह, मुस्तकीम और यामीन, के बयानात अंकित किये। तथा उसी दिन पोस्ट मार्टम कराने के लिये शव को ले जाने वाले कानिस्टेबिल सतपाल के बयान अंकित किये। तमामी विवेचना व बयानात गवाहान निरीक्षण घटना स्थल पोस्ट मार्टम रिपोर्ट के आधार पर अभियुक्तगण के विरुद्ध जुर्म बखूबी साबित पाया तथा आरोप पत्र उनके विरुद्ध न्यायालय प्रेषित किया गया। आरोप पत्र पत्रावली पर अ/7 है। मेरे लेख व हस्ताक्षर में है। शनाख्त करता हूँ। जिस पर प्रदर्श क-20 डाला गया। "

35. In cross examination, this witness deposed as under :

"घटना रात के ग्यारह बजे की है घटना स्थल का नक्शा नजरी मेरे द्वारा बनाया गया था। नक्शा नजरी बनाते समय मैंने कही भी रोशनी यानि लाईट का कोई जिक्र नक्शा नजरी में नहीं किया। मेरे द्वारा बनाई गयी फर्द बरामदगी प्रदर्श क-16 में कही भी मुलजिमान फारूख मुर्सरत के गिरफ्तार करने का स्थान वा दो डन्डे व एक चुनरी की बरामदगी का स्थान अंकित नहीं किया गया। ना ही गिरफ्तारी व बरामदगी का समय फर्द बरामदगी प्रदर्श क-16 में ही किया गया। स्वयं कहा कि सी०डी० में है। मैंने ना डन्डे, ना ही चुनरी एकस्पर्ट के पास परीक्षण हेतु नहीं भेजे थाने से रवाना होने पर जीडी में रवानगी दर्ज की जाती है।

मुलजिमान फारूख, मुर्सरत को गिरफ्तार करने से पहले थाने से रवाना होते समय जीडी में रवानगी दर्ज की थी। सीडी रवानगी ना तो मेरे सामने है ना मैं साथ लाया हूँ। यह कहना गलत है कि मैंने सारी कार्यवाही थाने पर बैठकर की हो, और जीडी में इन्द्राज ना किया हो। यह कहना भी गलत है कि फारूख वा मुर्सरत सोनी मृतका व मृतक शराफत की हत्या की

रिपोर्ट लिखाने गये हो और उन्हे वही थाने पर बैठाकर उन्ही का झूठा चालान इस मुकदमे मे कर दिया।

फर्द बरामदगी प्रदर्श क-16 में अंकित, "मौके पर आने जाने वाले जनता के गवाहान को गवाही देने को कहा कोई जनता का गवाह तैयार नहीं हुआ।"

मैने ना तो जनता के गवाहान के नाम पते लिखे ना ही उनके खिलाफ पुलिस रेग्यूलेशन एक्ट के विरुद्ध कोई कार्यवाही ही की।

केवल गवाह अनवर ने अपने बयान 161 सीआरपीसी मे मुलजिमान द्वारा मृतक शराफत व सोनी की हत्या टार्च की रोशनी मे करते हुये देखा है।

मैने ऐसी किसी टार्च को गवाह अनवर से कब्जे में नहीं लिया। और न ही कोई फर्द ही बनायी। यह कहना गलत है कि मैने अनवर का बयान 161 सीआरपीसी ना लिखा हो। यदि गवाह ने ऐसा बयान दिया हो कि मैने उसका बयान नहीं लिया तो गलत दिया है। डन्डा चुन्नी माल मुकदमाती आज न्यायालय मे मेरे सामने नहीं है। मुझे इस समय याद नहीं है कि इस केस से मुताल्लीक एक एफ.आई.आर. वादी रईस वा उसके परिजन के खिलाफ हुई थी। वह मेरे द्वारा विवेचना की हो। यह कहना गलत है कि मैने सारी कार्यवाही थाने पर बैठकर की हो और न्यायालय मे झूठा आरोप पत्र प्रस्तुत किया।"

36. Thereafter, the statements of the accused-appellants under Section 313 Cr.P.C. were recorded, in which all the incriminating evidence was put to them. They denied all the allegations and stated that they were falsely implicated in the present case.

37. Thereafter, the Trial Court vide impugned judgement convicted the appellants and sentenced them to life imprisonment as mentioned above.

38. Learned counsel for the accused-appellants submits that none of the witnesses have supported the prosecution case. No one has seen the incident and it is a case of circumstantial evidence where the chain of evidence is not complete. All the eye-witnesses i.e. PW-1, PW-2, PW-6, PW-7 & PW-8 were declared hostile and have not supported the prosecution version.

39. Per contra, learned A.G.A. has argued that the incident occurred on 5.2.2006 at about 11.00 PM in the house of accused-appellants which is in front of the house of the informant. A prompt F.I.R. was registered just after three and a half hours on 6.2.2006 at about 2.30 AM (night) while the distance of police station from the place of occurrence is about six kilometres. The F.I.R. was registered as Case Crime No. 16 of 2006 under Sections 147, 148, 149 & 302 of IPC against Ibrahim, Farukh, Ayub, Sannaur, Kayoom, Shaukeen, Mussarat and two unknown persons. It is a case of honour killing where the accused-appellants have killed their own daughter/sister, namely, Soni aged about 16 years and brother of the informant, namely, Sarafat, aged about 22 years in their house as they were having love affair and accused – appellants were against their relationship.

40. Learned A.G.A. further submits that in the F.I.R., it has been stated that the accused – appellants had already threatened to deceased-Sarafat and his family members for dire consequences as both Sarafat and Soni were having love affair with each other. The informant had proposed marriage of his brother Sarafat (deceased) with daughter/sister of accused-appellants but on 5.2.2006 at about 11.00 PM, the accused-appellants, having country made pistol, lathi, danda & ballam in their hands, came assaulting the girl and stating that she had illicit relationship with Sarafat and forcibly took Sarafat in their house. This incident was seen in the light of gas lamp and torch. The incident was not only seen by the informant (PW-1) but also by other eye-witnesses, namely, Anwar (PW-2) and other persons. Brother of the informant was killed by the accused-appellants. After lodging of the F.I.R. the police came and recovered two dead bodies from inside the

house of accused-appellants. The Investigating Officer (PW-9) prepared the topography report (Naksha Nazri). It is mentioned in the Topography Report (Ex. Ka-19) dated 6.2.2006 that the dead body of Sarafat was found inside the room of the house of accused-appellants while the dead body of Soni was found on a cot in the varandah of the same house. The Topography Report was exhibited as Ex.Ka-19 and proved by the Investigating Officer in the Court. Clearly dead bodies were found inside the house of the accused-appellants, therefore, the burden of proof is on the accused-appellants under Section 106 of the Evidence Act.

41. After hearing the rival contentions and going through the material on record, we find that section 106 of the Evidence Act read as under :

“When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

42. In **Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006)10 SCC 681**, the Apex Court has observed as under :

“12. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director

of Public Prosecution 1944 AC 315 quoted with approval by Arijit Pasayat, J. in State of Punjab vs. Karnail Singh (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him.”

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.”

43. In view of the evidence that has come on record, the accused persons had

taken deceased-Sarafat to their house while beating her daughter/sister, Soni. Thereafter, the dead bodies of both the deceased were found inside the house of the accused-appellants. The topography report (Naksha Nazri) duly proved by PW-9, the Investigating Officer, also shows that the dead bodies were found inside the house of the accused-appellants. Therefore, the burden to show as to what happened after the accused persons taken the deceased to their house and subsequently the dead bodies of the deceased were recovered from the house of the appellants would shift on the accused-appellants as these facts were only within the knowledge of accused-appellants and they were failed to discharge the burden under Section 106 of the Evidence Act. Therefore, we are agree with the arguments raised by learned A.G.A. for the State.

44. In the postmortem report, external injuries found on person of deceased Soni are mentioned as “both hyoid bone fractured” and “both lungs were swollen like balloons”. In the post-mortem report, earlier it was mentioned that the cause of death was ‘Asphyxia as a result of strangulation’ but later on correction was made in the post-mortem report and it was mentioned that the cause of death was ‘Asphyxia as a result of ante mortem hanging’.

45. It is case where both hyoid bones were fractured which is a case of strangulation and not of hanging and thus opinion of the Doctor is not acceptable as further evidence has come that both Sarafat and Soni were killed even as per the depositions of PW-1 and PW-2.

46. Postmortem of deceased Sarafat was conducted and eight injuries were

found on person of deceased Sarafat. 2 to 11 ribs were fractured and right lung was also lacerated due to the injuries. The death of the deceased was due to haemorrhage and shock. Panchayatnama/Inquest Report was prepared on 6.2.2006 at 3.30 AM (night) and in the Inquest Report it has been mentioned that the same was prepared in proper light and the dead body of deceased-Sarafat was found inside the room of accused-Ibrahim at 5.15 AM on 6.2.2016. The Panachayatnama/inquest report on the dead body of the deceased-Soni was prepared and in the inquest report it was mentioned that the deceased was murdered by throttling her neck and the dead body of deceased-Soni was found in the verandah of the house of the accused-appellant. The inquest report was prepared just after few hours of the alleged incident. Therefore, as per the inquest report of both the deceased, the dead bodies of deceased, Sarafat and Soni, were found inside the house of the accused-appellants and the same has been corroborated by the depositions of P.W.-1, P.W.-2 and P.W.-9 in their examination-in-chief and cross-examination.

47. On 17.08.2006 charges were framed under Sections 147, 302/149 against all the accused persons and the depositions of P.W.-1 (informant/brother of deceased-Sarafat) was recorded on 06.01.2009 and he has supported the prosecution case, he was cross examined by the defence on 12.01.2009, 21.01.2009, 27.01.2009 and has proved the contents of the F.I.R., Panchayatnama/inquest report, recovery of dead bodies as well as weapons used in the commission of crime. Thus, P.W.-1 has supported the prosecution case in his examination-in-chief as well as in the cross-examination but in what circumstances the then Presiding Officer

again amended charged vide order dated 21.05.2010 under Sections 504 and 506 IPC while these sections were not mentioned in the charge-sheet dated 22.02.2006 and the learned AGA has further submitted that on 22.02.2006, the charge-sheet was submitted under Section 147, 148, 149 and 302 IPC only and charges were framed on 17.08.2006 under Sections 147, 302/149 IPC and examination-in-chief of P.W.-1 was conducted on 06.01.2009 and cross-examination was done on several dates thereafter. The last cross-examination was done on 27.01.2009 and P.W.-1 has supported the prosecution case and not turned hostile till then. On 21.05.2010, the charges were amended in lesser punishment sections i.e. Sections 504 and 506 IPC and the trial court permitted de novo trial as his examination-in-chief was to be recorded only with respect to Sections 504 and 506 IPC i.e. 'Intentional insult with intend to provoke breach of peace and criminal intimidation'. However, the learned trial court conducted de novo trial under all the Sections i.e. 147, 302/149, 504 and 506 IPC rather than only with respect to Sections 504 and 506 IPC. Thereafter, the informant have not denied the murder of the deceased but they tried to twist the story which is not reliable while P.W.-1 has already assigned motive on the appellants for committing murder of both the deceased as honour killing and only in his later examination-in-chief he has stated that some unknown person have committed the murder. P.W.-1 has not denied the totality of the incident as well as the presence of the accused persons on the spot. The Trial Court should not have permitted de novo trial in the present case.

48. In **Willi (William) Slaney Vs. State of Madhya Pradesh**, 1955 SCC

OnLine SC 34, the Supreme Court has observed as under :

“24. Next, sections 226 and 227 show that errors in a charge, and even the total absence of a charge, do not vitiate a trial from the start so as to render it no trial at all as would the absence of sanction under section 197. This is evident because these errors and omissions can be remedied at any time during the course of the trial in the sessions Court (section 226) or even at the very end of the trial (section 227), and when this is done the trial need not proceed de novo but can go on from the stage at which the alteration was made provided neither side is prejudiced (section 228). That is conclusive to show that no error or omission in the charge, and not even a total absence of a charge, cuts at the root of the trial. The proceedings up to the stage of the alteration, which, as, we have seen, can be at the very end of the trial, are not vitiated unless there is prejudice; they are good despite these imperfections. That is impossible when the error is so vital as to cut at the root of the trial. It follows that errors in the charge, and even a total absence of a charge, are not placed in the non-curable class.”

49. In **Madhusudan and others vs. State of Madhya Pradesh**, 2024 SCC OnLine SC 4035, the Supreme Court has observed as under :

“21. The case materials nowhere indicate that the Court intended to alter the charge and it is unlikely that the altered charge was formally framed, read out, and explained to the accused. A Court may alter or add to any charge before judgment is pronounced but when charges are altered, opportunity must be given under Section 217 of the CrPC, both to the Prosecution

and the defence, to recall or re-examine witnesses in reference to such altered charges. More importantly, in case, charges are altered by the Court, reasons for the same must be recorded in the judgment.”

emphasis added

50. In **Rajesh Yadav and anr. Vs. State of U.P., (2022) 12 SCC 200**, the Supreme Court has observed as under :

“21.The expression “hostile witness” does not find a place in the Indian Evidence Act. It is coined to mean testimony of a witness turning to depose in favour of the opposite party. We must bear it in mind that a witness may depose in favour of a party in whose favour it is meant to be giving through his chief examination, while later on change his view in favour of the opposite side. Similarly, there would be cases where a witness does not support the case of the party starting from chief examination itself. This classification has to be borne in mind by the Court. With respect to the first category, the Court is not denuded of its power to make an appropriate assessment of the evidence rendered by such a witness. Even a chief examination could be termed as evidence. Such evidence would become complete after the cross examination. Once evidence is completed, the said testimony as a whole is meant for the court to assess and appreciate qua a fact. Therefore, not only the specific part in which a witness has turned hostile but the circumstances under which it happened can also be considered, particularly in a situation where the chief examination was completed and there are circumstances indicating the reasons behind the subsequent statement, which could be deciphered by the court. It is well within the powers of the court to

make an assessment, being a matter before it and come to the correct conclusion.”

51. Deposition of P.W.-1, both in examination-in-chief and cross-examination, cannot be discarded on the basis of his deposition made in the later examination-in-chief being conducted after amending of charges under Sections 504 and 506 IPC.

52. Examination-in-chief of P.W.-2, Anwar, was recorded on 04.03.2009 in which P.W.-2 has deposed as eye-witness account as mentioned in the F.I.R. and his cross-examination was done on the same day. In his cross-examination, he has also deposed that he has seen the incident in the light of gas lamp as well as torch and also deposed that both deceased Sarafat and Soni were killed by the accused-appellants. Thus, P.W.-2 has also supported the prosecution case by deposing on examination-in-chief as well as cross-examination. Later on, when the charges were amended, after a gap of four years of the previous charge, on 21.05.2010 P.W.-2, though he only has to depose in respect of amended Sections 504 and 506 of IPC, yet he has tried to deny the alleged incident. However, he has admitted that both the deceased were killed and has not denied the topography report/Naksha Nazari. Thus, depositions of P.W.-2 in later examination-in-chief recalling the testimony in respect of offence under Sections 147, 302/149 IPC and stating that there is no incident occurred as well as the accuse-appellants have not committed the murder of both the deceased, cannot be relied upon when the accused-appellants were acquitted under Sections 504 and 506 IPC.

53. Dr. S.P. Singh (P.W.-3), who has conducted post-mortem on the dead body

of the deceased has proved the post-mortem report and mentioned all the injuries which were found on the person of deceased-Sarafat aged about 22 years. This witness has also proved all the eight injuries which were caused on person of deceased and also mentioned that there was fracture of 2 to 11 ribs and right lung and peritoneal were also found lacerated. This witness has also conducted post-mortem on the dead body of deceased Soni aged about 16 years and it was deposed that ligature mark were found on the neck and she died due to asphyxia. This witness has also deposed that the injuries found on the dead body were of 11 O' clock in the night of 05.02.2006.

54. There was no question from the side of the defence as to whether it is a case of strangulation or hanging. In the post-mortem report, both hyoid bone were fractured and the defence has admitted that both the deceased were murdered.

55. S.I. Resham Singh (PW-4) has proved the Panchayatnama and also deposed that the first information report was lodged in his presence in police station at 02:30 A.M. (night). Learned AGA further submitted that in a suggestion given by the defence, P.W.-4 deposed that the arrest and alleged recovery are not forged.

56. P.W.-5, namely, Constable Prem Singh has proved the first information report, the chick report as it was scribed by him and the F.I.R. was registered as Case Crime No. 16 of 2006 under Sections 147, 148, 149, 302 IPC (State vs. Ibrahim and 6 others). The F.I.R. was exhibited as Ex.Ka.17.

57. Prosecution has also produced P.W.-6, P.W.-7 and P.W.-8 as eye-witnesses,

however, they became hostile. It is submitted that their testimony cannot be relied upon as they have not provided motive on any other person for committing the murder of the deceased, though, P.W.-1 and P.W.-2 have supported the prosecution case.

58. S.I. Devendra Kumar (PW-9/IO) has proved all the documents procured during investigation. He has also deposed that both the death bodies were found inside the house of the accused-appellants. This witness has also proved the topography report prepared by him.

59. In **Bhagwan Dass Vs. State of (N.C.T.) of Delhi, (2011) 6 SCC 396**, the Apex Court, showing concern over honour killing cases, has observed as under :

*“9. Many people feel that they are dishonoured by the behaviour of the young man/woman, who is related to them or belonging to their caste because he/she is marrying against their wish or having an affair with someone, and hence they take the law into their own hands and kill or physically assault such person or commit some other atrocities on them. We have held in **Lata Singh v. State of U.P. & Anr., 2006(3) RCR (Criminal) 870 : 2006(3) RCR (Civil) 738 : 2006(2) Apex Criminal 670 : (2006)5 SCC 475**, that this is wholly illegal. If someone is not happy with the behaviour of his daughter or other person, who is his relation or of his caste, the maximum he can do is to cut off social relations with her/him, but he cannot take the law into his own hands by committing violence or giving threats of violence.”*

60. The submission of learned counsel for the appellant that the conviction of the appellants is not sustainable as all the eye-

witnesses i.e. PW-1, PW-2, PW-6, PW-7, PW-8 have been declared hostile cannot be sustained in view of the fact that both PW-1 and PW-2 have supported the prosecution case as well as version of the First Information Report in their examination-in-chief as well as the cross-examination done on several dates prior to the recall of witnesses which was after a gap of about one year when charges were added under Sections 504 & 506 of IPC and de novo trial was permitted. The scope of the Trial Court was limited to recall the witness only to depose so far as added charges under Sections 504 & 506 of IPC are concerned. We found force in the argument of learned A.G.A. in view of the decision in **Willi (William) Slaney (Supra)** that trial need not proceed de novo but can go on from the stage at which the alteration was made. We also find support from the decision in **Bhagwan Das (Supra)** wherein the Apex Court has observed as under :

"No doubt Smt. Dhillo Devi was declared hostile by the prosecution as she resiled from her earlier statement to the E police. However, as observed in State: vs. Ram Prasad Mishra & Anr. : ,

"The evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but can be subjected to close scrutiny and the F portion of the evidence which is consistent with the case of the prosecution or defence may be accepted."

Similarly in Sheikh Zakir vs. State of Bihar AIR 1983 SC 911 this Court held :

"It is not quite strange that some witnesses do turn hostile but that by itself would not prevent a court from finding an accused guilty if there is otherwise acceptable evidence in support of the conviction."

61. It is established law that a man can tell a lie but circumstances cannot. Even the witnesses who later on turned hostile have admitted that both the deceased person were killed. Though they have deposed that some unknown persons had killed the deceased but they have not attributed any motive on those unknown persons for killing the deceased. Whereas, the accused appellants had sufficient motive as they felt dishonoured because of the love affair of their daughter/sister, deceased-Soni with deceased-Sarafat and, therefore, they killed both of them.

62. In view of the above, we are of the view that once the examination-in-chief as well as cross examination of the witnesses are already recorded and their evidence is complete, thereafter, if charges are altered/amended/added, the Trial Court should restrain itself from permitting the de novo trial so as to enable the said witnesses to discard their earlier depositions. In such circumstances, the Trial Court should permit the witnesses to depose only with respect to the altered/amended/added charges.

63. In view of the above, we concur with the findings of the learned Additional Sessions Judge in holding the accused-appellants guilty under Sections 147, 302/149 of IPC.

64. All these appeals being devoid of merits are **dismissed**. The impugned judgment of conviction and order of sentence are confirmed.

65. The accused-appellants, Ibrahim, Kayoom and Farukh are on bail. They shall be taken into custody forthwith to serve the sentence. So far as accused-appellants, Sannuar, Shaukeen, Mussarat & Ayub are

66. Record of proceedings of the Trial Court along with a copy of this judgment be transmitted to the Trial Court within two weeks.

BEFORE

Criminal Appeal No. 1226 of 1983

Counsel for the Appellants:
Sri Arvind Kumar Srivastava

Counsel for the Respondent:
D.G.A.,

(A) Criminal Law - Criminal Appeal - Absconding Accused - Code of Criminal Procedure, 1973 - Section 302 - Appeal can be decided on merits where appellant is absconding and presumed dead, and record is sufficient - If the case is decided on merits in the absence of the Appellant, the higher court can remedy the situation - Accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. (Para - 4,42)

(B) Indian Evidence Act, 1872 - Section 32 - *Dying Declaration* - Not necessary to be in Q&A form if certified fit by medical officer - Statement must be shown to be voluntary and credible - a truthful and reliable dying declaration may form the sole basis of conviction even though it is not corroborated - Merely because dying declaration was not in question answer

form, the sanctity attached to a dying declaration as it comes from the mouth of a dying person cannot be brushed aside and its reliability cannot be doubted. (Para -35,36,37,43)

Appellant Ashraf and co-accused Santosh Kumar assaulted Nanak Chand - due to prior litigation victim gave dying declaration naming assailants and died - FIR under S. 307 IPC later altered to S. 302 IPC - eye-witnesses turned hostile - trial court convicted both under Section 302 IPC - Santosh died during appeal - Ashraf absconded since 1990 - appeal heard ex parte with State counsel. (Para - 8,14 to 23)

HELD:- Conviction under Section 302 IPC confirmed on basis of reliable dying declaration and medical/documentary evidence. Hostile witnesses and defective investigation held immaterial. Court permitted to decide appeal on merits in absence of absconding appellant. **(Para - 42,46,47)**

Criminal appeal dismissed. (E-7)

LIST OF CASES CITED: -

1. Surya Baksh Singh Vs St. of U.P., (2014) 14 SCC 222
2. Prem Kumar Gulati Vs St. of Har., (2014) 14 SCC 646
3. Jose s/o Edassery Thomas Vs St. of Kerala, (2013) 14 SCC 172
4. Edakkandi Dineshan alias P. Dineshan Vs St. of Kerala, (2025) 3 SCC 273

(Delivered by Hon'ble Vivek Kumar Birla,
J. & Hon'ble Praveen Kumar Giri, J.)

1. List revised. No one is present to press the appeal on behalf of the appellant.
2. Sole appellant, Ashraf, son of Abdul Ghaffar, is being reported to have died as back as in the year 2018 and Amicus Curiae was appointed. After perusal of the entire order-sheet, on 19.3.2025 following order was passed :

"1. List revised.

2. No one is present to press this appeal on behalf of the appellant.

3. After the death of original counsel appearing for the appellant in the year 2014 itself notices were issued to the sole appellant to engage another counsel.

4. As per office report dated 22.05.2024, the sole appellant had shifted to Delhi and has not returned and according to the local residence the appellant (Ashraf) died in Delhi. His report, however, could not be verified. Vide order dated 21.02.2018, Sri Arvind Kumar Srivastava was appointed Amicus Curiae but he is not present.

5. On 24.10.2018, the following order was passed:

"Learned A.G.A. has filed an affidavit of compliance pursuant to the order dated 13.9.2018, the same is taken on record.

The report of the Chief Judicial Magistrate, Budaun dated 11.10.2018 is on record indicating the fact that the appellant's whereabouts could not be known who had left for New Delhi twenty years ago. The enquiry was conducted by recording the statements of the family members of the appellant Ashraf and all have consistently stated about that they cannot say about as to whether he is dead or alive. In this view of the matter we proceed to hear the Amicus Curiae who is representing the appellant Ashraf.

However, at the request of the learned counsel who is appearing in connected Criminal Appeal No. 1238 of 1983 the case is adjourned.

Let the case be listed on 14th November, 2018 for hearing before the appropriate Bench."

6. The above quoted order clearly reflects that the family members are not aware of his whereabouts and they

could not verify as to whether he is dead or alive. The only statement of family members on record is to the effect that the appellant was of criminal nature and had gone to Tis Hazari Court to attend proceedings on 17.09.1990, however, did not return thereafter from the Tis Hazari Court and they have never seen him thereafter. He had also not come to attend the death ceremony of his close relative as well. The informant has also died as per report submitted by Ashok Kumar, Sub Inspector, Police Station Kotwali, District Budaun before the Chief judicial Magistrate, Budaun. It is also on record that Ashraf was facing criminal cases in Delhi as well.

7. On perusal of the report dated 20.02.2024 written by Chief judicial Magistrate to Senior Superintendent of Police reflects that the information regarding sureties was demanded, however, the report is not available on record.

8. Office is directed to send the details of sureties.

9. We have also perused the report dated 29.03.2024. According to which the bail bonds of sureties are not available in the lower court record. The Letter numbers 6499 and 14698A have been sent to Chief Judicial Magistrate, Budaun, to find out the said bail bonds. No further report is on record.

10. Office is directed to send a reminder to the letter number 6499 and 14698 to Chief Judicial Magistrate to trace out the bail bonds and proceed accordingly.

11. List this case on 10.04.2025."

3. Pursuant to the aforesaid order, the office has submitted a report dated 9.4.2025 based on the report of the Chief Judicial Magistrate, Budaun, dated 3.4.2025 according to which, in spite of the best effort, the bail bond could not be traced out.

As such, it is clear that either the accused is absconding or must have died as is being reported since 2015 itself that he had gone to attend court proceeding on 17.9.1990 in Tis Hazari Court, however, thereafter, he was never seen. He was having criminal history and it was reported by his relatives that he had died. By now, the appellant must have aged about 66 to 67 years of age and there was no evidence on record in respect of his death as per the circular issued by this Court.

4. In **Surya Baksh Singh vs. State of Uttar Pradesh**, (2014) 14 SCC 222, the Hon'ble Apex Court has held that it is always not necessary to adjourn the matter in case both appellants or his counsels/lawyers are absent and the Court can decide the appeal on merits after perusal of the record and the judgement of the trial Court. It has further been observed that if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation. It has also been observed that appointment of Amicus Curiae is also on the discretion of the court. In paragraph 26 of the said judgement, it was held that it is always not essential for the High Court to appoint Amicus Curiae, paragraphs 24 and 26 of the said judgement whereof are quoted as under:

"24. It seems to us that it is necessary for the Appellate Court which is confronted with the absence of the convict as well as his Counsel, to immediately proceed against the persons who stood surety at the time when the convict was granted bail, as this may lead to his discovery and production in Court. If even this exercise fails to locate and bring forth the convict, the Appellate Court is empowered to dismiss the appeal. We fully and respectfully concur with the recent

elucidation of the law, profound yet perspicuous, in K.S. Panduranga v. State of Karnataka, (2013) 3 SCC 721. After a comprehensive analysis of previous decisions our learned Brother had distilled the legal position into six propositions:

"19.1. that the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. that the Court is not bound to adjourn the matter if both the Appellant or his Counsel/lawyer are absent;

19.3. that the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. that it can dispose of the appeal after perusing the record and judgment of the trial court.

19.5. that if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the Appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. that if the case is decided on merits in the absence of the Appellant, the higher court can remedy the situation.

25.....

26. Reverting back to the facts of the present case a perusal of the impugned order makes it abundantly evident that the High Court has considered the case in all its complexities. The argument that the High Court was duty-bound to appoint an amicus curiae is not legally sound. Panduranga correctly considers Mohd. Sukur Ali v. State of Assam (1996) 4 SCC 729 as per incuriam, inasmuch as the latter mandates the appointment of an amicus curiae and is thus irreconcilable with Bani Singh vs. State of U.P. (1996) 4 SCC 720.

In the case in hand the High Court has manifestly discussed the evidence that have been led, and finding it of probative value, has come to the conclusion that the conviction is above Appellate reproach correction and interference. In view of the analysis of the law the contention raised before us that it was essential for the High Court to have appointed an amicus curiae is wholly untenable. The High Court has duly undertaken the curial responsibility that fastens upon the Appellate Court, and cannot be faulted on the approach adopted by it. In this respect, we find no error.

(Emphasis supplied)

5. The aforesaid view has been followed by the Hon'ble Full Bench in **Criminal Reference No.1 of 2024, In Re-Procedure To Be Followed In Hearing Of Criminal Appeals vs. State of U.P.**, decided on 22.01.2025, paragraph Nos. 151 and 152 whereof are quoted as under:

“151. The crux of the aforesaid observations of the three celebrated judgments rendered by the Hon'ble Supreme Court in Bani Singh and others Vs. State of U.P. 11, Surya Baksh Singh Vs. State of Uttar Pradesh 12 and K.S. Panduranga Vs. State of Karnataka 13, thus, covers the entire length and breadth of Question No. 5 formulated by the Division Bench at Lucknow for consideration by this Bench and no fresh exercise, in our considered opinion, is required to be undertaken by this Bench, including on one point which has been highlighted by the Division Bench at Lucknow i.e. whether the amicus curiae may be appointed even when the presence of the convict, appellant or accused-respondent may be secured and without his consent.

152. The aforesaid legal precedents would evidently canvass that the emphasis of the Apex Court has been on providing opportunity of being heard to the appellant who is willing to cooperate with the appellate court or his counsel and in this regard a process to cause his presence for the purpose of giving opportunity of being heard is required to be issued to him and when the court is satisfied that such appellant is deliberately avoiding his presence before the court, in such a situation, the court may dispose of the appeal in the manner approved by the Hon'ble Supreme Court in Bani Singh and others Vs. State of U.P. 11, Surya Baksh Singh Vs. State of Uttar Pradesh 12 and K.S. Panduranga Vs. State of Karnataka 13 (i.e. after perusing the record/evidence vis-a-vis judgment of the trial court with the assistance of prosecutor and Amicus, if appointed) and we do not have any reason to deviate from the settled proposition laid down by the Apex Court in the above mentioned cases, moreover, the appointment of amicus is only for the purpose to provide fair trail to the appellant and also for rendering the assistance to the Court.”

6. Under such circumstances, we proceed to consider the present appeal on merits with the help of Sri Anuj Kumar Mishra, learned A.G.A. for the State.

7. The above noted appeal has been filed against the judgment of conviction and order of sentence dated 19.5.1983 passed by IInd Additional Sessions Judge, Budaun, in Sessions Trial No.71 of 1980 (State vs. Santosh Kumar and another) wherein the Trial Court has

convicted the accused-appellant under Section 302 and sentenced him to life imprisonment.

8. **Prosecution story**, in brief, is that prior to the incident, one F.I.R. was lodged by the wife of Chandra Bhan (P.W.1) against the accused-Santosh Kumar and others for assaulting the said lady and a criminal complaint had also been filed against the accused persons, Santosh and others and the case of this criminal complaint was going on in the court of Sri Ram Gopal Vaish, Special Judicial Magistrate, Budaun against Santosh Kumar and others prior to this incident of murder. Prosecution claims that on account of this litigation Santosh Kumar had enmity with Chandrabhan and his son deceased-Nanak Chand, who was also doing pairavi in the said criminal case pending in the court of Special Magistrate. On 16.10.1979 at about 10.00 PM deceased-Nanak Chand alias Sudeshpal was present at the Chha Sarka (6-Road Crossing) in the city of Budaun in the company of Mistri Aftab (PW-2), Rais Mia (PW-3) and Auis (PW-4). Accused Santosh Kumar, Asharaf and two others reached there and took away Nanak Chand towards Prakash Talkies under the pretext that they wanted to have talk with him in seclusion. The said three persons also followed them and when Nanak and the accused persons reached on the road near the Prakash Talkies very close to the shop of Qadir, Santosh Kumar exhorted his companion Asharaf to kill Nanak Chand having stated that he was posing to be a great litigant. The accused Asharaf started giving blows to Nank Chand with his knife, and Santosh Kumar and his two other companions were still standing there surrounding the deceased-Nanak Chand. The said three persons Aftab, Rais Mia and Anis also saw the occurrence. The accused

persons having stabbed fatally the deceased Nanak Chand, ran away. This incident was also seen by Smt. Ram Shree lying on a cot in her house in the vicinity.

9. Two persons, Indal (PW-6) and Bhupal, took the injured-Nanak Chand in a rickshaw to the District Hospital, Budaun where he was medically examined by Dr. K. R. Khan (PW-5) on 16.10.1979 at 10.30 PM and he found following injuries on person of Nanak Chand :

“(1) Stab wound 2 Cm. X 1.5 Cm., 10 Cm. above left out supper iliac spine (depth not noted).

(2) Incised wound 2 Cm. X .75 Cm, 5 Cm. above injury no. 1.

(3) Incised wound 2 Cm. X. 1 Cm. over left iliac crest, 9 Cm from middle off back (depth not noted).

(4) Incised wound 2 Cm. X 6 Cm., 11 Cm. from left out supper iliac spine at 4 0' Clok position (depth not noted). Directed down wards.

(5) Incised wound 1.5 Cm X .5 Cm on outer side of left thigh, 11 Cm., below out supper iliac spine, depth 4 Cm. directed down and forward.”

10. Dr. K.R. Khan (PW-5) has also recorded the **dying declaration of Nanank Chand at 12.50 AM**, in the night of 16/17.10.1979. The Dying Declaration was written by him in his own handwriting and he had also given a certificate to the effect that the deceased was in a fit condition to make statement and he had replied to his questions. The Dying Declaration of Nanak Chand read as under :

“डी०डी० आफ नानक चन्द

मेरा नाम नानक चन्द उर्फ सुदेश पाल पुत्र चन्द्रभान निवासी मु० पनवाडी बदायूँ का रहने वाला हूँ। मुझे अशरफ और उसके साथी संतोष तथा दो और आदमी जिनके मैं नाम नहीं जानता

हूँ अशरफ जोगीपुरा वाले ने जो हाजी सखावत के मकान के पीछे सरदार मठरी वाले के बराबर गली में रहता है इसने चाकू मारा था और संतोष कायस्थ पुत्र रामचन्द्र मु० पनवाडी वाले ने मुझे पकड़ा और कहा कि इसे जाने से मार दो मुझे करीब 10 बजे रात्रि को कदीर अन्नन वाले मिस्त्री की दुकान के सामने मारा गया मुझे छः सड़क से बात करने के लिये बुलाकर ले गये थे। संतोष से मारपीट की मुकदमें बाजी चल रही है। यह घटना शान्ती जो भगत के होटल पर रहता है की माँ ने और कदीर की दूकान के बाहर चारपाई पर कई आदमी बैठे थे तथा और आने जाने वाले लोगों ने यह घटना देखी।

16.10.79

ह० नानक उर्फ सुदेश पाल

17.10.79

Certified that the above statement was written by me as told by the injured in reply to my question.

It is also certified that Sri Nanak Chand was in sound state of mind and fully conscious at the time of above declaration.

Sd. illegible

Sd. illegible

(Dr.

K.R.Khan)

17/10/79

17.10.79

12.50 A.M.”

11. It is not in dispute that this statement was recorded at 12.50 AM in the night of 16/17.10.1979. Looking to the serious condition, Nanak Chand was sent to District Hospital, Bareilly where he succumbed to the injuries on 19.10.1979 at about 11.00 AM.

12. An information was sent to the Police Station -Kotwali on the same day i.e. 19.10.1979 which was entered in the G.D and S.I. Hari Shanker prepared the **Inquest Report/Panchayatnama** of the dead body in presence of witnesses. He also prepared the naksha nazri (Ex.Ka. 16) and sealed the dead body in a piece of cloth and the same was sent for post-mortem.

13. Dr. Mahesh Chandra Sharma (PW-10) conducted the postmortem of the dead body at 11.15 AM on the same day and reported following ante mortem injuries :

(1) *Incised left paramedian wound (stitched operated) - 21 Cm long with stitches well in position.*

(2) *Stitched wound 2½ Cm. long with two stitches on left side of chest, 5 Cm. below injury no.2.*

(3) *Stitched wound 2 Cm. long with two stitches on left side of chest 10 Cm. below left nipple at 5 O'clock position.*

(4) *Stitched wound 2 Cm. long with corrugated drain 5 Cm. below injury no.3 on left side of abdomen.*

(5) *Stitched wound 2 Cm. on outer side of upper of left thigh.*

(6) *Stitched wound 2 Cm. on upper part of left buttock.*

(7) *Incised wound 2 Cm. X ½ Cm. on back of left side, 2 Cm. about iliac crest X muscle deep.*

(8) *Incised wound ½ Cm. X ½ Cm. skin deep, 7 Cm. below injury no 2.*

(9) *Stitched wound on inner side of right leg 1 Cm. X ¼ Cm.*

14. The incident took place on 16.10.1979 at about 10.00 PM. Initially, the First Information Report was registered under Section 307 of IPC on the basis of the complaint made by the father of the deceased (PW-1). Thereafter, when the deceased succumbed to the injuries, the Hospital authority sent information to the police, the offence was converted into Section 302 of IPC.

15. The Investigating Officer after investigation submitted separate **charge-**

sheets against accused, Santosh Kumar and Asharaf under Section 302 of IPC on 5.11.1979 and 8.1.1980 respectively.

16. Thereafter, the learned Judicial Magistrate **took cognizance** on the charge-sheets and **committed** the case to the Court of Sessions after compliance of Section 207 Cr.P.C. and the case was numbered as **S.T. No. 71 of 1980** (State vs. Santosh Kumar and another) under Sections 302 read with 34 of IPC.

17. Learned Sessions Judge **framed charges** against the accused persons and the same were read over to them.

18. The accused persons had not pleaded guilty and claimed trial.

19. The prosecution, in order to prove its case, had examined as many as 10 witnesses namely, Chandra Bhan (PW-1/Complainant), Aftab (PW-2), Rais Mian (PW-3), Anis (PW-4), Dr. K.R. Khan (PW-5), Indal (PW-6), Ram Shri (PW-7), Vishwanath (PW-8), M.P. Bhatnagar (PW-9) & Dr. Mahesh Chandra Sharma (PW-10).

20. In addition to the aforesaid, the prosecution had produced certain documents, namely, (i) First Information Report as Ext. Ka.5 (ii) Recovery memo of blood stained 'Parchajat as Ext. Ka.12 (iii) Injury Report of Nanak Chand as Ext. Ka.1 (iv) Postmortem Report as Ext. Ka.13 (v) Charge-sheet as Ext. Ka.7 & 8 and (vi) Site Plan with Index as Ext. Ka.6 and the Dying Declaration of the deceased.

21. Thereafter, the statements of the accused under Section 313 Cr.P.C. were recorded, in which all the incriminating evidence was put to them. They denied all

the allegations and stated that they were falsely implicated in the present case.

22. The Trial Court vide impugned judgement convicted the accused and sentenced them to life imprisonment as mentioned above. Accused-appellant, Santosh, has died and his appeal has already stood abated. The present appeal has been filed on behalf of accused-appellant, Ashraf.

23. On perusal of the record, we find that PW-1, father of the deceased and informant, admittedly is not an eye-witness. PW-2, PW-3, PW-4 and PW-8 who were stated to be the eye-witness, turned hostile and denied that they have seen the incident.

24. The question of proving the guilt of the accused-appellant, lies on the prosecution to prove the Dying Declaration made before Dr. K.R. Khan (PW-5). The Dying Declaration of Nanak Chand was assailed on the ground that the same was not in the form of question and answer and was given to the doctor and, therefore, no reliance could have been placed thereon.

25. It was further pleaded that the father of the deceased, Chandra Bhan (PW-1), reached the hospital when deceased-Nanak Chand was being medically examined by Dr. K.R. Khan (PW-5) and also had some talk with his son, Nanak Chand, who subsequently died and, therefore, there was every possibility that the words were put in the mouth of the deceased to level allegation against the accused-appellant.

26. It was also pleaded that PW-5, the Doctor, himself had stated that pethidine injection was given to the deceased and the plea taken was that under such

circumstances, the injured must have fallen asleep and was not in a position to make statement and no reliance can be placed on the Dying Declaration.

27. In respect of source of light, it was also pleaded that no source of light on the spot was disclosed whereas the incident had taken place in the night. This was also one of the ground of defence that no blood was shown to have been found on the place of occurrence by the Investigating Officer.

28. On these grounds, the defence has taken a plea that the appellant could not have been convicted and on the same ground as apart from the grounds as taken in the appeal that the conviction of the appellant is against the weight and evidence on record and is against the law and that the sentence is too severe which may be taken into consideration by this Court.

29. Learned A.G.A., by drawing attention to various statements of the witnesses, submits that merely because the eye-witnesses have turned hostile subsequently, it cannot be said that this by itself is sufficient to reverse the judgement of conviction. Attention was also drawn to the statements of Dr. K.R. Khan (PW-5) who had recorded the statement of Nanak Chand (deceased) and the nature of injury as well as it was also submitted that the site plan indicates the source of light and merely because the blood was not found by itself is not sufficient to dislodge the conviction of the appellant as the incident had taken place on a busy road and even if there was a defective investigation that no serious effort was made to collect the blood from the place of incident, this by itself would not affect the judgment of conviction.

30. We have considered the averment on record. On perusal of the record, we find that the first informant (PW-1) who is the father of the deceased had fairly stated that he had not seen the incident and he was informed by Aftab (PW-2) who had accompanied him to the hospital as well. His son was taken to the hospital in a rickshaw and considering the seriousness of his injuries, deceased-Nanak Chand was referred to Bareilly Hospital in the same night where he died on the third day. PW-1 had verified the signatures of his son on his Dying Declaration.

31. We find that he had made statement in most natural way and had fairly admitted that when he reached the hospital with Aftab (PW-2), the Doctor, PW-5, was inspecting his son and, after asking him, he was writing down something. He also stated that though he reached there yet he was asked to go out. He made categorical statement that the injured was taken to the hospital in a rickshaw. We find that the rickshaw puller, Indal, was also produced as PW-6 in the present case and he had categorically stated that he had taken the injured to the hospital and a little blood came out which he wiped off subsequently.

32. In so far as the grounds that are taken in the appeal are concerned, it is very relevant to look into the Dying Declaration. It is not in dispute that the incident had taken place at about 10.00 PM on 16.10.1979 and immediately about 1 hour and 20 minutes, the incident was reported and the distance of police station is four furlong. The First Information Report was registered under Section 307 of IPC. **Thus, a prompt F.I.R. was registered.**

33. PW-1 had clearly stated that he was informed about the incident by Aftab (PW-2) and after taking his injured son to the Hospital, he had come to report the incident. We find that in the Dying Declaration, two dates have been written, one is 16.10.1979 just above the signature of the injured, Nanak Chand, who subsequently died and just below his signature the second date i.e. 17.10.1979 is given. Dr. K. R. Khan (PW-5) has given certificate to the effect that the statement was written by him as told by injured-Nanak Chand in reply to his questions and has also certified that injured-Nanak Chand was in sound state of mind and was fully conscious at the time of making of the above declaration.

34. After signatures, the date 17.10.1979 and time 12.50 AM were given. This timing and difference in dates have been clearly explained by Dr. K.R. Khan (PW-5) in his statement that as he has started writing the statement in the night of 16.10.1979, therefore, both the dates were written and while certifying the Dying Declaration he had put the date and time as after twenty four hours the date had changed.

35. He also stated that he had made endorsement in the bedhead ticket that the police be informed. In so far as the grounds for challenging the correctness of the Dying Declaration that the same was not written in the form of question and answer is concerned, the law is clear that there is no specific proforma for recording such statement in a particular manner or form. Although, in case, it is in the question and answer form, weightage is given to the same. However, the Doctor in the present case, PW-5, has certificated that he had asked questions to the deceased and his

answers were recorded in the form of his statement and, as per law, it cannot be said that Dying Declaration is not worth believing.

36. So far as the proforma of recording the dying declaration and its reliability when it is made to a doctor is concerned, we are supported in our view by the following decisions.

37. In **Prem Kumar Gulati vs. State of Haryana, (2014) 14 SCC 646**, the Apex Court has held as under :

“13. It is well settled that a truthful and reliable dying declaration may form the sole basis of conviction even though it is not corroborated. However, the reliability of declaration should be subjected to close scrutiny and the courts must be satisfied that the declaration is truthful.

16. The submission of Ms. Meenakshi Arora, learned senior counsel appearing for the appellant that the dying declaration is untenable being without mentioning the time when the statement was recorded as also not in the question answer form, cannot be sustained. **Merely because dying declaration was not in question answer form, the sanctity attached to a dying declaration as it comes from the mouth of a dying person cannot be brushed aside and its reliability cannot be doubted.”**

emphasis supplied

38. In **Jose s/o Edassery Thomas Vs. State of Kerala, (2013) 14 SCC 172**, the Apex Court has observed as under :

12. First, we shall consider whether the dying declaration recorded by the doctor should be accepted or is it so

improbable that it deserves to be thrown overboard. The dying declaration was recorded by PW 1 at 8.15 a.m. on 23-12-2012 when the deceased was in ICU in the Burns Ward. The doctor, a plastic surgeon, has signed the dying declaration, Ext. P-3. In the dying declaration, the deceased had stated that on the date of the incident, there was a quarrel between her and her husband alleging that the deceased was having illicit relationship with her son-in-law and he had threatened to kill her. She had clearly stated that her husband was running away and it is he who might have set fire on her. The doctor concerned, in his cross-examination, has stood embedded in his stand that the state of mind of the injured was absolutely clear and she was speaking fluently. He had denied the suggestion of the defence that because of the 92% of the burn injuries, the patient may not be conscious. It is not disputed that the doctor had not endorsed about the condition of the declarant of the dying declaration.

13. In this context, we may refer with profit to the decision in **Laxman v. State of Maharashtra [(2002) 6 SCC 710 : 2002 SCC (Cri) 1491]** wherein the Constitution Bench, while dealing with the concept of dying declaration, the fitness of mind and the necessity of endorsement by doctor, has stated thus : (SCC p. 713, para 3)

“3. ... The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court,

however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable.”

14. In *Babulal v. State of M.P.* [(2003) 12 SCC 490 : 2005 SCC (Cri) 620 : AIR 2004 SC 846] while dealing with the value of dying declaration in evidence, this Court has observed thus : (SCC p. 494, para 7)

“7. ... A person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is ‘a man will not meet his maker with a lie in his mouth’ (nemo moriturus praesumitur mentiri). Mathew Arnold said, ‘truth sits on the lips of a dying man’. The general principle on which the species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when

every motive to falsehood is silenced and mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice.”

17. The ample of evidence on record indicates that the deceased was conscious and hence, we are inclined to accept the dying declaration which would reveal the cruel treatment meted out by the husband to the wife, the suspicion harboured by him and the threats given. True it is, she had stated that she had suspected that her husband might have set her ablaze but to prove the said aspect, there are numerous circumstances which the trial Judge as well as the High Court has taken into consideration. The circumstances which lead singularly to the guilt of the accused are that the accused was sleeping in the bedroom on the eastern side of the room where she was sleeping and it was a small house; that the bedroom was not having any shutters; that PW 3 woke up on hearing the cries of the deceased; that the accused had purchased petrol from the petrol pump belonging to PW 5 in a bottle; that Ext. P-15, chemical analysis report, has clearly mentioned that kerosene was not detected in any of the material objects sent for chemical analysis; that the accused was seen running away from the house by PW 3 and PW 7; that it has been clearly deposed by PW 3, the daughter; that the father used to demand that mother should sleep with him, but she could not oblige him; and that he had threatened to kill her. The elder daughter has deposed that the father was doubting the husband of PW 3 of having an illicit relationship with the mother. She had also deposed that the mother was 52 years of age and was infirm and not in a position to

cater to the desire of her husband. All these circumstances appreciated in the context of the dying declaration clearly establish the involvement of the accused in causing burn injuries on the deceased.

39. In so far as the presence of father of deceased (PW-1) is concerned, it is not in dispute that the father was present in the hospital and had seen Dr. K.R. Khan attending his son, however, he had categorically stated that he was sent outside when the statement was being recorded. To the same effect, the Dr. K.R. Khan stated in categorical terms and nothing came out in his cross examination against the same.

40. It is also not in dispute that the settled law is that it is not necessary that the Dying Declaration must be recorded by the Magistrate only. In some of the cases when the injured/attending person is expecting immediate death of the injured, the statement can be recorded and even statement under Section 161 Cr.P.C. are may be at times treated as a Dying Declaration although its trustworthiness has to be seen on their own facts.

41. It is also not in dispute that the statement of injured was recorded on the same night after about two hours of the incident and was prompt in nature whereas he died after three days. It is not a case where the statement was subsequently recorded which could have been an after thought.

42. In so far as the argument that the blood was not found at the place of occurrence, it has come on record that it was a busy road in the heart of the city and the incident had taken place at about 10.00 PM and the Investigating Officer visited the place of occurrence in the morning and did

not find any blood there. As the blood was not shown in the site plan, therefore, this could have been a reason for the Investigating Officer to make statement that he did not find the blood on the spot just to save himself from the allegation of conducting a defective investigation and statement of the IO to that effect does not go to the root of the case to demolish the conviction of the appellant herein. We are supported in our view by the decision in **Edakkandi Dineshan alias P. Dineshan vs. State of Kerala, (2025) 3 SCC 273** wherein the Apex Court has held as under :

“26. A cumulative reading of the entire evidence on record suggests that the investigation has not taken place in a proper and disciplined manner. There are various areas where a properly investigation could have strengthened its case. In the case of Paras Yadav & ors. vs. State of Bihar, the Apex Court observed as under: (SCC P.130, Para 8)

“Para 8 - ..the lapse on the part of the Investigating Officer should not be taken in favour of the accused, may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. For this purpose, it would be worthwhile to quote the following observations of this Court from the case of Ram Bihari Yadav v. State of Bihar and others: (SCC pp. 523-24, para 13).

“In such cases, the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of

the people not merely in the law enforcing agency but also in the administration of justice.”

27. Hence, the principle of law is crystal clear that on the account of defective investigation the benefit will not inure to the accused persons on that ground alone. *It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report etc. **It has been a consistent stand of this court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency.***

(emphasis supplied)

43. One of the grounds taken is that the doctor had administered pethidine injection to the injured, therefore, he was not in a state of making any statement and, hence, the Dying Declaration is not worth believing, is concerned, suffice to note that no question was put to the doctor that at what stage pethidine injection was given and, therefore, it cannot be said that pethidine injection was given before he had made the statement.

44. Even otherwise, in ordinary circumstances, when the statement is recorded, no prudent doctor would administer sedative injection to the injured before recording the statement.

45. In so far as the identity of Ashraf that his father's name was not given is concerned, no such effort was made to dislodge the identity of accused-Ashraf as no other person proved to have been living in the locality and in case if there was any such other person, no one was produced to contradict the stand taken by the prosecution and on these footings, we do

not find any legal infirmity in the appreciation of the evidence by the learned Sessions Judge which we have independently reconsidered and re-appreciated.

46. After perusal of the entire evidence, it is found that a prompt F.I.R. was registered under Section 307 of IPC, injury report was prepared, the doctor recorded the dying declaration by giving certificate that the deceased was in a fit state of mind. The injured died, therefore, the F.I.R. was converted into Section 302 of IPC. The prosecution proved the F.I.R., dying declaration, injury report, postmortem report by ocular and documentary evidence.

47. We, therefore, are of the opinion that the present appeal lacks merit and is, accordingly, **dismissed**. The conviction of surviving appellant- Ashraf is confirmed.

48. Since, the accused-appellant is absconding, his bail bonds are cancelled and the sureties are discharged. He shall be taken into custody forthwith to serve the sentence. The Chief Judicial Magistrate and Senior Superintendent of Police/Superintendent of Police concerned shall ensure the arrest of the accused-appellant, Ashraf.

49. Trial court record be sent to the concerned Court forthwith.

50. Let a copy of this order be communicated by the Registrar (Compliance) to the Court concerned for compliance.

51. The Chief Judicial Magistrate shall submit a compliance report after two

months to be placed before the appropriate Court.

(2025) 4 ILRA 874

APPELLATE JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 11.04.2025

BEFORE

**THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE ANISH KUMAR GUPTA, J.**

Criminal Appeal No. 4854 of 2016
Connected with
Crl. Appeal Nos. 4607 of 2016, 5209 of 2016 &
5734 of 2016

Rakesh Singh & Anr. ... Appellants
Versus
State of U.P. ...Respondent

Counsel for the Appellants:

Ashok Kumar Tripathi, Govind Saran Hajela,
Radhey Shyam Shukla, Rajesh Kumar

Counsel for the Respondent:

Arvind Agrawal, G.A.

(A) Criminal Law - Unlawful Assembly - Common Object - Indiscriminate firing by armed accused causing death and injuries - Indian Penal Code, 1860 - Sections 147, 148, 149, 302 & 307 - Arms Act, 1959 - Section 27 - Any lawful assembly may become unlawful at any point of time - Common object may be formed at any stage and liability arises even without overt act if member shares object - Moment indiscriminate firing began in response to objection, assembly became unlawful and common object was formed.(Para -29 to 33,36)

Accused persons consuming liquor and abusing each other were objected to by the informant - Accused retaliated with firearms causing death of two and injuries to five including informant - FIR lodged after delay of six and a half hours due to urgent medical needs - Prosecution justified delay based on circumstances - Trial

Court convicted all accused - Appeals filed against conviction. **(Para -27)**

HELD: -The moment the accused persons had started the indiscriminate firing at the injured persons they had formed a common object and the assembly of the accused persons became an unlawful assembly. Prosecution succeeded in proving the case. No interference was required in the trial court's judgment., **(Para -36,37)**

Criminal appeal's dismissed. (E-7)

LIST OF CASES CITED: -

1. Subal Ghorai Vs St. of W.B., (2013) 4 SCC 607
2. Charan Singh Vs St. of U.P., (2004) 4 SCC 205
3. Haramant Laxmappa Kukadi Vs St. of Karn., (1994) 1 SCC 736
4. Roy Fernandes Vs St. of Goa, (2012) 3 SCC 221
5. Gajanand & ors. Vs St. of U.P. : AIR 1954 SC 695
6. Kuna Vs St. of Odisha, (2018) 1 SCC 296
7. Rajeevan Vs St. of Kerala, (2003) 3 SCC 355
8. Sekaran Vs St. of T.N., (2024) 2 SCC 17
9. Sattey & ors. Vs St. of U.P. : (2019) 106 ACC 469
10. Chikkarange Gowda Vs St. of Mysore, 1956 SCC OnLine SC 65
11. Mizaji Vs St. of U.P., 1958 SCC OnLine SC 95
12. Shambhu Nath Singh Vs St. of Bihar, 1959 SCC OnLine SC 27

(Delivered by Hon'ble Anish Kumar Gupta, J.)

1. Heard Sri Ashok Kumar Tripathi and Sri Shashank Singh, learned counsel

for the appellants, Sri Shubham Kumar holding brief of Sri Ashish Goyal, learned counsel for the informant and the learned A.G.A. for the State.

2. All these appeals have been filed by the appellants being aggrieved by the judgement and order dated 11.08.2016 passed by the Additional Sessions Judge, Court No. 5, Shahjahanpur in Sessions Trial No. 548 of 1997 & Sessions Trial No. 222 of 1998, whereby all the appellants herein have been convicted for the offences under Sections 147, 148, 149/307 and 149/302 I.P.C. For the offence under Section 147 I.P.C. they were sentenced for two years of imprisonment with a fine of Rs. 5,000/- each, for the offence under Section 148 I.P.C., three years imprisonment with fine of Rs. 5,000/- each, for the offence under Sections 149/307 I.P.C., all the appellants were sentenced for life imprisonment with a fine of Rs. 25,000/- each and for the offence under Sections 149/302 I.P.C. all the appellants were sentenced for life imprisonment with a fine of Rs. 30,000/- each. In case of non payment of fine for the offence under Sections 147 and 148 I.P.C., they were directed to undergo six months' additional imprisonment in addition to the sentence already awarded.

3. The brief facts of the prosecution case are that the informant- Narendra Pal Singh s/o Fakire Singh, had submitted a written report on 18.05.1997 at around 1:00 A.M. at P.S.- Nigohi, District-Shahjahanpur, stating therein that on 17.05.1997 at around 6:30 P.M., the accused Jangbahadur Singh, Rajkumar Singh, Devendra Singh who were equipped with guns, accused Jaipal Singh who was armed with a single barrel gun, Anil Kumar Singh who was armed with a double barrel

gun, Vijay Kumar Singh who was armed with a countrymade pistol, Omprakash Singh, Nanku Singh, Rajkumar Singh, Rakesh Singh, Rajendra @ Gajendra Singh, Dangal Singh who were all armed with single barrel gun and Veer Singh was again having a gun, were drinking liquor and abusing each other while passing through the informant's chaupal. When the informant and his family members objected to their behaviour, the aforesaid persons opened fire because of which Fakire Singh, Smt. Hira Kunwari Devi, Jhinak Singh, Nepal Singh, Rajkumar Singh, Prem Pal Singh sustained fire arm injuries. The informant- Nagendra Pal Singh had stated in the written report that he brought the injured persons in a tractor trolley to the police station and requested for lodging the report and taking appropriate legal action.

4. On the aforesaid written report submitted by the informant- Nagendra Pal Singh s/o deceased- Fakire Singh, an F.I.R. was registered under Sections 147, 148, 149, 307, 504 I.P.C. and also under Section 27 of the Arms Act against the accused appellants, namely Devendra Singh s/o Jangbahadur Singh, Omprakash Singh s/o Jagdish Singh, Rajendra @ Gajendra Singh s/o Kanhai Singh, Rakesh Singh s/o Rameshwar Singh, Rajkumar s/o Nanku Singh, Rajkumar s/o Jangbahadur Singh, Anil Kumar Singh s/o Jaipal Singh, Vijay Kumar Singh s/o Jagdish Singh, Nanku Singh s/o Mangoo Singh, Kanhai Singh s/o Pulander Singh, Dangal Singh s/o Visni Singh, Jaipal, Veer Singh and Jangbahadur s/o Zoravar Singh. On the basis of the letter of reference of the police station, medical examination of the injured persons was conducted at Government Hospital, Nigohi, District- Shahjahanpur.

5. As per the medical examination report dated 19.05.1997 at 10:30 A.M. the following injuries were found on the body of Smt. Heera Kumari:

1. A lacerated wound measuring 0.5 CM $\times$ 0.5 CM depth of which could not be measured and 8 CM on the right side of the head above the right eyebrow with folded edges.

2. Torn wound measuring 0.5 CM $\times$ 0.2 CM depth of which could not be measured and 12 CM on left side of head, edges folded over left ear.

3. Torn wound measuring 1.5 CM $\times$ 0.5 CM, 0.4 CM $\times$ 0.2 CM depth could not be measured. On left side of head 8 CM above left eyebrow.

4. Scratch measuring 0.5 CM $\times$ 0.2 CM in front of right ear.

5. Torn wound measuring 0.5 CM $\times$ 0.2 CM in the inner side of the front of the right ear.

6. Bullet wound behind the right ear measuring 0.5 CM $\times$ 0.2 CM"

[As per the opinion of the Doctor injury nos. 1, 2 and 3 were kept in observance and X-Ray was advised. Injury nos. 4, 5 and 6 were simple injuries.]

6. As per the medical examination report of the injured- Rajkumar Singh conducted on 19.05.1997 at 10:00 A.M., the following injuries were found on his body:

"1. Torn wound measuring 0.5 CM $\times$ 0.4 CM depth of which could not be measured. Left side of face 2 CM above the mouth.

2. Multiple lacerated wounds on right side of chest measuring 0.4 CM $\times$ 0.3 CM to 0.6 CM $\times$ 0.3 CM, depth of which could not be measured, with curled edges."

[As per the opinion of the Doctor, the injuries were kept in observance. Injuries were one and a half days old.]

7. As per the report of the medical examination of injured, Jhinak Singh @ Jhumak Singh, which was conducted on 20.05.1997 at 10:30 A.M., the following injuries were found on his body:

“1. Bullet entry wound measuring 0.3 CM X 0.2 CM on right side of Head just above the right ear, depth of which could not be measured.

2. Scratch scab red in colour measuring 0.7 CM X 0.3 CM over one third of the right ear.

3. Bruise measuring 3.5 CM × 0.4 CM in length, 9.5 CM above the right hip on right arm, brown in colour.”

[As per the opinion of the Doctor injury no.1 was kept in observance and X-Ray was advised. Injury nos.1, 2 and 3 were of simple in nature. Injury no. 1 was a firearm injury and injury nos. 2 and 3 were due to bruise marks. Injuries were two and a half days old.]

8. As per the injury report of injured-Munna Singh, the following injuries were found during the medical examination of the injured on 18.05.1997 at 3:20 A.M:

1. There were multiple firearm injuries on the head of the injured and three injuries were there on the head. One injury was there in the palm of both the hands, three injuries were there on the left face, one injury was there on the left hand. All the injuries were of similar type measurement of which were 0.4 CM to 0.3 CM. All injuries were soft and blood clotting was present. Signs of injuries were towards inside. Redness was present around the injuries. The whole blackishness or burning was not present around the injuries. There were two

injuries on the right chest, right stomach and right side. On the left chest there two injuries and one injury was there in front of the stomach and one entry wound was found on the left shoulder bone. As per the opinion of the Doctor the condition of the injured was very serious and he was in coma.

[As per the opinion of the Doctor, all the injuries were caused by the firearm. Both the eyes were damaged. Injuries were fresh. For the final opinion, X-Ray was advised.]

9. As per the medical examination report of injured- Fakire Singh, which was conducted on 18.05.1997 at 3:50 A.M., the following injuries were found on his body:

“Multiple bullet entry wounds on face. One wound in the middle of the forehead. One wound on the right cheek and four on the chin. One wound on the front of the head which was 6 CM above the forehead injury. One entry wound on the right forearm. One entry wound on the upper side of the right forearm. Blackness was present on the left side. All the wounds are similar and similar in appearance, measuring 0.3 CM to 0.4 CM. The skin is sunken. The edges of the wounds are soft and blood is present. There is infiltration cell in the wound. There was redness around the wound. Injured was in critical condition and in coma. The injuries were inflicted by a firearm and were fresh. The injuries were kept under observation and X-Ray was advised.”

10. As per the medical examination report dated 18.05.1997 at 3:10 A.M., the following injuries were found on the body of the injured Satyapal Singh:

“1. Bullet entry wound 0.2 cm on the lower eyelid of the right eye on which avulsion cell was present. The wound was soft on top and blood stain is present.

2. This wound was similar to injury no. 1 which was on the right ear across the ear. There was blood accumulation. There was an exit wound behind the ear with the edges bent outwards. Patient was complaining of dizziness, nausea and weakness.”

[As per the opinion of the Doctor, injury no. 1 was the entry wound and injury no.2 was also the entry wound and exit wounds were also present. These injuries were one fourth day to one and a half day old. X-Ray was advised and consultation with Eye Specialist was also recommended.]

11. As per the injury report of injured Prempal Singh dated 18.05.1997 at 5:00 A.M., the following injuries were found on his body:

“1. Multiple entry wounds, one on the left cheek, below the neck, between the two collarbones.

2. A wound on the right side of the chest, 4 CM below the middle of the collarbone.

3. A wound on the left chest, 8 CM above the nipple at the 12 o'clock position

4. A wound on the shoulder.

5. A wound in front of the abdomen.

6. Two wounds on the right arm at a distance of 10 cm from each other.

7. Two wounds on the right forearm.”

All the injuries were similar in nature. Also swellings were present.

12. Out of the aforesaid injured persons, the injuries of Munna and Fakire Singh were serious in nature and they were admitted to Balrampur Hospital, Lucknow, where the injured Munna Singh had died on

19.05.1997 at 1:20 P.M. and injured Fakire Singh died on 22.05.1997 at 3:25 P.M. Intimation of death was received at District- Lucknow and thereupon the inquest report of deceased Munna Singh was prepared on 20.05.1997 at 2:45 P.M. and similarly inquest report of deceased Fakire Singh was prepared on 23.05.1997 at 12:30 P.M. at District- Lucknow. Postmortem of deceased Munna Singh was conducted 21.05.1997 at 1:30 P.M. and postmortem of deceased Fakire Singh was conducted on 23.05.1997 at 3:45 P.M.

13. On the receipt of the report of death of Munna Singh and Fakire Singh, Section 302 I.P.C was added for the purpose of investigation against the accused persons. Investigation was carried out and from the place of incident blood stained and plain soil was taken from the crime scene. Empty cartridges were also recovered from the spot and the accused persons were subsequently arrested. After completion of the investigation, a charge-sheet under Sections 147, 148, 149, 302 and 307 I.P.C. and Section 27 of the Arms Act was filed against all the persons. Supplementary charge-sheet was also filed against Jangbahadur Singh s/o Zoravar Singh for the same offence. The Chief Judicial Magistrate had taken cognizance on both the charge-sheets and committed the case on 06.09.1997 and 06.03.1998 respectively to the Sessions Court. The Sessions Court vide order dated 21.06.2002 had framed charges against the accused persons for the offences under Sections 147, 148, 149, 302 and 307 I.P.C. The accused persons however had denied the charges and had claimed trial.

14. During the trial Anil Kumar Singh, Vijay Kumar Singh, Jaipal Singh, Nanku Singh, Kanhai Singh, Veer Singh

and Dangal Singh had died. Therefore, the case was abated against them.

15. The accused Jangbahadur Singh s/o Zoravar Singh was absconding from the trial, therefore, the proceedings under Sections 82 and 83 I.P.C. were initiated against him and subsequently after the execution of the bond against the sureties, proceedings under Section 299 I.P.C. were initiated against Jangbahadur Singh while the case proceeded against the rest of the accused persons.

16. In support of its case, the prosecution had examined PW-1/informant-Narendra Pal Singh, PW-2, Prempal Singh, PW-3 Satyapal Singh, PW-4 S.I. Harendra Pal Singh (Investigating Officer), PW-5 Dr. D.K. Gupta, PW-6 Dr. Yogesh Kaul, PW-7 Dr. Devendra Singh Negi, PW-8 Dr. Muniruddin, PW-9 Rajkumar Singh, PW-10 Vinod Kumar Singh, PW-11 S.I. Ramgopal Diwakar, PW-12 Rajendra Singh and various documents were filed. After conclusion of the prosecution evidence the statements of the accused Rajkumar Singh s/o Chandra Bahadur, Raj Kumar s/o Nanku Singh, Devendra Singh, Om Prakash Singh, Rajesh Singh, Rajendra Singh @ Gajendra Singh were recorded under Section 313 Cr.P.C.

17. Kunendra Pal Singh was examined as Defence Witness (DW) by the accused persons. After conclusion of the trial, the trial court had convicted the aforesaid accused persons, namely Rajkumar Singh s/o Jangbahadur Singh, Raj Kumar s/o Nanku Singh, Devendra Singh, Rajendra Singh and Rajendra Singh @ Gajendra Singh, Omprakash Singh for the offences under Sections 147, 148, 149/307, 149/302 I.P.C. and they were sentenced as aforementioned.

18. Being aggrieved by the judgement and order dated 11.08.2016, five separate appeals had been filed by the accused appellants. Criminal Appeal No. 4854 of 2016 was filed by accused persons- Rakesh Singh s/o Rameshwar Singh and Raj Kumar s/o Nanku Singh, Criminal Appeal No. 4607 of 2016 filed by Rajendra @ Gajendra Singh, Criminal Appeal No. 5209 of 2016 was filed by Omprakash Singh and Criminal Appeal No. 5734 of 2016 was filed by Devendra Singh s/o Jangbahadur Singh. **So far as the accused/appellant Raj Kumar son of Jang Bahadur Singh is concerned, since he has died during the pendency of the appeal, therefore, his appeal no. 6009 of 2016 has already been dismissed as abated vide order dated 30.9.2024.** The appellants- Omprakash Singh s/o Jagdish Singh and Rajendra @ Gajendra Singh s/o Kanhai Singh were released on bail by this Court. The appellants Rakesh Singh, Raj Kumar son of Nanku Singh and Devendra Singh are in Jail. Now, the above four appeals are left with us, which are being decided by the instant common judgement and order, as the same are arising out of the same impugned judgement and order and the same case crime number.

19. Learned counsel for the appellant has submitted that in the instant case out of the so many accused persons, one was absconding and six had died. These appeals now related to only five convicted accused persons.

20. As per the defence, indiscriminate firing was done by all the accused persons from their 312 bore gun without any premeditation. It is submitted by learned counsel for the appellants that there was no common intention/common object to cause death to any of the deceased. Therefore, he

submits that, there was no unlawful assembly. He further submitted that the appellants could not be said to be members of any unlawful assembly. There was a delayed F.I.R. by six and a half hours and the appellants were deliberately implicated who were innocent persons and were going to attend an engagement ceremony of the son of one of the co-accused persons. It is further submitted by learned counsel for the appellants that PW-3, Satyapal Singh, during his examination-in-chief, failed to identify the accused Rajkumar Singh and named him as Devendra Singh. Thus, he was either not present on the spot or had falsely implicated them. Learned counsel for the appellant further submits that there are allegations of indiscriminate firing by all the fourteen persons, however, only two empty cartridges of 312 bore were recovered from the spot and even the indiscriminate firing by the appellants herein was not proved against the appellants beyond reasonable doubt. As per PW-2 and PW-3, the specific role of firing was assigned only against the accused- Anil Kumar Singh upon the deceased Fakire Singh and a general role of indiscriminate firing by others was given. There was no recovery of any weapon nor was there a recovery of any incriminating article whatsoever either from the possession of or at the pointing out of the appellants herein.

21. Learned counsel for the appellants further submits that there is a delay of six and a half hours in reporting the incident, which had led to the lodging of an exaggerated version of the actual incident by implicating innocent persons of the families of the accused, who were not actually present at the place of incident. There is an unexplained delay by the Investigating Officer in recording the statements of the injured eye witnesses who

were brought to the police station by the informant at the time of submitting the written report. It is further submitted by learned counsel for the appellants that the present five appellants had been convicted by concluding that they were there with a common object whereas there is no evidence to establish the common object forming the unlawful assembly as from none of the appellants any recovery of weapon used in the instant case nor any other incriminating material had been recovered from their possession.

22. In support of his submissions learned counsel for the appellants has relied upon the judgements of Apex Court in *Subal Ghorai v. State of W.B.*, (2013) 4 SCC 607 (paragraph 53), *Charan Singh v. State of U.P.*, (2004) 4 SCC 205 (paragraph 13, 14, 15), *Haramant Laxmappa Kukkadi v. State of Karnataka*, (1994) 1 SCC 736, *Roy Fernandes v. State of Goa*, (2012) 3 SCC 221 (paragraph 27 to 33), *Gajanand & Ors. vs. State of U.P. : AIR 1954 SC 695*, *Kuna v. State of Odisha*, (2018) 1 SCC 296 (paragraph 21 to 23), *Rajeevan v. State of Kerala*, (2003) 3 SCC 355 (paragraph 12, 13, 14), *Sekaran vs. State of Tamil Nadu : (2024) 2 SCC 17* (paragraph 14 and 15) and *Sathey and Others vs. State of U.P. : (2019) 106 ACC 469* (paragraph 28).

23. Per contra, learned A.G.A. submits that from the evidence of the informant it is apparent that there was election rivalry between the accused persons and informant's family. All the accused persons were passing through the house of the informant while abusing the informant and other members of the injured persons, when they protested and thereafter the indiscriminate firing was done by all the accused persons.

24. The delay in lodging the F.I.R. has been well explained as after the incident the written report got prepared and thereafter all the injured persons were put into a tractor trolley and then they were brought to the police station, which is around 10-12 kilometres away from the place of incident and in reaching there it took around three hours. The incident is of 6:30 P.M. and one hour had taken place in making the arrangements and preparing the written report. Then, three hours had elapsed while reaching the police station. Thereafter, the F.I.R. was registered at 1:00 A.M. on 18.05.1997. So, there was no deliberate delay on the part of the informant, rather, the written report was got prepared promptly within an hour. Thus, there was no occasion for the informant to falsely implicate any person who was not present.

25. From the prosecution side, there was sufficient evidence regarding the role of the accused persons and the arms carried by each of the accused person's description had been categorically given in the written report as well as in the statements recorded during the course of trial. Therefore, all the fourteen persons armed with deadly weapons had formed a common object of causing grievous injuries to the injured persons and in the course of events two persons had died and five persons were injured. Even the independent witnesses had supported the prosecution evidence by naming all the accused persons, who had indiscriminately fired on the injured persons. The moment they had started firing they had formed an unlawful assembly and therefore, they were rightly convicted for the offences under Sections 147, 148, 149/307 and 149/302 I.P.C. Thus, these appeals are liable to be dismissed and no interference is called for in the impugned judgement.

26. Having heard the rival submissions made by learned counsel for the parties this Court has carefully gone through the record of the case.

Delayed F.I.R.

27. As per the prosecution's case, the incident of indiscriminate firing by the fourteen accused persons occurred on 17.05.1997 at 6:30 P.M. when the informant and the other injured persons were sitting outside their house and the accused persons equipped with firearms were passing through the house of the informant, and they while consuming liquor had hurled abuses on them. This when was objected by the injured persons, then they had indiscriminately fired at them and caused serious injuries to seven persons out of which two had died during treatment due to the injuries caused by these accused persons. As per the statement of PW-1, after the occurrence people had gathered, and thereupon, a written report was scribed by one Kunendra Singh, which was kept by the informant and the arrangements were made to carry the injured persons to the police station which was 10-12 Kilometres away from the place of incident. This took around one hour in making the arrangements and the injured persons alongwith informant were carried by the tractor to the police station. This again took around three hours to reach to the police station due to the bad road conditions. Thereafter, police had registered the F.I.R. at 1:00 A.M. on 18.05.1997. Thus, as per the informant the written report was already prepared while proceeding to the police station immediately after the incident, which was submitted to the police officers after reaching there on the basis of which the police has registered the F.I.R. at 1:00

A.M., on 18.05.1997. According to the informant, he reached at the police station around 11-12 O'Clock in the night. Therefore, there was no delay on the part of the informant in lodging the F.I.R. and the delay has been sufficiently explained. Thus, the delay in registering the F.I.R. about six and a half hours, has been well explained thus has no consequence to the prosecution's case.

Unlawful Assembly & Common Object

28. Before proceeding further it would be relevant to take note of Sections 141 and 149 I.P.C., which read as under:

"141. Unlawful assembly.—*An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is:*

1. *To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislatur e of any State, or any public servant in the exercise of the lawful power of such public servant; or*

2. *To resist the execution of any law, or of any legal process; or*

3. *To commit any mischief or criminal trespass, or other offence; or*

4. *By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or*

5. *By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to*

do, or to omit to do what he is legally entitled to do."

149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—*If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."*

29. In **Charan Singh (supra)**, the following observations have been made by the Apex Court with regard to the applicability of Sections 141 & 149 I.P.C., common object etc., which reads as under:

"13. Coming to the others who were armed with double-barrelled guns and country-made pistols, the question is regarding applicability of Section 149 IPC. Section 149 IPC has its foundation on constructive liability which is the sine qua non for its operation. The emphasis is on the common object

and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act

is proved against a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word "object" means the purpose or design and, in order to make it "common", it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression "in prosecution of common object" as appearing in Section 149 has to be strictly construed as equivalent to "in order to attain the common object". It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to a certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 IPC may be different on different members of the same assembly."

14. "Common object" is different from a "common intention" as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The "common object" of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to Section 141, an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words, it can develop during the course of incident at the spot eo instanti.

15. Section 149 IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order

*that the offence may fall within the first part, **the offence must be connected immediately with the common object of the unlawful assembly of which the accused was a member.** Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. **An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom.** Though no hard-and-fast rule can be laid down under the circumstances from which the common object can be culled out, **it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at or before or after the scene of incident.** The word “knew” used in the second branch of the section implies something more than a possibility and it cannot be made to bear the sense of “might have been known”. Positive knowledge is necessary. **When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object.** That, however, does not make the converse proposition true; there may be cases which would come*

within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within the first part; but offences committed in prosecution of the common object would be generally, if not always, within the second part, namely, offences which the parties knew to be likely to be committed in the prosecution of the common object. (See Chikkarange Gowda v. State of Mysore [AIR 1956 SC 731 : 1956 Cri LJ 1365] .)”

30. In *Chikkarange Gowda v. State of Mysore*, 1956 SCC OnLine SC 65, the Apex Court has held as under:

“10. It is quite clear to us that on the finding of the High Court with regard to the common object of the unlawful assembly, the conviction of the appellants for an offence under Section 302 read with Section 149 Indian Penal Code cannot be sustained. The first essential element of Section 149 is the commission of an offence by any member of an unlawful assembly; the second essential part is that the offence must be committed in prosecution of the common object. In the case before us, the learned Judges of the High Court held that the common object of the unlawful assembly was merely to administer a chastisement to Putte Gowda. The learned Judges of the High Court did not hold that though the common object was to chastise Putte Gowda, the members of the unlawful assembly knew that Putte Gowda was likely

to be killed in prosecution of that common object. That being the position, the conviction under Section 302 read with Section 149 Indian Penal Code was not justified in law.”

31. In **Mizaji v. State of U.P., 1958 SCC OnLine SC 95**, the Apex Court has held as under:

“6. This section has been the subject-matter of interpretation in the various High Courts of India, but every case has to be decided on its own facts. The first part of the section means that the offence committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. It is not necessary that there should be a preconcert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 149 if it can be held that the offence was such as the members knew was likely to be committed. The expression ‘know’ does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that when in a village a body of heavily armed men set out to take a woman by force, someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part of Section 149. Similarly, if a body of persons go armed to take forcible

possession of the land, it would be equally right to say that they have the knowledge that murder is likely to be committed if the circumstances as to the weapons carried and other conduct of the members of the unlawful assembly clearly point to such knowledge on the part of them all.[.]”

32. In **Shambhu Nath Singh v. State of Bihar, 1959 SCC OnLine SC 27**, the Apex Court has held as under:

*“6. Section 149 of the Penal Code is declaratory of the vicarious liability of the members of an unlawful assembly for acts done in prosecution of the common object of that assembly or for such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. If an unlawful assembly is formed with the common object of committing an offence and if that offence is committed in prosecution of the object by any member of the unlawful assembly, all the members of the assembly will be vicariously liable for that offence even if one or more, but not all committed the offence. Again, if an offence is committed by a member of an unlawful assembly and that offence is one which the members of the unlawful assembly knew to be likely to be committed in prosecution of the common object, every member who had that knowledge will be guilty of the offence so committed. But **members of an unlawful assembly may have a community of object upto a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community***

of object and as a consequence of this the effect of Section 149 of the Penal Code may be different on different members of the same unlawful assembly.”

33. From the aforesaid provisions of Sections 141 and 149 I.P.C. and keeping in mind the pronouncements by the Apex Court in the aforesaid decisions the following legal position emerges. Any lawful assembly may become unlawful at any point of time. The moment its object becomes unlawful and any offence is committed in furtherance of such common object by any member of such unlawful assembly, each and every member of such unlawful assembly will be liable for the same offence. A person, who is held to be liable for such offence is required to have understood that the assembly was unlawful or had become unlawful and it was likely to commit the offence. The word ‘object’ means the purpose or design and in order to make it “common”, it must be shared by all. Thus, “common object” means an object or purpose or design of an assembly, which is shared by all. For forming a “common object” no express agreement after mutual consent is required. It may be formed at any stage by all or a few of the members of the assembly and the other members might just join and adopt it. What common object of an unlawful assembly is there at a particular stage of the incident is essentially a question of fact to be determined by keeping in view the nature of the assembly which arms were carried by the members, and how they behaved at or near the scene of the incident would also have to be taken into consideration. The overt acts committed by any of the members of the assembly would also be a great pointer for the offence. It is not necessary that intention or purpose which is necessary to render assembly unlawful,

comes into existence at the very outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. A lawful assembly can become an unlawful assembly during the course of the incident itself, spontaneously. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be lead. The intention, has generally to be gathered from the acts, which the person commits and the result therefrom. It is a settled position of law that no hard and fast rule can be laid down regarding the circumstances from which the common object can be culled out. It may reasonably be collected from the nature of the assembly, arms that it carries and its behaviour at or before or after the scene of incident. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in furtherance of the common object.

34. The judgement relied upon by learned counsel for the appellants in ***Subal Ghorai (supra)*** is not applicable in the instant case as there is no evidence that any of the appellants were merely bystanders. Rather, against all the accused persons a common allegation is that they were armed with deadly weapons and had indiscriminately fired at the injured persons and the injuries co-relate with the weapons used by the appellants herein. Therefore, the aforesaid judgement is of no help to the accused persons.

35. In the considered opinion of this Court, the facts of the ***Haramant Laxmappa Kukkadi (supra)*** are entirely

different and are not applicable to the instant case.

36. Now, coming back to the facts of the instant case, there are three injured witnesses in the instant case who had categorically supported the prosecution's case and had alleged that all the accused persons while drinking liquor were passing through the houses of injured persons. When it was objected by the injured, then, all of them had indiscriminately fired at the injured persons. Due to the injuries sustained in the said incident, two persons had died. Thus, from the narration of incident as has been supported by the prosecution evidence, it is apparent that all the accused persons had formed a common object and they were armed with lethal weapons. They were passing through the houses of the injured persons and were abusing them, which was objected to by the injured persons. In response to such objections raised by the injured persons all the accused persons had indiscriminately fired at them. The injuries sustained by the injured persons were commensurate to the weapons used by the accused persons. Thus, the moment the accused persons had started the indiscriminate firing at the injured persons they had formed a common object and the assembly of the accused persons became an unlawful assembly. The prosecution witnesses, namely the PW-1, PW-2 and PW-3 had stood firm and there was not an iota of doubt regarding their testimonies. So far as the testimonies of PW-9 (Raj Kumar Singh) and PW-10 (Vinod Kumar Singh), who were declared hostile is concerned, despite the fact that they had been declared hostile they had not denied the incident in its entirety. Rather, they themselves had suffered injuries but it appears that for certain extraneous obvious reasons they could not support the incident

in its totality regarding the involvement of the accused persons. The involvement of the accused persons have categorically been narrated by PW-1, PW-2 and PW3. The medical examination reports also support that prosecution story with regard to indiscriminate firing by the accused/appellants. Therefore, in our considered opinion the prosecution has succeeded in proving the case against the appellants and there is no illegality in the impugned judgement and order passed by the trial court convicting the appellants for the offences under Sections 147, 148, 149/302 and 149/307 I.P.C. Thus, no interference is called for in the impugned judgement of the trial court and the conviction and sentence of the appellants awarded by the trial court is hereby affirmed.

37. In view of the aforesaid, we do not find any merit in the appeals of the appellants. Accordingly, the Criminal Appeal No. 4854 of 2016, Criminal Appeal No. 4607 of 2016, Criminal Appeal No. 5209 of 2016 and Criminal Appeal No. 5734 of 2016 are hereby *dismissed*.

38. The appellants Rakesh Singh, Raj Kumar son of Nanku Singh and Devendra Singh are in jail. They shall be kept there to serve out the sentence awarded by the trial court and affirmed by us. The appellants Rajendra alias Gajendra Singh and Om Prakash are on bail. C.J.M. Shahjahanpur is therefore directed to take them into custody and send to jail to serve out the sentence awarded by the trial court and affirmed by us.

39. Office is directed to send a copy of this order to the court concerned within a week for compliance. The compliance report shall be sent by the court concerned

registered and charge sheet filed under IPC and SC/ST Act - cognizance taken and summons issued. (Para -1,3,13)

HELD: - Material on record showed a prima facie case against the appellant to proceed to trial. Magistrate was justified in taking cognizance and issuing summons. No illegality, infirmity or perversity in the impugned order. Appeal devoid of merit. (Para -13,17)

Criminal appeal dismissed. (E-7)

LIST OF CASES CITED: -

1. R.P. Kapur Vs St. of Punj., A.I.R. 1960 S.C. 866,

2. St. of Har. Vs Bhajan Lal, 1992 SCC (Cr.) 426,

3. St. of Bihar Vs P.P.Sharma, 1992 SCC (Cr.)
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4. Z.P.W. Ltd. Vs Mohd. Saraful Haq & anr.,
2005 SCC (Cr.) 283)

5. Nirmaljit Singh Vs St. of W.B., (1973) 3 SCC 753

6. St. of Guj. Vs Afroz Mohammed Hasanfatta,
(2019) 20 SCC 539

7. Sarah Mathew Vs I.C.V.D., (2014) 2 SCC 62

8. Jagdish Ram Vs St. of Raj. & anr., AIR 2004 SC 1734

9. Ramesh Chandra Vaishya Vs St. of U.P. & anr., (2023) 17 SCC 615

(Delivered by Hon'ble Nalin Kumar
Srivastava, J.)

1. This criminal appeal under Section 14-A (1) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (in short 'the SC/ST Act') has been preferred by the appellant - Kaushal with the prayer to set-aside the cognizance / summoning order dated 2.12.2023 passed by the Special Judge

(SC/ST Act) Moradabad, the charge sheet and the entire proceedings of Special Session Trial No. 1771 of 2023, arising out of case crime no. 482 of 2023, under Sections 342, 504, 506, 323 IPC and 3(1)(da), 3(1) (dha), 3(2)(5 ka) the SC/ST Act, P.S. Civil Lines, District Moradabad.

2. Heard learned counsel for the appellant as well as the learned A.G.A. for the State and perused the entire record.

3. Prosecution case, as culled out from the record, is that an altercation took place between the named accused persons including the present appellant and the informant side at a coaching centre. It is alleged that after closing of the coaching when the informant was returning to his home in day time, the present appellant alongwith his associates hurled abuses with caste related remarks and threatened him for dire consequences and he was also beaten with kicking and fisting and his money was also robbed by the accused persons. Some independent persons of the same vicinity reached there and the accused persons fled away, however, police did not take proper action and the present appellant was simply challaned under Section 151 CrPC whereas the incident was captured in the CCTV footage. However, subsequently F.I.R. was lodged and after investigation charge sheet under Sections 342, 504, 506, 323 IPC and 3(1)(da), 3(1)(dha), 3(2)(5 ka) of SC/ST Act was filed and cognizance was taken by the Court of the said offences and the accused persons were summoned to face trial accordingly.

4. It is submitted by the learned counsel for the appellant that appellant is innocent and has been falsely implicated in this case. Admittedly, a fracas took place between two groups of students but it is

totally false to say that on account of said heated argument any assault was made by the appellant alongwith his associates upon the informant. The eye witnesses have not supported the prosecution case. No serious injuries have been caused to the informant / injured of this case. In the x-ray performed by the doctor no adversity has been discovered. Appellant has no criminal history to his credit. It is further submitted that offence under SC/ST Act is also not made out against the present appellant.

5. The next argument advanced by the learned counsel for the appellant is that the I.O. of this case collected absolutely no evidence to the effect that the incident took place in any place within the public view and intentional insult or intimidation was made by the appellant. It is further submitted that there is not even an iota of evidence on record as collected by the I.O. that the appellant committed the alleged offence for the simple reason of the injured being a member of SC/ST community. It is also submitted that the appellant never hurled abuses to insult him by caste related remarks nor threatened for life and no independent witness came forward to support the prosecution version in this respect. The impugned order suffers from infirmity and illegality warranting interference by this Court.

6. Per contra, the learned AGA opposed the appeal and submitted that since the appellant and the injured were studying in the same coaching centre, the appellant was very well knowing that the injured belonged to SC/ST community. As per the prosecution case the incident happened on a public road and several persons were present over there and witnesses Shanu and Kamal Hasan saw the incident. Hence, the offence was committed

at a place which was within public view. It is also submitted that since the charge sheet has been submitted under Section 323 IPC, no adverse inference may be drawn against the prosecution case, if no fracture was found in the x-ray report of the injured and no serious injury was caused to him. The Court concerned after applying its judicial mind has passed the cognizance and summoning order on the basis of sufficient evidence on record. The trial court was under no obligation to enter into the elaborate discussion of the evidence at the stage of taking cognizance of the offence. Hence, the appeal having no force is liable to be dismissed.

7. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned order.

8. It is trite law that at the stage of taking cognizance and summoning the accused, the Magistrate / Court dealing with the matter is required to apply judicial mind only with a view to take cognizance of the offence to find-out as to whether prima-facie case has been made out to summon the accused or not. The Court at this stage is not required to analyze the material on record to find-out as to whether the matter may lead to conviction or not. Sufficiency of materials for the purpose of conviction is not required. It is also settled that even when there are materials raising strong suspicion against the accused, the Court will be justified in taking cognizance and summoning the accused. The Court / Magistrate is not required to analyze the evidence on merits but to scrutinize the evidence only with a view as to whether sufficient grounds exist to initiate criminal proceedings in respect of the offence which is said to have been committed (Vide : **R.P.**

Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, 2005 SCC (Cr.) 283).

9. Further, what is 'sufficient ground' for proceeding to issue summons and warrant has been clarified in **Nirmaljit Singh Vs. State of West Bengal, (1973) 3 SCC 753** and it is held therein that the words "sufficient ground" used in Section 203 have been construed to mean the satisfaction that a prima facie case is made out against the person accused by the evidence of witnesses entitled to a reasonable degree of credit and not sufficient ground for the purpose of conviction.

10. It is also not out of the scope of subject here that an order passed to summon the accused is an opinion of the Magistrate and to pass a detailed order or to state the grounds of his satisfaction is not required from a Magistrate, however the summoning order must be a speaking order.

11. In **State of Gujarat v. Afroz Mohammed Hasanfatta, (2019) 20 SCC 539**, the Hon'ble Apex Court reiterated that for issuance of summons strict standard of proof of satisfaction of the Magistrate regarding sufficiency of ground(s) to proceed in the matter is not required and such satisfaction should be based only on prima facie evidence. Before summoning the accused, the facts stated will have to be accepted as they appear on the very face of it. Sufficiency of evidence to hold accused guilty, merits of matter and defence pleas have to be examined at the stage of trial and not at the stage of issuance of process.

Whether statement of a witness is hearsay and whether it is supported by "contemporaneous exposition" and whether it would fall under "res gestae" and whether it is admissible or not is to be seen only at the time of trial.

12. To find out the requisite ingredients to establish an offence under Sections 3(1)(r), 3(1)(s) [also to be read as Section 3(1)(da) and Section 3(1)(dha)] and 3(2)(v) of the SC/ST Act, the provisions thereof, are reproduced below :

"3. Punishments for offences of atrocities.— (1) *Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—*

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view.

(2) *Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—*

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine."

13. In the instant matter, the materials available on record are capable to show that the injured and the accused appellant were studying in the same coaching centre, hence, it was rightly supposed by the Investigating Officer that the appellant very

well knew that the injured belonged to SC/ST community. Furthermore, the offence took place at a public road in day time in the presence of several persons and the informant was wrongfully confined by the accused persons on road. There is also prima facie evidence on record that the injured was beaten by the appellant who also hurled abuses to him and threatened for life. Though the named eye witnesses Shanu and Kamal Hasan in their statements given to the I.O. have made some statements adverse to the prosecution case but the injured / informant very well supported the prosecution case when interrogated by the Investigating Officer. The injury report of the injured is also available on record. Hence, in this matter, as per the materials available on record, at this stage, it cannot be said that offences levelled against the appellant are not attracted. A prima facie case is made out against the appellant to proceed for trial. Further, to decide the pleas raised before this Court leading of evidence would be required, which can appropriately be done before the court concerned at appropriate Stage.

14. The Hon'ble Supreme Court in **Sarah Mathew vs. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62** held that cognizance is taken when a Magistrate or Court applies his mind or takes judicial notice of an offence with a view to initiating criminal proceedings in respect of the offence which is said to have been committed. This is the special connotation acquired by the term "cognizance", and is given the same meaning wherever it appears in Chapter XXXVI as well.

15. Moreover, the view vented in **Jagdish Ram vs. State of Rajasthan and another, AIR 2004 SC 1734** by the

Hon'ble Apex Court sets a reminder that taking cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

16. Further, the Hon'ble Apex Court in the case of **Ramesh Chandra Vaishya vs. State of U.P. and another, (2023) 17 SCC 615** has been pleased to observe that the first question that calls for an answer is whether it was at a place within public view that the appellant hurled caste related abuses at the complainant with an intent to insult or intimidate with an intent to humiliate him.

17. In view of the aforesaid discussion, I am of the opinion that there is no force in the submissions made by the learned counsel for the appellant. The Court concerned did not err in taking cognizance into the matter and thereby to summon the accused / appellant to face trial for the offences made out prima facie. There is no illegality, infirmity or perversity in the impugned order. The prayer made in the appeal is refused. The criminal appeal being devoid of merits is liable to be dismissed and the same is accordingly dismissed.

(2025) 4 ILRA 892
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 23.04.2025

BEFORE
THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Revision No. 1089 of 2024

Dr. Gomati Dwivedy **...Revisionist**
Versus
C.B.I./A.C.B. Branch, Lko. **...Respondent**

Counsel for the Revisionist:
Navneet Awasthi, Gaurav Chand Kaushik

Counsel for the Respondents:
Anurag Kumar Singh

Criminal Law - Criminal Procedure Code, 1973 – Section 91 – Application for production of document by accused at the stage prior to defence – Rejection justified – Order refusing sanction for prosecution of co-accused neither relevant nor necessary at pre-charge stage – Not a document falling under Section 91 Cr.P.C. when invoked by accused at framing of charge – Section does not confer an enforceable right on the accused to summon documents for defence before charge is framed – Verification of affidavit filed with the application found incomplete and casual – Judicial disapproval expressed.

Held, in light of St. of Orissa Vs Debendra Nath Padhi, (2005) 1 SCC 568, the right of the accused under Section 91 Cr.P.C. ordinarily arises only at the stage of defence. A document refusing sanction for prosecution of a co-accused is not one which can be compelled for production under Section 91 at the pre-charge stage. The revision was devoid of merit and was rightly rejected.

Case Law Discussed:

1. St. of Orissa Vs Debendra Nath Padhi, (2005) 1 SCC 568.
2. Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re Vs St. of Andhra Pradesh & ors., (2021) 10 SCC 598.

(Delivered by Hon'ble Subhash Vidyarthi,
J.)

1. Heard Sri Navneet Awasthi, the learned counsel for the revisionist, and Sri

Anurag Kumar Singh, the learned counsel for the respondent- CBI.

2. By means of the instant revision filed under Section 397/401 Cr.P.C., the revisionist has challenged the validity of an order dated 01.06.2024 passed by the Special Judge (Prevention of Corruption Act) C.B.I. Court No.3, Lucknow in Criminal Case No.2370 of 2018, arising out of R.C. No. 0062015A0017, under Sections 120B, 409 and 420 IPC and Sections 23(2) read with Section 13(1)(D) of the Prevention of Corruption Act, 1988, lodged at Police Station CBI/ACB, Lucknow, whereby an application under Section 91 Cr.P.C. filed by the revisionist seeking a direction to the Secretary, National Informatics Centre for production of an order refusing sanction for prosecution of another co-accused person Naseem Ahmad has been rejected.

3. A copy of the application under Section 91 Cr.P.C. has been annexed as Annexure No.11 to the affidavit filed in support of the revision. This application is supported by an affidavit of the revisionist. The affidavit runs into as many as 52 paragraphs and numerous judgments have been referred to and extracts of the judgment have been quoted in the affidavit of the revisionist. The verification clause of the affidavit filed before the learned trial court is being quoted below:-

“Verification

I, the deponent above named do hereby verify that the contents of paragraphs _____ to _____ of the affidavit are true to my own knowledge, those of paragraphs _____ to _____ are on the basis of legal advice and those of

paras _____ to _____ are based on record.

No part of it is false and nothing material has been concealed, so help me God.”

4. It is very disturbing to note that even when cases are filed on the basis of affidavits, the advocates treat verification and swearing of affidavits as an empty formality and they even do not fulfill that formality before filing the affidavit in a court. It is also very disturbing that the Oath Commissioner has verified the affidavit without even taking care to have a look at it and without ascertaining as to whether the deponent has in fact verified the contents of the affidavit. This casual approach of the learned Counsel for the revisionist as well as that of the oath commissioner cannot be appreciated by the Court, to say the least.

5. Even on merits of, through the application under Section 91 Cr.P.C., the revisionist has prayed for directing the Secretary, National Informatics Center (NIC) to present before the trial Court the order denying sanction for prosecution of a co-accused person Sri Naseem Ahmad.

6. Section 91 Cr.P.C. provides as follows: -

“91. Whenever any Court or any officer-in-charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be,

requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.”

7. The trial court has referred to the decision of the Hon’ble Supreme Court reported in **State of State Of Orissa versus Debendra Nath Padhi**: (2005) 1 SCC 568, wherein it has been held that: -

“25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is ‘necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code’. The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the Court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. In so far as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it whether police or accused. If under Section 227 what is necessary and

relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by Court and under a written order an officer in charge of police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.”

(Emphasis added)

8. he learned counsel for the revisionist has relied upon a decision of the Hon’ble Supreme Court reported in **Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re Vs. State of Andhra Pradesh and others**: (2021) 10 SCC 598, wherein the Hon’ble Supreme Court has expressed an opinion that while furnishing the list of statements, documents and material objects under Section 207/208 Cr.P.C. the Magistrate should also ensure that a list of other materials such as statements or objects/documents seized, but not relied on should be furnished to the accused. The Hon’ble Supreme Court formulated the Draft Criminal Rules of Practice, 2021, Rule 4 whereof provides as follows: -

“4. Supply of documents under Sections 173, 207 and 208 CrPC.—(i) Every accused shall be supplied with statements of witness recorded under Sections 161 and 164 CrPC and a list of documents, material objects and exhibits seized during investigation and relied upon by the investigating officer (IO) in

accordance with Sections 207 and 208 CrPC.

Explanation : The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the investigating officer.”

9. The aforesaid draft Rule 4 merely provides for supplying statements of witness recorded under Sections 161 and 164 CrPC and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer in accordance with Sections 207 and 208 Cr.P.C.

10. An order refusing sanction for prosecution of a co-accused person does not fall in any of the categories of the documents mentioned by the Hon’ble Supreme Court while expressing the aforesaid opinion in **Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re** (Supra). It does not fall in any of the categories of documents mentioned in the Draft Rule 4 relied upon by the learned Counsel for the revisionist. Therefore, the revisionist has no right to seek a direction for production of the order passed by the Secretary, National Informatics Centre refusing sanction for prosecution of a co-accused person under Section 91 Cr.P.C.

11. In view of the foregoing discussion, I am of the considered view that the order dated 01.06.2024 passed by the Special Judge (Prevention of Corruption Act) C.B.I. Court No.3, Lucknow does not suffer from any illegality, warranting interference by this court in exercise of its revisional

jurisdiction. The revision lacks merit and the same is accordingly **dismissed**.

(2025) 4 ILRA 895

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 10.04.2025

BEFORE

**THE HON’BLE MAHESH CHANDRA
TRIPATHI, J.**

THE HON’BLE PRASHANT KUMAR, J.

Crl. Misc. W.P. No. 2611 of 2020

Usman Ali

...Petitioner

Versus

State of U.P. & Ors.

...Opp. Parties

Counsel for the Petitioner:

Md. Aman Khan

Counsel for the Opp. Parties:

A.S.G.I., G.A., Manish Singh, Prahlad Kumar Khare, Sanjay Kumar Yadav, Sikandar Khan, Sushma Singh, Vineet Sankalp

Criminal Law – Constitution of India, 1950 – Section 226 & 243-R(b) - Indian Penal Code, 1860 - Sections 34, 120-B, 147, 148, 149, 302 & 506 - Criminal Procedure Code, 1973 – Sections – 82, 173, 173(2), 173(8), 311, 319 & 482 - National Investigation Agency Act, 2008 - Sections 6, 6(2) & 6(5) - Criminal Law Amendment Act, 1932- Section 7 - Unlawful Activities (Prevention) Act, 1967 - SectionS 10(a)(i) & 15(1) - writ petition - seeks multiple reliefs - primarily challenging the impugned U.P. Government’s order transferring the investigation of Case from local police to the CBCID without considering the petitioner’s demand for invoking the UAPA and further prayed to for transferring the case to a central agency like the NIA or CBI - FIR - offense of murder and rioting – allegations are that petitioner’s brother was murdered – the competent authority passed an order whereby investigation of the case was transferred from

the Local police to CBCID – challenged in writ petition – disposed of – with direction to the St. Govt. UP to taken fresh decision in accordance with law – matter reached finality – in compliance, UP Government passed impugned order - now challenged by the petitioner again in the current proceedings – court while discussing the various issue of like scope of Article 226, transfer of Investigation, further Investigation Permissibility, Applicability of UAPA, Criminal Procedure Powers, finds that, - such transfers should only occur in rare, exceptional cases where the St. investigation lacks credibility or public confidence - The Court emphasized the adequacy of existing legal remedies under the Cr.P.C., including powers under Sections 311 and 319, allowing trial courts to summon or recall witnesses and proceed against uncharged individuals if strong evidence emerges - Finding no compelling grounds justifying interference or transfer at this stage, and to avoid prejudicing the ongoing trial, the Court declined to exercise its jurisdiction under Article 226 and dismissed the writ petition – held that, (i) the power of transferring an investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind – and (ii) available procedural safeguards under Cr.P.C. (Sections 311 & 319) were adequate - and therefore declined to intervene in the matter – hence, the writ petition is dismissed to avoid prejudicing the ongoing trial – the trial court is at liberty to proceed in accordance with law. (Para - 35, 38, 39, 40, 41)

Writ Petition Dismissed. (E-11)

List of referred Cases: -

1. Mohanlal Shamji Soni Vs U.O.I.- 1991 (1) Crimes 818 (SC),
2. Heera Lal Vs St. of M.P. - 1997 (2) Crimes 634 (MP),
3. Sukhpal Singh Khaira Vs St. of Pun. - (2023) 1 SCC 289,

4. Ramesh Chandra Srivastava Vs St. of U.P.- (2021) 12 SCC 608,

5. St. of West Bengal & ors.Vs Committee for Protection of Democratic Rights, West Bengal & ors.– 2010 (3) SCC 571,

6. Vinay Tyagi Vs Irshad Ali - (2013) 5 SCC 762,

7. Bhagwant Singh Vs Commr. of Police - (1985) 2 SCC 537,

8. Rubabbuddin Sheikh Vs St. of Guj. & ors.- (2010) 2 SCC 200,

9. Kabir Shankar Bose Vs St. of W.B. & ors.– 2024 SCC Online SC 3592,

10. K. VS Rajendran Vs Superintendent of Police CBCID South John Chennai & ors.- 2013 AIR SC (Criminal) 2103,

11. K. Vadivel Vs K. Shanti & ors.- 2014 AIR SC 5064,

12. Arup Bhuyan Vs St. of Assam & anr.- 2023 (8) SCC 745,

13. Dharam Pal Vs St. of Har. & ors.- 2016 (4) SCC 160),

14. Rampal Gautam Vs the St. & another – 2025 LiveLaw (SC) 164,

15. Hasanbhai Valibhai Qureshi Vs St. of Guj. & ors.- 10. (2004) 5 SCC 347,

16. Smt. Vandana Srivastava Vs St. of U.P. & ors.- Criminal Misc. Writ Petition No.6973 of 2014 – decided on Dt. 23.04.2019.

(Delivered by Hon'ble Mahesh Chandra Tripathi, J. & Hon'ble Prashant Kumar, J.)

1. Heard Shri Rakesh Pande, learned Senior Advocate assisted by Mohd. Aman Khan, learned counsel for the petitioner and Shri Paritosh Malviya, learned AGA-I

alongwith Shri Sanjay Kumar Singh, learned AGA for the State-respondents.

2. The instant writ petition is preferred under Article 226 of Constitution of India seeking following reliefs:-

“a. To call for the records from the respondents.

b. To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 26.06.2019 (Vide Annexure No.1 of this Writ Petition) (Letter No.12 C.I.D./6-Pu-11-19-387M/2018) passed by the Government of U.P. through its Principal Secretary Home, Police Anubhag-11, Home Department U.P. whereby it has transferred the investigation of Case Crime No.238 of 2018 under Sections 147, 148, 149, 302, 120B, 34 IPC and Section 7 of Criminal Law Amendment Act, Police Station Chopan, District Sonbhadra, U.P. from the local police of Police Station Chopan, District Sonbhadra to C.B.C.I.D. and has not passed any order relating to the prayer of the petitioner for adding the offences under the Unlawful Activity Prevention Act, 1967 and for taking necessary actions under Section 6 of the National Investigation Agency Act, 2008 i.e. submission of report to the Central Govt. as contemplated under Section 6 (2) of the National Investigation Agency Act, 2008 so that Central Govt. may take a decision as contemplated under Section 6 (3) of the National Investigation Agency Act, 2008.

c. To issue a writ in the nature of mandamus directing/commanding the investigation of C.B. Case No.93 of 2019, Sector Varanasi, which arises out of aforesaid Case Crime No.238 of 2018 under Sections 147, 148, 149, 302, 120B, 34 IPC and Section 7 of Criminal Law Amendment Act, Police Station Chopan,

District Sonbhadra, U.P. to be transferred from C.B.C.I.D. to agency of Central Govt. i.e. the National Investigation Agency or the Central Bureau of Investigation.

d. To issue a writ in the nature of mandamus commanding the Union of India, Ministry of Home Affairs to take a decision on the representation dated 12.07.2019 (vide Annexure No.33) on behalf of the petitioner for taking action under Section 6 (5) of the National Investigation Agency Act, 2008.

e. To ensure fair, impartial, prompt and timely investigation of Case Crime No.238 of 2018 under Sections 147, 148, 149, 302, 120B, 34 IPC and Section 7 of Criminal Law Amendment Act, Police Station Chopan, District Sonbhadra, U.P. which is presently being investigated by the C.B.C.I.D. Sector Varanasi as C.B. Case No.93 of 2019 Sector Varanasi by monitoring the investigation of the aforesaid Case Crime No.238 of 2018 which is presently being investigated by the C.B.C.I.D. Sector Varanasi as C.B. Case No.93 of 2019 Sector Varanasi and to direct penal and disciplinary action against the investigating officers for lapses and shortcomings in investigation of aforesaid Case Crime No.238 of 2018 presently C.B. Case No.93 of 2019 Sector Varanasi.

f. To ensure that petitioner is not pressurized in pursuing the Sessions Trial No.18/19 of 2019 arising out of Case Crime No.238 of 2018 under Sections 147, 148, 149, 302, 120B, 34 IPC and Section 7 of Criminal Law Amendment Act, Police Station Chopan, District Sonbhadra, as well as pursuing and participating in the further investigation of the aforesaid Case Crime No.238 of 2018 on account of threat and danger of life and person of the counsel of the petitioner who is representing the petitioner in the Sessions trial as well as in the proceedings before the Chief Judicial

Court Sonbhadra and making representations on behalf of the petitioner to the investigating agencies and other authorities for fair and impartial investigation regarding which the petitioner has complained to the police by lodging first information report i.e. Case Crime No.479 of 2019 under Section 506 IPC which has been registered at Police Station Robertsganj, District Sonbhadra (vide Annexure No.32).

g. To direct the respondents to arrest the accused who were named in the first information report of Case Crime No.238 of 2018, under Sections 147, 148, 149, 302, 120B, 34 IPC and Section 7 of Criminal Law Amendment Act, Police Station Chopan, District Sonbhadra and other accused namely Sarvendra Mishra @ Shivendra Mishra whose complicity surfaced in the course of investigation and is figuring as an wanted accused in the investigating of Case Crime No.238 of 2018, under Sections 147, 148, 149, 302, 120B, 34 IPC and Section 7 of Criminal Law Amendment Act, Police Station Chopan, District Sonbhadra, U.P. (C.B. Case No.93 of 2019 C.B.C.I.D. Sector Varanasi) and further direct the respondents for compliance of the non-bailable warrants for arrest which had been issued by the Court on 12.12.2018 and orders against Rakesh Jaiswal and Ravi Jalan under Section 82 Cr.P.C. which had been issued by the learned CJM Sonbhadra on 22.12.2018 (vide Annexure No.15) and for the conclusion of the investigation of Case Crime No.19 of 2019 under Section 174-A, Police Station Chopan, District Sonbhadra for non-appearance of the accused in pursuance of proclamation u/s 82 Cr.P.C. which had been issued in respect of aforesaid Case Crime No.238 of 2018 under Sections 147, 148, 149,

302, 120B, 34 IPC and Section 7 of Criminal Law Amendment Act, Police Station Chopan, District Sonbhadra, U.P.

h. To issue any other writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

I. To award the cost of petition to the petitioner."

FACTUAL MATRIX OF THE CASE

3. The real brother of the petitioner namely Imtiyaz Ahmad, who was sitting Chairman of the Town Area Chopan, District Sonbhadra, was murdered in the morning of 25.10.2018. The incident was immediately reported to the concerned police station, whereupon First Information Report¹ dated 25.10.2018 was registered as Case Crime No.238 of 2018 under Sections 147, 148, 302, 120-B of Indian Penal Code² and Section 7 of Criminal Law Amendment Act, 1932, Police Station Chopan, District Sonbhadra against Rakesh Jaiswal, Ravi Jalan and four unknown shooters. One assailant/accused Kashmir Paswan @ Rauket was arrested by the police from the spot with prohibited 9mm Carbine and its cartridges. The matter was investigated by the police and during investigation Sections 149 and 34 IPC were added. Six accused persons including Kashmir Paswan were arrested by the police.

4. It is also reflected from the record that the named accused Rakesh Jaiswal approached to this Court by filing Criminal Misc. Writ Petition No.31379 of 2018 for quashing the FIR dated 25.10.2018, which was dismissed by the

Division Bench vide order dated 01.11.2018 with following observations:-

“Heard Shri Dilip Kumar, learned counsel assisted by Shri Kartikeya Saran, learned counsel for the petitioner, Shri Mohd. Aman Khan, Shri Rakesh Prasad and Shri Tushar Kant, learned counsel for the respondent No. 4 and the learned A.G.A. for the State-respondents.

This petition has been filed by the petitioner with a prayer to quash the F.I.R. in Case Crime No. 238 of 2018, under sections 147, 148, 302, 120-B IPC and 7 Criminal Law Amendment Act, 1932, PS Chopan, District Sonbhadra.

It has been submitted by the learned counsel for the petitioner that the petitioner along with co-accused Ravi Jalan has been nominated as accused on the basis of suspicion expressed by the deceased before his death. The deceased suspected that the petitioner may have conspired to cause his death. The plea of alibi has also been argued by the learned counsel for the petitioner. It is further submitted by the learned counsel for the petitioner that the petitioner was not found at the place of incident. On the date of occurrence, he went to Delhi to attend NGT meet, hence, since at this stage there is no credible evidence on record against the petitioner, the arrest of the petitioner may be stayed till credible evidence is collected and hence, the impugned FIR is liable to be quashed.

Per contra Shri Mohd Aman Khan, learned counsel for the respondent No. 4 has submitted that the petitioner as well as co-accused named in the FIR have actively participated in the commission of crime. The post-mortem report indicates that two fire arm injuries were found on the body of the deceased and the petitioner is not entitled to protection

with regard to which prayer has been made in the instant writ petition and hence, the impugned FIR is not liable to be quashed.

From the perusal of the F.I.R., prima facie it cannot be said that no cognizable offence is made out. Hence, no ground exists for quashing of the F.I.R. or staying the arrest of the petitioners.

The writ petition is, accordingly, dismissed.

However, It is provided that in case, the petitioner appears before the court concerned within three weeks from today and applies for bail, the same shall be dealt with in accordance with law expeditiously by the courts below.”

5. Similarly, another named accused Ravi Jalan preferred Criminal Misc. Writ Petition No.962 of 2019 and the same was disposed of by an order dated 17.01.2019. The order is reproduced as under:-

“Heard Sri I.K. Chaturvedi, learned counsel for the petitioner, Sri Purshottam Maurya, learned A.G.A. for the respondent nos. 1 to 3 and Sri Anil Tiwari and Sri Rakesh Pande, learned counsels appearing for the respondent no.4.

This writ petition has been filed by the petitioner seeking quashment of F.I.R. dated 25.10.2018 in respect of Crime No. 0238 of 2018 for the offence under Sections 120-B, 302, 147, 148, 149, 34 of I.P.C. and 7 Criminal Law Amendment, P.S. Chopan, District Sonebhadra.

Learned counsel for the petitioner after arguing for some time wants to withdraw this writ petition with liberty to file regular bail application

before the trial court. He further submits that the trial court be directed to decide his regular bail application on the same day or at least by the next date.

Counsels appearing for the complainant and State counsel have no objection insofar as withdrawal of the petition is concerned. They however, submit that discretion be given to the trial court to decide the bail application in accordance with law considering all the aspects of the matter.

In view of above, petitioner is permitted to withdraw this writ petition with the aforesaid liberty.

Needless to state that in the eventuality of filing any regular bail application by the petitioner before the competent court, the competent court shall decide the same objectively in accordance with law as expeditiously as possible considering all the aspects of the case.

The petition is, accordingly, disposed of.

It is made clear that this Court has not expressed any opinion on the merits of the case and the competent court shall be at liberty to decide the bail application strictly in accordance with law.”

6. On 12.12.2018 the Chief Judicial Magistrate³, Sonbhadra issued Non-Bailable Warrants⁴ against accused Ravi Jalan, Rakesh Jaiswal, Rinku Bhardwaj, Suraj Paswan, Akhilesh Thakur, Santosh Paswan and Shashi Kumar Chandrawanshi. As there was non-compliance of the NBWs, the FIR under Section 174-A IPC was also lodged on 30.01.2019, registered as Case Crime No.0019 of 2019 at Police Station Chopan, District Sonbhadra. Thereafter the CJM initiated proceedings under Section 82 of Cr.P.C. against the named accused Rakesh Jaiswal, Ravi Jalan and other accused and declared them as

absconders vide order dated 22.12.2018. The co-accused namely Suraj Paswan and Rinku Bhardwaj were arrested by the Special Task Force⁵, Varanasi Unit, U.P. from Kolkata, West Bengal on 27.12.2018.

7. It is alleged that when the named accused failed in their endeavour to get protection order from this Court, they manipulated with the administration for transfer of investigation, at the stage when coercive steps were taken to secure their arrest and the Competent Authority had passed an order dated 22.02.2019, whereby investigation of the Case Crime No.238 of 2018 was transferred from the local police to CBCID. The said order was challenged by the petitioner in Criminal Misc. Writ Petition No.6926 of 2019 by claiming that the order of transfer was passed in violation of the guidelines provided for consideration of transfer requests and the same was also with malafide intention. The said relief was pressed in the light of the guidelines provided by the Division Bench in **Smt. Vandana Srivastava vs. State of U.P. and others**⁶. The decision was also challenged on the ground that the guidelines, inter alia, provide that ordinarily no order of transfer of investigation should be on application made by the accused (in the instant matter, the wife of one of the accused had made an application); that every attempt should be there to first ensure that the investigation is done by the concerned police station/authority in a fair and diligent manner; that before passing an order of transfer of investigation, a report from the Investigating Officer qua the status of the investigation and order, if any, of the High Court, in respect of the case must be obtained; that if it is found that transfer of investigation is necessary, then the order must be supported by cogent reasons with reference to the material available with the

authority transferring the investigation; and that, if necessary and permissible, an opportunity should be afforded to the informant before passing an order of transfer of investigation. In the said writ petition, the petitioner had also prayed for a direction to incorporate penal Sections and to entrust the investigation to the National Investigating Agency⁷.

8. In the said writ petition, the Division Bench had opined that the order of transfer of investigation was a non-speaking order and it did not disclose reasons for the transfer, though it contained that the same had been made keeping in mind the facts stated in the undated letter of Smt. Arti Jaiswal, wife of one of the accused persons, who had submitted request for transfer. After hearing learned counsel for the parties, the Division Bench had partly allowed the writ petition on 23.04.2019. For ready reference, the operative portion of the order is reproduced herein below:-

“Having considered the rival submissions, upon perusal of the record, and the reasons recorded above, we are of the firm view that the order of transfer of investigation, which has been passed by the State Government, cannot be sustained and, therefore, it must go, though the State Government must be given opportunity to pass a fresh order.

Under the circumstances, we deem it appropriate to partly allow the petition. The order dated 22.02.2019 (Annexure No.1 to the writ petition) is quashed. A direction is issued to the Principal Secretary (Home), Government of U.P., Lucknow to have a fresh look at the request of the respondent no.10, as also of the petitioner, if any, for transfer of investigation of the matter and to take fresh

decision in accordance with law after calling for comments from the concerned police authorities of the district concerned on the grounds on which the State proposes to pass an order. The aforesaid exercise shall be completed, preferably, within a period of six weeks from the date a certified copy of this order is placed before it.

The petition stands partly allowed. There is no order as to costs.”

9. The record further reflects that none of the parties have assailed the order dated 23.04.2019 and the same has attained finality. The wives of the named accused Mrs. Arti Jaiswal, wife of Rakesh Jaiswal and Mrs. Meera Jalan, wife of Ravi Jalan moved Misc. Application Nos.48 of 2019 and 49 of 2019 in the Court of CJM on 25.05.2019 and learned CJM vide order dated 25.05.2019 had stayed the investigation of Case Crime No.238 of 2018. Pursuant to the said order dated 23.04.2019, the Special Secretary, Department of Home (Police), Anubhag-11, Govt. of U.P. Lucknow sent a letter dated 30.05.2019 to the Superintendent of Police, Sonbhadra and sought a report in respect of transfer of investigation of the present case. In response thereof, the Superintendent of Police, Sonbhadra submitted his report on 07.06.2019. Finally, the Principal Secretary, Department of Home, Government of U.P. passed an order on 26.06.2019 transferring the investigation of the instant case from Police Station Chopan, District Sonbhadra to CBCID, which is impugned in the present writ petition.

ARGUMENTS ON BEHALF OF THE PETITIONER

10. Sri Rakesh Pande, learned Senior Advocate appearing on behalf of the

petitioner vehemently submitted that the petitioner is real brother of the deceased, who was murdered in the broad day light on 25.10.2018 and the persons belonging to the banned extremists organization i.e. Jharkhand Jan Mukti Parishad⁸ were involved in the murder. The said murder was also done at the instance and conspiracy hatched by the named accused namely Rakesh Jaiswal and Ravi Jalan. The said claim is also fortified on the ground that one assailant/accused Kashmir Paswan @ Rauket was arrested from the spot with prohibited 9mm Carbine and he was an Area Commander of banned extremist organization JJMP. The matter was investigated by the police and six accused persons including Kashmir Paswan @ Rauket were arrested by the police.

11. Learned Senior Advocate submitted that the investigation, which was transferred to CBCID, was infact on the dictate of the two accused persons namely Rakesh Jaiswal and Ravi Jalan. They were having 'say' in the Government and in most arbitrary manner, the investigation of the said case was transferred to CBCID. He submitted that the instant matter is a fit case, wherein the investigation is to be conducted by an independent central agency i.e. CBI/NIA. The investigating officer of CBCID in a hasty manner filed a police report under Section 173 (2) Cr.P.C. before the Court of CJM on 29.02.2020, wherein he submitted chargesheet against eight persons and exonerated the named accused persons Rakesh Jaiswal and Ravi Jalan. The CJM had also taken cognizance of the police report on the same day. Aggrieved, therefore the petitioner filed a protest petition and the same was rejected by the CJM on 31.08.2020. Against the said order, the petitioner had preferred Criminal Revision No.08 of 2020, which was

allowed by the District and Sessions Judge, Sonbhadra vide order dated 20.02.2021.

12. He vehemently submitted that when the matter was taken up on 20.03.2025, a specific query was raised by Hon'ble Court that after filing of the charge sheet & after taking cognizance by the concerned Court and after the commencement of the trial into the matter, whether an order for further investigation can be passed. In response to the said query, he submitted that Hon'ble Apex Court in catena of judgments has held that further investigation can be directed even after filing of the charge sheet and commencement of the trial. In support of his submission, he had placed reliance on the judgment in **Rampal Gautam vs. the State & another**⁹ in which Hon'ble Apex Court, taking support of **Hasanbhai Valibhai Qureshi vs. State of Gujrat and others**¹⁰, had reiterated that further investigation can be directed even after filing of chargesheet and commencement of trial and highlighted that the prime consideration for further investigation is to arrive at the truth and to do substantial justice. For ready reference, paragraph-12 of the judgment is reproduced hereinafter:-

"12. At the outset, we may record that a direction to conduct further investigation even after filing of the chargesheet and commencement of the trial is permissible in law as has been held by a catena of judgments of this Court. Reference in this regard may be made to *Hasanbhai Valibhai Qureshi v. State of Gujarat and Others* (2004) 5 SCC 347 wherein, this Court observed that the prime consideration for directing further investigation is to arrive at the truth and to do real substantial justice. The Court further observed that further investigation

and re- investigation stand altogether on a different footing. Even de hors any direction from the Court, it is open to the police to conduct a proper investigation notwithstanding the fact that the Court has already taken cognizance on the strength of a police report submitted earlier. However, a caveat was added that before directing such investigation, the Court or the concerned police officer has to apply mind to the material available on record and arrive at a satisfaction that investigation of such allegations is necessary for the just decision of the case.”

13. It was further submitted that the other question, which has also cropped up during the course of hearing is, whether at this stage (commencement of trial and deposition of several witnesses) the investigation can be transferred to the CBI/NIA?. In response to the said query, he submitted that the power to order fresh, de-dovo or re-investigation being vested with the constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power, which is meant to ensure a fair and just investigation.

14. In this regard, he had placed reliance on the judgement in **Dharam Pal vs. State of Haryana and others**¹¹ in which it was held that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is only to ensure a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. Relevant part of the judgement is reproduced herein below:-

“20. Be it noted here that the constitutional courts can direct for further

investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. **We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power.** We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

21. We may further elucidate. The power to order fresh, de-novo or re-investigation being vested with the Constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic setup has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that Sun rises and Sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. **It is the bounden duty of a Court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one.** It is not acceptable. It has to be kept uppermost in

mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the 'faith' in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a Constitutional Court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idee fixe" but in our view the imperium of the Constitutional Courts cannot be stifled or smothered by bon mot or polemic. of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbor the feeling that he is an "orphan under law". 22. In view of the aforesaid analysis, the appeal is allowed, the order of the High Court is set aside, and it is directed that the CBI shall conduct the investigation and file the report before the learned trial judge. The said investigation report shall be considered by the trial judge as per law. Till the report by the CBI is filed, the learned trial judge shall not proceed with the trial. A copy of the order be handed over to Mr. P.K. Dey, learned Counsel for the CBI to do the needful."

(emphasis supplied)

15. It was next contended that as regards the further query of the Court that whether the facts are of such a nature, wherein penal provisions of the Act, 1967

be invoked in the matter? In response thereof, he submitted that the petitioner's brother was assassinated by the assailants, who belonged to the a banned extremist organization JJMP and the accused Kashmir Paswan, who was a member of the said banned organization, and was arrested from the spot alongwith prohibited 9mm Carbine. The post of Chairman of Town Area is a constitutional functionary as contemplated under Explanation (a) of Section 15 (1) of the Unlawful Activities (Prevention) Act, 1967¹² read with Article 243-R (b) of the Constitution of India. There was sufficient material before the Investigating Agency and even though deliberately they flouted the mandate of the provisions of the Act, 1967 and the NIA Act, 2008. He had placed reliance on the judgment in the case of **Arup Bhuyan vs. State of Assam and another**¹³ in which Hon'ble Supreme Court has categorically held that mere membership of an unlawful association is sufficient to constitute an offence under Section 10 (a) (i) of the Act, 1967.

16. He next contended that the concerned police had also registered FIR under Section 3 (1) of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986¹⁴ against accused Rinku Bhardwaj, Kashmir Kumar Rauket, Suraj Paswan, Pawan Chauhan, Krishna Singh, Ravi Gupta, Dharmendra Kumar and Arvind Kesari. The aforesaid accused persons have been chargesheeted and the trial has also commenced in the said proceeding. Even though he admitted to the extent that the subsequent proceeding in the instant matter has been assailed by the petitioner in Criminal Misc. Application No.1708 of 2025 under Section 482 Cr.P.C. which was de-tagged by this

Court at the time of hearing of the instant matter on 20.03.2025.

ARGUMENTS ON BEHALF OF STATE-RESPONDENTS

17. Per contra, Sri Paritosh Malviya, learned A.G.A.-I strongly defended the impugned order. He contended that the interest of justice is paramount and it will even trump the need to avoid any delay being caused in the proceedings. The petitioner has already preferred Criminal Misc. Application No.1708 of 2025 under Section 482 Cr.P.C./Section 528 of Bhartiya Nyaya Sanhita, 2023¹⁵ challenging the order dated 19.09.2024 passed by the CJM in Case No.108 of 2024 arising out of Case Crime No.238 of 2018. In the said application, which is stated to be pending before learned Single Judge, further prayer has been made to stay the effect and operation of the order dated 19.09.2024. He submitted that even though, learned Single Judge vide order dated 31.1.2025 had connected the aforesaid application alongwith the instant writ petition and directed that both the matters are to be heard together. Accordingly, the matter was nominated to this Bench by Hon'ble the Chief Justice vide order dated 04.03.2025 but as the trial has already commenced and the subsequent order dated 19.09.2024 is challenged in Application No.1708 of 2025, the Court had de-tagged the said application on 20.03.2025. It is an independent proceeding and learned Single Judge is also competent to adjudicate the said aspect of the matter.

18. Learned A.G.A.-I further submitted that in the previous Writ Petition No.6926 of 2019, the petitioner had also asked for issuing a direction to the respondents to incorporate certain penal

Sections and to entrust the investigation of the instant case to the NIA. In the said writ petition, it was also argued that the brother of the petitioner was murdered in the morning of 25.10.2018 and one of the arrested accused Kashmir Paswan was an Area Commander of a Banned Extremist Organisation i.e. JJMP. The JJMP is a formation of Maoist Communist Centre¹⁶, which finds place at serial no.27 of the first Schedule of Act, 1967. It was also prayed for issuing direction to the concerned authority to incorporate the appropriate penal Sections of the Act, 1967. In the said case, the request was made to comply with Section 6 of the National Investigation Agency Act, 2008¹⁷. The said request was not acceded by the Division Bench on 23.4.2019 and the order dated 22.02.2019, by which the investigation was transferred to CBCID, was set aside. Accordingly, the direction was issued to the Principal Secretary (Home), Government of U.P., Lucknow to have a fresh look at the request of the respondent no.10 i.e. Arti Jaiswal, as also of the petitioner and fresh decision was to be taken in accordance with law. Said order was passed only in the backdrop that the relief, as has been prayed for incorporation of the appropriate Sections of the Act, 1967, cannot be re-agitated in the instant proceeding as no such relief was accorded in the previous round of litigation.

19. He further contended that the impugned order had been passed after giving due opportunity to the petitioner and the same had been passed on cogent ground, hence no case is made out for any interference at this stage. Admittedly, the investigating officer submitted the charge sheet against the eight accused persons on 20.01.2019 and the cognizance was also taken by the CJM. He submitted that the trial is also at very advance stage, wherein

eight prosecution witnesses were already examined. The prayer for transfer of the investigation to NIA is also misconceived and untenable. During the investigation it was found that the victim was shot dead due to personal animosity. By no stretch of imagination, at this stage it can be presumed that the said incident had occurred on account of nexus/terrorists activities.

20. Learned A.G.A. submitted that even though at this stage it is not subject matter of scrutiny but at the same time, the Court may consider whether the allegations against the accused persons in the subject matter make out any offence under Chapters II and/or VI of the Act, 1967 and if so, which offence or offences are disclosed. Section 15 of the Act, 1967 engrafts the offence of 'Terrorist Act' and Section 17 lays down the punishment for raising funds for committing a terrorist act. Section 18 engrafts the offence of punishment for conspiracy etc. to commit a terrorist act or any act preparatory to commit a terrorist act. The phrase 'terrorist act' has been defined under Section 15 of the Act, 1967. The main intent of the activity, in which the accused were allegedly involved, was to murder the deceased for their personal animosity. By no stretch of imagination, the same were related to any naxal or terrorist activities or fall under the definition of 'terrorist act'. He further reiterated that initially, the Anti Terrorist Squad¹⁸ had also enquired the matter and submitted its reports on 14.11.2019 and 29.01.2020 before the CJM, wherein it was claimed that the murder was caused on account of personal animosity and the same was not related to any naxal/terrorist activities.

21. He submitted that it is well settled law that constitutional courts can order de-novo investigation or fresh investigation by any investigating agency at any stage of trial even after some witnesses are also examined. The power of police officer under Section 173 (8) of Cr.P.C. to conduct a further investigation, is unrestricted. (Ref. **Dharampal vs. State of Haryana and others** (supra)). He had further placed reliance on the judgement of Apex Court in the case of **K. Vadivel vs. K. Shanti and others**¹⁹ in which it was held that further investigation under Section 173 (8) Cr.P.C. may be ordered where fresh materials come to light which would implicate persons not previously accused or absolve persons already accused or it comes to notice of investigating agency that person already accused of an offence has a good alibi, it may be the duty of investigating agency to investigate genuineness of same and submit a report to the Court. He submitted that further investigation cannot be permitted to do fishing and roving enquiry when police has already filed charge sheet. A parallel investigation proceeding different from the trial could not be permitted which would hamper the fair trial. Moreover, the trial court has ample powers to summon the accused persons on the basis of material collected by the investigating officer, during the course of investigation. He also vehemently argued that in the previous round of litigation the petitioner had complained to the Court that at the behest of the wife of the accused, the investigation could not be permitted but at the same time considering the veracity of the allegations, which were levelled, the Court has given an opportunity to both the parties and the matter was referred to the Secretary (Home), State of U.P.

22. He submitted that no party either the accused or the complainant is entitled to choose the investigating agency or may insist for investigation of a crime by a particular agency. (Ref. **Kabir Shankar Bose vs. State of West Bengal and ors**²⁰). He had also placed reliance on the judgement passed by the Apex Court in **K. V. Rajendran vs. Superintendent of Police CBCID South John Chennai and others**²¹, wherein, Hon'ble Apex Court ruled out that where investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not re-open the investigation and it should be left open to the court where the charge sheet has been filed to proceed with the matter in accordance with the law.

23. He submitted that in the present case, the charge sheet has been submitted. The trial is at very advance stage and the prosecution witnesses had already been examined. Therefore, in the interest of justice, the investigation may not be transferred at this belated stage. He also argued that after the investigation, only the trial court has powers to summon the accused, on the basis of material collected by the investigating officer during the investigation. The magistrate is not bound by the opinion given by the police and he may summon anybody else as accused, who is not even charge sheeted by the police. The informant has no power to ask the trial court to summon someone as an accused. The appropriate relief is to press an application under Section 319 Cr.P.C. at an appropriate stage of trial after recording the depositions of witnesses in the trial court. (Ref. **Gopal Pradhan vs. State of Chhattisgarh**²²). He submitted that Cr.P.C./BNSS, 2023 is a complete code. Even the Magistrate may take cognizance of any offence at the stage of cognizance,

on the basis of material collected by the investigating officer, during the course of investigation and he may also change the criminal Sections at the stage of framing of charges or after that at the stage of trial before the pronouncement of the judgement.

24. We have heard and considered the submissions advanced by learned counsel for the parties at bar and have gone through the material placed on record.

ANALYSIS BY COURT

25. In the instant case, the petitioner herein lodged the first information report in respect of murder of his brother on 25.10.2018, bearing Case Crime No.238 of 2018 for the offences punishable under Sections 147, 148, 302, 120B IPC and Section 7 of Criminal Law Amendment Act. The matter was investigated by the police and thereafter a charge sheet was filed against eight accused persons on 20.01.2019. Meanwhile, the State Government vide order dated 22.02.2019 transferred the investigation of Case Crime No.238 of 2018 from the local police to CB-CID. The said order was challenged by the petitioner in Criminal Misc. Writ Petition No.6926 of 2019, which was partly allowed on 23.4.2019. Subsequently, the CBCID submitted charge-sheet against Santosh Paswan, Shashi Chandravansi and Akhilesh Thakur on 28.02.2020. Pursuant to the filing of the chargesheet, the Magistrate proceeded to take cognizance of the offences on 29.02.2020. The protest petition filed by the petitioner was rejected by learned Magistrate vide order dated 31.08.2020. Aggrieved, the petitioner filed a Criminal Revision No.8 of 2020, which came to be allowed by the learned Sessions Court vide order dated 29.02.2020.

26. In compliance thereof, the Magistrate vide order dated 19.05.2022 allowed the protest petition and directed the CBCID to conduct further investigation. The CBCID, Sector Varanasi commenced further investigation but after some time, the Director General of Police, CBCID transferred the investigation of the instant case to CBCID Sector Prayagraj. The investigating officer submitted charge sheet against named accused persons. Meanwhile, the petitioner moved an application on 29.06.2024 during the pendency of the writ petition, which was rejected by the Magistrate vide order dated 19.09.2024. Aggrieved by the order dated 19.09.2024, an application was preferred by the petitioner under Section 482 of the Cr.P.C., which is pending before learned Single Judge. The trial has commenced in Sessions trial No.19 of 2019 in the Court of District & Sessions Judge, Sonbhadra and eight prosecution witnesses were already examined.

ISSUE BEFORE THE COURT

27. The issue that arises for consideration is whether the given situation warrants for issuance of a direction for transfer of the investigation to the CBI/NIA?

28. To appreciate the issue before the Court, reference to the case laws on the subject is imperative which are being discussed henceforth.

29. In **Rubabbuddin Sheikh v. State of Gujarat & Ors.**²³, the Apex Court dealt with a case where the accusation had been against high officials of the police department of the State of Gujarat in respect of killing of persons in a fake encounter and the Gujarat police after the

conclusion of the investigation, submitted a charge sheet before the competent criminal court. The Apex Court came to the conclusion that as the allegations of committing murder under the garb of an encounter are not against any third party but against the top police personnel of the State of Gujarat, the investigation concluded by the State investigating agency may not be satisfactorily held. Thus, in order to do justice and instil confidence in the minds of the victims as well of the public, the State police authority could not be allowed to continue with the investigation when allegations and offences were mostly against top officials. Thus, the Apex Court held that even if a chargesheet has been filed by the State investigating agency there is no prohibition for transferring the investigation to any other independent investigating agency.

30. In **State of West Bengal & others v. Committee for Protection of Democratic Rights, West Bengal and others**²⁴ a Constitution Bench of Apex Court has clarified that extraordinary power to transfer the investigation from State investigating agency to any other investigating agency must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. The Constitution Bench further observed that it was not sufficient to instill confidence in the minds of the victims as well as the public at large that State should be allowed to continue the investigation when the alleged offences were against its officials. Under these circumstances, the Court

directed the CBI to take up the investigation and submit a report.

31. In **Vinay Tyagi v. Irshad Ali**²⁵, the Apex Court, after referring to the decision in **Bhagwant Singh v. Commr. of Police**²⁶, has held thus:

“However, having given our considered thought to the principles stated in these judgments, we are of the view that the Magistrate before whom a report Under Section 173(2) of the Code is filed, is empowered in law to direct "further investigation" and require the police to submit a further or a supplementary report. A three-Judge Bench of this Court in Bhagwant Singh has, in no uncertain terms, stated that principle, as aforenoticed.”

32. In the said case, the question had arisen whether a Magistrate can direct for reinvestigation. While dealing with the said issue, the Apex Court has observed:

“At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct "further investigation", "fresh" or "de novo" and even "reinvestigation". "Fresh", "de novo" and "reinvestigation" are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.

And again:

“Whether the Magistrate should direct "further investigation" or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct "further investigation" or "reinvestigation" as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation.”

33. In **Dharam Pal vs. State of Haryana & ors (supra)** the Apex Court observed that the power to order fresh, de-novo or re-investigation being invested with the Constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. The relevant paragraph of the judgement is reproduced herein below:-

“21. We may further elucidate. **The power to order fresh, de-novo or re-investigation being vested with the Constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination.** We may hasten to add that the democratic setup has the potentiality of

ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that Sun rises and Sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. **It is the bounden duty of a Court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative.** If there is indentation or concavity in the investigation, can the 'faith' in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a Constitutional Court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idee fixe" but in our view the imperium of the Constitutional Courts cannot be stifled or smothered by bon mot or polemic. of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbor the feeling that he is an "orphan under law".

34. A three-Judge Bench of Apex Court in **K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai and Ors. (supra)** observed

that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instill confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. The Court, after referring to earlier decisions, has laid down as follows:

"In view of the above, the law can be summarised to the effect that the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instill confidence in the investigation or where the investigation is prima facie found to be tainted/biased."

(emphasis supplied)

CONCLUSION

35. We find that in catena of judgements Hon'ble Apex Court has been consistently held that a direction to conduct further investigation even after filing of the charge-sheet and commencement of the trial is permissible in law. In **Hasanbhai Valibhai Qureshi v. State of Gujarat and others (supra)** it was observed by the Apex Court that the prime consideration for directing further investigation is to arrive at the truth and to do real substantial justice.

The Apex Court further observed that further investigation and re-investigation stand altogether on a different footing. Even de hors any direction from the Court, it is open to the police to conduct a proper investigation notwithstanding the fact that the Court has already taken cognizance on the strength of a police report submitted earlier. However, a caveat was added that before directing such investigation, the Court or the concerned police officer has to apply its mind on the material available on record and arrive at a satisfaction that investigation of such allegations is necessary for the just decision of the case. Undeniably, the complainant had the liberty to set out his/her entire case/grievances in examination-in-chief and make a prayer to the trial Court that the other accused, who had been left out during the investigation, should also be proceeded against by summoning them under Section 319 Cr.P.C.

36. In **Ramesh Chandra Srivastava vs. State of Uttar Pradesh**²⁷ Hon'ble Apex Court has considered the power of the trial court under Section 319 Cr.P.C and held that the test as laid down by the Constitution Bench of the Apex Court for invoking power under Section 319 Cr.P.C. inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319 Cr.P.C. should be exercised.

37. Expressing similar view a Five-Judge Bench of the Apex Court in **Sukhpal Singh Khaira v. State of Punjab**²⁸ elucidated:

“15. At the outset, having noted the provision, **it is amply clear that the power bestowed on the court is to the effect that in the course of an inquiry**

into, or trial of an offence, based on the evidence tendered before the court, if it appears to the court that such evidence points to any person other than the accused who are being tried before the court to have committed any offence and such accused has been excluded in the charge-sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.

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23. A close perusal of Section 319CrPC indicates that the power bestowed on the court to summon any person who is not an accused in the case is, when in the course of the trial it appears from the evidence that such person has a role in committing the offence. Therefore, it would be open for the court to summon such a person so that he could be tried together with the accused and such power is exclusively of the court. Obviously, when such power is to summon the additional accused and try such a person with the already charged accused against whom the trial is proceeding, it will have to be exercised before the conclusion of trial. The connotation “conclusion of trial” in the present case cannot be reckoned as the stage till the evidence is recorded, but, is to be understood as the stage before pronouncement of the judgment as already held in **Hardeep Singh** [**Hardeep Singh v. State of Punjab**, (2014) 3 SCC 92: (2014) 2 SCC (Cri) 86] since on judgment being pronounced the trial comes to a conclusion since until such time the accused is being tried by the court.

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33. In that view of the matter, if the court finds from the evidence recorded in the process of trial that any other person is involved, such power to summon the accused under Section 319CrPC can be exercised by passing an order to that effect before the sentence is imposed and the judgment is complete in all respects bringing the trial to a conclusion. While arriving at such conclusion what is also to be kept in view is the requirement of sub-section (4) to Section 319CrPC. From the said provision it is clear that if the learned Sessions Judge exercises the power to summon the additional accused, the proceedings in respect of such person shall be commenced afresh and the witnesses will have to be re-examined in the presence of the additional accused. In a case where the learned Sessions Judge exercises the power under Section 319CrPC after recording the evidence of the witnesses or after pronouncing the judgment of conviction but before sentence being imposed, the very same evidence which is available on record cannot be used against the newly added accused in view of Section 273CrPC. As against the accused who has been summoned subsequently a fresh trial is to be held. However while considering the application under Section 319CrPC, if the decision by the learned Sessions Judge is to summon the additional accused before passing the judgment of conviction or passing an order on sentence, the conclusion of the trial by pronouncing the judgment is required to be withheld and the application under Section 319CrPC is required to be disposed of and only then the conclusion of the judgment, either to convict the other accused who were before the Court and to sentence them can be proceeded

with. This is so since the power under Section 319CrPC can be exercised only before the conclusion of the trial by passing the judgment of conviction and sentence.

34. Though Section 319CrPC provides that such person summoned as per sub-section (1) thereto could be jointly tried together with the other accused, keeping in view the power available to the court under Section 223CrPC to hold a joint trial, it would also be open to the learned Sessions Judge at the point of considering the application under Section 319CrPC and deciding to summon the additional accused, to also take a decision as to whether a joint trial is to be held after summoning such accused by deferring the judgment being passed against the tried accused. If a conclusion is reached that the fresh trial to be conducted against the newly added accused could be separately tried, in such event it would be open for the learned Sessions Judge to order so and proceed to pass the judgment and conclude the trial insofar as the accused against whom it had originally proceeded and thereafter proceed in the case of the newly added accused. **However, what is important is that the decision to summon an additional accused either suo motu by the court or on an application under Section 319CrPC shall in all eventuality be considered and disposed of before the judgment of conviction and sentence is pronounced, as otherwise, the trial would get concluded and the court will get divested of the power under Section 319CrPC. Since a power is available to the court to decide as to whether a joint trial is required to be held or not, this Court was justified in holding the phrase, "could be tried together with the accused" as contained in Section 319 (1) CrPC, to be directory as held in Shashikant Singh**

[Shashikant Singh v. Tarkeshwar Singh, (2002) 5 SCC 738: 2002 SCC (Cri) 1203] which in our opinion is the correct view.

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38. For all the reasons stated above, we answer the questions referred as hereunder.

39.(I) Whether the trial court has the power under Section 319CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order? **The power under Section 319CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.**

40.(II) Whether the trial court has the power under Section 319CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split-up (bifurcated) trial pointing to the involvement of the

accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion.

41.(III) What are the guidelines that the competent court must follow while exercising power under Section 319CrPC?

41.1. If the competent court finds evidence or if application under Section 319CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

41.2. The court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

41.3. If the decision of the court is to exercise the power under Section 319CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

41.4. If the summoning order of additional accused is passed, depending on the stage at which it is passed, the court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

41.5. If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

41.6. If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the court to continue and conclude the trial against the accused who were being proceeded with.

41.7. If the proceeding paused as in para 41.1 above, is in a case where the accused who were tried are to be acquitted, and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

41.8. If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split-up (bifurcated) trial.

41.9. If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319CrPC, the appropriate course for the court is to set it down for re-hearing.

41.10. On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

41.11. Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.

41.12. If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier:

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused."

(emphasis supplied)

38. We also find that Hon'ble Apex Court, while dealing with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI, has consistently held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. Where the investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge sheet has been filed, to proceed with the matter in accordance with law.

39. Even otherwise, we find that the provisions contained in Cr.P.C. 1973/BNSS, 2023 are exhaustive. The Cr.P.C./BNSS is a complete self contained Code, wherein the trial court is competent and empowered to summon any person as witness at any stage of enquiry, trial or other proceeding in view of Section 311 of Cr.P.C. (Section 348 of BNSS). Ref. **Heera Lal vs. State of Madhya Pradesh**²⁹.

40. We also find that it is well settled law that if the conditions under these Sections are satisfied, the Court can call upon a witness not only on the motion of either the prosecution or the defence but also it can do so on its own motion. The trial court is competent to recall any

witness or witness already examined or to summon any witness even if the evidence on both sides is closed so long as the Court retains seisin of the criminal proceeding. Ref. **Mohanlal Shamji Soni vs. Union of India**³⁰.

41. In view of the aforementioned facts and circumstances, we are not inclined to make any such observation, which may impinge the right of the parties and may also vitiate the trial and accordingly, we are not inclined to exercise our discretionary jurisdiction under Article 226 of Constitution of India.

42. For the aforesaid reasons, the writ petition is **dismissed**.

43. It is made clear that this Court has not expressed any views on the merits of the matter and the trial court is at liberty to proceed in accordance with law.

(2025) 4 ILRA 915
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 16.04.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Crl. Misc. W.P. No. 15379 of 2019
 And
 Crl. Misc. W.P. No. 17172 of 2019

Abhimanyu Prasad Ojha & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Opp. Parties

Counsel for the Petitioners:

Anil Kumar Tripathi, Anil Kumar Tripathi

Counsel for the Opp. Parties:

G.A., Faiz Ahmad Khan, Indrajeet Shukla, Santosh Kumar Gupta

Criminal Law- The Constitution of India, 1950-Article 226 - The Code of Criminal Procedure, 1973-Section 133- That a wall has been constructed on a public land by the predecessor-in-interest of the petitioners, which is being used as a way to come on the main way--- Petitioner admitted in his evidence/cross-examination that the wall was constructed by predecessor in-interest of the petitioners---The only plea has been taken that since the finding has been recorded that in case adjacent to the same if construction is made in future, the public way may be obstructed, whereas, the order could not have been passed merely on the basis of presumption of happening in the future, but it cannot be disputed that the wall has been constructed on a public land and as per Section 133 Cr.P.C., the unlawful obstruction or nuisance over any public place or over any way, river or channel which is or may be lawfully used by the public is required to be removed--- Any person cannot unlawfully obstruct or create nuisance on a public place or over any way and if it has been done or construction is raised, the same is liable to be removed under Section 133 Cr.P.C---Merely because it may not have completely created obstruction to the public, it cannot be said that the person, who has created such an obstruction or nuisance, can be allowed to continue with the same.

Writ petitions dismissed. (Para 17) (E-15)

List of Cases referred:-

1. Joginder Singh Vs St. of Har. & ors.; 2021 (2) R.C.R. (Civil) 109
2. Jagpal Singh & ors.Vs St. of Pun. & ors.; AIR 2011 SC 1123
3. Sri Krishna Vs St. of U.P. & ors.
4. Gurmukh Singh Vs St. of Pun. & ors.by the High Court of Punjab and Haryana at Chandigarh

(Delivered by Hon'ble Hon'ble Rajnish Kumar, J.)

1. Heard Shri Sanjay Tripathi, Advocate holding brief of Shri Anil Kumar Tripathi, learned counsel for the petitioners in Criminal Misc. Writ Petition No.- 15379 of 2019 and learned counsel for the petitioners in Criminal Misc. Writ Petition No.- 171721 of 2019, Shri Rajesh Kumar Shukla, learned State Counsel and Shri Santosh Kumar Gupta, learned counsel for the private respondent in both the petitions.

2. Criminal Misc. Writ Petition No. 15379 of 2019 has been filed assailing the order dated 30.11.2018 passed in Case No. 80 under Section 133 of Code of Criminal Procedure (hereinafter referred as Cr.P.C.) by Sub-Divisional Magistrate, Tarabganj, District-Gonda and the judgment and order dated 21.05.2019 passed in Criminal Revision No. 318 of 2018; Rajkishore Ojha (Deceased) substituted by legal heirs Abhimanyu Prasad Ojha and others vs. State of U.P. and another and Criminal Misc. Writ Petition No. 17172 of 2019 has been filed assailing the order dated 30.05.2019 passed by the Sub Divisional Magistrate, Tehsil-Tarabganj, District-Gonda, by means of which he has directed to the In-charge Inspector, Dehat Kotwali, Gonda for compliance of the order dated 30.11.2018 in pursuance of the order dated 21.05.2019 passed by the Session Judge Gonda. Thus, both the petitions have been clubbed together and are being decided by this common judgment and order.

3. Learned counsel for the petitioners submitted that in view of the report submitted by the Tehsildar, Tarabganj, District Gonda, there was no dispute between the petitioners and the private respondent and the public way was not restrained by the petitioners, but without considering it, the learned Sub-Divisional Magistrate passed the impugned order

dated 30.11.2018 on the ground that in case in future any construction is raised by the predecessor-in-interest of the petitioners i.e. Rajkishore Ojha, then the public way will be disturbed. Thus, the order has been passed merely on presumption that the public way will be disturbed in future, whereas on the basis of mere presumption that the public may be disturbed in future, the order cannot be passed under Section 133 Cr.P.C. He further submits that during pendency of the revision, the revisional court also passed the impugned judgment and order dated 21.05.2019, without considering the grounds raised by the petitioners. He further submitted that during pendency of the Criminal Misc. Writ Petition No. 15379 of 2019, the order passed by the learned Sub Divisional Magistrate and learned Sessions Judge, the Sub-Divisional Magistrate, Tarabganj, District-Gonda directed to the In-charge Inspector for compliance of the order passed by him, whereas the same could not have been issued, therefore Criminal Misc. Writ Petition No. 17172 of 2019 was filed. Thus, the submission is that the impugned judgment and orders are not sustainable in the eyes of law and liable to be set aside by this Court.

4. Per contra, learned counsel for the private respondent in both the petitions submitted that the impugned judgment and orders have rightly been passed in accordance with law after considering the report of the Tehsildar and the evidence on record and the admission of the witnesses of the petitioners that the petitioners had constructed a wall on public land, which was being used as a way, therefore, merely because the report indicates that in case, he constructs further wall in future the public way may be disturbed, it cannot be said that the impugned judgment and orders have

been passed merely on presumption of happening in future. Thus, the writ petitions have been filed on misconceived and baseless grounds and the same are liable to be dismissed. He relied on **Jagpal Singh and others vs. State of Punjab and others; AIR 2011 SC 1123, judgment and order dated 02.03.2021 passed in Public Interest Litigation (PIL) No. 1474 of 2020; Sri Krishna vs. State of U.P. and 4 others by a co-ordinate Bench of this Court and judgment and order dated 09.09.2021 passed in CWP No. 17706 of 2021; Gurmukh Singh vs. State of Punjab and others by the High Court of Punjab and Haryana at Chandigarh.**

5. I have considered the submissions of learned counsel for the parties and perused the records.

6. The application was filed by Shri Balak Ram Tiwari resident of Madhavpur (Gajadharpurwa), Police Station Kotwali Dehat, District Gonda on 08.12.2017 under Section 133 Cr.P.C. for removal of the wall constructed by the predecessor-in-interest of the petitioners i.e. Raj kishore Ojha on public land. It was stated in the application that on 18.09.2017 adjacent to the plot of the applicant in 0.08 dismil land of Bhumidhari Gata No. 202/48, a wall was constructed by Raj kishore, predecessor-in-interest of the petitioners, obstructing the way of the applicant because the main way and sehan is on the western side towards the pond. He has filled the pond and claiming right over it. There is unconstructed way in the just western side of Gata No. 225 and 0.60 acre land is in the shape of pond and belongs to Gram Sabha, which is a government land. The allegations made in the application were got inquired from the Tehsildar Tarabganj. On account of consolidation process, the

inquiry was made jointly by the revenue and consolidation departments. In the report, it was stated that it has been alleged by the applicant that the wall has been constructed on Gata No. 225, which is a pond land. The total area of Gata No. 225 is 5.30 acre, out of which 0.15 dismil land i.e. 0.5 dismil each was recorded in the name of three tenure holders having transferable rights. No part of it is in water or recorded as pond adjacent to Gata No.225/5.15 acre and Gata No. 202 is situated, which is a transferable land, in which Balak Ram Tiwari has purchased a plot on the western side of the said plot. There is a public way in the gata of abadi, which connects Majre Gajadharpurwa, therefore the said constructed road is being used by the parties as well as the villagers for commutation. On the eastern side of the public way adjacent to the plot of the applicant, the respondent has constructed a wall, which is about 30 feet long and 6 feet height. The place where the wall has been constructed, it is not justifiable to construct a wall because the said land is neither near to the house of the respondent nor to the sehan. In case, in future the respondent makes any construction adjacent to the same, then the public way may also be obstructed and on account of construction of wall in front of the plot of Balak Ram Tiwari, (which is on way on the land of abadi), the applicant-Balak Ram Tiwari and other villagers would have difficulty in reaching on the way, therefore the same is liable to be removed. Taking cognizance of the said report dated 19.04.2018 submitted by Tehsildar Tarabganj, the proceedings under Section 133 Cr.P.C. were initiated and the conditional order (notice) was issued.

7. The respondent i.e. the predecessor-in-interest of the petitioners

filed an objection dated 14.05.2018 against the said notice stating therein that the Gata No. 225 situated in Village-Madhavpur, Police Station Kotwali Dehat, District Gonda is abadi land since a long time, in which the house of the applicant-the objector and other villagers are situated, in the east of abadi Gata No. 202, which was earlier in the shape of grove and the applicant-objector is a co-tenure holder. The house of the objector is situated in Gata No. 225 on the boundary of Gata No. 202, in which the wall of the objector is standing from north to south since a long time. There was no way of going from this wall and sehan land of the applicant. The applicant-Balak Ram Tiwari is a co-tenure holder in Gata No. 202. He has got filled the plinth on the same without any partition, in which there is no wall or roof. He also does not reside in the same. On the eastern boundary of Gata No. 202, khadanja has been constructed and the applicant has way for his commutation to his plinth from the same. The land in dispute has never been a public way, thus, the proceedings are liable to be quashed.

8. Shri Balak Ram Tiwari, the private respondent filed a reply dated 11.06.2018 to the objection admitting that he is co-tenure holder of Gata No. 202 and the predecessor-in-interest of the petitioners i.e. Raj kishore has no concern with the said land. He has constructed the wall with an intention to close the public way. The construction has been made obstructing the way to the pond from the front of the applicant, thus, the objection is liable to be rejected.

9. The additional objection was filed by the predecessor-in-interest of the petitioners i.e. Rajkishore on 23.7.2018 stating therein that in the map of Gata No.

225, there is no way. The affidavits of Arjun Prasad, Harish, Dwarikanath, Lalji, Vijaynath, Basdev, Mata Prasad, Rambaran, Ashok Kumar, Radheyshyam Ojha, Omprakash, Rameshchandra, Dinesh Kumar, Shivanand and Indrabhushan Ojha dated 13.08.2018 were filed on behalf of the applicant-Raj Kishore i.e. the petitioners. The cross-examination of Arjun Prasad, Indrabhushan Ojha, Mishrilal Ojha, Vijaynath and Omprakash were recorded. Though the witnesses mainly stated that the Gata No. 225 has always been recorded as abadi in the revenue records and not pond and it has also been stated that the way of anybody has not been obstructed on account of construction of wall in Gata No. 225, but Shri Mishri Lal Ojha son of the objector-Raj Kishore stated in his cross-examination dated 03.10.2018 that he has not constructed the wall in the public way but the wall has been constructed by Raj Kishore i.e. his father.

10. The affidavit dated 15.10.2018 of Gangasaran Ojha, Virendra Kumar, Ramprakash Ojha and Phoolchandra were filed on behalf of Balak Ram Tiwari i.e. private respondent and cross objection of Phoolchandra Ojha, Virendra Kumar and Ramprakash Ojha were also recorded. They stated that Raj Kishore had constructed a wall adjacent to the plot of Balak Ram on the eastern side of the public way, which is not adjacent to his house and sehan and there is no justification of the said land. In case, any construction is made on the said wall, then public way would be obstructed. In the cross-examination of Phoolchandra Ojha, Virendra Kumar and Ramprakash Ojha, they have stated that the wall has been constructed on the part of public way, on

account of which, the way of Balak Ram Tiwari and other villagers is obstructed.

11. In view of above, it is apparent that a wall has been constructed by the predecessor-in-interest of the petitioners i.e. Raj Kishore on a part of public land on Gata No. 225, which is being used as a public way.

12. Section 133 Cr.P.C. provides that whenever a report or other information is received, the District Magistrate or Sub-Divisional Magistrate or any other Executive Magistrate specifically empowered in this behalf by the State Government on taking such evidence, (if any), it is found that unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance etc. to remove such obstruction or nuisance etc. within a time to be fixed in the order or if he objects so to do, then to show cause why the order should not be made absolute. Thereafter, after following the procedure prescribed under Section 141 Cr.P.C., the order may be made absolute under Section 138 of Cr.P.C.

13. Section 134 Cr.P.C. provides the manner of service on the person against whom it is made and modification of order. Section 135 Cr.P.C. provides that the person against whom such order is made shall perform the act directed thereby within the time specified or show cause against the same. Section 136 provides the procedure where existence of public right is denied. It provides that where an order is made under Section 133 Cr.P.C., the Magistrate shall, or on the appearance

before him of the person against whom the order was made inquire into the matter before proceeding under Section 138 Cr.P.C. Sub-section (2) of Section 137 provides that if in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Court; and if he finds that there is no such evidence, he shall proceed as laid down in section 138. Section 138 provides the procedure where the person against whom the order/notice has been issued appears to show cause and if the person shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case. Sub-section (2) provides that if the Magistrate is satisfied that the order, either as originally made or subject to such modification as he considers necessary, is reasonable and proper, the order shall be made absolute without modification or, as the case may be, with such modification. Sub-section (3) provides that if the Magistrate is not satisfied, no further proceedings shall be taken in the case. Section 139 provides the power of Magistrate to direct local investigation and examination of an expert for the purposes of inquiry under Section 137 Cr.P.C. Section 140 provides the power of Magistrate to furnish written instructions etc. for investigation under Section 139 Cr.P.C. Section 141 provides the procedure on order being made absolute under Section 136 Cr.P.C. or Section 138 Cr.P.C. and consequences of disobedience. Section 142 provides that if a Magistrate making an order under Section 133 Cr.P.C. considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may issue an injunction pending determination of the matter. Section 143 Cr.P.C. provides that

the Magistrate may prohibit repetition of public nuisance.

14. The Hon'ble Supreme Court, in the case of **Jagpal Singh and others vs. State of Punjab and others (Supra)**, has held that the trespassers, who have illegally encroached on the Gram Panchayat land by using muscle power or money power and in collusion with the officials and even with the Gram Panchayat, such kind of blatant illegalities must not be condoned and even if the appellants have built houses on the land in question they must be ordered to remove their constructions and possession of the land in question must be handed back to the Gram Panchayat. The relevant paragraphs 13 to 23 are reproduced herein:-

"13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. The letter dated 26.9.2007 of the Government of Punjab permitting regularization of possession of these unauthorized occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such

illegalities cannot be regularized. We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years.

14. In M.I. Builders (P) Ltd. vs. Radhey Shyam Sahu, 1999(6) SCC 464 the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs.100 crores. In Friends Colony Development Committee vs. State of Orissa, 2004 (8) SCC 733 this Court held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an exception. In our opinion this decision will apply with even greater force in cases of encroachment of village common land. Ordinarily, compounding in such cases should only be allowed where the land has been leased to landless labourers or members of Scheduled Castes/Scheduled Tribes, or the land is actually being used for a public purpose of the village e.g. running a school for the villagers, or a dispensary for them.

15. In many states Government orders have been issued by the State Government permitting allotment of Gram Sabha land to private persons and commercial enterprises on payment of some money. In our opinion all such Government orders are illegal, and should be ignored.

16. The present is a case of land recorded as a village pond. This Court in Hinch Lal Tiwari vs. Kamala Devi, AIR 2001 SC 3215 (followed by the Madras High Court in L. Krishnan vs. State of Tamil Nadu, 2005(4) CTC 1 Madras) held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The Court ordered the

respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case.

17. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.

18. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.

19. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop.

20. In Uttar Pradesh the U.P. Consolidation of Holdings Act, 1954 was widely misused to usurp Gram Sabha lands either with connivance of the Consolidation Authorities, or by forging orders purported to have been passed by Consolidation Officers in the long past so that they may not be compared with the original revenue record showing the land as Gram Sabha land, as these revenue records had been weeded out. Similar may have been the practice in other States. The time has now come to review all these orders by which

the common village land has been grabbed by such fraudulent practices.

21. For the reasons given above there is no merit in this appeal and it is dismissed.

22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram

Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.

23. Let a copy of this order be sent to all Chief Secretaries of all States and Union Territories in India who will ensure strict and prompt compliance of this order and submit compliance reports to this Court from time to time."

15. A co-ordinate Bench of this Court, in the case of Sri Krishna vs. State of U.P.

and others (Supra) and a Division Bench of Punjab and Haryana at Chandigarh, in the case of **Gurmukh Singh vs. State of Punjab and others (Supra)**, relying on **Jagpal Singh and others vs. State of Punjab and others (Supra)**, have passed the orders.

16. The aforesaid proposition has been reiterated by the Hon'ble Apex Court in the case of **Joginder Singh vs. State of Haryana and others; 2021 (2) R.C.R. (Civil) 109**.

17. Adverting to the facts of the present case, it is apparent that a wall has been constructed on a public land by the predecessor-in-interest of the petitioners, which is being used as a way to come on the main way. The petitioner no. 2-Mishri Lal Ojha has admitted in his evidence/cross-examination that the wall was constructed by predecessor-in-interest of the petitioners. The only plea has been taken that since the finding has been recorded that in case adjacent to the same if construction is made in future, the public way may be obstructed, whereas, the order could not have been passed merely on the basis of presumption of happening in the future, but it cannot be disputed that the wall has been constructed on a public land and as per Section 133 Cr.P.C., the unlawful obstruction or nuisance over any public place or over any way, river or channel which is or may be lawfully used by the public is required to be removed. Thus, any person cannot unlawfully obstruct or create nuisance on a public place or over any way and if it has been done or construction is raised, the same is liable to be removed under Section 133 Cr.P.C. Merely because it may not have completely created obstruction to the public, it cannot be said that the person,

who has created such an obstruction or nuisance, can be allowed to continue with the same. Since the orders challenged in earlier writ petition were neither stayed nor modified, therefore, the learned Magistrate had rightly and in accordance with law directed for their execution. Learned Magistrate as well as the Revisional Court have passed the orders in accordance with law on the basis of pleadings, evidence and material on record, which does not suffer from any illegality or error. Thus, it does not call for any interference by this Court. Both the writ petitions have been filed on misconceived and baseless grounds, which lack merit and are liable to be dismissed.

18. In view of above, both the writ petitions i.e. Criminal Misc. Writ Petition No. 15379 of 2019 and Criminal Misc. Writ Petition No. 17172 of 2019 are **dismissed**. No order as to costs.

(2025) 4 ILRA 922
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.04.2025

BEFORE

THE HON'BLE MAHESH CHANDRA
TRIPATHI, J.
THE HON'BLE PRASHANT KUMAR, J.

CrI. Misc. W.P. No. 16146 of 2024

Sai Nageswar Satchidanand ...Petitioner
Versus
State of U.P. & Ors. ...Opp. Parties

Counsel for the Petitioner:
 Sri Dheeraj Singh (Bohra), Sri Sudeep Harkauli,
 Sri Vaibhav, Sri Amit Saxena (Sr. Adv.)

Counsel for the Opp. Parties:
 G.A., Ms. Ujjwal Gupta
Criminal Law – Constitution of India, 1950
– Sections 226 & 243-R(b) - Indian Penal

Code, 1860 - Sections 171-F, 188, 384, 500, 501, 498-A, 323, 504, 420, 344 & 386 - Criminal Procedure Code, 1973 - Sections 125 & 482 - Information and Technology Act, 2008 - Section 67 - Bhartiya Nagarik Suraksha Sanhita, 2023 - Sections 215 & 379 - Hindu Marriage Act, 1955 - Sections 12, 12(1)(a), 13, 13-B, 13-B(1) & 13-B(2) - Dowry Prohibition Act, 1961 - Sections 3 & 4 - Mediation Act, 2023 - Sections 27, 27(1) & 27(2) - Civil Procedure Code - Order 23, Rules 3 - Writ

Petition – to quash an FIR – arose from a marital dispute between the petitioner and the informant (his wife) – after legal proceedings, both opted for mediation and executed binding interim and final settlement agreements – agreed to mutual divorce under Section 13-B of the Hindu Marriage Act – petitioner paid ₹20 lakh in two parts as full settlement – informant agreed to withdraw all pending criminal/maintenance cases and not pursue FIR against petitioner, though retained rights against others – despite informant opposing the writ petition later, the Court noted that, she had accepted full settlement and never contested the agreement – FIR predated the settlement, but informant undertook in divorce proceedings not to pursue it – Court finds that, (i) crime in question is between the parties, who have already settled their previous acrimonious relations in terms of the agreement – (ii) the agreement acted upon and legally binding under Section 27 of the Mediation Act, 2023 – held that, (i) if dispute between the parties is resolved by consent then such settlement must not be reopened unless one of the above noted mischiefs is pleaded and proved – (ii) a mediated settlement agreement resulting from a mediation signed by the parties and authenticated by the mediator shall be final and binding on the parties, (iii) relying on SC precedents (Banwari Lal, Gian Singh, Charu Kishor Mehta), observed that litigation post-settlement is abuse of process – hence, FIR was quashed under Article 226 and informant's application under Section 379 of BNSS, 2023 was rejected. (Para – 24, 25, 28, 29, 31, 33, 34)

Writ Petition Allowed. (E-11)

List of referred Cases: -

1. Charu Kishor Mehta Vs Prakash Patel & Ors – SLP(C) No. 11030 of 2022 – decided on 22.06.2022,
2. St. of M.P. Vs Laxmi Narayan & ors.- AIR 2019 SC 1296,
3. Subrata Roy Sahara Vs U.O.I.&ors. - (2014) 8 SCC 470,
4. Gian Singh Vs St. of Pun. - 2012(10) SCC 303,
5. Banwari Lal Vs Chando Devi - (1993) 1 SCC 581,
6. Kale & ors. Vs Deputy Director of Consolidation - AIR 1976 SC 807

(Delivered by Hon'ble Mahesh Chandra Tripathi, J. & Hon'ble Prashant Kumar, J.)

1. Heard Shri Amit Saxena, learned Senior Advocate assisted by Shri Vaibhav, learned counsel for the petitioner, Ms. Ujjwal Gupta, respondent no. 4 (informant), in person and Shri Paritosh Kumar Malviya, learned AGA-I for the State respondents.

2. The instant writ petition is preferred under Article 226 of Constitution of India seeking following reliefs:-

“i. Issue a writ, order or direction in the nature of writ of certiorari for quashing the First Information Report dated 18.05.2023 registered as Case Crime No.358 of 2023 under Sections 501, 500, 384, 188, 171-F IPC and Section 67 I.T. Act, 2008, Police Station Firozabad North, District Firozabad (Annexure No.1 to this writ petition).

ii. Issue a writ, order or +direction in the nature of writ of mandamus commanding and give direction to the respondents to submit the progress report in Case Crime No.358 of 2023 under

Sections 501, 500, 384, 188, 171-F, I.P.C. and 67 I.T. Act, 2008, Police Station Firozabad North, District Firozabad, which is pending against the petitioner.

iii. Issue a writ, order or direction in the nature of writ of mandamus commanding the respondents not to arrest the petitioners in Case Crime No.358 of 2023 under Sections 501, 500, 384, 188, 171-F, I.P.C. and 67 I.T. Act, 2008, Police Station Firozabad North, District Firozabad.

iv. Issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.

v. Award the cost of the writ petition to the petitioners."

3. During the pendency of the present writ petition, the respondent no.4 had filed Criminal Misc. Application No.Nil of 2025 under Section 379 of Bhartiya Nagarik Suraksha Sanhita, 2023¹ seeking direction to the Registrar of this Court to file a complaint against the petitioner and his counsel namely Dheeraj Singh Bohra in terms of Section 215 of BNSS, 2023 read with Section 379 of BNSS, 2023 before the learned Magistrate having jurisdiction for making false and misleading statements with dishonest suppression and concealment of material facts before this Court.

FACTUAL MATRIX OF THE CASE

4. A compendium of the controversy involved in the instant case is that the petitioner belongs to the State of Orissa. The marriage between the petitioner and the respondent no.4 (informant) was solemnized on 29.06.2020 according to Hindu rites and rituals and no child was

born from the said wedlock. Since 20.07.2021 they were not able to live together as husband and wife due to their incompatibility of nature and temperamental differences. There was bleak chance and probability of their living together as husband and wife as their marital relation virtually came to an end w.e.f. 20.07.2021. Both have instituted multiple proceedings against each other, which are as follows:-

(i). The petitioner moved an application under Section 12 (1) (a) of Hindu Marriage Act, 1955² against the informant, which was registered as HMA No.426 of 2022 (Sai Nageswar Satchidanand vs. Ujjwal Gupta) seeking annulment of marriage and learned Additional Principal Judge-I, Family Court, Firozabad had dismissed the same. However, the petitioner also agreed to withdraw it completely.

(ii). The informant had lodged a Criminal Case against the petitioner and his family members, which was registered as Case Crime No.126 of 2023 under Sections 498-A, 323, 504 IPC and Section 3/4 of D.P. Act, Police Station Mahila Thana, District Firozabad. In the said matter, the charge sheet was forwarded to the competent court on 12.03.2022, which was challenged in Application U/S 482 No.24039 of 2023 (Sai Nageswar Satchidanand vs. State of UP and another). The matter was referred for mediation on 07.07.2023, wherein the parties have settled the matter vide settlement agreement dated 03.01.2024 and agreed to withdraw all civil and criminal cases filed against each other. Finally, after perusing the report of the Mediation Centre, learned Single Judge had allowed the said application on 31.01.2024 and quashed the entire proceedings relating to the said case.

(iii). The informant had also filed a complaint against the petitioner and his family members under Section 12 of Protection of Women From Domestic Violence Act, 2005 (Case No.375 of 2022), which was pending consideration before the Court of learned Judicial Magistrate, Firozabad and later on, the same was withdrawn.

(iv). The informant had also filed an application under Section 125 Cr.P.C. against the petitioner, which was initially seized before learned Additional Principal Judge-II, Family Court, Firozabad and later on, the same was also withdrawn.

(v). The petitioner had lodged the first information report against the informant and her family members, which was registered as Case Crime No.0136 of 2022 under Sections 420, 504, 344, 323, 386 IPC, P.S. Firozabad North, District Firozabad. After investigation, the investigating officer had forwarded a final report to the competent court. Aggrieved by the final report, the petitioner filed a protest petition and the same was treated as a Complaint Case No.22703 of 2023. Later on, the same was also withdrawn.

(vi). The informant had lodged the FIR against the petitioner and some other persons, which was registered as Case Crime No.0358 of 2023, P.S. Firozabad North, District Firozabad under Sections 171-F, 188 384, 500, 501 IPC and Section 67 of IT (Amendment) Act, 2008 (the impugned FIR in the instant matter).

5. During the pendency of aforesaid cases, the petitioner filed an application U/S 482 No.24039 of 2023 before this Court wherein the learned Single Judge vide an order dated 07.07.2023 referred the matter for mediation. After various sittings, the parties decided for peaceful burial of their acrimonial relation and entered into a

mutual settlement of all their disputes and also agreed to prefer an application under Section 13-B of the Act, 1955 for decree of divorce by mutual consent in terms of the conditions recorded in the final settlement agreement dated 03.01.2024, which was duly signed and executed between the parties. It would be apt to reproduce the relevant clauses of the settlement agreement dated 03.01.2024 as under:-

“5. The marriage of Sai Nageswar Satchidanand (Applicant-Husband) and Smt. Ujjawal Gupta (O.P. No.2-Wife) was solemnized on 29.06.2020, which was registered on August, 2020 before the Registrar Marriages. Out of aforesaid wedlock, parties have no issue. The parties have been living separately since 20.07.2021.

6. The parties hereto confirm and declare that they have voluntarily and of their own free will arrive at this Settlement Agreement in the presence of the Mediators/Conciliators.

7. In view of the Interim Settlement Agreements dated 19.10.2023 and 06.12.2023. The following settlement has been arrived at between the parties hereto:-

(a) That the parties have already settled their dispute and decided to live separately and in this regard they have filed a petition U/S 13-B of the Hindu Marriage Act before the Principal Judge, Family Court, Firozabad and the same is registered as H.M.A. Petition No.1088 of 2023. The photocopy of the aforesaid divorce petition is being annexed to this settlement-agreement for kind perusal of this Hon'ble Court.

(b) That it has been agreed between the parties that the applicant-

husband shall pay one time settlement amount of Rs.20,00,000/- (Rupees Twenty Lakh only) which includes permanent alimony and Stridhan of the wife by way of Demand Draft.

(c) That on 19.10.2023, the applicant-husband has produced a demand draft bearing No.504055 dated 16.10.2023 for Rs.10,10,000/- (Rupees Ten Lakhs only) drawn on ICICI Bank in favour of Ujjwal Gupta (wife) and the same has been handed over to the wife today i.e. 03.01.2024 and she has acknowledged the receipt of the same.

(d) That it has been agreed between the parties that the remaining amount i.e. Rs.10,00,000/- (Rupees Ten Lakhs only) shall be paid by Sai Nageswar Satchidanand (Applicant-Husband) to Smt. Ujjawal Gupta (O.P. No.2-wife) at the time of final judgement in H.M.A. Petition No.1088 of 2023 pending in the Court of Principal Judge, Family Court, Firozabad by way of demand draft.

(e) That in view of the para 7 (f) of the II interim Settlement dated 06.12.2023, the Applicant has produced the certified copy of the order of withdrawal passed by Chief Judicial Magistrate, Firozabad in Case No.22703/2023 filed U/S 420, 506, 344, 323, 386 IPC. The certified copy of the same is being annexed to this settlement-agreement for kind perusal of this Hon'ble Court.

(f) That as per the Para 7 (g) of the II interim Settlement dated 06.12.2023, the Applicant has produced the copy of the withdrawal Application in Case No.426/2022 filed under Section 12 (1) (a) of the Hindu Marriage Act. The certified copy of the same is being annexed to this settlement agreement for kind perusal of this Hon'ble Court.

(g) That in compliance of the Para 17 of the mutual divorce petition, the

husband has prepared an affidavit and handed over the certified copy of the same to the O.P. No.2-wife and she has acknowledged the receipt of the same.

(h) That it has also been agreed between the parties that all civil and criminal cases, if any, filed by them against each other regarding present matrimonial dispute shall be withdrawn by the parties concerned by taking appropriate steps before the Court/authority concerned.

(i) That the parties will not file any fresh case against each other in respect of this matrimonial dispute. They have no claim against each other in future also.

(j) That it has been agreed between the parties that they shall not violate the terms and conditions of this settlement otherwise the aggrieved party will be free to take legal recourse.

8. By signing this Agreement the parties hereto state that the Application U/S 482 No.24039 of 2023 and all disputes and differences in this regard have been amicably settled by the parties hereto through the process of Conciliation/Mediation.”

6. Finally, the learned Single Judge taking note of the above settlement agreement had allowed the aforesaid application U/S 482 No.24039 of 2023 on 31.01.2024, and quashed the entire proceedings relating to the aforementioned case. Order dated 31.01.2024 is reproduced herein below:-

“Heard learned counsel for the applicants and learned A.G.A. for the State and perused the material on record.

The present application under Section 482 of the Code of Criminal Procedure has been filed for quashing the charge sheet dated 12.03.2022 in case crime no.126 of 2022 (State vs. Sai Nageswar Satchidanand) under section 498A, 323, 504 IPC Section 3/4 D.P. Act,

P.S. Mahila Thana, District Firozabad pending in the court of Chief Judicial Magistrate, Firozabad.

Vide order dated 07.07.2023 the matter was referred for mediation. The report has submitted by the Mediation Centre. Parties have settled the matter in mediation vide settlement agreement dated 03.01.2024 which is annexed with the report of mediation centre. The applicant and opposite party no.2 are husband and wife and the dispute between them is matrimonial in nature. Parties have agreed to withdraw all civil and criminal cases filed against each other. Both the parties are agreed that in terms of the compromise the proceeding of case be terminated and the entire proceedings be quashed.

Matter is related to matrimonial dispute and both the parties have entered into amicable settlement. The fact of compromise has been confirmed and admitted by learned counsels for the parties.

A three-Judge Bench of the Supreme Court in *Gian Singh v. State of Punjab & another*, (2012) 10 SCC 303, has observed that: (SCC p.340, para 58)

"58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is resorted; securing the ends of justice being the ultimate guiding factor."

Where matters are also of civil nature i.e. matrimonial, family disputes, etc. the Court may consider "special facts", "special feature" and quash the criminal proceeding to encourage genuine

settlement of disputes between the parties. [Vide: *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandraojirao Angre*, (1988) 1 SCC 692].

Keeping in mind the position of law and facts, circumstances of the case, the present application under Section 482 of the Code stands allowed.

The entire proceedings relating to aforementioned case is hereby quashed.

The parties may file the copy of this order before the court concerned within two weeks from today."

7. In terms of the settlement agreement dated 03.01.2024 both the parties had approached to learned Principal Judge, Family Court, Firozabad for an appropriate decree of divorce by mutual consent and moved an application under Section 13 (B) of the Act, 1955. As the parties have already settled their previous acrimonial relation initially in terms of the interim agreement dated 19.10.2023, which was followed by the second interim settlement agreement dated 06.12.2023 and these two interim settlements were crystallized into a final settlement agreement dated 03.01.2024.

7. In terms of the interim settlement agreement arrived at between the parties dated 19.10.2023, the petitioner agreed to pay total sum of Rs.20,00,000/- to the informant towards full and final settlement of all her claims qua maintenance, out of which a demand draft bearing No.504055 dated 16.10.2023 for Rs.10,10,000/- drawn on ICICI Bank in favour of informant, was produced by the petitioner on 19.10.2023 and the same was kept on the file of the Mediation Centre. The said demand draft was to be handed over to the informant at the time of final settlement agreement on 03.01.2024 and the remaining Rs.10,00,000/- was to be paid to the

informant before learned Court concerned at the time of final decree of dissolution of marriage. It was also agreed that all the pending matters between the parties would be withdrawn. The informant had also given an undertaking not to pursue the matter against the petitioner and made a statement to that effect to the concerned investigating officer in the instant FIR dated 18.05.2023. However, the informant reserved her right to pursue the FIR against other accused persons. Two other pending matters i.e. one under Section 125 Cr.P.C. and the other under Section 12 of the Act, 1955, shall be withdrawn. It was also agreed that the petitioner shall publish a clarification article in English newspaper 'Times of India' and Hindi newspapers 'Dainik Jagran' and 'Amar Ujala'.

8. During the course of mediation, the petitioner had also given an affidavit that he had nothing to do with the defamatory statements published in media/social platforms against the informant and the informant had also reserved her right to take action against the persons, who are responsible for making/publishing defamatory statements against the informant. The petitioner had also given an affidavit that he had never asked his Ex-Advocate namely Amit Garg, who is accused in the instant FIR, to make any statements in media and the same were his own statements. He was not authorised by the petitioner, and the informant was also at liberty to take suitable action against Amit Garg.

9. It also appears that later on, the petitioner had withdrawn complaint case No.22703 of 2023 under Sections 420, 504, 344, 323, 386 IPC, emanating from protest petition filed by the petitioner against the final report forwarded by the investigating

officer in Case Crime No.0136 of 2022. The petitioner and the informant had mutually agreed that the terms and conditions recorded in the interim agreements dated 19.10.2023, 06.12.2023 and final agreement dated 03.01.2024 are binding and there shall remain no dispute, difference, litigation, claim or counter claim (s) whatsoever, whether tangible or intangible of any nature between the petitioner and the informant. They shall take necessary steps and actions to implement the settlement arrived at between the parties. Accordingly, both the parties agreed to appear before the Principal Judge, Family Court, Firozabad on the date fixed to make their statements in support of the petitions under Sections 13 B (1) and 13-B (2) of the Act, 1955 in person.

10. Both the parties agreed that after the dissolution of the marriage, they shall not interfere in the personal matters of the other party including marriage, property etc. and they shall not make any defamatory statement against each other and their family members in future. They further agreed that they shall not try to have any sort of communication with each other in future. In case any party withdraws his/her consent from giving divorce by way of mutual consent or backs out from any of the terms mentioned in the interim agreement dated 19.10.2023 or in the present second motion petition, in such an eventuality, the aggrieved party shall not only be free to initiate proceedings under criminal and civil law but shall also be entitled to file claim for damages against the breaching party apart from reviving the cases from the state where they were at the time of signing the said agreement dated 19.10.2023. Both the parties agreed and undertake that they shall not send any e-

mails/text messages/post or any other manner of communication to the past, present and future employers or employees or friends, family/acquaintances of the other party.

11. In this backdrop, the instant writ petition was entertained on 30.09.2024 and the Division Bench had accorded an interim relief to the petitioner with detailed observations. For ready reference, the same is reproduced herein under:-

“1. Heard Sri Dheeraj Singh (Bohra), learned counsel for the petitioner and Sri Satendra Tiwari, learned A.G.A. for the State-respondents.

2. The present writ petition has been preferred with the prayer to quash the impugned first information report dated 18.05.2023, registered as Case Crime No.358 of 2023, under Sections 501, 500, 384, 188, 171-F I.P.C. and 67 I.T. Act, 2008, Police Station - Firozabad, District - Firozabad, and for a direction to the respondents to submit the progress report and further not to arrest the petitioners in pursuance of the impugned first information report.

3. Pursuant to the order dated 11.09.2024, learned counsel for the petitioner has filed supplementary affidavit annexing therewith certified copy of the second motion petition filed under Section 13-B (2) of the Hindu Marriage Act, 1955 before the Principal Judge, Family Court, Firozabad. It is pointed out that in an application filed under section 482 No.24039 of 2023 (Sai Nageswar Sachidanand vs. State of U.P. and Another) the matter was referred to Mediation Centre vide order dated 07.07.2023 wherein a settlement agreement dated 03.01.2024 had taken place. It is pointed out that pursuant thereto a Divorce Petition filed under

Section 13-B of the Hindu Marriage Act, being HMA Petition No.1088 of 2023 (Sri Sai Nageswar Satchidanand vs. Smt. Ujjawala Gupta) was also allowed vide judgement and decree dated 31.05.2024. It was next pointed out that in the second motion in the aforesaid proceedings, it was clearly mentioned that the proceedings of the present impugned F.I.R. shall also be withdrawn. The term of settlement before the Mediation Centre were also noted in the second motion. Learned counsel for the petitioner further submits that the informant may not come forward to contest the present case. Submission, therefore, is that the present criminal prosecution is liable to be set aside.

4. Matter requires consideration.

5. Issue notice to the respondent no.4 through C.J.M., Firozabad. Steps be taken within a week.

6. Put up this case as fresh on 24.10.2024.

7. Till the next date of listing, investigation pursuant to the aforesaid impugned first information report shall remain stayed.

8. In the meantime, learned counsel for the parties may exchange their respective affidavits.”

ARGUMENTS ON BEHALF OF THE PETITIONER

12. Sri Amit Saxena, learned Senior Advocate appearing for the petitioner vehemently submitted that the petitioner is working as a Computer Engineer in Microsoft Co., Bangalore. As per prosecution story, the informant was contesting the election for the post of Mayor in District Firozabad as an independent candidate. During the election, a video clip was received by Whatsapp on 23.04.2023, wherein it was shown that Mr.

Amit Garg (Ex-Advocate of the petitioner) threatened the informant by narrating that during his meeting with her husband she allegedly received handsome amount for settling the matrimonial matter between the informant and the petitioner, which maligned the image of the informant in public. He submitted that the informant had instituted various matrimonial proceedings against the petitioner and other family members including the impugned FIR dated 18.05.2023 but later on, the matter was referred to the Mediation Centre by learned Single Judge of this Court vide an order dated 07.07.2023 passed in Application U/S 482 No.24039 of 2023, wherein the settlement agreement entered into between the petitioner and the informant on 03.01.2024 and specially, in the light of the earlier interim settlement agreements dated 19.10.2023 and 06.12.2023 the petitioner had produced a demand draft of Rs.10,00,000/- dated 16.10.2023 and the same was handed over to the informant on 03.01.2024. The informant had also acknowledged the same and the remaining amount of Rs.10,00,000/- was to be paid to her at the time of final judgement and decree in H.M.A. Petition No.1088 of 2023.

13. Sri Amit Saxena, learned Senior Advocate placed reliance on Para 7 (h) of the settlement agreement dated 03.01.2024, wherein both the parties agreed that *“all civil and criminal cases, if any, filed by them against each other regarding present matrimonial dispute shall be withdrawn by the parties concerned by taking appropriate steps before the Court/authority concerned”*. Even while passing the order dated 31.01.2024 in Application U/S 482 No.24039 of 2023, learned Single Judge had considered the settlement agreement dated 03.01.2024, wherein the parties have also agreed to

withdraw all civil and criminal cases filed against each other and both the parties agreed that in terms of the compromise the proceeding of the Case Crime No.126 of 2022 be terminated and the entire proceeding be quashed.

14. It was further submitted by learned Senior Counsel that only in this backdrop, the application U/S 482 was allowed on 31.1.2024, which was corrected on 21.02.2024. Later on, the Civil Judge (Senior Division), F.T.C./A.C.J.M. Firozabad vide order dated 12.03.2024 had also closed the proceeding of Case No.16993 of 2022 but in both the proceedings, at no point of time any such objections were taken. Now, at this stage the informant cannot resile from the earlier undertaking given at the time of mediation proceedings and it was the sole reason for passing the judgement and decree dated 31.05.2024 passed by the Principal Judge, Family Court, Firozabad in H.M.PNo. 1088 of 2023. The relevant portion of the judgment and decree dated 31.05.2024 is reproduced herein below:-

"याचिनी ने अपने सशपथ बयान में कथन किया है कि माननीय उच्च न्यायालय, इलाहाबाद के आदेश दिनांक 03-01-2024 को मीडिएशन सेन्टर में हुए समझौते के अनुसार मैंने आंशिक रूप से दस लाख रुपये प्राप्त कर लिये हैं एवं शेष मुव- दस लाख रुपये निर्णय के समय प्राप्त करूंगी। स्त्रीधन सारा प्राप्त कर लिया है।

निर्णय के पूर्व याची संख्या-1 द्वारा याची संख्या-2 को डी०डी०संख्या-585714 की मूल प्रति प्रदान की गई जिसकी छाया प्रति पत्रावली पर संलग्न की गयी। याची संख्या-2 ने डी०डी० प्राप्त के हस्ताक्षर आदेश पत्र पर किये।

अतः ऐसी स्थिति में पक्षों को सुनने एवं उनके मध्य सुलह की सम्भावना न होने की स्थिति को दृष्टिगत रखते हुए पक्षकारों की ओर से दाखिल प्रस्तुत याचिका अन्तर्गत धारा-13(बी) हिन्दू विवाह अधिनियम स्वीकार किये जाने योग्य है।"

15. He lastly submitted that at the time of final decree, the informant has

received the remaining Rs.10,00,000/- and the marriage was also annulled. The impugned proceeding is a misuse of process. Even on merit, the FIR does not reflect that there is any complicity of the petitioner and even for the sake of argument, if earlier Advocate has made any comment on the social media, it cannot be presumed that the same was on the dictate of the petitioner or on his behest. No such presumption can be drawn against the petitioner and the informant cannot drag the petitioner in the impugned proceeding. In case the same continues to proceed, the same would be in teeth of the settlement agreement arrived at between the parties in the mediation proceeding and the same is also in conflict of the judgement and decree accorded by the Principal Judge, Family Court, Firozabad.

16. Making the above submissions, learned Senior Counsel appearing for the petitioner prayed to allow the writ petition and quash and set aside the impugned FIR in exercise of its extraordinary powers under Section 226 of Constitution of India.

ARGUMENTS OF THE INFORMANT

16. Per contra, the informant appearing in person vehemently opposed the writ petition. She submitted that as the cognizable offence is made out against the petitioner and the writ petition is devoid of merit, the same is liable to be quashed. She vehemently argued and tried to press the Misc. Application moved under Section 379 of BNSS, 2023 on the ground that the petitioner has intentionally made false statement with dishonest suppression, twisting and concealment of material facts in the writ petition and made false statement on affidavit. The petitioner had

deliberately tried to mislead the Court and got an interim order in his favour with dishonest intent. She submitted that Hon'ble Court may direct for lodging a complaint in terms of Section 215 of BNSS, 2023 read with Section 379 of BNSS, 2023 against the petitioner and his counsel before learned Magistrate having jurisdiction.

17. We have heard the learned counsel for the parties and perused the record.

ANALYSIS BY THE COURT

18. In the instant case, undisputed position which emerges out is that the marriage between the petitioner and the informant was solemnized on 29.06.2020 and with the said wedlock, no child was born. There was no cohabitation between the petitioner and the informant since 20.07.2021 and since then, they are living separately. Both the parties filed several cases against each other and during the pendency of these cases, the petitioner preferred an application under Section 482 Cr.P.C. before this Court for quashing the FIR, which was registered as Case Crime No.126 of 2023 under Sections 498-A, 323, 504 IPC and Section 3/4 D.P. Act. Learned Single Judge vide an order dated 07.07.2023 referred the matter for mediation and by way of the interim agreement dated 19.10.2023, both the parties had approached the Court concerned for dissolution of their marriage by a decree of divorce by mutual consent by filing the petitions under Section 13-B (1) and 13-B (2) of the Act, 1955. The said interim settlement agreement dated 19.10.2023 was followed by a second interim settlement agreement dated 06.12.2023 and these two settlements were crystallized into a final settlement agreement dated 03.01.2024.

19. In terms of the settlement arrived at between the parties, the petitioner had agreed to pay a total sum of Rs.20,00,000/- to the informant towards full and final settlement of all her claims. The petitioner furnished a demand draft of Rs.10,00,000/- at the time of signing and execution of the agreement dated 19.10.2023 and the same was handed over to the informant at the time of the final settlement agreement dated 03.01.2024. The remaining sum of Rs.10,00,000/- was paid to the informant at the time of final judgement before the Court concerned. All the pending matters between the parties were withdrawn. The informant had undertaken not to pursue the matter against the petitioner. However, she had reserved her right to pursue the FIR against other accused persons. Both the parties had mutually agreed that the terms recorded in the agreements dated 19.10.2023, 06.12.2023 and 03.01.2024 are binding and there shall remain no dispute, difference, litigation, claim or counter claim (s) whatsoever, whether tangible or intangible of any nature between them and they shall take necessary steps and actions to implement the settlement arrived at between the parties by way of the agreement dated 19.10.2023 in its true, sincere earnest & letter and spirit.

20. Admittedly, the agreement was signed on 19.10.2023 and much prior to it, the impugned FIR was lodged on 18.05.2023. They have jointly moved the First Motion Petition under Section 13-B (1) of the Act, 1955 as amended by the Marriage Laws (Amendment) Act, 1976 in the Court of learned Principal Judge, Family Courts, Firozabad and sworn the affidavit for dissolution of their marriage by a decree of divorce by mutual consent under the provisions of Section 13 (B) (1) of the Act, 1955, as amended upto date, in

the interest of justice. The aforesaid petition was registered as H.M.A. Petition No.1088 of 2023 in the matter of Mr. Sai Nageswar Satchidanand (petitioner no.1) and Mrs. Ujjwal Gupta (petitioner no.2). On the date of filing the first motion petition, the petition under Section 12 (1) (a) of the Act, 1955 filed by the petitioner being HMA No.426/2022 (Sai Nageshwar Satchidanand vs. Ujjwal Gupta) was pending adjudication before the Court of learned Additional Principal Judge-2, Family Court, Firozabad. In the first motion petition, they had agreed that they shall not level any defamatory allegations against each other in future and whatever defamatory allegations or statements, which were made till the date of signing of the agreement dated 19.10.2023, the same shall stand withdrawn unequivocally without any undue influence, pressure or coercion since their disputes and differences in this regard have been amicably settled by them.

21. After the first motion was successfully completed, the second motion petition was moved by the parties under Section 13-B (2) of the Act, 1955, as amended by the Marriage Laws (Amendment) Act, 1976. Both the parties have sworn the affidavit with a request to the Principal Judge, Family Courts, Firozabad for dissolution of the marriage between the petitioner and the informant by a decree of divorce by mutual consent under the provisions of Section 13 (B) (2) of the Act, 1955, as amended upto date in the interest of justice. In para-5 of the second motion petition they had disclosed all the criminal proceedings including the instant FIR and also acknowledged the full and final settlement of all her claims qua maintenance – past, present and future, stridhan and alimony, marriage expenses.

The said amount of Rs.20,00,000/- was to be paid to the informant in the following manner:-

“(a) An amount of Rs.10,00,000/- (Rupees Ten Lakhs only) has already been paid by the petitioner No.1 to the petitioner No.2 at the time of signing and execution of the Agreement dated 19.10.2023 by way of DD No.504055 drawn on ICICI Bank in the name of the petitioner No.2 which DD had been kept on the file of the Mediation Centre and was handed over to petitioner No.2 at the time of the Final Settlement Agreement dated 03.01.2024.

(b). An amount of Rs.10,00,000/- (Rupees Ten Lakhs only) shall be paid by the petitioner no.1 to the petitioner no.2 by way of Demand Draft/Pay Order in the name of the petitioner No.2 at the time of final judgment before the learned Court concerned to whom the present petition shall be assigned.”

22. At the time of judgement and decree dated 31.05.2024 passed by the Principal Judge, Family Court, Firozabad in proceeding under Section 13 (B) of the Act, 1955, the remaining sum of Rs.10,00,000/- had been received by the informant without any protest. In para-10 of the second motion petition the informant had made a categorical averment to the following effect:-

“10. That all the pending matters between the parties have been withdrawn, and the petitioner no.2 has undertaken not to pursue the matter against the petitioner no.1 and make a statement to that effect to the concerned IO in the FIR No.0358/2023 PS Firozabad North U/ss. 171-F, 188, 384, 500, 501 IPC and S. 67 IT (Amendment) Act, 2008 registered by the petitioner No.2 against petitioner No.1, however, petitioner

No.2 reserves right to pursue the FIR against other respondents/accused. Only two matters i.e. one under Sec. 125 Cr.P.C. and the other under Sec. 12, MHA are pending which shall be withdrawn on the next upcoming dates of hearing.”

23. In view of the second motion petition, it is not in dispute that even though the instant impugned FIR is dated 18.05.2023 but in terms of the interim settlement agreement dated 19.10.2023 the parties have resolved the dispute. Later on, the informant had also given an undertaking not only in the first motion petition but also in the second motion petition that she shall not pursue the matter against the petitioner and made a statement to that effect before the concerned investigating officer in the impugned FIR No.0358 of 2023. However, the informant had reserved her right to pursue the FIR against the other accused persons. It was also agreed that the other two matters, which were pending consideration under Section 125 Cr.P.C. and other under Section 12 of the Act, 1955, shall also be withdrawn on the next date of hearing. Admittedly, both the proceedings have been withdrawn.

24. Both the parties have already dissolved their marriage in terms of the interim settlement agreements dated 19.10.2023 and 06.12.2023 and the final settlement agreement dated 03.01.2024. The informant having taken the advantage of the settlement agreement is otherwise estopped from agitating the matter again, particularly when there is no challenge to the settlement agreement on any of the grounds permissible in law. Therefore, at this stage we cannot accord any leave to the informant to pursue her cases against the petitioner. In view of the aforementioned

facts and circumstances at this stage the petitioner cannot be resiled with the earlier undertaking given in the mediation proceeding and later on, the same was acted upon by the Principal Judge, Family Court, Firozabad.

25. Section 27 in Chapter-VI of the Mediation Act, 2023 deals with enforcement of mediated settlement agreement and provides that a mediated settlement agreement resulting from a mediation signed by the parties and authenticated by the mediator shall be final and binding on the parties and persons claiming under them respectively and enforceable as per the provisions of sub-section (2). Section 27 reads as under:-

“27. (1) A mediated settlement agreement resulting from a mediation signed by the parties and authenticated by the mediator shall be final and binding on the parties and persons claiming under them respectively and enforceable as per the provisions of sub-section (2). (2) Subject to the provisions of section 28, the mediated settlement agreement shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree passed by a court, and may, accordingly, be relied on by any of the parties or persons claiming through them, by way of defence, set off or otherwise in any legal proceeding.

(2) Subject to the provisions of section 28, the mediated settlement agreement shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree passed by a court, and may, accordingly, be relied on by any of the parties or persons claiming

through them, by way of defence, set off or otherwise in any legal proceeding.”

26. The law relating to sanctity of compromise in such matters came to be examined by the Supreme Court in **Kale and others Vs. Deputy Director of Consolidation**³, and is consistently followed in subsequent decisions of the Supreme Court and this Court. The object of family settlement and the binding effect which it carries have been eloquently summed up in following words:-

"Before dealing with the respective contentions put forward by the parties, we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this connection, Kerr in his valuable treatise "Kerr on Fraud" at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus;

"The principles which apply to the case of ordinary compromise between strangers, do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant

as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to that their rights actually are, or of the points on which their rights actually depend."

The object of the arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administering of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successions so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The Courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. **Where the Courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is**

applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. The law in England on this point is almost the same. In Halsbury's Laws of England, Vol. 17, Third Edition, at pp. 215-216, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made:

"A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course. Of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied.

Family arrangements are governed by principles which are not applicable to dealings between strangers. The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections- to the binding effect of family arrangements".

In other words to put the binding effect and the essentials of a family

settlement in a concretised form, the matter may be reduced into the form of the following propositions:

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of s. 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property 'It which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must

be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.

The principles indicated above have been clearly enunciated and adroitly adumbrated in a long course of decisions of this Court as also those of the Privy Council and other High Courts, ...

.... Even bona fide dispute present or possible, which may not involve legal claims would be sufficient. Members of a joint Hindu family may to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an agreement is entered into bona fide and the terms thereto are fair in the circumstances of a particular case, the courts would more readily give assent to such an agreement than to avoid it."

Thus it would appear from a review of the decisions analysed above that the Courts have taken a very liberal and broad view of the validity of the family settlement and have always tried to uphold it and maintain it. The central idea in the approach made by the Courts is that if by consent of parties a matter has been settled, it should not be allowed to be re-opened by the parties to the agreement on frivolous or untenable grounds."

27. The Supreme Court further observed that a family arrangement being binding on the parties to the arrangement clearly operates as a estoppel against the one who has taken advantage under the settlement/compromise from revoking or challenging the same. Observations in that

regard are apposite and consequently reproduced hereinafter:-

"This Court has also clearly laid down that a family arrangement being binding on the parties to the arrangement clearly operates as an estoppel so as to preclude any of the parties who have taken advantage under the agreement from revoking or challenging the same."

28. It is well settled in law that courts would lean in favour of family settlement unless it is unfair, tainted by fraud or lacks bona fide. The object clearly being that if dispute between the parties is resolved by consent then such settlement must not be reopened unless one of the abovenoted mischiefs is pleaded and proved in the facts of the case.

29. Hon'ble Supreme Court in **Banwari Lal v. Chando Devi**⁴ has laid down the law on the disposal of a proceeding in accordance with a compromise between the parties and on recall of a compromise decree. It was held that under Order 23, Rule 3 of CPC, the Court must be satisfied upon applying judicial mind that the agreement between the parties is lawful before accepting the same and disposing the suit. Further, the proviso and the Explanation to Order 23, Rule 3 mandate that the court must "decide the question" of whether an adjustment or satisfaction has been arrived at, and it is clarified that void and voidable agreements under the Indian Contract Act, 1872 shall be deemed to be not lawful. Upon such reading of the provision, the Apex Court held that the court recording the compromise can examine the legality of the agreement, in accordance with the provisions of the Contract Act, even after the compromise

decree is passed and when a party moves an application for recall.

30. In the case of **Gian Singh v. State of Punjab**⁵ the Apex Court has held that the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings; or continuation of the criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer; and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end; and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings. The relevant paragraph 61 of the judgment is reproduced herein below:-

"61. The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court

must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement

and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

31. Hon'ble Supreme Court in **Subrata Roy Sahara vs. Union of India & Ors.**⁶, has held that "The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims. One needs to keep in mind that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part."

32. In **State of Madhya Pradesh vs. Laxmi Narayan and ors**⁷ a Full Bench of the Apex Court laid down specific guidelines by which the High Court can settle the disputes between the parties and held as under:-

"i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which

involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not

permissible when the matter is still under investigation.

Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (*supra*) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

32. Hon’ble Supreme Court, in **Charu Kishor Mehta vs. Prakash Patel & Ors.**⁸, vide judgement and order dated 22.06.2022 confirmed the order dated 13.06.2022 passed by the Bombay High Court, and held that filing frivolous cases in a court of law is an abuse of process of law. The Supreme Court also upheld the order of Bombay High Court imposing the cost of Rs. 5 lakhs on the petitioner and dismissed the Special Leave Petition.

33. Having regard to the aforesaid dictum as well as attending facts and circumstances of the case, it is found that the crime in question is between the parties, who have already settled their previous acrimonious relations in terms of the interim agreement dated 19.10.2023, followed by second interim settlement agreement dated 06.12.2023. These interim settlements were crystalized into a final

settlement agreement dated 03.01.2024, wherein they have mutually agreed that the terms and conditions recorded in these agreements are binding and there shall remain no dispute, difference, litigation, claim or counter claim whatsoever between the petitioner and the informant. Based on the aforesaid settlement agreements, the Principal Judge, Family Court, Firozabad had decreed the H.M.P. No.1088 of 2023 under Section 13-B of Act, 1955 on 31.05.2024. In these circumstances, in the interest of justice, it appears to be a fit case qua the petitioner to exercise our discretionary powers under Section 226 of Constitution of India.

33. Accordingly, for the aforesaid reasons, the writ petition is allowed and the impugned FIR dated 18.05.2023 registered as Case Crime No.358 of 2023 under Sections 501, 500, 384, 188, 171-F IPC and Section 67 I.T. Act, 2008, Police Station Firozabad North, District Firozabad qua the petitioner is quashed.

34. In view of the aforesaid facts and circumstances, we do not find any merit in the application, which has been moved by the informant under Section 379 of B.N.S.S., 2023, and the same stands rejected.

(2025) 4 ILRA 940

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 18.04.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

CrI. Misc. W.P. No. 28135 of 2018

Mohd. Kasim Usmani & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Opp. Parties

Counsel for the Petitioners:

Rajeiu Kumar Tripathi, Diwakar Singh Gautam,
Rajeiu Kumar Tripathi

Counsel for the Opp. Parties:

G.A., Akhilesh Pratap Singh, Anurag Tiwari,
Ashok Kumar Verma, Avadhesh Kumar Shukla,
Gayasuddeen Hari Bux Singh, Mahmood Alam,
Mayank Dwivedi, Mohd. Shahanshah Newaz
Khan

Criminal Law – Constitution of India, 1950

– Article 226 - Criminal Procedure Code, 1973 – Sections 145, 145(1), 146 & 146(1)

- Writ Petition – challenging the impugned orders u/s 145 and 146(1) Cr.P.C. - alleging that petitioner held long-standing ancestral possession and that parallel civil suits on title and injunction were already pending – as such making the criminal proceedings unwarranted - Respondent no.4 argued that the proceedings were necessary due to apprehension of breach of peace - though both his own application and police reports acknowledged the petitioners' possession - Despite this, the Magistrate issued attachment orders without establishing emergent need – Revision - the Revisional Court failed to evaluate maintainability or the civil litigation context – writ petition – Court finds that, learned Magistrate failed to record any findings as to when civil suits have been filed by both the parties, as to whether the application u/s 145 CrPC was maintainable or not and even if it was maintainable, whether any order could have been passed in the facts and circumstances of the present case or not -relying on Supreme Court precedents, court held that – unless the issue of title is determined, the long and admitted possession of the petitioners cannot be settled in the proceedings u/s 145 CrPC and in view of the ongoing civil suits, there was no need of passing order of attachment – consequently, the impugned orders are not sustainable in the eyes of law and liable to be set-aside – accordingly, writ petition is allowed. (Para – 19, 20, 24, 25)

Writ Petition Allowed. (E-11)

List of referred Cases: -

1. Amresh Tiwari Vs Lalta Prasad Dubey & anr.-
(2000) 4 SCC 440,

2. Mahant Ram Saran Dass Vs Harish Mohan & anr.- (2001) 10 SCC 758,

3. Ashok Kumar Vs St. of Utterakhand & ors.- (2013) 3 SCC 366

(Delivered by Hon'ble Hon'ble Rajnish Kumar, J.)

1. Heard, Shri Rajeiu Kumar Tripathi, learned counsel for the petitioners, Shri S.P. Tiwari, learned AGA for the State and Shri Mahmood Alam, learned counsel for the respondent no. 4.

2. This petition under Article 227 of the Constitution of India has been filed assailing the judgment and order dated 29.08.2018, passed in Criminal Revision No.141 of 2017 (Mohd. Kasim Usmani and Others Vs. State of U.P. and Others) by Third Additional Sessions Judge, Bahraich and the order dated 24.06.2017 passed in Case No.23 of 2015, under Section 145 of the Code of Criminal Procedure (here-in-after referred as Cr.P.C.) by the City Magistrate, Bahraich and to quash the proceedings of the said case.

3. Learned counsel for the petitioners submitted that the petitioners are the owner and in possession of the property in dispute since the time of their ancestors. Earlier, the names of predecessors of the petitioners were recorded in the records and now the petitioners' names are recorded. He further submitted that the proceedings under Section 145 Cr.P.C. are not maintainable as the dispute of title is also pending before the civil court in one of the suits filed by the respondent no.4 for declaration as well as cancellation of the sale deed. Another suit filed by the petitioners for injunction is also pending before the civil court. It was only after

coming to know about the institution of the suit for permanent injunction filed by the predecessor-in-interest of the petitioners, application under Section 145 Cr.P.C. was filed before the Magistrate, which is apparent from the fact that the specific plea of knowledge of the suit taken in paragraph-21 of the petition has not been specifically denied and only a vague reply has been given in paragraph-33 of the counter affidavit. He further submitted that the respondent no.4 admitted the possession of the predecessor-in-interest of the petitioners in the application itself, therefore, the application was not maintainable. He further submitted that the impugned order dated 24.06.2017 could not have been passed by the learned Magistrate because there was no report of emergent need for passing the order on account of breach of public peace and tranquility. The impugned order dated 24.06.2017 was passed on a report dated 30.06.2015, whereas not even a single incident was reported after that and it also does not disclose of any emergent need. No any further report was also sought in this regard.

4. He further submitted that the petitioners had placed ample evidence on the record of the court below to show that the petitioners have been in possession for a long time and are also paying the taxes etc. The sale deed dated 25.09.1937 of a neighbour was also placed on record, in which in the boundaries, the house of the petitioners has been shown in the south with the name of grand father of the petitioners. He further submitted that learned revisional court also without considering the aforesaid and grounds raised in the revision, dismissed the revision. He further submitted that no

interim injunction has been granted by the civil court in either of the suits and if there was any urgency, the application could have been moved in the suits filed before the civil court. He further submitted that the possession can not be taken away from the petitioners in such an illegal manner. Thus, the submission is that the impugned orders are not sustainable in the eyes of law and liable to be set-aside. He relied on **Amresh Tiwari Vs. Lalta Prasad Dubey and Another; (2000) 4 SCC 440, Mahant Ram Saran Dass Vs. Harish Mohan and Another; (2001) 10 SCC 758 & Ashok Kumar Vs. State of Utterakhand and Others; (2013) 3 SCC 366.**

5. Per contra, learned counsel for the respondent no.4 submitted that the application under Section 145 Cr.P.C. was filed by the respondent no.4 as there was apprehension of breach of public peace and tranquility. He further submitted that admittedly, the predecessor-in-interest of the respondent no.4 is the owner of the property-in-dispute. However on account of certain circumstances, the predecessor-in-interest of the petitioners were asked to get the map sanctioned. Since the predecessor-in-interest of the respondent no.4 was out and residing in Delhi in connection with employment for livelihood, where the respondent no.4 was also living with his father, therefore the possession was with the predecessor-in-interest of the petitioners. After death of his father, the petitioners could not come for a long time and when he came back then he came to know that the property has changed a lot and the name of the predecessor-in-interest of the petitioners has been got recorded, therefore, an F.I.R. was lodged on 08.06.2013, the proceedings of which are pending. He further submitted that prior to

filing of the suit by the parties, the application was moved on account of emergent need and it is wrong to say that the application was filed only after coming to know about the institution of suit by the petitioners. Even otherwise, it is apparent from the written statement filed by the respondent no.4 in the suit filed by the petitioner as the same was filed after coming to know about the suit on 16.04.2015, whereas the application under Section 145 Cr.P.C. was filed on 30.01.2015.

6. He further submitted that no proof of title has been filed by the petitioners even before this Court and no rejoinder affidavit to the counter affidavit filed by the respondent no.4 has also been filed even after passing of a long time, therefore, the facts disclosed in the counter affidavit are unrebutted. He further submitted that the impugned orders have rightly been passed in accordance with law and there is no illegality or infirmity in the same. The judgment relied by the learned counsel for the petitioners are not applicable on the facts and circumstances of the present case and the petitioners are not entitled for any benefit of the same. The petition has been filed on misconceived and baseless grounds, which is liable to be dismissed.

7. Learned A.G.A. could not dispute the factual aspects of the matter as argued by learned counsels for the parties and the legal position under which an order under Section 145 Cr.P.C can be filed on account of emergency on account of threat of breach of public peace and tranquility. However he submitted that the impugned orders have been passed in accordance with law and there is no illegality or infirmity in them. Thus, the petition is misconceived and liable to be dismissed.

8. I have considered the submissions of learned counsel for the parties and perused the records.

9. An application under Section 145 Cr.P.C. was moved by the respondent no.4 against the predecessor-in-interest of the petitioners on 30.01.2015. A report was called from the in-charge Inspector, Kotwali Nagar. In response thereof the report dated 30.06.2015 and 02.07.2015 were submitted stating therein that there was tension between the parties regarding possession and that a serious incident could occur at any time, therefore, the further legal action was required in the matter. Having been satisfied with the report of S.H.O. that there was tension between the parties due to possession on the property in dispute, a preliminary order was passed on 20.08.2015 by the City Magistrate, Bahraich i.e. the respondent no.2 and a notice was issued to appear and file objection and relevant documents. In response thereof, the applicant i.e. the respondent no.4 appeared and filed his documents relating to the property in dispute and an application under Section 146 (1) Cr.P.C. However, the respondents i.e. the petitioners did not appear. Thereafter the learned Magistrate passed an ex-parte order of attachment under Section 146 (1) Cr.P.C. on 17.10.2016. Being aggrieved by the same, the petitioners filed a Revision No.194 of 2016, which was allowed by the Revisional Court by means of the order dated 24.12.2016 and the matter was remanded to pass a fresh order on merit after affording an opportunity of hearing to both the parties and to adduce evidence.

10. In compliance of the aforesaid order passed by the Revisional Court the respondent no.4 appeared before the

learned Magistrate but the petitioners did not appear. The learned Magistrate passed a fresh order on 24.06.2017, recording a finding that since the petitioners have not appeared, therefore, there is no effect on the circumstances under which the order dated 17.10.2016 was passed and after considering the documents filed by the petitioners alongwith their application for restoration filed on 30.11.2016, the learned Magistrate passed a fresh order under Section 146 (1) Cr.P.C. for attachment and closed the proceedings recording a finding, on perusal of the documents placed on record, that it is apparent that there is a dispute of title between the parties. It has also been recorded that it is also apparent from the Police report that there is serious dispute between the parties with regard to possession of the house in question and there is serious possibility of breach of peace on the spot.

11. The order dated 24.06.2017 was challenged by the petitioners in Revision No.141 of 2017 before the Session Judge, which was dismissed by means of the judgment and order dated 29.08.2018, by the IIIrd Additional Session Judge, Bahraich. The revision was decided ex-parte, as the petitioners had not appeared, with the assistance of assistant District Government Counsel and counsel for the respondent no.4 and after perusing the records. The learned Revisional Court, considering the plea taken before the Revisional Court that on account of start of election procedure the petitioners could not know about the proceedings of the case before the learned Magistrate, therefore, they could not place their case and objections, recorded a finding that the matter was remanded by the Revisional Court by means of the order dated 24.12.2016, whereas the nominations for

Elections were made on 01.02.2016 and the Election Symbols were allotted on 12.02.2016 and the impugned order by the learned Magistrate was passed after completion of Election process on 24.06.2017, therefore, the plea is not tenable and it appears that they had deliberately not appeared for some undue benefit. It has also been recorded that on account of it, they have again not appeared in the last many dates before the Revisional Court also. Thus, no illegality appears in the lower court's order dated 24.06.2017 and there is no need of interference in the matter. Thus, it is apparent that the Revisional court passed the order merely on the ground of the petitioners' absence before the Revisional Court as well as learned Magistrate during the proceedings and on presumption without considering as to whether the application under Section 145 Cr.P.C. was maintainable or not and if maintainable as to whether the order could have been passed in the facts and circumstances of the case and on the basis of Police Report.

12. An authority or Court can pass an order only in accordance with law and after considering the pleadings and material on record even if a party does not appear for any reason.

13. The section 145 Cr.P.C., relevant for consideration of the case in hand, is extracted here-in-below:-

"145. Procedure where dispute concerning land or water is likely to cause breach of peace.—

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or

water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, pursue the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if

that party had been in possession on the date of his order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to subsection (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper

custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of powers of the Magistrate to proceed under section 107."

14. Section 146 Cr.P.C. provides the power to attach the subject of dispute and to appoint a receiver, which is extracted here-in-below:-

"146. Power to attach subject of dispute and to appoint receiver:—

(1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make

such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate—

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just."

15. In view of above, on being satisfied by a police officer's report or upon other information that a dispute is likely to cause a breach of peace exists concerning any land or water or the boundaries thereof within his jurisdiction, an Executive Magistrate shall make an order recording the grounds of satisfaction and requiring the parties concerned in such dispute to appear and file their respective claims regarding the actual possession of disputed subject. Thereafter, proceeding in the manner provided under Section 145, after passing the order under sub-section (1), if the Magistrate finds the case to be one of emergency or if he decides that some of the parties came in such possession or he is unable to satisfy as to who was in such possession of the subject or dispute, he may attach the subject of dispute until a competent court determines the rights of the parties therein with regard to the person entitled thereon. However, the attachment may be withdrawn at any time if the

learned Magistrate is satisfied that there is no longer likelihood of breach of peace subject to dispute. Thus, in case after passing an order under Section 145 (1) Cr.P.C. from a report of police officer or any other information that there is a dispute in regard to any land or water or boundaries thereof, an Executive Magistrate may pass an order under Section 145 (1) and if during the proceedings thereof, he considers that there is an emergency in the case or none of the parties was in possession or if he is unable to satisfy himself as to who was in possession, he may pass an order of attachment of the property in dispute until a competent court determines the rights of the parties with regard to the possession.

16. Adverting to the facts of the present case, respondent no.4 filed an application under Section 145 Cr.P.C. on 30.01.2015, stating therein that the grand father, late Mohd. Bux was the owner and in possession of the disputed property and after his death, the respondent no.4 inherited it. His grand father got the map sanctioned in the year 1939 for boundaries and thereafter again in the year 1964 and got the boundaries constructed. After his death, the father of the respondent no.4 got the map sanctioned for a room and latrine but due to financial constraints, he had to go out for livelihood and gave some money to Mohd. Naseem Usmani residing near the house for approval of map and also told that in case the money would be short, he may incur further which he would give to him but Mohd. Naseem Usmani and his sons colluded and got a forged map sanctioned in the name of Mohd. Naseem Usmani and informed to the father of the applicant that the map has been sanctioned. The applicant i.e. the respondent no.4's father got the room and latrine constructed.

He asked to the respondents i.e. the petitioners for the map but they said that it is missing. His father had not given any attention to it. The applicant was also residing with his father in Delhi. The father of the applicant had full faith on Mohd. Naseem Usmani, therefore, the house and plot was left with him. The father of the applicant died in the year 1992. The applicant thereafter could not come about 18-20 years. Thereafter, when he came back there was a lot of changes in the property and there is a wall on some part and constructions on the other. Some of the portion is also on rent. The applicant gave an application in Nagar Palika Parishad for a copy of the map and for registering the house in his name, then he came to know that the respondents had got their names also recorded in the Nagar Palika Parishad. The house number was changed from 313 to 497. In regard to the aforesaid, fraud and cheating by the respondent, the applicant lodged an F.I.R. on 08.06.2013, in which the respondents have been bailed out. It was also submitted that the respondents i.e. the petitioners are trying to sell the property and other things without permission. Accordingly, he prayed for proceedings under Section 145 Cr.P.C. and for attachment to save the property.

17. The aforesaid averments made by respondent no.4 indicates that he has admitted the possession of the petitioners and the predecessor-in-interest of the petitioners. The report was called by the learned Magistrate on the aforesaid application from the in-charge Inspector, Kotwali Nagar by means of the order dated 22.04.2015. In response thereof, the report was submitted by the Police Station-Kotwali Nagar, District- Bahraich disclosing therein the boundaries of the property-in-dispute and stating that in half

of the portion of the property in dispute, there is a furniture shop by a firm of Mohd. Haneef and on some portion there is lock and it has been informed by the people residing in the vicinity that Mohd. Usmani is residing in the same, who is presently residing in Lucknow in regard to which F.I.R. has been lodged by Mohd. Nasir son of Naseerullah against the respondents. The report was submitted on 30.06.2015. It has also been stated in the report that both the parties have filed the suites in regard to the property in dispute bearing Case No.63 of 2014; Mohd. Usmani and Others Vs. Nafees in the court of civil judge (Jr. Division) Bahraich and Regular Suit No.45 of 2015; Mohd. Nafees Vs. Usmani in the court of Civil Judge (Jr. Division) Bahraich. Thereafter, it has been stated that there is tension between the parties with regard to possession on the property in dispute, therefore, there is a need of legal action with regard to the property in dispute during pendency. Thus, it is apparent that the possession of the petitioners has been admitted in the report also and it has also been admitted that the petitioners were not on the spot at the time of the inspection and the report was only for tension (Kasheedgi) between the parties with regard to possession on the property in question but there is no report of any emergency for passing an order for attachment in the matter. The fact of filing of the suit by both the parties were also disclosed in the report.

18. On the basis of aforesaid report, the order dated 20.08.2015 was passed by the learned Magistrate requiring the parties to appear and file there written statement with their claims of actual possession of the property in dispute. In response thereof the respondent no.4 appeared through his counsel and filed an application under Section 146 (1) Cr.P.C. stating therein that

the other parties i.e. the petitioners used to make tussle for possession on the land in dispute and there is a possibility of breach of peace, therefore, there is a need of attachment of disputed property. It appears that no document with regard to the ownership or possession were filed alongwith the application either under Section 145 Cr.P.C. or under Section 146 (1) Cr.P.C. Thus, merely on the basis of the police report, the order dated 17.10.2016 was passed under Section 146 (1) Cr.P.C., which is also apparent from the perusal of the order, which is annexed as annexure no.21 of the petition. In pursuance of the said order a report was submitted by the Police Station- Kotwali Nagar, Bahraich that there is a hardware shop of Mohd. Haneef in some part of the property in dispute, who has told that he has got the sale deed of the same from the respondent Mohd. Usmani and in some part Anas son of Haji Zaheer Ahmad is residing on rent, therefore, the house could not be vacated and attached. A request was also made to appoint some competent magistrate for execution of the order after getting it vacated. Thus, from this report also it is apparent that the property in dispute was in possession of the persons mentioned in the report out of which one was doing business of hardware and the other was residing on rent but there is no report that there was any emergency of attachment on account of emergent need of likelihood of breach of peace or tranquility. The aforesaid order passed by the learned Magistrate on 17.10.2016 was challenged by the petitioners in Revision No.184 of 2016, which was allowed by means of the order dated 24.12.2016 and the matter was remanded back to pass a fresh order on merit on application under Section 145 Cr.P.C. after affording opportunity of hearing to the parties.

19. In pursuance of the aforesaid order though the petitioners had not appeared before the learned Magistrate but the learned Magistrate passed the impugned order dated 24.06.2017 without calling any fresh report and merely on the ground that there is no change in situation of circumstances under which the order dated 17.10.2016 was passed, whereas as discussed above, even the order dated 17.10.2016 was not passed in accordance with law after considering as to whether there is any emergency or need of passing the said order because there was no dispute in regard to possession on the property in dispute, which was also apparent from the pleadings made in the application by the respondent no.4 and the report of police. Both had admitted that the petitioners were in possession of the property in dispute. The learned Magistrate has even not considered that two civil suits were pending, one by each party. The learned Magistrate also failed to record any findings as to when civil suits have been filed by the both the parties, as to whether the application under Section 145 Cr.P.C. was maintainable or not and even if it was maintainable, whether any order could have been passed in the facts and circumstances of the present case or not.

20. The suit for permanent injunction has been filed by the petitioners on 24.03.2014, bearing Regular Suit No.63 of 2014 and other suit has been filed by the respondent no.4 for declaration of his title, cancellation of sale deed dated 17.01.2013 and for permanent injunction on 24.02.2015. The pleadings made in the suit filed by the respondent no.4 are similar to the pleadings made in the application under Section 145 Cr.P.C. as disclosed above and a specific plea has been taken by the petitioner in paragraph- 21 of the petition

that after coming to know about the filing of the suit of permanent injunction by the petitioners, the application under Section 145 Cr.P.C. has been filed by the respondent no.4, which has not been specifically denied in paragraph-33 of the counter affidavit and only a vague reply has been given. Para- 21 of the petition and para- 33 of the counter affidavit are extracted here-in-below:-

"21. That, in the meantime, by concealing the fact of the pendency of Regular Civil Suit for Permanent Injunction filed by the petitioners nos.1 and 2, the opp-party no.4, malafidely with quite false and flimsy averments, only with intention to dispossess the petitioners nos.1 and 2, from the ancestral property in dispute, filed an application under the provisions of Section 145 of the Code of Criminal Procedure before the opp-party no.2 on 30.1.2015. A true copy of the aforesaid application, filed under the provisions of Section 145 of the Code of Criminal Procedure before the opp-party no.2, by opp-party no.4, on 30.1.2015, is being filed herewith as Annexure No.16.

33- That contents of paragraph No. 21 of the petition are misconceived hence denied. It is stated that application u/s 145 Cr.P.C. was filed in the compelling circumstances."

21. In view of above, it appears that after coming to know about filing of the suit for permanent injunction by the petitioners, the application under Section 145 Cr.P.C. was filed on 30.01.2015. The contention of the learned counsel for the respondent no.4 that he after coming to know about the pendency of the suit filed by the petitioners had filed a written statement on 16.04.2015, does not indicate that he came to know only at that time as

no specific date of knowledge has been indicated, therefore, it is nothing but a misconceived plea. Even otherwise when admittedly the title was not in favour of the respondent no.4 and he had subsequently filed a suit for declaration of his title, he could have, instead of filing an application under Section 145, filed an application in the suit in which the relief for injunction as well as attachment could have been prayed and learned Magistrate without considering it and that there was no emergency of passing any order as no report was also called even after remand of the matter, and even no incident was also reported during this period which may indicate that a dispute likely to cause a breach of the peace exist, passed the impugned order, which could not have been passed. Learned Revisional Court also failed to consider it and the grounds of remand.

22. The Hon'ble Supreme Court, in the case of **Amresh Tiwari Vs. Lalta Prasad Dubey and Another (Supra)**, has held that it is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil Court would be binding on the Magistrate. The relevant paragraphs 12, 13 and 14 are extracted here-in-below:-

"12. The question then is whether there is any infirmity in the order of the SDM discontinuing the proceedings under Section 145 of the Criminal Procedure Code. The law on this subject-matter has

been settled by the decision of this Court in the case of Ram Sumer Puri Mahant v. State of U.P. [(1985) 1 SCC 427 : 1985 SCC (Cri) 98] In this case it has been held as follows : (SCC pp. 428-29, para 2)

“When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the civil court is binding on the criminal court in a matter like the one before us. Counsel for Respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the civil court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue....”

13. We are unable to accept the submission that the principles laid down in Ram Sumer case [(1985) 1 SCC 427 : 1985 SCC (Cri) 98] would only apply if the civil court has already adjudicated on the dispute regarding the property and given a finding. In our view Ram Sumer case [(1985) 1 SCC 427 : 1985 SCC (Cri) 98] is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be wasted over meaningless litigation. On this

principle it has been held that when possession is being examined by the civil court and parties are in a position to approach the civil court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 proceedings should not continue.

14. Reliance has been placed on the case of Jhummal v. State of M.P. [(1988) 4 SCC 452 : 1988 SCC (Cri) 974] It is submitted that this authority lays down that merely because a civil suit is pending does not mean that proceedings under Section 145 of the Criminal Procedure Code should be set at naught. In our view this authority does not lay down any such broad proposition. In this case the proceedings under Section 145 of the Criminal Procedure Code had resulted in a concluded order. Thereafter the party, who had lost, filed civil proceedings. After filing the civil proceedings he prayed that the final order passed in the Section 145 proceedings be quashed. It is in that context that this Court held that merely because a civil suit had been filed did not mean that the concluded order under Section 145 of the Criminal Procedure Code should be quashed. This is entirely a different situation. In this case the civil suit had been filed first. An order of status quo had already been passed by the competent civil court. Thereafter Section 145 proceedings were commenced. No final order had been passed in the proceedings under Section 145. In our view on the facts of the present case the ratio laid down in Ram Sumer case [(1985) 1 SCC 427 : 1985 SCC (Cri) 98] fully applies. We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the

same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil court would be binding on the Magistrate."

23. The Hon'ble Supreme Court, in the case of **Mahant Ram Saran Dass Vs. Harish Mohan and Another (Supra)**, has taken similar view as aforesaid.

24. The Hon'ble Supreme Court, in the case of **Ashok Kumar Vs. State of Utterakhand and Others (Supra)**, has held that if after the enquiry under Section 145 of the Code, the Magistrate is of the opinion that none of the parties was in actual possession of the subject of dispute at the time of the order passed under Section 145 (1) or is unable to decide which of the parties was in such possession, he may attach the subject of dispute, until a competent court determines the rights of the parties thereto with regard to the person entitled to possession thereof. It has further been held that under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment and a case of emergency, as contemplated under Section 146 has to be distinguished from a mere case of apprehension of breach of the peace. The Magistrate must explain the circumstances why he thinks it to be a case of emergency and to infer a situation of emergency, there must be a material on record before Magistrate when the submission of the parties filed, documents produced or evidence adduced. It has also been held that if the reports indicate that

one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency. The relevant paragraphs 9, 10 and 11 are extracted here-in-below:-

"9. The above order would indicate that the SDM has, in our view, wrongly invoked the powers under Section 146(1) CrPC. Under Section 146(1), a Magistrate can pass an order of attachment of the subject of dispute if it be a case of emergency, or if he decides that none of the parties was in such possession, or he cannot decide as to which of them was in possession. Sections 145 and 146 of the Criminal Procedure Code together constitute a scheme for the resolution of a situation where there is a likelihood of a breach of the peace and Section 146 cannot be separated from Section 145 CrPC. It can only be read in the context of Section 145 CrPC. If after the enquiry under Section 145 of the Code, the Magistrate is of the opinion that none of the parties was in actual possession of the subject of dispute at the time of the order passed under Section 145(1) or is unable to decide which of the parties was in such possession, he may attach the subject of dispute, until a competent court has determined the right of the parties thereto with regard to the person entitled to possession thereof.

10. The ingredients necessary for passing an order under Section 145(1) of the Code would not automatically attract for the attachment of the property. Under Section 146, a Magistrate has to satisfy himself as to whether emergency exists before he passes an order of attachment. A case of emergency, as contemplated under Section 146 of the Code, has to be distinguished from a mere case of apprehension of a breach of the peace. The Magistrate, before passing an order under

Section 146, must explain the circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be material on record before the Magistrate when the submission of the parties is filed, documents produced or evidence adduced.

11. We find from this case that there is nothing to show that an emergency exists so as to invoke Section 146(1) and to attach the property in question. A case of emergency, as per Section 146 of the Code has to be distinguished from a mere case of apprehension of breach of peace. When the reports indicate that one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency. The order acknowledges the fact that Ashok Kumar has started construction in the property in question, therefore, possession of property is with the appellant Ashok Kumar, whether it is legal or not, is not for the SDM to decide."

25. In view of above and considering over all facts and circumstances of the case, the impugned orders are not sustainable in the eyes of law for the reason that they have been passed without considering and recording any finding as to whether the application under Section 145 Cr.P.C. was maintainable or not in the facts and circumstances of the case, if maintainable, there was an emergency of passing an order of attachment as contemplated under Section 146, when Police Report does not indicate the same and it has also failed to consider that the petitioners are in possession, which is not disputed by either of the parties and in the Police Report and the suit for injunction filed by the petitioners and the suit claiming title, cancellation of sale deed and injunction by the respondent no.4 are pending before the civil court, in which unless the issue of title is

determined, the long admitted possession of the petitioners can not be unsettled in the proceedings under Section 145 Cr.P.C. and in view of suit filed by the respondent no.4, there was no need of passing order of attachment. Thus, the impugned orders are not sustainable in the eyes of law and liable to be set-aside. The petition is liable to be allowed.

26. The petition is, accordingly, **allowed**. The impugned judgment and order dated 29.08.2018, passed in Criminal Revision No.141 of 2017 (Mohd. Kasim Usmani and Others Vs. State of U.P. and Others) by Third Additional Sessions Judge, Bahraich and the order dated 24.06.2017 passed in Case No.23 of 2015, under Section 145 Cr.P.C. by the City Magistrate, Bahraich are hereby set-aside and the proceedings of Case No.23 of 2015 are quashed. No order as to costs.

(2025) 4 ILRA 952

APPELLATE JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 21.04.2025

BEFORE

**THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE AVNISH SAXENA, J.**

First Appeal Defective No. 207 of 2025

Smt. Minakshi Gupta	... Appellant
Versus	
Kailash Chandra	...Respondent

Counsel for the Appellant:
Aman Singh, Manoj Pandey

Counsel for the Respondent:
Prakash Tripathi

**Civil Law - Hindu Marriage Act, 1955 –
Section 13-B – Divorce by Mutual Consent**

– **Code of Civil Procedure, 1908 – Section 5 - Limitation Act, 1963** – Condonation of Delay – Separation Period – Requirement of One Year Separation – Error in Reckoning Separation Date – Mutual Consent Agreement During Separation – No Collusion.

Held:

The appellant-wife and respondent-husband jointly petitioned the Family Court for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955, after living separately since 12.01.2022. The Family Court dismissed the petition on 30.11.2024, erroneously reckoning the separation date from 02.08.2023, the date of their agreement to seek mutual divorce. The Court condoned a 54-day delay in filing the appeal, finding sufficient cause, and admitted the appeal. On ascertaining that the parties had lived separately for over one year before filing the petition and had mutually agreed to divorce without collusion, the Court held that the Family Court erred in presuming togetherness based on the agreement date. The requirement under Section 13-B(1) is separation of one year or more before presenting the petition, and an agreement for mutual divorce during separation does not imply cohabitation, as clarified in **Sureshta Devi v. Om Prakash*, (1991) 2 SCC 25*. The absence of collusion and the parties' firm resolve to separate were affirmed, consistent with **Amardeep Singh v. Harveen Kaur*, (2017) 8 SCC 746*, which emphasizes flexibility in the six-month waiting period under Section 13-B(2) when reconciliation is improbable. The marriage solemnized on 06.12.2004 was declared dissolved by mutual consent, and a decree was ordered to be drawn expeditiously.

Appeal allowed; marriage dissolved by mutual consent.

Case Law Discussed:

1. *Sureshta Devi Vs Om Prakash*, (1991) 2 SCC 25* – Section 13-B requires one year of separation before filing a mutual consent divorce petition; agreement during separation does not negate separate living.

2. *Amardeep Singh Vs Harveen Kaur*, (2017) 8 SCC 746* – Courts may waive the six-month waiting period under Section 13-B(2) if reconciliation is not possible and parties are resolute in seeking divorce.

3. *Collector, Land Acquisition Vs Katiji*, (1987) 2 SCC 107* – Liberal approach to condonation of delay under Section 5, Limitation Act, to advance substantial justice.

Observation:

The Court, upon personal enquiry with the parties present, confirmed their firm resolve to separate, absence of claims against each other, and that their children would remain with the appellant. The joint petition and affidavits clearly established no physical relation since 2013 and separate living since 12.01.2022, satisfying the conditions for mutual consent divorce under Section 13-B

(Delivered by Hon'ble Arindam Sinha, J.)

1. Mr. Manoj Pandey, learned advocate appears on behalf of applicant-appellant and submits, his client is wife. Both parties had joined to petition the Family Court for dissolution of their marriage on mutual consent under section 13-B in Hindu Marriage Act, 1955. By impugned judgment dated 30th November, 2024, the petition was dismissed. His client and respondent are both aggrieved. His client presented the appeal on reported delay of 54 days. The delay be condoned and the appeal admitted.

2. Mr. Prakash Tripathi, learned advocate appears on behalf of respondent. He submits, his client too is aggrieved by impugned judgment. Delay be condoned and impugned judgment reversed.

3. Perused causes shown for the delay. They are accepted. The delay is condoned and the appeal admitted. The application is disposed of.

4. Mr. Pandey submits, there was direction by coordinate Bench for the parties to be present in Court. Both of them are present in Court. On query he submits, the marriage was solemnized on 6th December, 2004. Three children were born in the marriage. It is after that disputes and differences arose between the parties. On 12th January, 2022, his client along with her children, went to her parental house and parties thus separated. On 1st August, 2023, on intervention of elders and relatives, the parties agreed to jointly petition for dissolution of the marriage. Pursuant to the agreement, they petitioned the Family Court. The petition was filed after more than the prescribed period of one year of separation. Upon filing of the petition, parties waited out subsequent prescribed period. There was and is no collusion between the parties in having petitioned the Family Court and thereafter this Court in appeal. The learned Judge erred in reckoning date of separation from on or after the date of agreement i.e. 2nd August, 2023, to dismiss the petition as not maintainable.. The judgment be reversed.

5. Mr. Tripathi confirms, submissions made on behalf of appellant are also those of his client.

6. Parties being present in Court, we asked each of them. They both answered that they have been living separately since 12th January, 2022. They had agreed to seek divorce on mutual consent in terms of agreement dated 1st August, 2023, disclosed in the appeal. They are firm in their resolve to go their separate ways.

They do not have any claim or counter claim against each other, but that the children will remain with appellant.

7. We have ascertained from the record that parties have lived separately for a period of more than one year prior to their joint petition filed in the Family Court. In the time of separation they mutually agreed to petition for divorce by mutual consent, as inferred from averments made in the joint petition and the affidavit of evidence filed by the parties, There are categorical statements of no physical relation since year 2013 and separate living since 12th January, 2022.

8. Requirement under sub-section (1) in section 13-B is for separation of one year or more before the petition is presented. During the period of separation, in event there is agreement to file for divorce by mutual consent, unless there is proof that parties, for the agreement or thereafter stayed together, the meeting of minds to petition for divorce by mutual consent does not militate against them living separately at the time of agreement made during the separation. We have next ascertained, upon filing the petition and waiting out the prescribed period of six months, motion was made for grant of divorce by mutual consent.

9. In view of aforesaid, the learned Court erred on facts in presuming togetherness because parties were, as on 1st August, 2023 in agreement that they would file for mutual divorce, as the agreement came after they separated on 12th January, 2022. Cause of action is a bundle of facts and averment that lastly the cause of action accrued on 1st August, 2023, as mentioned in the petition, is a fact that constitutes whole of the cause of action. Such

averment can in no way be said to be unambiguous or clear admission of parties being together as on that date.

10. We are satisfied, on hearing the parties and making our enquiry as aforesaid, parties are entitled to divorce by mutual consent. The averments in the petition are true. Hence, we declare the marriage solemnized on 6th December, 2004 to be dissolved by mutual consent. The decree be drawn up expeditiously.

11. The appeal is disposed of.

(2025) 4 ILRA 955
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 21.04.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Second Appeal No. 361 of 2018

Ram Baran ... Appellant
Versus
Sheetla Prasad Yadav & Anr. ... Respondents

Counsel for the Appellant:
Mohammad Ehtesham Khan

Counsel for the Respondent:
C.B. Singh, Anshuman Singh Rathore, Bhoomika Bajpai, Raqhaw Ram Upadhyay

Civil Law - Civil Procedure Code, 1908 – Section 100 – U.P. Zamindari Abolition and Land Reforms Act, 1950 – Section 229-B – Jurisdiction of Civil Court – Suit for Cancellation of Sale Deed – Fraud, Cheating, and Impersonation – Prima Facie Title of Recorded Tenure Holder – Concurrent Findings of Fact – Scope of Interference in Second Appeal.

Held:

The appellant challenged the judgment and decree dated 10.12.2013 by the Additional Civil Judge, Sultanpur, and the appellate court's confirmation on 29.09.2018, which cancelled a sale deed dated 20.04.1987 on grounds of fraud, cheating, and impersonation. The appeal was admitted on the substantial question of whether the civil court had jurisdiction to entertain the suit for cancellation of the sale deed, given that the plaintiff's predecessor-in-interest was not recorded as the tenure holder, or if the suit was maintainable only in the revenue court under Section 229-B of the U.P.Z.A. & L.R. Act. The Court held that a civil court has jurisdiction to try a suit for cancellation of a sale deed when the plaintiff's predecessor-in-interest was the recorded tenure holder with prima facie title, and the suit alleges fraud, as per *Shri Ram v. Ist Addl. Distt. Judge, (2001) 3 SCC 24*. The plaintiff's husband, Ram Dev, was the recorded tenure holder, and after his death, the plaintiff, as his legal heir, had prima facie title. The sale deed was not supported by evidence of execution or payment of consideration, and the defendant/respondent no.2, a beneficiary, supported the plaintiff's claim of fraud. Concurrent findings of fact by both courts below, based on evidence, were not perverse and thus not liable to interference under Section 100 CPC. The substantial question of law did not arise, as the civil court was competent to entertain the suit. The appeal was dismissed for lack of merit.

Second Appeal dismissed.

Case Law Discussed:

1. **Shri Ram Vs Ist A.D.J., (2001) 3 SCC 24* –** Civil court's jurisdiction to entertain suit for cancellation of sale deed by recorded tenure holder alleging fraud.
2. **Kamla Prasad Vs Kishna Kant Pathak, (2007) 4 SCC 213* –** Suit for declaration of rights in revenue court required if plaintiff's name not recorded in revenue records.
3. **Ram Padarath Vs II A.D.J., Sultanpur, 1989 AWC (FB) (LB) 290* –** Recorded tenure holder can seek cancellation of void document in civil court without needing declaration in revenue court.

4. Jai Ram Singh Vs 1st A.D.J., Bijnore, 2007 (25) LCD 283* – Civil court's jurisdiction for cancellation of sale deed on grounds of fraud if plaintiff or predecessor-in-interest recorded in revenue records.

5. Suryakunwari Vs Nanhu, 2019 (37) LCD 2346* – Concurrent findings of fact not to be interfered with in second appeal unless perverse.

6. Jangi Singh Vs Brij Mohan Singh, 2012 (30) LCD 2616 – No interference in second appeal if findings based on evidence.

7. Kapil Kumar Vs Raj Kumar, (2022) 10 SCC 281* – No interference with concurrent findings unless perverse.

8. Shivah Balram Haibatti Vs Avinash Maruthi Pawar, (2018) 11 SCC 652* – Concurrent findings binding in second appeal absent perversity.

9. Narendra Vs Ajabrao, (2018) 11 SCC 564* – Interference in second appeal permissible only for perverse findings or legal errors.

10. Dalip Singh Vs Bhupinder Kaur, (2018) 3 SCC 677* – No interference in second appeal absent perversity.

11. Gautam Sarup Vs Leela Jetly, (2008) 7 SCC 85* – Alternative pleas permissible but not mutually destructive.

12. State Bank of India Vs S.N. Goyal, (2008) 8 SCC 92* – Substantial question of law must impact the decision in the case.

Observation:

The Court noted that the defendant/respondent no.2, a beneficiary of the sale deed, supported the plaintiff's claim of fraud, denying execution and payment of consideration. The appellant's claim of execution and possession was not substantiated by evidence, and the absence of any provision for the plaintiff's livelihood by her husband, Ram Dev, further supported the inference of fraud. The

concurrent findings of the courts below, based on oral and documentary evidence, were not perverse, and the civil court was competent to entertain the suit given the plaintiff's prima facie title as the legal heir of the recorded tenure holder.

(Delivered by Hon'ble Rajnish Kumar, J.)

1. Heard, Shri Mohammad Ehtesham Khan, learned counsel for the appellant alongwith Shri Shashi Kant Mishra, Sri Raghaw Ram Upadhyay, learned counsel for the respondent no.1 and Shri Anshuman Singh Rathore, learned counsel for respondent no.2.

2. The instant Second Appeal has been filed under Section 100 of the Civil Procedure Code, 1908 (here-in-after referred as CPC) against the judgment and decree dated 10.12.2013 passed in Regular Suit No.1129 of 1992; Pran Dei (deceased) substituted by legal heir Smt. Karma Dei versus Ram Baran and another by Additional Civil Judge (Jr.Div.), Court No.31, Sultanpur and judgment and decree dated 29.09.2018 passed in Civil Appeal No.36 of 2014; Ram Baran Versus Sheetala Prasad and others by the VIth Additional District Judge, Sultanpur.

3. The appeal has been admitted on the following substantial question of law framed in the memo of appeal:-

“Whether the civil court was competent to entertain a suit for cancellation of sale deed dated 22.04.1987 on behalf of Mst. Pran Dei who was not recorded over the land in question or the said suit was maintainable before the revenue courts in terms of the provisions contained under Section 229-B of the U.P.Z.A. & L.R. Act?”

4. A suit for cancellation of sale deed dated 20.04.1987 was filed by the predecessor-in-interest of plaintiff/respondent no.1 i.e. Pran Dei with the allegation that the land in dispute bearing Gata No.839 having an area of 2 bigha, 4 biswa and 17 dhur, situated in village Salahpur, Pargana-Meeranpur, Tehsil and District-Sultanpur was recorded in the name of Ram Dev son of Nohar. He remained in possession of the said land during his life time. He died in the year 1987. He had only one daughter, namely, Smt. Karma Dei, who was married to Ram Akbal, resident of Village-Mainapur, Pargana-Aldemau, Tehsil-Kadipur, District-Sultanpur. The suit was filed by Smt. Pran Dei, wife of Ram Dev, claiming that she is widow of deceased Ram Dev and is only legal heir and after his death she is owner and in possession of all immovable and movable properties of the deceased Ram Dev. The deceased Ram Dev had not executed any sale deed or Will deed in favour of anybody in his life time. The defendant/respondent no.2 herein i.e. Radhey Shyam had got the land in dispute recorded in his name on the basis of a Will. On coming to know about the same she filed an application on 17.09.1992 for removal of his name from the revenue records, which is pending. On 20.09.1992 when she inquired from the defendants about the forged order made in their favour then it came to light that a sale deed has also been executed in favour of the defendants i.e. the defendant/appellant and defendant no.2/respondent no.2. She was astonished to hear it and she moved an application for certified copy of the documents, which was received by her on 09.10.1992. 10.10.1992 and 11.10.1992 were holidays, therefore, she filed the suit for cancellation of sale deed on 12.10.1992. The suit was filed alleging therein that the

sale deed in question dated 20.04.1987 in favour of defendants is illegal. There was no talks between the husband of the plaintiff i.e. predecessor-in-interest of the plaintiff/respondent no.1 and the defendants i.e. the defendant no.1/appellant and defendant/respondent no.2 for sale of the land in dispute. He had also not executed the sale deed of the land in dispute in favour of the defendants. It was further alleged that the deceased Ram Dev had no need to sell the land in dispute. He had also not received any sale consideration. The sale deed in question is an outcome of fraud and forgery. The deceased Ram Dev was very old. He was aged about 80 years at that time. He was unable to differentiate between good and bad. On coming to know about the sale deed in question she asked to the defendants to get the same cancelled, but they were not ready and they had completely denied on 11.10.1992, therefore, she had to file the suit.

5. The suit was contested by the defendant/appellant-Ram Baran, who was defendant no.1 in the suit denying the averments made in the plaint. It was further alleged that the deceased Ram Dev son of Nohar was the sole owner of the land in dispute bearing Gata No.839. He was in need of money, therefore, he want to execute the sale deed of the land in dispute, for which he had talked to the defendant No.1/appellant. Thereafter, he in his good health and with independent mind without any coercion executed the sale deed of the land in dispute after receiving the total sale consideration before the witnesses. After the sale deed the defendant no.1/appellant; Ram Baran entered into possession on his portion of the land in dispute. The predecessor-in-interest of the plaintiff/respondent no.1 had the

knowledge of it since the beginning, but no action was taken during life time of the deceased-Ram Dev. She was old therefore some persons got the wrong and forged suit filed by her by undue influence, whereas she has no concern with the land in dispute. The suit was filed in the year 1992, therefore, it is beyond limitation. The names of the defendant No.1/appellant and defendant/respondent no.2 were recorded in the revenue records. Thus the suit is not maintainable and liable to be dismissed.

6. On the basis of the pleadings of the parties seven issues were framed. Thereafter oral as well as documentary evidence was adduced by the parties. The plaintiff/respondent no.1 filed the copy of the sale deed in favour of Ram Baran and Radhey Shyam, copy of the Khatauni. The defendant No.1/appellant placed on record the original sale deed. Predecessor-in-interest of the plaintiff/respondent no.1-Pran Dei got herself examined as P.W.-1 and Radhey Shyam i.e. the defendant/respondent no.2 as P.W.2 in oral evidence. The defendant no.1/appellant got himself examined as D.W.-1, Sadhu Yadav as D.W.-2 and Rati Pal as D.W.3. The learned Trial court after considering the pleadings of the parties, evidence and material on record decreed the suit and cancelled the sale deed dated 20.04.1987 by means of the judgment and decree dated 10.12.2013.

7. Being aggrieved by the aforesaid decree passed by the trial court, the defendant no.1-appellant; Ram Baran filed a civil appeal under Section 96 and Order 41 Rule (1) CPC challenging the judgment and decree dated 10.12.2013 passed by the trial court. The appellate court considered the appeal after framing four points for determination and

considering the pleadings, evidence and material on record dismissed the appeal and confirmed the judgment and decree passed by the trial court. Hence this Second Appeal has been filed by the defendant no.1/appellant, which has been admitted on the aforesaid substantial question of law.

8. The suit for cancellation of sale deed dated 20.04.1987 was filed by the predecessor-in-interest of the plaintiff/respondent no.1-Mst.Pran Dei, who was wife of Ram Dev. Ram Dev was the original tenure holder of the land in dispute bearing Gata No.839 having an area of 2 bigha, 4 biswa and 17 dhur, situated in village Salahpur, District-Sultanpur. Ram Dev and Pran Dei had no son. They had only one daughter, namely, Smt. Karma, who was married to Ram Akbal. Ram Dev died in the year 1987. Thus after death of Ram Dev, his widow Pran Dei was the only legal heir of his immovable and movable properties except for the sale deed challenged in the suit. These facts are not disputed.

9. Section 9 of CPC provides that the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred, which is extracted here-in-below:-

“9. Courts to try all civil suits unless barred .- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

*Explanation [1].-*A suit in which the right to property or to an office is contested is a suit of a civil nature,

notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

[*Explanation II* .-For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]”

10. In view of above, every person has an inherent right to file a suit of civil nature unless there is an express or implied bar of taking cognizance of a suit of the nature which has been filed. Thus the courts under CPC have jurisdiction to try all types of suits unless the same is barred specifically or by necessary implication in any law.

11. Section 229-B provides declaratory suit by person claiming to be an asami of a holding or part thereof or bhumidhar. Thus the suit before the revenue court can be filed, if a person is claiming a right of bhumidhar, whereas he may not have a claim otherwise. Section 229-B is extracted here-in-below:-

“[229-B. Declaratory suit by person claiming to be an asami of a holding or part thereof.- [(1) Any person claiming to be an asami of a holding or any part thereof, whether exclusively or jointly with any other person, may sue the landholder for a declaration of his rights as asami in such holding or part, as the case may be].

(2) In any suit under sub-section (1) any other person claiming to hold as asami under the land-holder shall be impleaded as defendant.

(3) The provisions of sub-sections (1) and (2) shall mutatis mutandis apply to a suit by a person claiming to be a

[bhumidhar] [Substituted by U.P. Act No. 37 of 1958.] [* * *] [Omitted by U.P. Act No. 8 of 1977 (w.e.f. 28.01.1977).] with the amendment that for the word "landholder" the words "the State Government and the [Gaon Sabha] [Substituted by U.P Act No. 33 of 1961.] are substituted therein.]”

12. The Hon’ble Supreme Court, in the case of **Shri Ram and another Versus 1st Addl. Distt. Judge and others; (2001) 3 SCC 24**, has held that where a recorded tenure-holder having a prima facie title and being in possession files suit in the civil court for cancellation of sale deed having been obtained on the ground of fraud or impersonation he cannot be directed to file a suit for declaration in the Revenue Court, the reason being that in such a case, prima facie, the title of the recorded tenure holder is not under cloud and he does not require declaration of his title to the land.

13. The Hon’ble Supreme court, in the case of **Kamla Prasad and others Versus Kishna Kant Pathak and others; (2007) 4 SCC 213**, has held that a suit in which the name of the purchaser was mutated on an admission of the execution of sale deed by the plaintiff himself, who appeared as a witness before the mutation court, the plaintiff would have to go before the Revenue Court for declaration of his rights also.

14. This court, in the case of **Jai Ram Singh and another versus 1st Additional Distt. Judge, Bijnore and others; 2007 (25) LCD 283**, relying on a Full Bench decision of this court in the case of **Ram Padarath Versus II ADJ, Sultanpur and others; 1989 AWC(FB)(LB) 290** and **Shri Ram and another Versus 1st Addl. District Judge and others; AIR 2001 SC 1250**, has held that a person who questions

sale deed executed or purported to be executed by him in respect of agricultural land can file the suit for its cancellation before civil court if it is alleged by him that the sale deed is void or voidable on the ground of fraud, coercion, undue influence, misrepresentation or impersonation. Similarly sale deed executed or purported to be executed by predecessor-in-interest of a plaintiff can also be challenged by him before civil court on the same grounds. However, in such situation it is necessary that immediately before the execution of the sale deed, the plaintiff or his predecessor-in-interest must undisputedly be recorded in the revenue records. Conversely, if a person challenged the sale deed executed by any person claiming right over the land though his name was not recorded then he will have to go before a revenue court for declaration of his rights because in such case the challenge in real sense is to the position and affairs in existence immediately before execution of sale deed. The paragraphs 8 and 9 are extracted here-in-below:-

“8. In view of the above authorities, including the Full Bench authority a person who questions sale deed executed or purported to be executed by him in respect of agricultural land can file the suit for its cancellation before civil court if it is alleged by him that the sale deed is void or voidable on the ground of fraud, coercion, undue influence, misrepresentation or impersonation. Similarly sale deed executed or purported to be executed by predecessor-in-interest of a plaintiff can also be challenged by him before civil court on the same grounds. However, in such situation it is necessary that immediately before the execution of the sale deed, the plaintiff or his predecessor-

in-interest must undisputedly be recorded in the revenue records.

9. Conversely, if sale deed executed by a person is challenged by another person on the ground that even though immediately before the sale deed only the name of vendor / vendors was undisputedly recorded in the revenue records, still plaintiff had a right in the said land, then such suit is not maintainable before civil court, as it primarily involves question of declaration of right in the agricultural land. In such situation it is not actually the sale deed and state of affairs coming in existence by execution of the sale deed which is being challenged. The challenge in such situation in real sense is to the position and affairs in existence immediately before the execution of the sale deed. If a person asserts that apart from the recorded tenure-holder he also has got a right in the agricultural land then his only remedy lies in filing a suit for declaration before the revenue Court.”

15. A Full Bench of this court, in the case of **Ram Padarath and others Versus IInd Additional District Judge, Sultanpur and others; 1989 AWC (FB) (LB) 290**, has held that a recorded tenure holder having prima facie title in his favour can hardly be directed to approach the revenue court in respect of seeking relief for cancellation of a void document, which made him to approach the court of law and in such case he can also claim ancillary relief even though the same can be granted by the Revenue Court. Relevant paragraph 41 is extracted here-in-below:-

41. We are of the view that the case of *Indra Deo v. Smt. Ram Piari*, 1982 (8) ALR 517 has been correctly decided and the said decision requires no consideration, while the Division Bench

case, Dr. Ayodhya Prasad v. Gangotri, 1981 AWC 469 is regarding the jurisdiction of consolidation authorities, but so far as it holds that suit in respect of void document will lie in the revenue court it does not lay down a good law. Suit or action for cancellation of void document will generally lie in the civil court and a party cannot be deprived of his right getting this relief permissible under law except when a declaration of right or status of a tenure-holder is necessarily needed in which event relief for cancellation will be surplusage and redundant. A recorded tenure-holder having prima facie title in his favour can hardly be directed to approach the revenue court in respect of seeking relief for cancellation of a void document which made him to approach the court of law and in such case he can also claim ancillary relief even though the same can be granted by the revenue court.”

16. This court, in the case of **Ram Tahal Singh Versus Deputy Director of Consolidation, Sultanpur and others; Writ-B No.4512 of 1985** by means of judgment and order dated 22.12.2023 passed by me after considering the aforesaid Full Bench judgment, has held that the recorded tenure holder having prima facie title in his favour can hardly be directed to approach the revenue court in respect of seeking relief for cancellation of a void document.

17. In view of above, it is clear that in such types of cases where the rights or title are not mainly involved and the question involved is only for cancellation of a sale deed, it is the civil court only which has jurisdiction to try the suit and cancel the sale deed. However, a person filing a suit is required to show that he/she has title in the land in dispute and his/her name or the

name of the predecessor-in-interest of him/her was recorded in the revenue records showing title in their name, except for the sale deed under challenge and he/she would not have favoured/consented for mutation during mutation proceedings.

18. Adverting to the facts of the present case, it is not in dispute that Ram Dev son of Nohar was the recorded tenure holder of the land in dispute. The plaintiff-Pran Dei (now deceased) was the wife of Ram Dev. They had no son and only a daughter, therefore, after death of Ram Dev his widow i.e. Pran Dei was the only legal heir of movable and immovable properties of Ram Dev. The suit was filed for cancellation of sale deed on the ground that the sale deed in question dated 20.04.1987 in favour of defendants i.e. the defendant No.1/appellant and defendant/respondent no.2 is illegal for the reasons that there was no talk between the husband of the plaintiff and the defendants for sale of the land in dispute and there was no agreement for execution of sale deed and no sale deed has been executed by the husband of plaintiff in favour of the defendants and there was no need of sale of the land in dispute by the said Ram Dev i.e. the husband of the plaintiff and Ram dev had not got the sale consideration and the sale deed is an outcome of fraud, cheating and impersonation and Ram Dev was very old and in 1987 he was aged about 80 years and he had no sense of good and bad since prior to two years of his death. Thus the suit was filed alleging that it is an outcome of the fraud, cheating and impersonation by the defendants and prima facie title of the plaintiff can not be denied because her husband was a recorded tenure holder and after him the plaintiff was the only legal heir, except for the sale deed alleged to have been executed by her husband.

19. The suit was contested by by the defendant no.1/appellant denying the allegations and stating that Ram Dev executed the sale deed in favour of him and his brother after receiving the sale consideration from them and they are in possession of the land in dispute. However it was not contested by the defendant/respondent no.2, who appeared in evidence as P.W.-2 on behalf of plaintiff/respondent no.1 and supported her/his case. Radhey Shyam; defendant/respondent no.2 appeared as P.W.2. The sale deed is also in favour of Radhey Shyam. P.W.-2 stated in his examination-in-chief that he had neither got executed the sale deed from Ram Dev nor paid any money. He also stated that his brother had asked him for getting the sale deed executed from Ram Dev by impersonation by somebody else in his place, but he had declined. He also stated that the land in dispute is of Ram Dev and his widow is in possession of the same and he and his brother have no concern with the same. He also stated in his cross examination that no sale deed was executed by Ram Dev in favour of him and his brother Ram Baran. He also stated that Ram Dev was old and Ram Baran had took him for treatment. He was not with them. Their relations with Ram Dev were cordial and both reside in the same house. Ram Baran also resides in the same house. There was no talks during life time of Ram Dev for execution of sale deed between them. He also stated that the relations of Ram Dev and Ram Baran were also cordial. The land in dispute is in possession of Pran Dei and the purchasers are not in possession of the same. P.W.-1 Pran Dei also stated in her evidence that land-in-dispute is in her possession.

20. The defendant No.1/appellant; Ram Baran appeared as D.W.-1 in the witness box. He stated that the sale deed was executed by the deceased Ram Dev in favour of him and his brother after thinking and with his free will and without any coercion. The sale deed was executed in consideration of Rs.35,000/-. He further stated that the sale consideration was paid in 2-3 installments six months prior to the sale deed. The last installment of Rs.5,000/- was paid about 4-6 days back. The money was given by him and his brother Radhey Shyam together, whereas he while appearing as P.W.2 has denied of paying any money. He also stated that Gokul and Ravindra Kumar Singh were the witness of the sale deed and at the time of execution of sale deed Radhey Shyam, Pran Dei, Gokul and Ravindra Kumar Singh were present and the sale deed was read over to all of them. He further stated that after execution of the sale deed, he and his brother Radhey Shyam are in possession of the land in dispute, whereas Radhey Shyam has denied the possession and stated that Pran Dei is in possession after his husband, who remained in possession during his life time. He also stated that he has got the sale deed executed of whole of the property of Ram Dev and Ram Dev has not left anything for livelihood of his wife. He also stated that there was nobody from village including Gokul present at the time of payment of sale consideration. He also admitted that no money was paid before the Registrar. He also stated that Rs.20,000/- was paid towards expenses, which was included in Rs.35,000/-.

21. D.W.-2 Sadhu Yadav has stated that neither the sale deed was executed before him nor the payment was made

before him. In regard to possession, he stated that Ram Dev used to cultivate the land in dispute during his life time and after his death Pran Dei is doing the same. D.W.-3 Rati Pal stated that Ram Dev had executed the sale deed of his whole property and nothing was left for his wife. The house had also come in favour of Ram Baran and Radhey Shyam.

22. In view of above it is apparent that the execution of sale deed by Ram Dev and payment of sale consideration could not be proved by the defendant No.1/appellant as the defence witnesses and P.W.-2, who himself is a beneficiary of the sale deed as per the sale deed, have not supported the case of the defendant No.1/appellant in regard to payment of sale consideration, execution of sale deed and possession of the land in dispute.

23. It is also very strange that nothing would have been left by Ram Dev for the livelihood of his wife. The defendant no.1/appellant admitted that nothing was left by him for the wife for her livelihood, but no reason could be shown as to why nothing was left by him. It is not believable that a husband would not leave anything or make any arrangement for the livelihood of his wife in case of his death during life time of his wife, unless there is any cogent reason for it with proof thereof, which could not be shown and proved, therefore, execution of sale deed by Ram Dev itself creates doubt and it can be safely inferred that it would have been an outcome of fraud, cheating and impersonation by the defendant No.1/appellant, in regard to which P.W.-2 Radhey Shyam, in whose favour also the sale deed has been executed, has specifically stated that the defendant No.1/appellant had asked him to get the sale deed executed from Ram

Dev by impersonation by some other person. The courts' below have recorded the findings considering the above on the basis of pleadings, evidence and material on record and nothing could be shown contrary to it.

24. An argument was raised by learned counsel for the defendant No.1/appellant that since after execution of the Will by Ram Dev, he had executed the sale deed of the fertile land in favour of the defendant No.1/appellant, therefore, his brother Radhey Shyam colluded with the plaintiff/respondent no.1 and gave evidence in his favour. This contention does not seem to be correct for the reason that P.W.-2 Radhy Shyam i.e. defendant/respondent no.2 was also beneficiary of the sale deed, therefore, it is totally misconceived and not tenable.

25. It is settled law that the concurrent findings of facts recorded by the two courts below cannot be set aside in the Second Appeal, unless they are perverse. This Court, in the case of **Suryakunwari versus Nanhu and Others 2019(37)LCD 2346**, considering several judgements has held that the concurrent findings of facts recorded by the two courts are not liable to be set aside unless and until the findings are perverse. The relevant paragraphs 11 to 16 are extracted here-in-below:-

“11. In this case, there are concurrent findings on facts by both the courts below. The Hon'ble Apex Court in catena of judgments has laid down the law that the concurrent findings of fact recorded by two courts below should not be interfered by the High Court in Second

Appeal, unless and until the findings are perverse.

12. In a recent case of Shivah Balram Haibatti Vs. Avinash Maruthi Pawar (2018)11 SCC 652 the Apex Court has held as under:-

"..... These findings being concurrent findings of fact were binding on the High Court and, therefore, the second appeal should have been dismissed in limine as involving no substantial question of law."

13. In another recent case of Narendra and others Vs. Ajabrao S/o Narayan Katore (dead) through legal representatives, (2018) 11 SCC 564 the Hon'ble Apex Court held as under:-

"...interference in second appeal with finding of fact is permissible where such finding is found to be wholly perverse to the extent that no judicial person could ever record such finding or where that finding is found to be against any settled principle of law or pleadings or evidence. Such errors constitute a question of law permitting interference in Second Appeal."

14. In one more recent case Dalip Singh Vs. Bhupinder Kaur, (2018) 3 SCC 677 the Hon'ble Apex Court has held that if there is no perversity in concurrent findings of fact, interference by the High Court in Second Appeal is not permissible.

15. In Gautam Sarup v. Leela Jetly and Ors. [(2008) 7 SCC 85], the Apex Court held that a party is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other.

16. In State Bank of India and others Vs. S.N. Goyal; (2008) 8 SCC 92 the Hon'ble Supreme Court has held as under :-

"Second appeals would lie in cases which involve substantial questions of law. The word 'substantial' prefixed to 'question of law' does not refer to the stakes

involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. In the context of section 100 CPC, any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing in the final outcome, will not be a substantial question of law. Where there is a clear and settled enunciation on a question of law, by this Court or by the High Court concerned, it cannot be said that the case involves a substantial question of law."

26. Similar view has been taken by this Court, in the case of **Bhagauti Singh @ Chedi Singh S/O Madhuban Singh versus Mata Prasad Singh S/O Bhaggu Singh; 2022(40)LCD 2461**, in which it has been held that it is crystal clear that the High Court in exercise of power under Section 100 CPC should not interfere in the findings of fact recorded by the first appellate court, which is a final court of fact or concurrent findings of fact unless the same are based on no evidence or perverse.

27. This Court, in the case of **Jangi Singh versus Brij Mohan Singh and others; 2012(30)LCD 2616**, has held that both the courts below have recorded their finding on the basis of the evidence on record, which does not give any rise to the substantial question of law as raised by the defendant-appellant.

28. The Hon'ble Supreme Court, in the case of **Kapil Kumar versus Raj Kumar; (2022) 10 SCC 281**, has held that unless the concurrent findings recorded by the courts below were found to be perverse, the same were not required to be interfered with by the High Court in exercise of powers under Section 100 CPC.

29. In view of above and considering the overall facts and circumstances of the case this court is of the view that the impugned judgment and decrees have been passed in accordance with law by reasoned and speaking order, which does suffer from any illegality, error or perversity. Thus the substantial question of law formulated by this court does not arise in this case because the suit for cancellation of sale deed can be filed by a person, who has a prima facie title of the land in dispute and the predecessor-in-interest of the plaintiff/respondent no.1 had the title except for the sale deed in question, which was challenged, which was an out come of fraud, cheating and impersonation as discussed above. The Second Appeal has been filed on misconceived and baseless grounds, which lacks merit and is liable to be dismissed.

30. The Second Appeal is, accordingly, **dismissed**. No order as to costs.

(2025) 4 ILRA 965

APPELLATE JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 17.04.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

First Appeal from Order No. 151 of 2013

Smt. Sarba Maurya & Ors. ...Appellants
Versus
The Oriental Insurance Co. Ltd. & Ors.
...Respondents

Counsel for the Appellants:

Y.K. Pandey Rakesh Pratap Singh

Counsel for the Respondent:

Mukund Tewari, Satyajit Banerji, Surendra Pal Singh

A. Motor Accident Act, 1988 – Compensation – Enhancement in loss of consortium, loss of eSt., funeral expenses claimed – Entitlement – *Pranay Sethi's case* and *Babita's case* relied upon – Held, the amount towards loss of eSt., loss of consortium and funeral expenses as awarded by the learned Tribunal stand enhanced to Rs.15,000/-, Rs.40,000/- & Rs.15,000/- respectively. Each of the claimants would be entitled to loss of consortium of Rs.40,000/-. Rate of interest on the amount as has been awarded by the learned Tribunal is also enhanced to 9% per annum. (Para 21, 23 and 24)

B. Motor Accident Act, 1988 – Compensation – Future prospects – Determination – *Savita's case* relied upon – Held, the notional income is increased by 30% being the future prospect. Said amount would be added to the notional income of the deceased, upon which deduction as done by the learned Tribunal on actual income would be done. (Para 22 and 24)

Appeal allowed. (E-1)

List of Cases cited:-

1. National Insurance Comp. Ltd. Vs Pranay Sethi & ors.; (2017) 16 SCC 680

2. Savita Vs Bindar Singh & ors.; (2014) 4 SCC 505

3. Civil Appeal No. 2222 of 2024; Babita & ors. Vs Karnataka Road Lines Pvt Ltd. & ors.

(Delivered by Hon'ble Abdul Moin, J)

withdrawn vide the order dated 11.12.2021.

1. Heard learned counsel for the appellants, Shri Dhawalbir Prasad holding brief of Shri Mukund Tewari, learned counsel for the respondent No.1 and Shri Satyajit Banerji, learned counsel for the respondent No.3.

2. As per the order of this Court dated 23.09.2019, notice has been issued to respondent No.2. Respondent No.2 is also respondent No.7 in the connected First Appeal from Order No.1211 of 2011, and has been served sufficiently but no objections have been filed on his behalf nor anybody appears on his behalf. Accordingly, the Court proceeds to hear the appeal and decide it on merit.

3. Bereft of unnecessary details facts of the case are that an accident is said to have occurred on 13.09.2002 involving a tempo of the deceased Munni Lal, husband of appellant No.1 and the father of appellants No.2 to 5 and a D.C.M. which resulted in the death of Shri Munni Lal.

4. The claimants filed Claim Application No.601 of 2002 In Re Smt Sarba Maurya & Ors vs National Insurance Company & Ors.

5. Learned Tribunal vide judgment and order dated 27.09.2011, a copy of which is part of the appeal, has awarded an amount of Rs.2,29,500/- along with interest @ 6% per annum to the claimants.

6. The Oriental Insurance Company had filed First Appeal from Order No.1211 of 2011 being aggrieved by the aforesaid award, which has been

7. The appellants by means of the instant appeal have prayed for enhancement of the amount towards (a) loss of consortium; (b) loss of estate (c) cremation/funeral expenses; (d) future prospect; (e) consortium to each claimants; and (f) enhancement of rate of interest as has been awarded by the learned Tribunal.

8. Admittedly, the vehicle being driven by Shri Munni Lal was not having a valid insurance at the time of the accident.

9. Learned Tribunal by means of the award dated 27.09.2011 after ascertaining the monthly income of the deceased @ Rs.5,000/- and by considering the contributory negligence has assessed the monthly income thereafter @ Rs.2,500/- per month, the annual income of Rs.30,000/- and after deduction of 1/3rd of the amount has applied a multiplier of 11 in order to arrive at the compensation of Rs.2.20 Lakh for the claimants.

10. Learned Tribunal has also awarded an amount of Rs.5,000/- towards the loss of consortium, Rs.2500/- towards loss of estate and Rs.2,000/- towards the funeral expenses.

11. Placing reliance on the constitution bench judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Ltd., vs Pranay Sethi & Ors : (2017) 16 SCC 680*, the argument of the learned counsel for the appellants is that the Hon'ble Supreme Court has held that reasonable figures 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 and the said amounts should be enhanced at the rate of 10% in every three years.

12. Further contention is that the learned Tribunal has also erred in law in not awarding any amount towards future prospects, which as per the law laid down by the Hon'ble Supreme Court in the case of *Savita vs Bindar Singh & Ors* : (2014) 4 SCC 505 should be increased by at least 30% of the notional income, therefore, the claimants are entitled to get the benefit of Rs.750/- being the future prospects and the said amount should be added to the notional income of the victim. The total deduction on personal expenses should have been one third of Rs.2500+Rs.750=Rs.3250 per month amounting to Rs.1083.33/-. Therefore, the salary after deduction would come to Rs.2166.67/- and after applying the multiplier of 11 the amount of compensation to be paid would be $\square 2166.67 \times 11 \times 12 = 2,86,000/-$.

13. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Babita & Ors vs Karnataka Road Lines Pvt Ltd. & Ors : Civil Appeal No.2222 of 2024*, it has been argued that the consortium of Rs.40,000/- as directed to be paid by the Hon'ble Supreme Court in the case of *Pranay Sethi (supra)* would be payable to all the claimants.

14. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Babita (supra)*, it is also contended that the rate of interest which has been awarded @ 6% per annum merits to be enhanced considering that the incident pertains to the year 2002 wherein a higher rate of interest

was prevailing in the country. Thus, it is prayed that as per the rate of interest awarded in the case of *Babita (supra)* the rate of interest may be enhanced to 9% per annum.

15. On the other hand, Shri Dhawalbir Prasad, learned counsel appearing for respondent No.1 and Shri Satyajit Banerji, learned counsel for the respondent No.3 have argued that the learned Tribunal has correctly awarded the compensation amount in favour of the claimants, which does not require any enhancement.

16. Incidentally, Shri Satyajit Banerji, learned counsel for the respondent No.3 has argued that once the very factum of the incident is in dispute consequently the appeal itself merits to be dismissed.

17. At the outset the argument of the Shri Satyajit Banerji, learned counsel is found to be patently fallacious considering the fact that respondent No.3 has himself not raised any challenge to the award passed by the Tribunal and thus for all practical purposes, the said award has attained finality. Even the appeal which has been filed by the respondent No.1 i.e. Oriental Insurance Company has been dismissed as withdrawn consequently it does not lie in the mouth of the learned counsel appearing for respondent No.3 to raise such an argument. Thus, the said argument is rejected.

18. Having heard learned counsel for the parties and perused the record, it emerges that the accident took place on 13.09.2002 involving a vehicle which was being driven by Shri Munni Lal namely a tempo. On account of said accident, Shri Munni Lal died on the spot. The claimants

filed a claim petition before the learned Tribunal. Learned Tribunal vide the award dated 27.09.2011 has awarded an amount of Rs.2,29,500/- in favour of the claimants along with interest @ 6%.

19. The claimants, praying for enhancement of the amount, have preferred the instant appeal.

20. Enhancement has been prayed under the following heads:-

- (a) loss of consortium;
 - (b) loss of estate;
 - (c) cremation/funeral expenses;
 - (d) future prospect;
 - (e) consortium to each claimants;
- and
- (f) enhancement of rate of interest as has been awarded by the learned Tribunal.

21. So far as the heads (a), (b) & (c) i.e. loss of consortium, loss of estate and cremation/funeral expenses are concerned, the Hon'ble Supreme Court in the case of **Pranay Sethi (supra)** has held as under:-

"59.8. Reasonable figures 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. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

22. So far as head (d) i.e. future prospect is concerned, the Hon'ble Supreme Court in the case of **Savita (supra)** has held as under:-

"8. We have failed to understand why the Tribunal as well as the High Court lost its sight to hold that the victim could

*have had future prospects with regard to the amounts the victim used to earn during his lifetime? Therefore, the notional income also needs to be increased by at least 30% and thereby the claimant is entitled to get the benefit of Rs 900 being the future prospects; the said amount should be added to the notional income of the victim. Therefore, it appears that the total salary along with future prospects of the victim should have been calculated at Rs 3000 plus Rs 900 amounting to Rs 3900 per month. The total deduction on personal expenses, in our opinion, should have been one-third of Rs 3900 amounting to Rs 1300. Therefore, the salary after deduction would come to Rs 2600 and the multiplier should be applied at 17, as has been done correctly by the Tribunal after taking into account the age of the victim. In this process, the total amount of compensation to be paid would be Rs 2600 * 17 * 12 amounting to Rs 5,30,400."*

23. So far as heads (e) and (f) i.e. consortium to each claimants and enhancement of rate of interest as has been awarded by the learned Tribunal are concerned, the Hon'ble Supreme Court in the case of **Babita (supra)** has held as under:-

"12. We are of the opinion that besides a sum of ₹70,000/- (Rupees Seventy thousand only) which could be treated under the head of conventional expenses, each of the claimants are entitled to loss of consortium @ ₹40,000/- (Rupees Forty thousand only) (i.e. 40,000 x 4 = ₹1,60,000/- (Rupees One lakh sixty thousand only). Lastly, in our opinion, simple interest awarded on the total estimated amount by the Tribunal as also the High Court ought to be enhanced from 6% per annum to 9% per annum which

would be closer to the then prevalent rate of interest i.e. in the year 2015."

24. Keeping in view the aforesaid discussion, the appeal is *allowed*. The amount towards loss of estate, loss of consortium and funeral expenses as awarded by the learned Tribunal stand enhanced to Rs.15,000/-, Rs.40,000/- & Rs.15,000/- respectively. Each of the claimants would be entitled to loss of consortium of Rs.40,000/-. Rate of interest on the amount as has been awarded by the learned Tribunal is also enhanced to 9% per annum. As regards the future prospects, the notional income is increased by 30% being the future prospect. Said amount would be added to the notional income of the deceased, upon which deduction as done by the learned Tribunal on actual income would be done. The Insurance Company is directed to calculate the enhanced amounts as observed by this Court in preceding paragraphs keeping in view the judgments of the Hon'ble Supreme Court in the cases of *Pranay Sethi (supra)*, *Savita (supra)* and *Babita (supra)* within a period of two weeks from the date a certified copy of this order is produced before it and deposit the same before the learned Tribunal within a period of four weeks thereafter. The learned trial court shall ensure that the payment of the aforesaid amount be made to the appellants within next four weeks of the amount being deposited before it, in accordance with law.

25. Let trial court record be returned.

(2025) 4 ILRA 969
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 18.04.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

First Appeal from Order No. 198 of 2024

National Insurance Co. Ltd. Lko

... Appellant

Versus

Manorama & Ors.

... Respondents

Counsel for the Appellant:

Mrs. Pooja Arora

Counsel for the Respondent:

Ravindra Kumar Dwivedi

A. Motor Accident Act, 1988 – Sections 165 & 166 – Claim proceeding – Negligent driving – Effect of failure in not proving – Ground was taken by the Insurance company to the effect that the claimants failed to prove that the vehicle having been driven negligently and rashly – Acceptability – Held, a perusal of the claim application and the written St.ment would duly indicate that there was clear negligence on the part of the driver. Consequently keeping in view the specific findings of fact as given by learned Tribunal, the said ground is rejected. (Para 21 and 25)

B. Motor Accident Act, 1988 – Claim proceeding – Occurrence of accident – Filing of charge-sheet against a particular person – Relevance – Strict proof, how far required – *Bimla Devi's case* and *Mangla Ram's case* relied upon – Held, the chargesheet indicates that on account of negligence of the driver Shri Shitla Prasad, who was the driver of the concerned vehicle, the said accident had taken place. It is also indicated that the truck concerned has been released on the orders passed by the learned court – Learned tribunal has not committed any error in arriving at a finding of the deceased having died on account of an accident involving the truck. (Para 27, 28 and 33)

Appeal dismissed. (E-1)

List of Cases cited:-

1. First Appeal From Order No. 460 of 2018; Kamleshwar Tiwari Vs Abhishek Verma & ors. decided on 06.02.2025
2. Shriram General Insurance Co. Ltd Vs Smt. Hem Lata & ors.; 2021(2) T.A.C. 366 (All.)
3. Parshuram Pal & ors. Vs Ram Lakhan and another; 2013 (98) ALR 589
4. Minu B. Mehta Vs Balkrishna Ramchandra Nayan; AIR 1977 SC 1248
5. Surinder Kumar Arora & anr Vs Dr. Manoj Bisla & ors.; AIR 2012 SC 1918
6. Bimla Devi & ors. Vs Himachal Road Transport Corporation & ors.; 2009 (13) SCC 530
7. Mangla Ram Vs Oriental Insurance Company Ltd. & ors.; 2018 (5) SCC 656
8. Dr. Anoop Kumar Bhattacharya & anr. Vs National Insurance Co. Ltd.; 2021 (12) ADJ 596

(Delivered by Hon'ble Abdul Moin, J)

1. Heard learned counsel for the appellants and Shri Ravindra Kumar Dwivedi, learned counsel for the respondents no. 1 to 3.

2. Despite notices having been served on respondents no. 4 and 5 as per the report dated 28.08.2024 nobody has put on appearance on their behalf.

3. Accordingly, the Court proceeds to hear and decide the matter finally.

4. Under challenge is the judgement and award dated 12.04.2024 passed by learned Motor Accident Claims Tribunal, District Sultanpur in Claim Petition No. 264 of 2017 in re: Manorama and others vs Shitla Prasad and others. By the said award

learned tribunal has partly allowed the claim petition filed by the claimants and has awarded certain compensation. Being aggrieved instant appeal has been filed.

5. Bereft of unnecessary details, the fact as set forth by learned counsel for the appellants is that one Shri Ram Kailash, who was working as a Khalasi on a truck bearing no. UP 44 AT 0404, died on 27.05.2017. The claimants, of which claimant no. 1 is the wife of the deceased, the claimant no. 2 is daughter of the deceased and claimant no. 3 is the mother of the deceased, filed the claim application before the learned tribunal. The case set forth by the claimants before learned tribunal was that the deceased Ram Kailash was working as a Khalasi and was in receipt of Rs 6000 per month paid towards his wages and Rs 3000 towards his fooding. He was going on the truck in question when driver of the said vehicle asked Ram Kailash to clean certain parts of concrete that had got stuck in the back wheel of the truck. Shri Ram Kailash died on account of an accident involving a truck and died on the spot. The claimants filed the post mortem report as well as FIR that had been lodged. The police filed chargesheet in which driver of the truck namely Shri Shitla Prasad had been named.

6. Learned Tribunal had framed an issue as to whether on 27.05.2017 at 11:30 AM the deceased was cleaning the back-wheel of the truck no.UP 44 AT 0404 and on account of the negligence of the driver, died.

7. Learned Tribunal has considered the said issue as per the averments made in the written statement that had been filed on behalf of the driver and owner of the vehicle (one written statement filed jointly

on their behalf) and also considered the contradiction as appeared in the said written statement of an averment having been made in paragraph 4 of the written statement that the deceased died on account of an accident involving "a truck" and the averment made in paragraph 5 that he died on account of the negligence of the truck driver and the learned Tribunal was of the view that on account of the negligence of the Driver which resulted in the accident, the truck Driver namely Shitla Prasad did not inform the police. The said incident itself indicates that it was on account of negligence of the driver himself i.e. Shri Shitla Prasad that the said accident occurred. Learned trial court has also considered the chargesheet which has been filed against the driver concerned and thus arrived at a conclusion that the accident had taken place from the said vehicle on account of negligence of the driver concerned and has awarded the compensation after considering the other issues including the quantum of compensation.

8. Learned counsel for the appellant has raised the following grounds to challenge the impugned judgment namely:

(a) that the claim application having been filed under the provisions of Section 166 of the Motor Vehicle, 1988 which itself indicates that an application for compensation arising out of accident of the nature specified under Section 165 of the Act, 1988 is to be filed by claimants and Section 165 of the Act 1988 would have to necessarily include the accident to have arisen on account of negligence of the driver and the vehicle having been driven negligently and rashly which the claimants failed to prove before the learned tribunal as emerges from perusal of the written

statement that had been filed by the owner and the driver as well as the statement of the wife of the deceased and the post mortem report which indicates that the deceased was not identified at that stretch of time. Reliance has also been placed on the pleadings in this regard, and

(b) that in the written statement that was filed by the owner and the driver it was indicated that the accident had occurred from "a truck" without specifying the vehicle which itself indicates that the accident did not took place from the truck which was being driven by the driver concerned namely Truck No. UP 44 AT 0404.

9. No other ground has been taken/urged.

10. In support of her arguments learned counsel for the appellant has placed reliance on a recent judgement of this Court passed in **First Appeal From Order No. 460 of 2018 in re: Kamleshwar Tiwari vs Abhishek Verma and others** decided on 06.02.2025, judgement of this Court passed in the case of **Shriram General Insurance Co. Ltd vs Smt. Hem Lata and others, 2021(2) T.A.C. 366 (All.)**, judgement of Division Bench of this Court in **Parshuram Pal and others vs Ram Lakhan and another, 2013 (98) ALR 589**, judgement of Hon'ble Supreme Court in the case of **Minu B. Mehta v. Balkrishna Ramchandra Nayan, AIR 1977 Supreme Court 1248**, judgement of Hon'ble Supreme Court in the case of **Surinder Kumar Arora & anr vs Dr. Manoj Bisla & ors, AIR 2012 Supreme Court 1918**.

11. Placing reliance on the judgement of **Parshuram Pal (supra)** the contention is that the chargesheet that had been submitted by the authorities could not be

made a basis for the purpose of filing of the claim petition as the same cannot be considered to be substantive evidence in order to prove the accident against a particular person.

12. Placing reliance on the Hon'ble Supreme Court in the case of **Minu B. Mehta (supra)** and **Surinder Kumar Arora (supra)** the argument is that in order to sustain an application under Section 166 of the Act, 1988 it has to be proved that there was negligence on the part of the driver of the vehicle being driven rashly and negligently which has not been indicated and proved by the claimants while filing the claim petition.

13. Placing reliance on the judgement of this Court in the case of **Smt. Hem Lata (supra)** the argument is that the prosecution witness 2 was father in law of the deceased and he had not seen the accident and as such no reliance could have been placed on the statement given by the said witness.

14. Placing reliance on the judgement of this Court in the case of **Kamleshwar Tiwari (supra)** the argument is that this Court has held that once it is not known as to how the vehicle number came to the knowledge of police and chargesheet has also been filed consequently there cannot be any occasion for grant of compensation and for allowing the claim petition.

15. On the other hand, learned counsel for the respondents has supported the award as passed by learned tribunal.

16. Heard learned counsels for the parties and perused the record.

17. Having heard learned counsels for the parties and having perused the record it emerges that one Shri Ram Kailash who was working as a Khalasi on a truck no.UP 44 AT 0404 and was in receipt of certain amount for the service being rendered by him. Shri Ram Kailash died on 27.05.2017 while working as Khalasi on the said truck. As per the claimants, on the fateful day, Shri Ram Kailash had been asked by the driver of the said vehicle to remove certain pieces of concrete (goti) that had got stuck in the backwheel of the truck. While Shri Ram Kailash was cleaning the said concrete he died on account of being involved in an accident. The post mortem report indicates that the identity of the deceased was not known.

18. The truck had been seized on the same day i.e. 27.05.2025 at around 11:40 AM as would be apparent from a perusal of the seizure report (page 120). The accident has occurred at 11:30 AM as would be apparent from perusal of the claim petition as well as the judgement of the learned tribunal to which there is no dispute on the part of the appellants.

19. Learned Tribunal after considering the alleged contradictions in averments made in the written statements that had been filed jointly by the driver and the owner of the vehicle involved has harmonized the averments made in paragraphs 4 and 5 of the written statement to hold that though in one part of the written statement, it had been indicated that the accident occurred on account of involvement of "a truck" but learned tribunal also considered the categorical averment made in paragraph 5 of the written statement that the accident had

occurred on account of negligence of the driver of the truck.

20. As already indicated above, the averments made in the written statement have been harmonized by the learned tribunal to arrive at the conclusion that it was the truck driver who was involved in the said accident and the accident occurred on account of his negligence and has thereafter awarded the compensation by means of the impugned judgement and award. The award has been challenged by the appellant insurance company on the grounds as indicated above which now the Court proceeds to consider.

21. The grounds as urged by the learned counsel for the appellant are as under:

(a) that the claim application having been filed under the provisions of Section 166 of the Motor Vehicle, 1988 which itself indicates that an application for compensation arising out of accident of the nature specified under Section 165 of the Act, 1988 is to be filed by claimants and Section 165 of the Act 1988 would have to necessarily include an accident to have arisen on account of negligence of the driver and the vehicle having been driven negligently and rashly which the claimants failed to prove before the learned tribunal as emerges from perusal of the written statement that had been filed by the owner and the driver as well as the statement of the wife of the deceased and the post mortem report which indicates that the deceased was not identified at that stretch of time. Reliance has also been placed on the pleadings in this regard;

22. In this regard, a perusal of the claim application would indicate that the

claimants had specifically averred of the accident having occurred on 27.05.2017 from the same truck on which the deceased was working as a Khalasi, rather a categoric averment has been made in the claim application that on account of the negligence of the driver, while the deceased was cleaning the backwheel, Shri Ram Kailash died on the spot.

23. In the written statement, although in one part of the written statement, the driver and the owner have indicated that the deceased died on account of an accident involving "a truck" yet in paragraph 5 of the written statement the negligence of the driver concerned has clearly been brought out.

24. Hon'ble Supreme Court in the case of **Minu B. Mehta (supra)** and **Surinder Kumar Arora (supra)** has held that there has to be an accident involving the negligence of the vehicle concerned.

25. A perusal of the claim application and the written statement would duly indicate that there was clear negligence on the part of the driver. Consequently keeping in view the specific findings of fact as given by learned Tribunal, the said ground is rejected.

26. So far as ground (b) i.e. in the written statement that was filed by the owner and the driver, it was indicated that the accident had occurred from "a truck" without specifying the vehicle which itself indicates that the accident did not took place from the truck which was being driven by the driver concerned namely Truck No. UP 44 AT 0404, the argument is that no evidence was led in support of the accident in as much as neither PW1 nor PW2 indicated about the accident having

occurred in front of them or were eyewitnesses, suffice to state that when the owner and driver of the vehicle have themselves indicated about the accident having occurred and the written statement has been read harmoniously by the learned Tribunal and from the post mortem report and the seizure report are all indicative of the fact that the accident took place from the vehicle in question itself i.e. the truck no. UP 44 AT 0404 on account of the negligence of the Driver, accordingly, the said ground is also rejected.

27. In this regard it would be apt to refer to the judgement of Hon'ble Supreme Court in the case of **Bimla Devi and others vs Himachal Road Transport Corporation and others, 2009 (13) SCC 530** wherein Hon'ble Supreme Court has held that strict proof of an accident caused by a particular vehicle in a particular manner may not be possible to be done by the claimants and that the claimants are only required to establish the case on the touchstone of preponderance of probabilities.

28. For the sake of convenience, the relevant observations of the judgement of **Bimla Devi (supra)** are reproduced below:

"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For

the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

(Emphasis added)

29. In this regard, it would also be pertinent to mention that in the charge sheet that has been filed by the authorities the name of the Driver namely Shitla Prasad of the offending vehicle has clearly come out which itself indicates about the offending vehicle and the driver who caused the accident which resulted in the death of Sri Ram Kailash which aspect of the matter can also not be ignored keeping in view the law laid down by Hon'ble Supreme Court in the case of **Mangla Ram vs. Oriental Insurance Company Limited & Others 2018 (5) SCC 656** wherein Hon'ble Supreme Court has held that filing of chargesheet against a particular person prima facie points towards his complicity in driving the vehicle negligently and rashly.

30. For the sake of convenience, the relevant observations of Hon'ble Supreme Court are reproduced below:

"27. Another reason which weighted with the High Court to interfere in the first appeal filed by respondents 2 & 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST 4701 was driven rashly and negligently by respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet file by

the police, naming Respondent 2. This Court in a recent decision in Dulcina Fernandes, noted that the plea of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance or probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgements already adverted to by us, filing of charge-sheet against Respondent 2 prima facie points towards his complicity in driving the vehicle negligently and rashly. Further, even when the accused were to be acquitted in the criminal cases, this Court opined that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal."

(Emphasis added)

31. A Division Bench of this Court in the case of **Dr. Anoop Kumar Bhattacharya & Another Vs. National Insurance Co. Ltd.** 2021 (12) ADJ 596 has held that the documents such as the F.I.R., the Site map and the charge-sheet, which form part of the police record, even though they may not establish the occurrence, when considered holistically and prudently, could help draw an informed and intelligent inference as to the degree of probability which lends itself to the case set up by a claimant.

32. For the sake of convenience, the relevant observations of **Dr. Anoop Kumar Bhattacharya (supra)** are reproduced below:

"29. We may now revert to the original question whether Tribunal was correct in altogether excluding from evidence the documents such as the FIR,

the site plan and the charge-sheet, which form part of the police record.

30. We have no doubt in our mind that the answer to the aforesaid question must be a resounding 'No'. The Tribunal opted to ignore the FIR, the charge-sheet and the site plan on the ground that they do not establish either that the driver of the offending truck was involved in the accident or that he was guilty of rash and negligent driving. In our opinion, the Tribunal would have been correct had the standard of proof in claim proceedings been that of beyond reasonable doubt as is the case with criminal proceedings. Even in a criminal proceedings, these documents may be considered to corroborate the evidence led in the Court and not to be completely disregarded or ignored. In any case, corroborative value of the police record cannot be ignored completely though decision may not be based solely upon them. Moreover, the standard of proof in the claim proceedings is not that of proof beyond reasonable doubt but that of preponderance of probabilities. The Tribunal on assessment of evidence before it had to satisfy itself that it was more likely than not that the events as alleged in the claim petition had transpired. To our mind, the documents such as the FIR, the site map and the charge-sheet, which form part of the police record, even though they do not establish the occurrence when considered holistically and prudently could help draw an informed and intelligent inference as to the degree of probability which lends itself to the case set up by a claimant. Was the FIR promptly lodged or was it lodged after an undue delay? Does the site plan conform to the recital contained in the FIR? Do injuries sustained corroborate the recital contained in the FIR? Does the charge-

sheet bolster the allegations contained in the FIR? These are the factors which when considered fairly and prudently could help to assess if the case set up by the claimants was more probable or not. As such, we consider it an error to altogether ignore the said documents on the ground that they were not conclusive proof of the occurrence more so since that is not the goal of claim proceedings in the first place."

(Emphasis added)

33. As already indicated above, from perusal of the chargesheet dated 25.06.2017, which the Court has perused from the original record, it clearly emerges that the chargesheet indicates that on account of negligence of the driver Shri Shitla Prasad, who was the driver of the concerned vehicle, the said accident had taken place. It is also indicated that the truck concerned has been released on the orders passed by the learned court. This is indicative of the connivance and involvement of the driver Shitla Prasad in the said accident and thus keeping in view the law laid down by Hon'ble Supreme Court in the case of **Mangla Ram (supra)** it is apparent that learned tribunal has not committed any error in arriving at a finding of the deceased having died on account of an accident involving the truck.

34. Accordingly, considering the judgements of **Bimla Devi (supra)**, **Mangla Ram (supra)** and **Dr. Anoop Kumar Bhattacharya (supra)** the judgements of **Smt. Hem Lata (supra)** and **Kamleshwar Tiwari (supra)** may not detain the Court.

35. Likewise the Division Bench judgement of this Court in the case **Parshuram Pal (supra)** over which

reliance has been placed by learned counsel for the appellant is also not of any help to the appellant keeping in view the judgement of **Bimla Devi (supra)** in this regard which incidentally has not been considered by division bench of this court in the case of **Parshuram Pal (supra)**.

36. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the appeal is **dismissed**.

37. Let trial court records be returned.

(2025) 4 ILRA 976
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 09.04.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

First Appeal from Order No. 602 of 2011
 And
 First Appeal from Order No. 670 of 2011

U.P.S.R.T.C. Faizabad .. Appellant
Versus
Smt. Meena Srivastava & Ors.
...Respondents

Counsel for the Appellant:
 J.B. Singh, Akhilesh Kumar Srivastava

Counsel for the Respondent:
 Vivek Kumar Pandey, Amit Tripathi, M.A.
 Siddiqui, Rakesh Kumar Srivastava

A. Motor Accident Act, 1988 – Claim proceeding – Occurrence of incident – Non production of Station superintendent to proof the route of Bus – Testimony of driver – Relevance – Held, the non production of the station superintendent may not detain this Court considering the testimony of the driver wherein he specifically St.d that on 06.09.2007, the bus returned through Sultanpur and was

also parked in Sultanpur at the roadways bus station. (Para 30)

B. Practice and procedure – Ground of challenge, as raised in appeal, was neither raised before the Tribunal nor described in memo of appeal – Effect – New ground was raised that no ticket was found from the deceased – Permissibility – Held, the said ground may not detain this Court considering that once the learned Tribunal has specifically indicated about the factum of the accident having occurred on the said date which involved Shri Pradeep Kumar Srivastava, the deceased, and having resulted in his death, consequently, the said ground is also rejected. (Para 33 and 34)

C. Motor Accident Act, 1988 – Claim proceeding – Occurrence of accident – Proof of driver's involvement in accident – Statement of driver – Filing of charge-sheet – Relevance – *Bimla Devi's case, Mangla Ram's case* and *Dr. Anoop Kumar Bhattacharya's case* relied upon – Held, even though the bus driver may not have specifically averred to the factum of the accident on 06.09.2007 yet in the charge sheet which has been filed against the driver, as has been considered by the learned Tribunal, it clearly emerges that the police authorities were of the view that the driver was involved in the said accident. (Para 35 and 39)

D. Motor Accident Act, 1988 – Award of compensation – Tribunal awarded compensation on the basis of salary of son of deceased, though the salary slip of the deceased was filed – Validity challenged – Held, the learned Tribunal adopted a strange procedure inasmuch as it has placed reliance on the salary slip of the son of the deceased who had been appointed on compassionate grounds – Award of compensation by the learned Tribunal on the basis of the salary of the son of the deceased is not found to be legally sustainable in the eyes of law. (Para 42 and 44)

Corporation's Appeal dismissed and Claimant's Appeal disposed of. (E-1)

List of Cases cited:-

1. FAFO No.434 of 2016; Mohd. Siraj Vs Motor Accident Claim Tribunal, Lucknow decided on 21.11.2024
2. Bimla Devi & ors. Vs Himachal Road Transport Corporation & ors.; 2009 (13) SCC 530
3. Mangla Ram Vs Oriental Insurance Company Ltd. & ors. 2018 (5) SCC 656
4. Dr. Anoop Kumar Bhattacharya & anr. Vs National Insurance Co. Ltd.; 2021 (12) ADJ 596

(Delivered by Hon'ble Abdul Moin, J)

1. Heard Shri Akhilesh Kumar Srivastava, learned counsel for the appellant as well as Shri Amit Tripathi, learned counsel for the respondents.

2. The connected appeal i.e. FAFO No.670 of 2011 has been filed praying for enhancement of the awarded amount.

3. Learned counsel appearing for the contesting parties state that the facts involved in both the appeals are common.

4. Accordingly, the Court proceeds to hear and decide both the appeals together by way of a common judgment. For the sake of convenience, the facts of the FAFO No.602 of 2011 are being taken.

5. Under challenge is the judgment and order dated 10.03.2011 passed by the learned Motor Accident Claims Tribunal / court No.2, Faizabad in Claim Application No.257 of 2009 in Re: Smt. Meena Srivastava and Others Vs. U.P. State Roadways Transport Corporation and Others. By the said judgment, learned

Tribunal has awarded a sum of Rs.12,85,000/- in favour of the claimants along with interest @ 6% per annum.

6. Bereft of unnecessary details, the facts set forth by learned counsel for the contesting parties are that an accident occurred on 06.09.2007 when one Shri Pradeep Kumar Srivastava, the husband of claimant No.1 and the father of the claimants No.2 & 3 / respondents No.1 to 3 in the appeal, died on account of accident. The accident is said to have occurred when the deceased was alighting from a bus No. UP 42 T3542 around 07:00 in the evening in front of Seth Petrol Pump, Sultanpur. As per the claimants, the leg of the deceased got stuck in the bus while alighting and the bus started off without noticing that the leg of the passenger was stuck in the bus and after driving for some time, when certain persons stopped the bus then it was noticed that Shri Pradeep Kumar Srivastava was seriously injured. He was shifted to the hospital where he was declared brought dead.

7. Upon filing of the claim application, the corporation put in appearance and denied the incident. The sheet anchor of the denial on the part of the Corporation was that the bus was not operating on the route in question rather the route of the bus was Faizabad - Allahabad and thus it was contended that once the place at which the incident occurred in Sultanpur, i.e. opposite of the petrol pump, did not fall within the ambit of the route which had to be taken by the bus, thus, there was no occasion for the bus to have been involved in an accident and as such there is no question of any claim being awarded against the Corporation.

8. The learned Tribunal framed various issues of which issue no.1 was as to whether on 06.09.2007 at 07:00 P.M., Shri Pradeep Kumar Srivastava while alighting from the Bus No. UP 42 T3542 fell down and his leg got stuck in the door of the bus and he was dragged along with bus and thereafter he died on account of the injuries sustained by him.

9. Another issue with which the connected appeal i.e. FAFO No.670 of 2011 is concerned is as to the compensation to which the claimants are entitled to.

10. Shri Akhilesh Kumar Srivastava, learned counsel for the appellant had vehemently argued on issue No.1, which has been decided in favour of the claimants, wherein the learned Tribunal has held that an accident occurred from the bus in question on the fateful day i.e. 06.09.2007 in which Shri Pradeep Kumar Srivastava died.

11. The argument of Shri Srivastava is that the learned Tribunal has failed to consider the issue on the basis of the documents that were led by the Corporation namely a certificate issued by the station superintendent indicating the route of the bus, which indicated that the bus was not operating on the route on which the accident had occurred rather was operating on the Faizabad - Allahabad route.

12. Shri Srivastava has also argued that no bus ticket was recovered from the possession of the deceased and thus it cannot be said that the deceased was a bona fide passenger of the bus from which the alleged accident itself is said to have occurred.

13. Another argument of Shri Srivastava is that the bus driver's testimony in which he did not indicate anything about the accident has not been discarded and has not been considered in this regard to hold that an accident in fact occurred on the fateful day i.e. 06.09.2007.

14. No other argument has been urged.

15. On the other hand, Shri Amit Tripathi, learned counsel appearing for the respondents / claimants has argued that C.P.W.- 2 Shri Vijay Kumar (witness), who has appeared to depose before the learned Tribunal, had specifically indicated that he was present on the spot on 06.09.2007 at around 07:00 P.M. and he had witnessed the said accident in detail in which on account of negligence on the part of the bus driver in having started driving the bus although the leg of Shri Pradeep Kumar Srivastava was stuck in the door of the bus which resulted in Shri Pradeep Kumar Srivastava sustaining serious injuries and having subsequently died.

16. It is contended that the statement of Shri Vijay Kumar could not be rebutted by the Corporation nor any lacunae was found in the said statement and the learned Tribunal has correctly proceeded to hold that the accident took place on the fateful day.

17. So far as the ground that no ticket was found from the person of the deceased, it is argued that the said plea was never taken either before the learned Tribunal or in the instant appeal which has been filed by the Corporation and consequently, it is too late in the day to take the said plea for the first time.

18. Even otherwise, it is submitted that considering the judgment of the learned Tribunal as well as the statement of Shri Vijay Kumar (C.P.W.-2), the accident in fact occurred on the fateful day and thus the learned Tribunal has correctly proceeded to award the compensation in favour of the claimants.

19. So far as the argument of Shri Srivastava that the bus driver's testimony has not been discarded, learned counsel for the claimant has placed reliance on the judgment of this Court passed in **FAFO No.434 of 2016 in Re: Mohd. Siraj Vs. Motor Accident Claim Tribunal, Lucknow on 21.11.2024** wherein this Court, on the basis of the judgment of **Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others 2009 (13) SCC 530**, has specifically held that the strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants and that the claimants are only required to establish their case on the touchstone of preponderance of probability.

20. As regards the route of the bus being Faizabad - Allahabad and no accident could have occurred in Sultanpur, as is argued by learned counsel for the appellant, the argument of Shri Tripathi is that the statement of the bus driver, as indicated in the judgement of the learned Tribunal, would itself indicate that the bus driver has accepted that on 06.09.2007 he had returned back through Sultanpur and that on the fateful day, the bus in the question was also parked at the roadways bus stand at Sultanpur, which has prevailed upon the learned Tribunal to hold that the accident took place from the bus in question at Sultanpur.

21. Learned counsel for the claimant has also placed reliance on the charge sheet which has been filed against the concerned driver and has also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Mangla Ram vs. Oriental Insurance Company Limited & Others 2018 (5) SCC 656** to contend that the Hon'ble Supreme Court has held that filing of a charge sheet against a particular person would prima facie points towards his complicity in driving the vehicle negligently and rashly.

22. Reliance has also been placed on a Division Bench judgment of this Court in the case of **Dr. Anoop Kumar Bhattacharya & Another Vs. National Insurance Co. Ltd. 2021 (12) ADJ 596** to contend that the Division Bench of this Court has held that the documents such as the F.I.R., the Site map and the charge-sheet, which form part of the police record, even though they may not establish the occurrence when considered holistically and prudently could help draw an informed and intelligent inference as to the degree of probability which lends itself to the case set up by a claimant.

23. Learned counsel for the claimant has also argued on the third issue as has been framed by the learned Tribunal, i.e. the amount of compensation to which the claimants are entitled to, in his appeal i.e. FAFO No.670 of 2011 which pertains to enhancement of the compensation.

24. It is contended that although the salary slip of the deceased, who was working as Junior Engineer in the U.P. Power Corporation, was filed which indicated his salary as Rs.54,143/- yet the learned Tribunal was of the view that as the said salary slip had not been proved, as

such, no reliance could be placed upon the same and in turn the learned Tribunal has placed reliance on the salary slip of the son of the claimant who had been given compassionate appointment on account of the death of his father namely Shri Pradeep Kumar Srivastava (deceased) and his salary has been considered for the award of compensation. Placing reliance on the salary of the son of the deceased, the salary of the deceased has been determined at Rs.20,000/- per month which is in stark contrast to the actual salary that has been indicated in the salary slip of Rs.54,143/- and thus, it is contended that the learned Tribunal has patently erred in law in awarding compensation on such basis.

25. Heard the learned counsels for the parties and perused the record.

26. From the argument as raised by learned counsels for the parties and a perusal of the record, it emerges that an accident is said to have occurred on 06.09.2007 which resulted in the death of Shri Pradeep Kumar Srivastava.

27. Upon filing of the claim application by the wife and the sons of the deceased, the learned Tribunal had framed an issue as to whether on 06.09.2007, an accident had occurred with Bus No. UP42T3542 on account of the negligence of the bus driver.

28. The said issue has been decided in favour of the claimants.

29. The said findings have been challenged by means of the instant appeal by the Corporation on the grounds that (a) the accident is said to have occurred in Sultanpur while as per the bus route, Sultanpur did not fall on its route as the bus

was having a route of Faizabad -Allahabad; (b) the deceased was not found to have any bus ticket; (c) the bus driver's testimony has not been discarded.

30. So far as the ground (a) is concerned, the Corporation in support of the bus being operated on Faizabad - Allahabad route had placed reliance on the certificate issued by the station superintendent indicating the route of the bus in question. Incidentally, the station superintendent was never produced as a witness before the learned Tribunal. Moreover, the non production of the station superintendent may not detain this Court considering the testimony of the driver wherein he specifically stated that on 06.09.2007, the bus returned through Sultanpur and was also parked in Sultanpur at the roadways bus station.

31. Even otherwise, a witness namely Shri Vijay Kumar has clearly deposed of the accident having taken place on 06.09.2007 at 07:00 P.M. and he having witnessed the entire accident in which the leg of the deceased got stuck in the door of the bus and he was dragged for some time which resulted in the deceased getting grievously injured and subsequently having died.

32. However, the said issue may not detain the Court much longer considering the specific finding of fact as has been given by the learned Tribunal of the accident having occurred on the fateful day with the bus in question considering the testimony of the driver and the witness namely Shri Vijay Kumar. Thus, the said ground raised by the learned counsel for the appellant is rejected.

33. So far as the ground (b) is concerned that no ticket was found from the deceased, it would be suffice to state that both before the learned Tribunal as well as before this Court, no ground in this regard has been taken. The Court has carefully gone through the grounds as have been taken by the Corporation while filing the instant appeal which run from ground A to O but the said ground does find place in the appeal also.

34. Even otherwise, the said ground may not detain this Court considering that once the learned Tribunal has specifically indicated about the factum of the accident having occurred on the said date which involved Shri Pradeep Kumar Srivastava, the deceased, and having resulted in his death, consequently, the said ground is also rejected.

35. So far as the ground (c) is concerned that the bus driver's testimony has not been discarded, it would be suffice to state that the bus driver in his statement has categorically stated about the bus having returned through Sultanpur and having been parked at Sultanpur Roadways Bus Depot. Even though the bus driver may not have specifically averred to the factum of the accident on 06.09.2007 yet in the charge sheet which has been filed against the driver, as has been considered by the learned Tribunal, it clearly emerges that the police authorities were of the view that the driver was involved in the said accident.

36. In this regard, it would be apt to refer to the judgment of the Hon'ble Supreme Court in the case of **Bimla Devi (supra)** wherein the Hon'ble Supreme Court has held as under:-

"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties."

37. Likewise, the Hon'ble Supreme Court in the case of **Mangla Ram (supra)** has held as under:-

*"27. Another reason which weighted with the High Court to interfere in the first appeal filed by respondents 2 & 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST 4701 was driven rashly and negligently by respondent 2 when it collided with the motorcycle of the appellant leading to the accident. This can be discerned from the evidence of witnesses and the contents of the charge-sheet file by the police, naming Respondent 2. This Court in a recent decision in *Dulcina Fernandes*, noted that the plea of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance or probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgements already adverted to by us, filing of charge-sheet against Respondent 2*

prima facie points towards his complicity in driving the vehicle negligently and rashly. Further, even when the accused were to be acquitted in the criminal cases, this Court opined that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal."

(Emphasis added)

38. The Division Bench of this Court in the case of **Dr. Anoop Kumar Bhattacharya (supra)** has held as under:-

"29. We may now revert to the original question whether Tribunal was correct in altogether excluding from evidence the documents such as the FIR, the site plan and the charge-sheet, which form part of the police record.

30. We have no doubt in our mind that the answer to the aforesaid question must be a resounding 'No'. The Tribunal opted to ignore the FIR, the charge-sheet and the site plan on the ground that they do not establish either that the driver of the offending truck was involved in the accident or that he was guilty of rash and negligent driving. In our opinion, the Tribunal would have been correct had the standard of proof in claim proceedings been that of beyond reasonable doubt as is the case with criminal proceedings. Even in a criminal proceedings, these documents may be considered to corroborate the evidence led in the Court and not to be completely disregarded or ignored. In any case, corroborative value of the police record cannot be ignored completely though decision may not be based solely upon them. Moreover, the standard of proof in the claim proceedings is not that of proof beyond reasonable doubt but that of preponderance of probabilities. The Tribunal on assessment of evidence before

it had to satisfy itself that it was more likely than not that the events as alleged in the claim petition had transpired. To our mind, the documents such as the FIR, the site map and the charge-sheet, which form part of the police record, even though they do not establish the occurrence when considered holistically and prudently could help draw an informed and intelligent inference as to the degree of probability which lends itself to the case set up by a claimant. Was the FIR promptly lodged or was it lodged after an undue delay? Does the site plan conform to the recital contained in the FIR? Do injuries sustained corroborate the recital contained in the FIR? Does the charge-sheet bolster the allegations contained in the FIR? These are the factors which when considered fairly and prudently could help to assess if the case set up by the claimants was more probable or not. As such, we consider it an error to altogether ignore the said documents on the ground that they were not conclusive proof of the occurrence more so since that is not the goal of claim proceedings in the first place."

(Emphasis added)

39. Accordingly, considering the judgments passed by the Hon'ble Supreme Court in the case of **Mangla Ram (supra)** as well as in the case of **Bimla Devi (supra)** as well as the Division Bench judgment in the case of **Dr. Anoop Kumar Bhattacharya (supra)**, the ground (c) taken by the appellant is also rejected.

40. Keeping in view the aforesaid discussion, the appeal filed by the appellant - Corporation i.e. FAFO No.602 of 2011 is **dismissed**.

41. So far as the appeal filed by the claimants is concerned, the said appeal

revolves around issue No.3 which pertains to the compensation as has been awarded in favour of claimants.

42. A perusal of the discussion on issue No.3 would indicate that although a salary slip was filed on behalf of the claimants indicating that the deceased was employed in the U.P. Power Corporation as a junior engineer and as per his salary slip, he was in receipt of an amount of Rs.54,143/- as salary yet the learned Tribunal was of the view that the said salary slip could not be relied on as the same has not been proved. The learned Tribunal adopted a strange procedure thereafter inasmuch as it has placed reliance on the salary slip of the son of the deceased who had been appointed on compassionate grounds. On the basis of deceased's son's salary slip, the learned Tribunal has opined that the salary of the deceased would be Rs.20,000/- and thereafter, the learned Tribunal has proceeded to award the compensation.

43. The analogy adopted by the learned Tribunal in order to arrive at the salary of the deceased is not found to be legally sustainable in any view of the matter inasmuch as the deceased, who was aged about 54 years, was at the fag end of his service while his son has only been appointed on account of the death of Shri Pradeep Kumar Srivastava (deceased) and was an infant in the service and by no stretch of imagination could the salary of a young employee, the son of the deceased, would be comparable with the salary of an officer who was at the fag end of his service.

44. Thus, the award of compensation by the learned Tribunal on the basis of the salary of the son of the deceased is not

found to be legally sustainable in the eyes of law.

45. Accordingly, the case is remitted to the learned Tribunal to consider the award of compensation in accordance with law. As the claim application is of the year 2009 and a substantial period has already lapsed, as such, the learned Tribunal is directed to decide the said claim application pertaining to award of compensation in accordance with law and the relevant rules within a period of six months from the date a certified copy of this order is brought on record of the learned Tribunal.

46. With the observations as made above, the appeal i.e. FAFO No.670 of 2011 stands **disposed of**.

47. Also, considering the long pendency of the claim application before the learned Trial and thereafter before this Court and considering the order of this Court dated 05.07.2011 whereby half of the amount, as awarded before the learned Tribunal, was directed to be deposited before the learned Tribunal, the claimants are permitted to withdraw the amount which was deposited before the learned Tribunal in accordance with law and the relevant rules which would be subject to the order(s) being passed by the learned Tribunal in pursuance to the directions made above.

48. The records be returned back as per procedure.

(2025) 4 ILRA 984
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 23.04.2025

BEFORE

**THE HON'BLE SAUMITRA DAYAL SINGH,
 J.
 THE HON'BLE SANDEEP JAIN, J.**

Government Appeal No. 43 of 2025

State of U.P. ...Appellant
Versus
Pushpendra alias Gabbar ..Respondent

Counsel for the Appellant:
 Ashutosh Kumar Sand

Counsel for the Respondent:
 Mukesh Kumar Pandey

A. Criminal Appeal against acquittal - When interference may be offered by the High Court in appeal against acquittal - High Court must be satisfied that the finding recorded by the learned trial court suffers from the vice of perversity. Once that satisfaction is reached, the High Court must further reappraise the evidence through a prism that may allow for a singular conclusion of guilt to arise upon such reappraisal of evidence. It must also be strong enough to be described as nearly absolute, as may not only discard the presumption of innocence that the accused enjoys at the beginning of the trial but also dispel the confirmation of such innocence offered by the order of acquittal. Such conclusion must be free from any benefit of doubt that may arise to the accused on the strength of evidence led at the trial. Where a finding of fact may be recorded either dehors the evidence or contrary to the evidence, or where conclusions may have been drawn contrary to the law, that finding and/or conclusion may be described as perverse. (Para 38, 39, 40)

B. Evidence Act, 1872 - Minor inconsistencies - It is not the law that prosecution witness must maintain their consistent stand by way of an empirical truth, to establish the credibility of the prosecution witnesses or version. The settled principle in that regard is that evidence must carry a ring of truth. Minor inconsistencies are

not to be looked/amplified by the Courts but to be reconciled with the entire weight of evidence.(Para 45)

C. Code of Criminal Procedure , 1973 - Section 161 - Defence stance that 'X' and the accused had quarreled as was claimed to have been stated by 'X' during her statement recorded under Section 161 Cr.P.C., was never proven. Discrepancy, if at all was never confronted to 'X' during her cross-examination. Once the defence failed to confront 'X' with her alleged previous statement recorded under Section 161 Cr.P.C., it never became open to the learned trial court to either rely on that statement or to disbelieve or discredit the prosecution evidence. The right of the defence or the right of the parties to confront a witness with their previous statement is a right that vests with the parties. No confrontation was ever offered to 'X' with any previous statement. At the stage of hearing, it was neither open to the parties nor to the learned trial Court to look into the statement recorded under Section 161 Cr.P.C., to disbelieve the proven facts or to observe that there pre-existed a quarrel between the parties. Findings recorded by the learned trial Court are perverse, to that extent. (Para 46, 60)

D. Evidence Act - Defence stance that 'X' and the accused had quarreled - Merely because there may have existed a dispute between the parties, it may not be a stand alone reason to discredit the prosecution story, that was otherwise duly proven. The nature of quarrel was neither specified nor it was shown to be such as may have, prompted 'X' and her family members to therefore rush to make a false accusation against the appellant. Neither the nature of the quarrel nor its date and time were proven. The F.I.R. against the accused is of a heinous offence of rape. Evidence exists both on the strength of ocular evidence offered by 'X' as also other material, in support of the prosecution story (Para 61)

E. Rape - Delay in lodging F.I.R. - Some reasonable time may always be consumed by the parties visited with such traumatic occurrences, to rationalize their situation and to chalk out their future course of action. It takes conviction, courage, efforts and sometimes even reference, to lodge an F.I.R. Court may therefore allow for a margin to exist to the informant side and it may not hold it

accountable for every hour or day. There is no inordinate delay in lodging the F.I.R., it was not for the learned trial Court to throw out the ocular evidence. (Para 68)

F. Rape - Absence of internal injuries or serious external injuries - there is no rule or law available that such injuries must be proved to establish the occurrence of rape. Once it was by the prosecution on the strength of ocular evidence of the victim that she was overpowered or subjugated to the point that her resistance stood broken down or negated, the proof of occurrence through injury would be a medieval construct, but not modern reality. In the first place, the threat practiced by the accused (on the strength of firearm) to cause fatal injury, was proven. Second, it was also proven that 'X' alongwith her fiancé were filmed in nude, by the accused. On both counts, sufficient evidence was led by the prosecution that the resistance that may have otherwise been offered, stood neutralized by the accused before committing the above rape. Further, evidence was led by the prosecution to establish that the resistance had been neutralized by establishing that 'R' the younger brother of 'X' aged about 12 years was assaulted and forced out of the 'apartment' before 'X' was filmed nude and thereafter, her fiancé, 'S' was forced out of the 'apartment' under the threat of a gun, before rape was committed on 'X'. Once the victim, who is 18 years of age, had been thus subjugated and overpowered mentally, psychologically and physically, to accept the submission that she must be shown to have suffered internal and external injuries, would be ridiculous (Para 62)

G. Indian Penal Code, Sections 376, 452 and 506 - Rape - Victim had offered a singular version of the occurrence. Narration of the occurrence has remained consistent from the stage of the F.I.R. being lodged, the statement being recorded by the police under Section 161 Cr.P.C. and statement being recorded under Section 164 Cr.P.C. by the learned Magistrate and also at the trial. At the trial, the victim 'X' was subjected to extensive cross-examination on many dates. She maintained her stand. Trial Court reached an unsustainable conclusion that the occurrence had not been caused by referring to the delay, the absence of internal

and external injuries and bad relations between the parties. Deposition of 'X' was sufficient to offer conviction since her deposition stands on the higher footing as of an injured witness. Court found it to be a fit case to offer interference with the order of acquittal. Accordingly, the government appeal allowed. The judgment and order acquitting the accused of the charge under Sections 452, 376, 506 set aside. Accused guilty of offence under Sections 376, 452 and 506 I.P.C. (Para 69)

Allowed. (E-5)

(Delivered by Hon'ble Saumitra Dayal
Singh, J.)

1. Heard Shri V.P. Srivastava, learned Senior Advocate assisted by Shri Mukesh Kumar Pandey, learned counsel for the respondent and Shri L.D. Rajbhar, learned A.G.A. for the appellant.

2. The present government appeal arises from the order of acquittal dated 08.12.2023 passed by Shri Atik Uddin, learned Additional District and Sessions Judge/F.T.C., Auraiya, in S.T. No. 75 of 2017 (State of U.P. v. Pushpendra @ Gabbar), arising out of Case Crime No. 694 of 2016, under Sections 452, 506 and 376 IPC, Police Station Auraiya, District Auraiya.

3. By that order, the learned trial court has acquitted the accused of the offence alleged under Sections 452, 506 and 376 IPC, Police Station Auraiya, District Auraiya.

4. The above Sessions Trial emerged on the F.I.R. lodged in above noted Case Crime number. It was lodged on the strength of the Written Report dated 14.09.2016 submitted by 'S' (P.W.-2 at the trial). He is the brother of the victim 'X' (P.W.-1 at the trial). In that Written Report,

it was narrated, 'X' aged about 18 years suffered rape by the present accused on 11.09.2016, at around 01:30 p.m. at the residence of the informant side at Awass Vikas Colony, Auraiya (hereinafter described as the 'apartment'). In that, it was disclosed, prior to the occurrence the accused used to make obscene utterances at 'X'. On the day and time of occurrence, he forcibly entered the 'apartment' and forced her to first undress by threatening her with a country made firearm. Upon 'X' calling for help, her younger brother, 'R' intervened. He was pushed out by the accused. Then, rape was committed on 'X'. The Written Report is Ex. Ka-2 at the trial. On that Written Report submitted by P.W.-2, F.I.R. was registered on the same day. It is Ex. Ka-8 at the trial. On such F.I.R. lodged, statement of P.W.-2 was recorded on 16.09.2016. Therein, he disclosed that the accused used to live at Awass Vikas Colony, Kanpur Road, Auraiya. The accused was his neighbor. The 'X' had been engaged to one 'S'. On the date of occurrence, she along with 'S' and her brother 'R' were present in the 'apartment'. At that time, the accused along with 3-4 accomplices forced their entry into the 'apartment' threatening her and her fiancée, 'S' with a country made firearm. He forced them to undress and filmed a video of the two, in that nude state. Thereafter, 'S' was made to wear his clothes and leave the 'apartment'. Thereafter, the accused committed rape on 'X'. She lost her consciousness. When she regained her consciousness, she found herself lying at Nainpura in Jalaun. She managed to get back home. There, she narrated the story to her mother. At last, she stated that there pre-existed some quarrel with the accused. That statement is Ex. Ka-9 at the trial. On 15.09.2016, a medico legal examination of 'X' was conducted by Dr. Seema Gupta

(P.W.-3 at the trial). It is Ex. Ka-3 at the trial. On the same date/15.09.2016, medical examination report was prepared, upon due examination of the accused, by Dr. Seema Gupta. In that, following injuries were noted:

“(i) Brown colour abrasion present both side of neck. 3 cm x 1.5 cm right side. 8 cm below right ear.

(ii) 3 cm x 2.5 cm left side of neck 7.5 cm below (illegible) left ear.

(iii) 6 cm x 3.5 cm Brown's color abrasion present at right buttock 9 cm away from middle.”

5. Further, the following observation was made by the doctor upon medical examination of the 'X' :

“Sign of struggle present, injuries seen over neck and buttock. (illegible) video graphy present. PSA not confirmed. Pathological and DNA report is awaited.

6. The said report is also Exhibited at the trial. She was also subjected to other examination such as Ultrasound, X-ray etc. However, findings on those tests remained inconclusive. A serological report was also prepared. It did not suggest the presence of spermatozoa-dead or alive. However, it may noted here itself, that sample was drawn on 15.09.2016 i.e. more than 3 days after the occurrence.

7. Thereafter, on 24.09.2016, the statement of the victim was recorded under Section 164 Cr.P.C. In that, she reiterated her earlier statement except that she did not make any disclosure of any pre-existing quarrel with the accused. Also, she added, when she regained consciousness at

Nainpura, Sunil and Chhotu, both brothers of the accused were present at that place. That statement is Ex. Ka-1 at the trial.

8. Upon the case being committed for trial by the Court of Sessions, following charges were framed :

“1- यह कि दिनांक 11.09.2016 को समय करीब 1.30 बजे व स्थान ब्लाक xxxxxxऔरैया में अभियुक्त द्वारा वादी xxxxxx के घर में घुसकर गृह-अतिचार किया। इस प्रकार आपने ऐसा कार्य किया जो भारतीय दण्ड संहिता की धारा 452 के अधीन दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

2- यह कि दिनांक 11.09.2016 को समय करीब 1.30 बजे व स्थान xxxxxxऔरैया में अभियुक्त द्वारा वादी xxxxxx के घर में घुसकर वादी xxxxxxकी बहिन को कमरे में ले जाकर उसे तमंचा दिखाकर उसके कपड़े उतार उसके साथ जबरन बलात्कार किया । इस प्रकार आपने ऐसा कार्य किया जो भारतीय दण्ड संहिता की धारा 376 के अधीन दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

3- यह कि उपरोक्त तिथि समय व स्थान पर अभियुक्त द्वारा वादी की xxxxxx की बहिन को जान से मारने की धमकी दिया। इस प्रकार आपने ऐसा कार्य किया जो भारतीय दण्ड संहिता की धारा 506 के अधीन दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।”

9. At the trial, besides the above documentary evidence and other documents, the prosecution led oral evidence. In that, first, the victim 'X' was examined as P.W.-1. During her examination-in-chief, she proved, she was a student of Intermediate and resident of village Badua. The occurrence took place on 11.9.2016, at about 01:30 p.m. when she was present at the 'apartment' along with her younger brother 'R' and her fiance 'S'. At that time, the accused forcibly entered that 'apartment' and pushed out her minor brother. He then commanded 'X' and 'S' to undress. He threatened to kill them if they did not obey his command. He filmed them

and made a video. Thereafter, he asked 'S' wear his clothes and forced him to leave. While 'X' was getting dressed, the accused forced himself on her and thus committed rape. She could not let out any cry for help as the accused covered her mouth with his hand. Upon such occurrence, she was disoriented. The accused further threatened to kill her if she dared to tell her family or police about the occurrence. Having caused such occurrence, the accused then forced 'X' to accompany him on a motorcycle to be dropped to her village. Initially, 'X' did not cooperate. On that, the accused threatened to push her from the third floor of that building. She complied and thus accompanied the accused on a motorcycle with another person riding pillion on the same motor-cycle, seated behind her. She was thus left at Nainapurva village under a 'Peepal' tree. She lost her consciousness. When she gained her consciousness, she found a crowd had gathered, including Amit Pal and Sunil brothers of the present accused. From there, she travelled to her home at Badua village with the help of a passerby who gave her lift.

10. Upon reaching home, she found, neither her mother nor her father were present. From a mobile phone of a stranger, she talked to her elder brother 'S-1' (P.W.-2) and informed him about the entire occurrence. During her cross-examination, 'X' admitted, she knew the accused from before. He used to live two houses away. She specifically stated that her family and family of the present accused were not on terms. Neither they had any animosity nor they were on talking terms. She denied suggestion of having attended the marriage of the sister of the present accused or of the accused having offered any help in any treatment that may have been given to her, earlier. As to her fiancé 'S', she disclosed he

was a Medical Representative. Though earlier engaged to him, upon the occurrence being caused, her marriage was called off. On being further questioned, she specifically stated, she had earlier complained to her family about vulgar utterances/vulgar songs of the appellant, directed at her. On such occurrence, her family members had met the family members of the accused who had assured that they would offer appropriate reprimand to the accused. On being further questioned, she specified, her parents had complained to the uncle and 'Amma' of the accused. During her cross-examination, she was shown her photographs (produced by the defence). She denied the knowledge of the same.

11. Thereafter, on 31.01.2018, she was further examined. On that date she further disclosed that she got married on 18.6.2016 to one 'S-2'. She denied all suggestions thrown to her of knowledge about prior events in the life of the present accused. Thus, she denied any acquaintance with the accused. At that stage, she further stated, at the time of the occurrence, four persons had entered her 'apartment' (including the present accused). They had beaten 'R' and thus forced him out of the 'apartment'. She again reiterated that the accused held a country made pistol on her temple, at the time of the occurrence being caused. She further explained the external injuries suffered by him. She denied the suggestion that she had formed a consensual relationship with the accused.

12. Next, 'S-1', the elder brother of 'X' was examined as P.W.-2. During his examination-in-chief, he proved, earlier the accused had made vulgar utterances at 'X'-described as singing of vulgar songs, directed at 'X'. Then, he proved the F.I.R.

narration. At the same time, it is an admitted case of the prosecution that he is not an eye-witness. He proved the version as narrated to him by 'X'. During his cross-examination, he admitted that he is an illiterate person and that he had not seen the occurrence. He had got the Written Report typed as was submitted to the police. As to the age of his younger brother 'R' at the time of occurrence, he proved the same to be about 10-11 years. On being questioned he explained, he learnt of the occurrence at about 1.30 p.m. on 11.09.2016 through a telephonic call made by 'R'. At that time his father was not home. He neither disclosed the occurrence to his mother nor he visited the house of the accused at that time though it was near to his place. At the same time, he first disclosed the occurrence to his uncle 'L' (not examined at the trial) at about 2.00 p.m. On that, six people travelled on motorcycles to the 'apartment'. They reached before sundown. At that time, 'X' was not found there, though the 'apartment' was lying open. They travelled on three different motorcycles in three different directions in search of 'X'. They could not locate 'X'. After returning to the 'apartment', he received a phone call from another person described as 'C.P.' from Jalaun crossing. Then, 'X' was found at Nainapur village under a 'Peepal' tree, about 200 meters, from the nearest habitation. After again returning to the 'apartment', he found 'X' and 'R' had reached back. By that time, the sun had also set.

13. At that time, he called one Dr. Som Singh (not examined at the trial) to examine 'X'. For reason of trauma suffered, 'X' was unable to speak. She narrated the entire occurrence to P.W.-1, the next morning. On the third day, he lodged the F.I.R. and the police investigation started.

He disclosed that his next younger brother got the Written Report typed. He also reiterated that the marriage between 'X' and 'S' could not be solemnized. Later, 'X' married with 'S-2' (not examined at the trial).

14. Thereafter, Dr. Seema Gupta was examined as P.W.-3. She proved the injuries noted by her in the medical examination of 'X'. She also proved that at the time of her medical examination, 'X' had complained of pain in her private parts. It may be noted, no internal injury had been noted. As to external injuries, she proved three injuries described (by the doctor), to be signs of possible struggle. She explained that such injuries may have been suffered by 'X' while offering resistance to rape. However, she clarified that all injuries were simple in nature and there were no internal injuries. Hymen was old torn and healed with no fresh injuries noted. As to absence of DNA sample, she admitted that DNA report would have been relevant but that it was not received by her. During her cross examination, she was again questioned as to the possibility of external injuries suffered by 'X' in resisting rape. She admitted the possibility of such occurrence.

15. Thereafter, the Investigating Officer Ratan Singh was examined as P.W.-4. He proved the investigation. Lady constable Mohita Verma was examined as P.W.-5. She proved the registration of the case and the GD entries etc.

16. 'R', youngest brother was examined as P.W.-6. He narrated that the accused alongwith 3-4 other persons had forced their entry into the 'apartment' where he alongwith 'X' and 'S' were present, before the occurrence. He also narrated that the accused had asked 'X' and 'S' to

undress. On that, 'R' claimed to have questioned the accused. The accused and others responded and beat him. He was forced out of the 'apartment'. On being thus forced out, he left for his home. In the evening, 'X' disclosed, after 'R' left, the accused filmed 'X' and 'S' without clothes and thereafter 'S' was forced out of the 'apartment' and 'X' raped by the accused. He identified the accused as one of the persons who had forced his entry into the 'apartment', armed with a country made firearm. During his extensive cross examination, he stood by his original stand and no discrepancy was offered by him.

17. Thereafter, lady constable Maya Devi was examined as P.W.-7. She proved the fact of 'X' being taken for medical examination. She also proved preparation of certain test slips etc. Thereafter, S.I. Balraj Shahi was examined as P.W.-8. He proved the fact that the accused surrendered and that his statement was recorded during the investigation.

18. Upon conclusion of prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C.. Amongst others, specific question was put to him with respect to three external injuries received by 'X', by way of question No. 4. Other than bald denial, he did not make any other statement. As to the reason why such accusation may have emerged against him, he only stated, there was old animosity between the parties and that he was innocent. No defence evidence was led. Thereupon, the learned trial Court has heard the parties and made the order of acquittal, impugned in the present appeal.

19. Learned A.G.A. would submit, parameters for such an appeal though limited, are well defined. To the extent the

learned trial Court has reached a conclusion of innocence of the accused dehors the evidence and in fact wholly conflicted to the consistent evidence led by the prosecution-that the accused had caused such occurrence, the finding recorded by the learned trial Court, is perverse. In that, he has heavily relied on the testimony of the victim 'X' (P.W.-2 at the trial). Besides the minor discrepancy i.e. whether the accused alone or the accused alongwith 3-4 other persons had forced their entry into the 'apartment' of 'X', there is absolutely no other discrepancy as to the occurrence disclosed by 'X' as also 'R' who was present just prior to the occurrence and who upon resistance offered (by him), was beaten and forced out of the 'apartment', at that time. In that, both witness of fact consistently narrated that the accused had forced his entry into the 'apartment' by threatening the inmates with a country made firearm. He commanded 'X' and her fiancée 'S' to undress, under such threat and compulsion. After filming 'X' and her fiancée 'S' in that nude state, he forced 'S' to leave the place. After 'S' left and as 'X' was getting dressed, the accused forced himself on her and committed rape, despite resistance offered by her. That narration offered by P.W.-2-the victim, stands on the footing of evidence of an injured witness. It remained unimpeached, at the trial. The conclusion drawn by the learned trial Court to the contrary, is not based on any evidence or material on record.

20. While such finding of fact suffers from perversity, what makes the case fall within the parameters of appeal against acquittal is the remarkable feature that the learned trial Court has not disbelieved or discredited the evidence of the victim 'X'. Though it has noted in detail the evidence led at the trial, it has not offered any

material consideration to that vital evidence.

21. Then, the further finding recorded by the learned trial Court to disbelieve the prosecution story are also described to be perverse and based on extraneous consideration. The fact that there was delay of three day in lodging the F.I.R., has been given undue weight. It is settled law that delay in lodging the F.I.R. alone may not be relevant to disbelieve the prosecution story based on strong and cogent direct evidence. While it may have remained with the learned trial court to consider that issue if facts had otherwise given rise to any doubt in the prosecution story, in the proven facts of the present case where the occurrence was proven beyond reasonable doubt, delay of three days in lodging the F.I.R. in the circumstances proven on record, was inconsequential.

22. At the relevant time, 'X' was engaged to 'S'. She was in his company at her 'apartment', when the accused barged into that accommodation. Forced objectionable video to be shot of the two and thereafter forced 'S' to leave the premises. The marriage engagement between 'X' and 'S' broke down upon that occurrence. It took the parties half a day to search out 'X' and for her to reach back home. She was disoriented by the occurrence. It took time for the parties to reconcile the tragic situation in which they had landed. They responded within reasonable time. Therefore, the ocular evidence as corroborated by medical evidence may not have been thrown out on a simple noting of three days' time taken to lodge the F.I.R.

23. As to the medical evidence, it has been submitted again, it is not the rule of

law that rape must be established on the strength of medical evidence. In the first place where credible ocular evidence of the victim exists, no corroboration is required. Even if some corroboration is required, in the present facts, that was clearly shown to exist in the shape of three external injuries suffered by 'X'. Both during her examination-in-chief as also during her cross-examination, Dr. Seema Gupta (P.W.-3) established that such injuries may be received by the victim while resisting commission of rape.

24. The finding recorded by the learned trial Court that there were pre-existing bad relations between the parties is plainly perverse. A stray sentence appearing in the statement recorded under Section 161 Cr.P.C. has been given undue weight by the learned trial Court that too wholly contrary to the scheme and manner in which a witness may be contradicted. At no stage of her cross-examination, P.W.-2 was ever confronted with any her previous statement. Therefore, it never became open to the learned trial Court to refer to those statements in the reasoning offered by it, to reach a conclusion that there pre-existed bad relations between the parties. The approach adopted by the learned trial Court is not permissible/recognized in law.

25. In such circumstances, reliance has been placed on a recent decision of the Supreme Court in **Constable 907 Surendra Singh and another, 2025 SCC Online SC 176**.

26. On the other hand Sri V.P. Srivastava learned Senior Counsel assisted by Sri Mukesh Kumar Pandey learned counsel for the accused would submit that the learned trial Court has rightly made the order of acquittal. On merits, it has been

submitted, the prosecution version was not wholly credible and consistent. The accused had no occasion to commit such occurrence merely because bad relations may have emerged between the parties. He has been falsely implicated. Reference has been made to the fact that the prosecution evidence is inconsistent as to the number of accused persons/accomplices who forced their entry into the 'apartment' of 'X'. Though the F.I.R. narrated only the accused and in the initial statement of 'X' also she named only the accused, later at the trial that story was changed to the accused along with 3-4 other unnamed persons.

27. Second, it has been submitted, prosecution story is not certain as to how the first informant (P.W.-1) came to know of the occurrence. At one place, he claimed to have been informed by the younger brother of victim 'X' namely 'R' (P.W.-6) and at another he claimed to have been informed by 'X' herself.

28. Third, it has been submitted, initially 'X' claimed she had a quarrel with the accused but later she claimed neutral relations.

29. Fourth, it has been submitted, there is absolutely no medical evidence to establish the occurrence of rape. In the nature of occurrence disclosed by the prosecution, it is unlikely that the victim would not have suffered both-external and internal injuries. Absence of such injuries establishes that no such occurrence took place. In that regard, reliance has been placed on the fact that neither any dead nor live spermatozoa were detected in the vaginal swab test.

30. Fifth, it has also been alleged that it is wholly unlikely that in such an

occurrence neither 'S' nor 'R' called for help any sooner. In fact, 'S' neither called anybody for help nor he has been examined at the trial. It clearly proves that the occurrence was otherwise.

31. In such circumstances, heavy reliance has been placed on the following decisions to submit, no interference is warranted in the present appeal against acquittal :

(i) Sheo Swarup and others v. Emperor, 1935 VOL 1 CRLJ 786.

(ii) Dhanna v. State of M.P., 1996 VOL 10 SCC 79.

(iii) Shailendra Pratap and another v. State of U.P., 2003 VOL 2 CRLJ 1270.

(iv) Samghaji Haniba Patil v. State of Karnataka, 2007 VOL 1 SCC CrI. 113.

(v) Suryakant Dadasahab Bitale v. Dilip Bajranj Kale and others, 2014 VOL 5. SCC CrI. 728.

32. Having heard learned counsel for the parties and having perused the record, in the first place as to the principle in law at which interference may be offered by the High Court in appeal against acquittal, there is no quarrel. In Sheo Swarup (supra), in the context of similar statutory provision, the Privy Council observed as under :

“But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been

acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.”

33. Then, in **Dhanna (supra)**, it was observed as under :

“Though the Code does not make any distinction between an appeal from acquittal and an appeal from conviction so far as powers of the appellate court are concerned, certain unwritten rules of adjudication have consistently been followed by Judges while dealing with appeals against acquittal. No doubt, the High Court has full power to review the evidence and to arrive at its own independent conclusion whether the appeal is against conviction or acquittal. But while dealing with an appeal against acquittal the appellate court has to bear in mind: first, that there is a general presumption in favour of the ignorance of the person accused in criminal cases that presumption is only strengthened by the acquittal. The second is, every accused is entitled to the benefit of reasonable doubt regarding his guilt and when the trial court acquitted him. He would retain that benefit in the appellate court also. Thus, appellate court in appeals against acquittals has to proceed more cautiously and only if there is absolute assurance of the guilt of the accused, upon the evidence on record, that the order of acquittal is liable to the interfered with or disturbed. (Durgacharan Naik and ors. v. State of Orissa, AIR 1966 SC 1775, Caetan Piedade Fernandes & Anr. v. Union Territory of Goa, Daman & Diu, Panaji. Goa, AIR 1977 SC 135, Tota Singh and Anr. v. State of Punjab, AIR 1987 SC 1083, Awadhesh and Anr. v. State of

M.P., AIR 1988 SC 1158, Ashok Kumar v. State of Rajasthan, AIR 1990 SC 2134).”

34. Next, in **Shailendra Pratap (supra)**, the Supreme Court observed as under :

“Having heard learned counsel appearing on behalf of the parties, we are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity.”

35. In **Samghaji Haniba Patil (supra)**, the Supreme Court observed as under :

“Had the High Court been the first court, probably its view could have been upheld, but it was dealing with a judgment of acquittal. We have taken notice of the depositions of the main prosecution witnesses only to show that the view of the learned Trial Judge cannot be said to be perverse or the same was not possible to be taken. While dealing with a case of acquittal, it is well known, the High Court shall not ordinarily overturn a judgment if two views are possible. accused had no axe to grind. The prosecution had not proved that he had any motive. He was only said to be the friend of accused No.1. If the accused had gone there with six others to assault the deceased and his family members, it is unlikely that accused would

take with him for the said purpose, a hammer to an agricultural field. The hammer is not ordinarily used for agricultural operations. Even if we assume that accused No.1 had been nurturing any grudge against the deceased, it is unlikely that accused would be involved therein.”

36. Also, in **Suryakant Dadasahab Bitale (supra)**, the Supreme Court further observed as below :

“In the present case the Session Court has not ruled out any evidence which was admissible. Both the dying declarations were considered in proper prospect. The material evidence has not been overlooked by the Sessions Court, as apparent from the discussions made by Sessions Judge and quoted above. In these circumstances, the High Court was not justified in interfering with the order of acquittal in a revision.”

37. In **Constable 907 Surendra Singh (supra)**, the Supreme Court again revisited the law in point and observed as under :

“11. Recently, in the case of Babu Sahebagouda Rudragoudar v. State of Karnataka, (2024) 8 SCC 149 a Bench of this Court to which one of us was a Member (B.R. Gavai, J.) had an occasion to consider the legal position with regard to the scope of interference in an appeal against acquittal. It was observed thus:

“38. First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging acquittal of the accused recorded by the trial court.

39. This Court in Rajesh Prasad v. State of Bihar [Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] encapsulated the legal position covering the field after considering various earlier judgments and held as below : (SCC pp. 482-83, para 29)

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words : (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325], SCC p. 432, para 42)

‘42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the

court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

40. Further, in *H.D. Sundara v. State of Karnataka* [*H.D. Sundara v. State of Karnataka*, (2023) 9 SCC 581 : (2023) 3 SCC (Cri) 748] this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC as follows : (SCC p. 584, para 8)

“8. ... 8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn

the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

41.1. That the judgment of acquittal suffers from patent perversity;

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

38. Thus, as to the principle to be applied by the High Court while dealing with an appeal against acquittal, though there is a statutory appeal wherein the High

Court by virtue of its power as an appeal Court, may reappraise the evidence and reach a different fact conclusion, at the same time, before that exercise is entered into, the High Court must be satisfied that the finding recorded by the learned trial court suffer from the vice of perversity. That guard rail exists and must be followed in exercise of appeal jurisdiction, against an order of acquittal.

39. Once that satisfaction is reached, the High Court must further reappraise the evidence through a prism that may allow for a singular conclusion of guilt to arise, upon such reappraisal of evidence. It must also be strong enough to be described nearly absolute, as may not only discard the presumption of innocence that the accused enjoys at the beginning of the trial but as may dispel the confirmation of such innocence offered by the order of acquittal. Such conclusion must be free from any benefit of doubt that may arise to the accused on the strength of evidence led at the trial. By very nature of such exercise to be undertaken by the High Court, it may remain vigilant and slow in interfering with the findings recorded by the learned trial court.

40. As to what may be perversity, there is less or no doubt. Where a finding of fact may be recorded either dehors the evidence or contrary to the evidence or where conclusions may have been drawn contrary to the law, that finding and/or conclusion may be described perverse.

41. Seen in that light, in the context of trial on the charge of rape, other law settled in this regard may be noted first. In the first place, in **State of H.P. Vs. Raghubir Singh, (1993) 2 SCC 622**, dealing with the credibility and reliability

of the victim of rape, it was observed as below :

"5. ... The High Court appears to have embarked upon a course to find some minor contradictions in the oral evidence with a view to disbelieve the prosecution version. In the opinion of the High Court, conviction on the basis of uncorroborated testimony of the prosecutrix was not safe. We cannot agree. There is no legal compulsion to look for corroboration of the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. In the present case the evidence of the prosecutrix is found to be reliable and trustworthy. No corroboration was required to be looked for, though enough was available on the record. The medical evidence provided sufficient corroboration...."

(emphasis supplied)

42. Next, in **State of Punjab Vs. Gurmit Singh, (1996) 2 SCC 384**, it was further laid down that to seek corroboration of the version proven by the victim of the rape, is not the rule.

43. Here, the victim had offered a singular version of the occurrence. In that, she clearly narrated that she was present at the 'apartment' on 11.09.2016 along with her fiancé 'S' and her younger brother 'R'. At that time, the accused forced his entry into that accommodation brandishing a firearm. He first asked the victim 'X' and her fiancé 'S' to undress. On resistance being offered by 'R', he was assaulted and

forced out of the accommodation. Thereafter, the victim and her fiancé were forced to undress. They were filmed by the accused. Next, 'S' was made to dress and leave the accommodation. Thereafter, the accused committed rape on 'X' despite resistance offered by her. Further, how he came to leave that premises was also explained through a singular version wherein she disclosed that at first the accused asked her to accompany him. On her refusal, she was threatened with dire consequence of being pushed out from the third floor. She then accompanied the accused. Thereupon she was dropped at Nainpura. She was disoriented/partly conscious. She somehow traveled back to her home and narrated the occurrence to her family.

44. That narration of the occurrence has remained consistent from the stage of the F.I.R. being lodged, the statement being recorded by the police under Section 161 Cr.P.C. and statement being recorded under Section 164 Cr.P.C. by the learned Magistrate and also at the trial. At the trial, the victim 'X' was subjected to extensive cross-examination on many dates. She maintained her stand. Therein, she also disclosed that in the meantime she got married to a third person as her marriage with 'S' broke, upon the occurrence being caused by the accused.

45. Seen in that light, the minor inconsistencies being pointed out by the learned counsel for the accused fade into insignificance. It is not the law that prosecution witness must maintain their consistent stand by way of an empirical truth, to establish the credibility of the prosecution witnesses or version. The settled principle in that regard is that evidence must carry a ring of truth. In that

regard, in **State of U.P. v. M.K. Anthony, (1985) 1 SCC 505**, the Supreme Court observed as under:

"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer."

(emphasis supplied)

46. Thus the law is settled that minor inconsistencies are not to be looked/amplified by the Courts but to be reconciled with the entire weight of evidence. The defence stance that 'X' and the accused had quarreled as was claimed to have been stated by 'X' during her statement recorded under Section 161 Cr.P.C.), was never proven. The learned trial Court has fallen in error on two counts. In the first place, that discrepancy, if at all was never confronted to 'X' during her cross-examination. As to the manner of confrontation, the law is clear.

47. In **Tara Singh vs State of U.P., (1951) SCC OnLine SC 49**, two witnesses entered the witness box at the trial and made depositions contrary to their statements recorded earlier under Section 288 Cr.P.C. Yet, they were not confronted with that previous statements made by them. When asked about those previous statements (at the trial), they only replied that they were made under coercion. That reply was found to have not met the requirement of Section 145 of the Indian Evidence Act. In that regard, the Supreme Court observed as below:

41. Now, it is evident that one of the main purposes of using the previous statements was to contradict and displace the evidence given before the Sessions Court because until that evidence was contradicted and displaced, there was no room in this case for permitting the previous statements to be brought on record and used under Section 288. Therefore, as these statements were not put to these witnesses and as their attention was not drawn to them in the manner required by Section 145, Evidence Act, they were not

admissible in evidence. The observations of the Privy Council in *Bal Gangadhar Tilak v. Shriniwas Pandit* [*Bal Gangadhar Tilak v. Shriniwas Pandit, (1914-15) 42 IA 135 at p. 147 : 1915 SCC OnLine PC 16*] are relevant here.

(emphasis supplied)

48. In **Rudder vs State, 1956 SCC OnLine All 141**, a co-ordinate bench of this Court opined, a deposition in Court can or cannot be reconciled with a statement made under Section 161 Cr.P.C. only after the alleged omission is brought to the notice of the witness and he is given an opportunity to explain the same. In that regard, it was observed as below:

“Desai, J. also went on to hold that if the statement under Sec. 162, Cr. P.C. can be reconciled with the deposition in court and can stand with it then there is absolutely no contradiction. The question whether the deposition in court can or cannot be reconciled with the statement recorded under Sec. 161, Cr. P.C. can only be settled after the omission has been brought to the notice of the witness and the witness has had an opportunity to give his explanation. If after the explanation it appears that the two are reconcilable, it would cease to be a contradiction. But that can happen not only in the case of an omission, but even in the case of an apparent contradiction of positive facts included in the deposition and the statement under Sec. 161, Cr. P.C. There may appear to be a contradiction between the deposition in court and the statement under Sec. 161, Cr. P.C. but when it is put to the witness, he may give an explanation which may reconcile them, whereupon the contradiction may cease to be a contradiction. The mere fact that he may possibly reconcile the two statements,

cannot effect the applicability of the proviso to Sec. 162, Cr. P.C. in the case of an omission which is of such a nature that it can be held to be a contradiction.”

49. In **Inder Deo & Anr. vs State, (1958) SCC OnLine All 175**, an issue arose if a statement recorded under Section 288 Cr.P.C. may be treated as evidence if it was not disclosed to the witness (at the time of such statement being recorded), that the Court may use the statement as evidence. While considering the issue, a coordinate bench of this Court noticed non-compliance of Section 145 of the Indian Evidence Act, 1875. Thereupon, relying on **Tara Singh vs State of U.P., (supra)**, a coordinate bench of the Court observed as below:

“There is, in the present case, yet another difficulty which we have found in the way of properly treating the statements of the two witnesses mentioned above as admissible, if we may use that expression, under Sec. 288, Cr. P.C. and the difficulty we find is that in respect of these statements compliance had not been made of the provisions of Sec. 145 of the Indian Evidence Act. Sec. 288 itself states that evidence was subject for all purposes to the provisions of the Indian Evidence Act. As we have pointed out earlier, specific passages or the particular portions on which the prosecution desired to contradict the witnesses were not read out to the witnesses and they were not afforded an opportunity of explaining those particular or specific passages. The entire statements were read out to the witnesses and they were asked to say what they had to in regard to the entire statements. In our opinion, this was not compliance with the provisions of Sec. 145 of the Indian Evidence Act. A proper compliance of these

provisions can only be if the particular passages are put to the witnesses. We may here refer to the decision of their Lordships of the Supreme Court in Tara Singh v. The State [1951 A.L.J. 640 : A.I.R. S.C. 441.] wherein their Lordships at pages 446-447 said this:

“There is some difference of opinion regarding this matter in the High Courts. Sec. 288 Provides that the evidence recorded by the Committing Magistrate in the presence of the accused may, in the circumstances set out in the section, ‘be treated as evidence in the case for all purposes subject to the provisions of the Indian Evidence Act, 1872.’ One line of reasoning is that Sec. 145, Evidence Act, is not attracted because that section relates to previous statements in writing which are to be used for the purpose of contradiction alone. Statements of that kind do not become substantive evidence and though the evidence given in the trial can be destroyed by a contradiction of that kind, the previous statements cannot be used as substantive evidence and no decision can be grounded on them. But under Sec. 288, Cr. P.C. the previous statement becomes evidence for all purposes and can form the basis of a conviction. Therefore, according to this line of reasoning Sec. 145, Evidence Act, is not attracted. Judges who hold that view consider that provisions of the Evidence Act referred to are those relating to hearsay and matters of that kind which touch substantive evidence.”

In my opinion the second line of reasoning is to be preferred. I see no reason why Sec. 145, Evidence Act, should be excluded when Sec. 288 states that the previous statements are to be ‘subject to the provisions of the Indian Evidence Act.’ Sec. 145 falls fairly and squarely within the plain meaning of these words. More than that this is a fair and proper vision and is

in accord with sense of fair-play to which Courts are accustomed.....I hold that the evidence in the Committal Court cannot be used in the Sessions Court unless the witness is confronted with his previous statement as required by Sec. 145, Evidence Act..... but if the prosecution wishes to go further and use the previous testimony to the contrary as substantive evidence, then it must, in my opinion, confront the witness with those parts of it which are to be used for the purpose of contradicting him. Then only can the matter be brought in as substantive evidence under Sec. 288.” (The decision of the Supreme Court was given, by Bose, J. and Fazl Ali, J., Patanjali Sastri, J., and Das, J., agreed with that decision.).”

(emphasis supplied)

50. In **Tahsildar Singh & Anr. vs State of U.P., (1959) SCC OnLine SC 17**, six-judge bench of the Supreme Court had the occasion to consider the changes made to Section 162 of the Cr.P.C. The Supreme Court recognized the object to incorporate the amendment to Section 162 Cr.P.C. and Section 145 of the Indian Evidence Act - to protect the accused from any statement made by a witness only before any police authority and to protect the accused from any false statement deposition made at the trial. It was also recognized, such previous statement made to the police may be used by the accused person to bring out any contradiction that would be of help to the accused and/or to discredit the witness making any statement before the Court. In that regard, in paragraph 17 of the report, it has been observed as below:

“17. At the same time, it being the earliest record of the statement of a witness soon after the incident, any contradiction found therein would be of

immense help to an accused to discredit the testimony of a witness making the statement. The section was, therefore, conceived in an attempt to find a happy via media, namely, while it enacts an absolute bar against the statement made before a police officer being used for any purpose whatsoever, it enables the accused to rely upon it for a limited purpose of contradicting a witness in the manner provided by Section 145 of the Evidence Act by drawing his attention to parts of the statement intended for contradiction. It cannot be used for corroboration of a prosecution or a defence witness or even a court witness. Nor can it be used for contradicting a defence or a court witness. Shortly stated, there is a general bar against its use subject to a limited exception in the interest of the accused, and the exception cannot obviously be used to cross the bar.”

(emphasis supplied)

51. Then, in **State of U.P. vs Nahar Singh, (1998) 3 SCC 561**, the Supreme Court referred to and applied the following principle of law laid down by Lord Herschell, L.C. in *Browne v. Dunn*, [(1893) 6 R 67] wherein it was observed as below:

“I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is

suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses.”

(emphasis supplied)

52. Then, in **Rammi vs State of M.P., (1999) 8 SCC 649**, the Supreme Court examined the scope of Section 155 of the Indian Evidence Act and held, the previous statement made by a witness (who later deposes before a Court), may be used to impeach his credibility, in accordance with the Section 155(3) of the Indian Evidence Act. In that, it observed as below:

“25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

155. Impeaching credit of witness.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him—

*(1)-(2)****

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;”

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be “contradicted” would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to “contradict” the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to “contradict” the witness.”

(emphasis supplied)

53. In **Karan Singh vs State of M.P., (2003) 12 SCC 587**, the Supreme Court explained the object of Section 145 of the Indian Evidence Act – to give the witness a chance to explain the discrepancy or inconsistency or to clear up the point of ambiguity or dispute. In that, it observed as below:

“5. When a previous statement is to be proved as an admission, the statement as such should be put to the witness and if the witness denies having given such a statement it does not amount to any admission and if it is proved that he had given such a statement the attention of the witness must be drawn to that statement. Section 145 of the Evidence Act is clear on this aspect. The object is to give the witness a chance of explaining the discrepancy or inconsistency and to clear up the particular

point of ambiguity or dispute. In the instant case, Ext. D-4 statement as such was not put to the witness nor was the witness given an opportunity to explain it. Therefore, Ext. D-4 statement, even if it is assumed to be a statement of PW 1 Hari Singh, that is of no assistance to the appellants to prove their case of private defence.”

(emphasis supplied)

54. Then, in **Munna Pandey vs State of Bihar, (2023) SCC OnLine SC 1103**, the three-judge bench of the Supreme Court had the occasion to consider the issue as to the credibility of the prosecution evidence led at the trial, in the absence of such evidence being tested on the anvil of Section 145 of the Indian Evidence Act, 1875-by contradicting the witness with their previous statement (recorded during investigation). Deprecating the practice on part of the prosecution in not doing so and further not appreciating the slackness on part of the defence in that regard, as also cautioning the Courts to remain vigilant, on that aspect, the Supreme Court observed as below:

41. It was the duty of the defence counsel to confront the witnesses with their police statements so as to prove the contradictions in the form of material omissions and bring them on record. We are sorry to say that the learned defence counsel had no idea how to contradict a witness with his or her police statements in accordance with Section 145 of the Evidence Act, 1872 (for short, ‘Evidence Act’).

42. The lapse on the part of public prosecutor is also something very unfortunate. The public prosecutor knew that the witnesses were deposing something contrary to what they had stated before the police in their statements recorded under

Section 161 of the CrPC. It was his duty to bring to the notice of the witnesses and confront them with the same even without declaring them as hostile.

43. The presiding officer of the Trial Court also remained a mute spectator. It was the duty of the presiding officer to put relevant questions to these witnesses in exercise of his powers under Section 165 of the Evidence Act. Section 162 of the CrPC does not prevent a Judge from looking into the record of the police investigation. Being a case of rape and murder and as the evidence was not free from doubt, the Trial Judge ought to have acquainted himself, in the interest of justice, with the important material and also with what the only important witnesses of the prosecution had said during the police investigation. Had he done so, he could without any impropriety have caught the discrepancies between the statements made by these witnesses to the investigating officer and their evidence at the trial, to be brought on the record by himself putting questions to the witnesses under Section 165 of the Evidence Act. There is, in our opinion, nothing in Section 162 CrPC to prevent a Trial Judge, as distinct from the prosecution or the defence, from putting to prosecution witnesses the questions otherwise permissible, if the justice obviously demands such a course. In the present case, we are strongly of the opinion that is what, in the interests of justice, the Trial Judge should have done but he did not look at the record of the police investigation until after the investigating officer had been examined and discharged as a witness. Even at this stage, the Trial Judge could have recalled the officer and other witnesses and questioned them in the manner provided by Section 165 of the Evidence Act. It is regrettable that he did not do so.

(emphasis supplied)

55. In **Birbal Nath vs State of Rajasthan & Ors., (2023) SCC OnLine SC 1396**, it has been observed as below:

“19. Statement given to police during investigation under Section 161 cannot be read as an “evidence”. It has a limited applicability in a Court of Law as prescribed under Section 162 of the Code of Criminal Procedure (Cr.P.C.).

20. No doubt statement given before police during investigation under Section 161 are “previous statements” under Section 145 of the Evidence Act and therefore can be used to cross examine a witness. But this is only for a limited purpose, to “contradict” such a witness. Even if the defence is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness. It is here that we feel that the learned judges of the High Court have gone wrong.

(emphasis supplied)

56. Recently, in **Alauddin & Ors. vs State of Assam & Anr., (2024) SCC OnLine SC 760**, the Supreme Court again considered the manner in which a prosecution witness may be cross-examined with the help of their prior statement. Referring to Section 162 of the Cr.P.C. and Section 145 of the Indian Evidence Act, the Supreme Court has observed as below:

“6.....

The basic principle incorporated in sub-Section (1) of Section 162 is that any statement made by a person to a police officer in the course of investigation, which is reduced in writing, cannot be used for

any purpose except as provided in Section 162. The first exception incorporated in sub-Section (2) is of the statements covered by clause (1) of Section 32 of the Indian Evidence Act, 1872 (for short, ‘Evidence Act’). Thus, what is provided in sub-Section (1) of Section 162 does not apply to a dying declaration. The second exception to the general rule provided in sub-Section (1) of Section 162 is that the accused can use the statement to contradict the witness in the manner provided by Section 145 of the Evidence Act. Even the prosecution can use the statement to contradict a witness in the manner provided in Section 145 of the Evidence Act with the prior permission of the Court. The prosecution normally takes recourse to this provision when its witness does not support the prosecution case. There is one important condition for using the prior statement for contradiction. The condition is that the part of the statement used for contradiction must be duly proved.”

(emphasis supplied)

57. Specifically, with respect to Section 145 of the Indian Evidence Act, the Supreme Court observed as below:

“8.....

The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross-examined by asking whether his prior statement exists. The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is

recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the contradictory part of his previous statement is proved the contradictions can be said to be proved. The usual practice is to mark the portion or part shown to the witness of his prior statement produced on record. Marking is done differently in different States. In some States, practice is to mark the beginning of the portion shown to the witness with an alphabet and the end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was shown to the witness. Which part of the prior statement is shown to the witness for contradicting him has to be recorded in the cross-examination. If the witness admits to having made such a prior statement, that portion can be treated as proved. If the witness does not admit the portion of his prior statement with which he is confronted, it can be proved through the Investigating Officer by asking whether the witness made a statement that was shown to the witness. Therefore, if the witness is intended to be confronted with his prior statement reduced into writing, that particular part of the statement, even before it is proved, must be specifically shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the cross-examination of the concerned

police officer. The object of this requirement in Section 145 of the Evidence Act of confronting the witness by showing him the relevant part of his prior statement is to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness."

(emphasis supplied)

58. Recently, in **Lavkush vs State of U.P., (2024) SCC OnLine All 7674**, a coordinate bench of this Court also had the occasion to consider the manner of confrontation of a witness with his previous statement, in accordance with the Section 145 of the Indian Evidence Act, 1875. In that, it was observed as below:

"37.....

The basic principle incorporated in sub-Section (1) of Section 162 is that any statement made by a person to a police officer in the course of investigation, which is reduced in writing, cannot be used for any purpose except as provided in Section 162. The first exception incorporated in sub-Section (2) is of the statements covered by clause (1) of Section 32 of the Indian Evidence Act, 1872 (for short, 'Evidence Act'). Thus, what is provided in sub-Section (1) of Section 162 does not apply to a dying declaration. The second exception to the general rule provided in sub-Section (1) of Section 162 is that the accused can use the statement to contradict the witness in the manner provided by Section 145 of the Evidence Act. Even the prosecution can use the statement to contradict a witness in the manner provided in Section 145 of the Evidence Act with the prior permission of the Court. The prosecution normally takes

recourse to this provision when its witness does not support the prosecution case. There is one important condition for using the prior statement for contradiction. The condition is that the part of the statement used for contradiction must be duly proved.

38. When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under Section 161(1) or Section 164 of CrPC has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under Section 161(1) or Section 164 of CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the Police, which he states before the Court in his evidence. The explanation to Section 162 CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the cross-examination.

39.....

.....

The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross-examined

by asking whether his prior statement exists. The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the contradictory part of his previous statement is proved the contradictions can be said to be proved. The usual practice is to mark the portion or part shown to the witness of his prior statement produced on record. Marking is done differently in different States. In some States, practice is to mark the beginning of the portion shown to the witness with an alphabet and the end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was shown to the witness. Which part of the prior statement is shown to the witness for contradicting him has to be recorded in the cross-examination. If the witness admits to having made such a prior statement, that portion can be treated as proved. If the witness does not admit the portion of his prior statement with which he is confronted, it can be proved through the Investigating Officer by asking whether the witness made a statement that was shown to the witness. Therefore, if the witness is intended to be confronted with his prior statement reduced into writing, that particular part of the statement, even

before it is proved, must be specifically shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the cross-examination of the concerned police officer. The object of this requirement in Section 145 of the Evidence Act of confronting the witness by showing him the relevant part of his prior statement is to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness.

40.....

It must be noted here that every contradiction or omission is not a ground to discredit the witness or to disbelieve his/her testimony. A minor or trifle omission or contradiction brought on record is not sufficient to disbelieve the witness's version. Only when there is a material contradiction or omission can the Court disbelieve the witness's version either fully or partially. What is a material contradiction or omission depends upon the facts of each case. Whether an omission is a contradiction also depends on the facts of each individual case."

59. In Mayank Parasari v. State of U.P., Neutral Citation No. - 2025:AHC:23769-DB, in relation to requirements of Section 145 Cr.P.C., this Court observed as below :

"47. Thus, though neither the prosecution nor the defence may rely by way of evidence - on any previous statement recorded under Section 161 Cr.P.C., at the same time, Sections 145 & 155 of the Indian Evidence Act and Section 162 Cr.P.C., allow the party adversely affected by a deposition made

at a trial, to confront the witness (making such deposition), with their previous statement including that recorded under Section 161 Cr.P.C., to either impeach the credibility of the witness or to bring out a contradiction. If that confrontation (with any previous statement) is not offered by that affected party, in the manner permitted under Section 145 and/or 155 of the Evidence Act or Section 162 Cr.P.C., then, the deposition made would have to be considered on its own weight, in the individual facts of each case and its correctness or truthfulness may not be doubted merely because it may be claimed (by the party affected by the depositions made by that witness), that there exists contrary to the deposition made a previous statement of the same witness, that runs contrary to the depositions thus made."

60. Once the defence failed to confront 'X' with her alleged previous statement recorded under Section 161 Cr.P.C., it never became open to the learned trial court to either rely on that statement or to disbelieve or discredit the prosecution evidence. The right of the defence or the right of the parties to confront a witness with their previous statement is a right that vests with the parties. While it may remain open to the Court also to require confrontation of any witness with their previous statement, the stage for the same would be when the evidence was being recorded. Here, suffice to note, no confrontation was ever offered to 'X' with any previous statement. At the stage of hearing, it was neither open to the parties nor to the learned trial Court to look into the statement recorded under Section 161 Cr.P.C., to disbelieve the proven facts or to observe that there pre-existed a quarrel

between the parties. Plainly, the findings recorded by the learned trial Court are perverse, to that extent.

61. Second, even if any discrepancy of the nature pointed out above, were to be cited, merely because there may have existed a dispute between the parties, it may not be a stand alone reason to discredit the prosecution story, that was otherwise duly proven. The nature of quarrel was neither specified nor it was shown to be such as may have, prompted 'X' and her family members to therefore rush to make a false accusation against the appellant. Neither the nature of the quarrel nor its date and time were proven. The F.I.R. against the accused is of a heinous offence of rape. Evidence exists both on the strength of ocular evidence offered by 'X' as also other material, in support of the prosecution story.

62. As to the absence of internal injuries or serious external injuries, there is no rule or law available that such injuries must be proved to establish the occurrence of rape. Once it has been proven by the prosecution on the strength of ocular evidence of the victim that she was overpowered or subjugated to the point that her resistance stood broken down or negated, the proof of occurrence through injury would be a medieval construct, but not modern reality. In the first place, the threat practiced by the accused (on the strength of firearm) to cause fatal injury, was proven. Second, it was also proven that 'X' alongwith her fiancée were filmed in nude, by the accused. On both counts, sufficient evidence was led by the prosecution that the resistance that may have otherwise been offered, stood neutralized by the accused before committing the above rape. Further,

evidence was led by the prosecution to establish that the resistance had been neutralized by establishing that 'R' the younger brother of 'X' aged about 12 years was assaulted and forced out of the 'apartment' before 'X' was filmed nude and thereafter, her fiancée, 'S' was forced out of the 'apartment' under the threat of a gun, before rape was committed on 'X'. Once the victim, who is 18 years of age, had been thus subjugated and overpowered mentally, psychologically and physically, to accept the submission that she must be shown to have suffered internal and external injuries, would be ridiculous.

63. As to the delay in lodging the F.I.R., the law again is clear. In **Lalai @ Dindoo and Another Vs. State of U.P. (1975) 3 SCC 273**, a three judge bench of the Supreme Court considered the issue and observed as below:

“6. The only other ground on which Radhey Shyam's evidence was challenged is that though the incident took place at about 10.30 p.m. on the 24th it was not until 11 a.m. on the 25th that Radhey Shyam lodged the first information report. This undoubtedly is an important circumstance but the Sessions Court and the High Court have given a reasonable explanation of the delay. The night was dark, the road was rough and the assault so fierce that Radhey Shyam could not have collected his wits to proceed straightway to the police station. There is no indication in the evidence that the names of the appellants were incorporated in the first information report as a result of any confabulation.”

(emphasis supplied)

64. In **Tara Singh and Others Vs. State of Punjab 1991 Supp (1) SCC 536**,

the Supreme Court considered the issue of delay in lodging of F.I.R. It was observed as below:

“4. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report. Of course the Supreme Court as well as the High Courts have pointed out that in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the courts are cautioned to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay. These are all matters for appreciation and much depends on the facts and circumstances of each case. In the instant case there are three eye-witnesses. They have consistently deposed that the two appellants inflicted injuries on the neck with kirpans. The medical evidence amply supports the same. In these

circumstances we are unable to agree with the learned counsel that the entire case should be thrown out on the mere ground there was some delay in the FIR reaching the local Magistrate. In the report given by PW 2 to the police all the necessary details are mentioned. It is particularly mentioned that these two appellants inflicted injuries with kirpans on the neck of the deceased. This report according to the prosecution, was given at about 8.45 p.m. and on the basis of the report the Investigating Officer prepared copies of the FIR and despatched the same to all the concerned officers including the local Magistrate who received the same at about 2.45 a.m. Therefore we are unable to say that there was inordinate and unexplained delay. There is no ground to doubt the presence of the eye-witnesses at the scene of occurrence. We have perused their evidence and they have withstood the cross-examination. There are no material contradictions or omissions which in any manner throw a doubt on their veracity. The High Court by way of an abundant caution gave the benefit of doubt to the other three accused since the allegation against them is an omnibus one. Though we are unable to fully agree with this finding but since there is no appeal against their acquittal we need not further proceed to consider the legality or propriety of the findings of the High Court in acquitting them. So far as the appellants are concerned, the evidence against them is cogent and convincing and specific overt acts are attributed to them as mentioned above. Therefore we see absolutely no grounds to interfere. The appeal is, therefore, dismissed.”

(emphasis supplied)

65. Then in **Ravinder Kumar and Another Vs. State of Punjab (2001) 7**

SCC 690, there was delay of two days in lodging the F.I.R. In that, the Supreme Court made following pertinent observations:

“13. The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein.

14. When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased

might take some appreciable time to regain a certain level of tranquillity of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident.

15. We are not providing an exhaustive catalogue of instances which could cause delay in lodging the FIR. Our effort is to try to point out that the stale demand made in the criminal courts to treat the FIR vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR.

...

16. In the present case, no doubt, there is apparently a long delay of two days to give information to the police but the bereaved widow was not absolutely certain that she lost her husband once and for all until her brother-in-law confirmed to her, after identifying the dead body, that the same was that of her husband. The initial tension and suspense undergone by her would have billowed up into a massive wave of grief. It is only understandable how much time a woman, placed in such a situation, would take to reach some level of placidity for communicating to the strangers of what she knew about the last journey of her husband. We therefore find no merit in the contention based on the delay in lodging the FIR.”

(emphasis supplied)

66. In an occurrence of this nature where it was proven as discussed above, it cannot be accepted that there was delay. Some reasonable time may always be consumed by the parties visited with such traumatic occurrences, to rationalize their situation and to chalk out their future course of action. Suffice to note, it is not as simple as it may sometimes appear why an F.I.R. was not lodged within a few hours of the occurrence. It takes conviction, courage, efforts and sometimes even reference, to lodge an F.I.R. To the extent, it was proven, in these facts that 'X' was disoriented and unable to think clearly till next morning and she first came to disclose to her family, on 12.09.2016, it would have taken time for her family as well to react by lodging the F.I.R. In the first place, the occurrence is disclosed to have taken place when the victim 'X' was enjoying the company of her fiancé who was also assaulted by being first filmed in the nude and thereafter forced out of the accommodation by the accused. Eventually, that engagement of 'X' broke down. That fact was also proven at the trial. The Court may therefore allow for a margin to exist to the informant side and it may not hold it accountable for every hour or day. To the extent, there is no inordinate delay in lodging the F.I.R., it was not for the learned trial Court to throw out the ocular evidence.

67. To the extent (noted above), the findings recorded by the learned trial Court are wholly perverse, occasion exists for the appeal jurisdiction to arise against the order of acquittal made by the learned trial Court.

68. As to the conclusion that may have been drawn, we again note that the learned trial Court has reached an

unsustainable conclusion that the occurrence had not been caused-by referring to the delay, the absence of internal and external injuries and bad relations between the parties. As to the exact conclusion that was permissible in the facts proven, there is absolutely no doubt that the testimony/deposition of 'X' remained wholly consistent. She maintained her stand without a blemish.

69. As discussed above, not only her deposition was consistent but that was wholly supported by 'R' who was also present till before commission of rape. No doubt whatsoever emerged in that evidence. Again, as discussed above, the deposition of 'X' was sufficient to offer conviction since her deposition stands on the higher footing as of an injured witness. Unless any reasonable doubt emerged in her deposition, no other conclusion except that of guilt of the appellant, may have been reached by the learned trial Court. Minor discrepancies cited as to number of persons/accomplices, is also of no significance in the present case, inasmuch as it is not the prosecution story that any person other than the accused committed rape on 'X' or that there were accomplices in the commission of rape. Other persons were only described to be persons who were present alongwith the accused before he committed rape on 'X'. Whether that would constitute offence or not and whether the prosecution may have erred in not seeking their conviction also, is an issue extraneous to the trial at hand. Therefore, the opinion of the learned trial Court may not have been colored or influenced by the fact that at some stage the prosecution witnesses had described that 3-4 accomplices were present with the accused before he caused the occurrence of

rape. To the extent, they were never described to have caused that occurrence, the fact that they were not identified, tried or convicted remained extraneous.

70. Similarly, the fact that 'S', fiancé of 'X' was not examined, is extraneous to the issue. At the cost of repetition, it may be noted, the trial may have been concluded solely on the strength of ocular evidence of 'X', the injured witness. In our considered view, no other conclusion except that of guilt was proven at the trial.

71. For the above reasons, we find, it is a fit case to offer interference with the order of acquittal. Accordingly, the government appeal is **allowed**. The judgment and order dated 08.12.2023 passed by the Court of A.S.J./F.T.C.-I/Special Judge, Gangster Act, Auraiya in S.T. No. 75 of 2017 (State of U.P. v. Pushpendra @ Gabbar), arising out of Case Crime No. 694 of 2016 acquitting the accused of the charge under Sections 452, 376, 506 I.P.C., Police Station Auraiya, District Auraiya is **set aside**. We hold the accused guilty of offence under Sections 376, 452 and 506 I.P.C.

72. Heard the learned counsel for the accused. On the issue of sentencing, learned counsel for the accused has prayed that minimum sentence be imposed on the accused since the accused has already undergone incarceration in jail for about 7 years during trial. We have duly considered the prayer made by the learned counsel for the accused. In view of the proven facts, we find, the accused is liable to be sentenced for 7 years, a minimum sentence of simple imprisonment for the offence committed under Section 376 I.P.C. together with fine Rs. 45,000/-, in default thereof, he

may suffer further simple imprisonment for 6 months; under Section 452 I.P.C., 2 years simple imprisonment together with fine Rs. 5000/-, in default thereof, 3 months simple imprisonment; under Section 506 I.P.C., 2 years simple imprisonment. All sentences are directed to run concurrently.

73. We are aware that the accused may have remained confined for 6 years 9 months and 11 days (actual). The accused would also remain entitled to remission under prison rules. For the purpose of giving effect to this order, first, period of undergone together with remission may be computed by the Jail Superintendent, District Jail, Etawah, U.P. where the accused was confined, pending trial. Due communication of the same may be made to the accused through trial Court within 30 days from today. The accused is on bail. If the accused is required to serve out any part of the remaining sentence, he may surrender on or before 30.07.2025, failing which the trial Court is directed to take coercive steps in accordance with law. Compliance report be also submitted by the trial Court.

74. The fine imposed by this Court, if deposited by the accused, be paid out to the victim 'X'.

75. Also, Criminal Appeal u/s 372 Cr.P.C. No. 83 of 2024 filed by the informant and victim is **allowed**.

76. Trial court record be returned to the Court concerned along with a copy of this order.

Per:- Sandeep Jain,J. (concurring)

I have gone through the judgement drafted by my learned brother and I fully agree with the reasoning and conclusion drawn by my learned brother. **I am not repeating those facts and evidence which have been already mentioned by my learned brother in his judgement.**

1. The trial court has disbelieved the prosecution version on the following grounds:-

A) The alleged incident took place on 11.09.2016 at about 01:30 p.m, but the F.I.R was lodged on 14.09.2016 at 05:30 p.m. by the 'X's brother P.W-2. The distance between the place of occurrence and Police Station was merely 2 k.m. The trial court has held that there is delay of three days in lodging the F.I.R. and the prosecution has failed to give any explanation for this delay.

B) The trial court has mentioned that the learned D.G.C. has given the reason of delay that due to fear, the 'X's family members could not register the F.I.R.

C) That no motive of the alleged incident has been assigned by the prosecution.

D) The accused has been falsely implicated in this case due to enmity.

E) The accused used to sing vulgar songs in front of the 'X', but regarding this no complaint was lodged with the police and due to this, the accused has been falsely implicated.

F) At the time of alleged incident, the 'X's fiancé 'S' was also present with the 'X', but he has not been examined by the prosecution.

G) There is a contradiction in the testimony of the 'X' P.W.-1 and the

informant P.W.-2, regarding literacy of P.W.-2.

H) There is a serious contradiction in the testimony of informant P.W. 2 and 'R' P.W. 6, in the manner, in which the information of the incident was given by phone after the alleged incident/occurrence.

I) There is a serious contradiction between the testimony of the witnesses, regarding how the 'X' P.W.-1 reached her house after the occurrence.

2. Now I, analyse the conclusions drawn by the learned trial court in detail.

3. The Hon'ble Apex Court in the Case of *Satyapal v. State Of Haryana, (2009) 6 SCC 635* has held that delay in lodging the first information report in a rape case is a normal phenomenon. Ordinarily the family of the 'X' would not intend to get a stigma attached to the 'X'.

4. The Hon'ble Apex Court in the Case of *State of Himachal Pradesh Vs. Prem Singh (2009) 1 SCC 420* has held that the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the F.I.R.

5. The Hon'ble Apex Court in the Case of *Satpal Singh Vs. State of Haryana (2010) 8 SCC 714* has held that

delay in lodging F.I.R. in sexual offences has to be considered with a different yardstick. In case of sexual offences, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to the Court or not. In such a fact situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur.

6. In the present case, the first information report regarding the incident has been lodged by the 'X's brother, who has been examined as P.W.-2 in the trial court, who has stated in his examination-in-chief that due to fear of accused, he could not go to the police station on the date of occurrence. On 14.09.2016, finding opportunity he had gone to Auraiya and then had got typed an application and thereafter had given it to S.H.O., Auraiya, on the basis of which first information report was registered. In the cross-examination this witness has mentioned that on the date of the incident at 1:30 p.m. his brother had informed about the incident, by phone. At that time his father was not present but mother was present and he had not told his mother about the incident. He has further mentioned that he had first informed his uncle 'L' about the incident at about 2:00 p.m. on the same day and his uncle had directed him to go to Auraiya with 4-6 persons. Then on three motorcycles they had gone to Auraiya and had reached the place of occurrence but none was present there. Thereafter, they were not aware of the whereabouts of the 'X' and his younger brother. This witness has further mentioned that the 'X' was found in Nainapur village near a Sheesham tree, besides the road, and thereafter he had brought the 'X' to his house and by that

time sunset had occurred. This witness has mentioned that at that time the 'X' was unconscious and thereafter he had got the 'X' treated by Doctor Som Singh and thereafter some medication was given to the 'X'. At about 8-9 p.m. the 'X' became conscious but he had no talk with the 'X'. He had a talk with the 'X' in the next morning and then the 'X' had told about the incident but on the next day he did not go to Auraiya for lodging the first information report. Third day after the incident had gone to Auraiya with Baba Ramji, mother, father along with 'X' and reached the police station at 5:30 p.m., then the police had got examined the 'X'. The 'X' P.W.-1 has also mentioned in her cross-examination that her engagement ceremony was performed with 'S' on 16.02.2016 but her marriage was not solemnized with him before and after the incident. It is the case of the prosecution that at the time of the incident 'X's fiancé 'S' and her younger brother 'R' P.W.-6 were also present with the 'X' and then the accused had come armed with a country-made pistol along with his accomplices and had got the door forcibly opened.

7. From the above testimony of 'X' P.W.-1 and informant P.W.-2, it is evident that the informant came to know about the incident fully on the next day of the incident i.e. in the morning of 12.09.2016, but the 'X' and her family members took some time to deliberate, whether to get the first information report lodged or not? It is quite natural because at that time 'X' was engaged with 'S' and the honour of the 'X's and 'S's family was involved, as such, the family deliberated and took time to take a decision to proceed further in this matter. The Hon'ble Apex Court has held that in rape cases generally there is a delay in lodging the first information report since

the honour of the family is involved and in view of this, the delay in lodging first information report has to be considered with a different yardstick in such cases. In view of this, in my opinion, the delay of about three days in lodging first information report in this case is not fatal to the prosecution case and does not make the prosecution story unbelievable.

8. The trial court has come to the conclusion that the prosecution has failed to prove the motive of the incident. This conclusion of the trial court is wholly perverse because sexual offences are crimes of passion in which, there is no requirement to prove the motive of the offence on the part of the prosecution.

9. The trial court has recorded a finding that the accused has been falsely implicated due to enmity. The accused used to sing vulgar songs in the presence of the 'X' but no complaint was got registered with the police regarding this act of the accused. To the contrary, the 'X' P.W.-1 has been suggested in her cross-examination that she had a very good friendship with the accused. The 'X' has specifically denied in her cross-examination that she had enmity with the accused. It has been further suggested to the 'X' that she used to talk day and night with the accused through mobile phone having a Vodafone S.I.M. No.7379629374, which she has denied. It has been further suggested that the accused was not accompanied by other accomplices and further the accused was not armed with a country-made pistol but she has denied these suggestions. It has been further suggested to the 'X' that the incident took place with her consent.

10. From the above testimony of the 'X' P.W.-1, it is apparent that according to

the accused, the alleged incident occurred with the consent of the 'X', to which the 'X' has specifically denied. The 'X' in her previous statement under Sections 161 and 164 Cr.P.C. as well as in her examination-in-chief and cross-examination in the trial court has mentioned that the accused has committed rape upon her. The 'X' has also specifically denied that there was previous enmity and due to this, a false case has been got registered against the accused. On the one hand the accused is taking a stand that there was a deep friendship and physical consenting relationship between him and the 'X' and on the other hand a contrary stand has been taken that due to enmity he has been falsely implicated in this case. Both these stands taken by the accused are contradictory to one another. As such, the trial court has committed a patent illegality in recording a finding that the accused has been falsely implicated.

11. The trial court has come to the conclusion that since 'X's fiancé 'S' was present at the time of the occurrence, he must have been examined by the prosecution in the trial court and his absence from the trial has created serious doubts in the prosecution story. The 'X' P.W.-1 in her cross-examination has stated that prior to the incident she was engaged with 'S' on 16.02.2016 but her marriage with 'S' could not be solemnized because the accused had threatened her and 'S' with a country-made pistol in a public place. The 'X' has accepted that her marriage has been solemnized with 'S-2' on 18.06.2017 and she has not concealed anything from her in-laws regarding the incident. It is the case of the prosecution that at the time of the incident, the 'X' was present in her house along with her fiancé 'S' and her younger brother 'R' P.W.-6 and at that time the accused had barged into the house, armed

with country made pistol, and ordered the 'X' and his fiancée 'S' to get undressed and threatened them with dire consequences, if they failed to do so. After getting them undressed, made a video film and thereafter the 'X's fiancée was forced out of the house and the accused had committed rape upon the 'X'. 'R' P.W.-6 has mentioned in his examination-in-chief that accused arrived at the spot of occurrence on 11.09.2016 at about 1:30 p.m., at that time the door was closed, the accused was armed with country-made pistol, his 3-4 accomplices were also present and thereafter the accused had assaulted P.W.-6 and forced him out of the house.

12. From the above evidence, it is apparent that after the incident, the engagement of 'X' with 'S' had been broken and 'X's marriage could not be solemnized with 'S'. It can be inferred that due to this incident the honour of 'S' and his family had been tarnished because he was engaged with the 'X', as such, he could not be examined as a prosecution witness, but due to his non-examination prosecution story cannot be doubted. The trial court has committed a serious illegality in doubting the prosecution story due to the non-examination of 'S'.

13. The trial court has recorded a finding that there is a contradiction in testimony regarding the literacy of informant P.W.-2 and the manner in which the information of the incident was given, after the incident. It is clear that both the above considerations are irrelevant. The literacy of P.W.-2 and the manner in which information of the incident was communicated to P.W.-2 has nothing to do with the actual incident itself. The trial court has seriously misdirected itself in

considering the above irrelevant facts in disbelieving the prosecution story.

14. The trial Court has recorded a finding that the medical evidence of the 'X' does not corroborate the 'X's testimony and the DNA report is also not available, which creates a doubt in the prosecution story.

15. The Hon'ble Apex Court in the case of **State of Rajasthan Vs. N.K. (2000) 5 SCC 30** (by three Judges), has held that the testimony of prosecutrix in a rape case should be appreciated on the basis of probabilities like testimony of any other witness and conviction can be based solely on such testimony but if court finds its difficult to accept her testimony, it may seek assurance to her testimony which may be short of corroboration from other evidence. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. It has been further held that whether the prosecutrix was a consenting party or not, evidence of the prosecutrix that she was forcibly subjected to sexual intercourse should normally be believed unless there is material leading to an inference of her consent. Absence of marks of external injuries on the person of the prosecutrix by itself not sufficient to draw an inference of consent of the prosecutrix. Absence of visible marks of injuries on the person of the prosecutrix on the date of her medical examination would not necessarily mean that she had not suffered any injuries or that she had offered no resistance at the time of commission of the crime.

16. The Hon'ble Apex Court in the case of *State of Himachal Pradesh vs. Mango Ram*, (2000) 7 SCC 224 (by three Judges), has held that submission of body by prosecutrix under fear of terror does not amount to consent. Whether there was resistance by the prosecutrix depends upon relevant circumstances. Absence of marks of violence on the body of the prosecutrix as well as accused not of much significance when accused was examined three days after the incident. It was also held that consent for the purposes of Section 375 I.P.C. requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. It was also held that offence of rape being a serious one, Court should pay careful attention and show greater sensitivity, the evidence should be appreciated on broader probabilities.

17. The Hon'ble Apex Court in the case of *State of Orissa vs. Thakara Besra*, (2002) 9 SCC 86, has held that if evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with case involving sexual molestations.

18. The Hon'ble Apex Court in the case of *Dastagir Sab vs. State of Karnataka*, (2004) 3 SCC 106, has held

that absence of injuries in private parts would not rule out being subjected to rape.

19. The Hon'ble Apex Court in the case of *Prithi Chand vs. State of Himachal Pradesh*, AIR 1989 SC 702 and *Narayanamma Vs. State of Karnataka*, (1994) 5 SCC 728, has held that mere absence of spermatozoa in vaginal smear cannot cast a doubt on the correctness of the prosecution case.

20. The Hon'ble Apex Court in the case of *State of Rajasthan vs. Noore Khan*, 2000 (3) Supreme Law Today 389 and *State of Punjab vs. Ramdev Singh*, (2004) 1 SCC 421, has held that if 'X' was accustomed to sexual intercourse, did not and cannot in law gave licence to any person to rape her. Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the 'X'.

21. The Hon'ble Apex Court in the case of *Mohd. Imran Khan vs. State of NCT of Delhi*, 2012 (1) SCC (Crl) 240, has held that if no other witness has seen the commission of offence, hence non-examination of other witnesses is immaterial. Sole testimony of 'X' is sufficient, if inspires confidence and is found to be reliable. No corroboration is required.

22. The Hon'ble Apex Court in the case of *Suresh N. Bhusare and others vs. State of Maharashtra* (1999) 1 SCC 220, has held that where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a view to rule out consent on her part and

there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence..

23. The Hon'ble Apex Court in the case of **Tameezuddin @ Tammu vs State (NCT Of Delhi) (2009) 15 SCC 566**, has held that it is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.

24. The Hon'ble Apex Court in the case of **State of Punjab vs. Gurmit Singh and others, AIR 1996 SC 1393 and State of U.P. vs. Pappu @ Yunus and another, AIR 2005 SC 1248**, has held that even in cases where there is some material to show that the 'X' was habituated to sexual intercourse, no inference of the 'X' being a woman of "easy virtues" or a woman of "loose moral character" can be drawn. Such a woman has a right to protect her dignity and cannot be subjected to rape only for that reason. She has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. Merely because a woman is of easy virtue, her evidence cannot be discarded on that ground alone rather it is to be cautiously appreciated.

25. The Hon'ble Apex Court in the case of **Narender Kumar vs. State (NCT of Delhi) AIR 2012 SC 2281**, has held that prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and

material on record to record the conviction of the accused. Conviction can be based on sole testimony of the prosecutrix provided it lends assurance to her testimony. However, in case the court has reason not to accept the version of prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecution is found to be improbable, the prosecution case becomes liable to be rejected.

26. From the above principles laid down by Hon'ble Apex Court, it is evident that where the evidence of the 'X'/prosecutrix is trustworthy, credible and inspires confidence then conviction can be based on her sole testimony, however in case, the Court has reason not to accept the version of the prosecutrix on its' face value, it may look for corroboration and in case, the evidence is read in it's totality and if the story projected by the prosecution is found to be improbable, then the prosecutrix's case becomes liable to be rejected. It is also evident that in a rape case the 'X' is not an accomplice but is an injured witness, whose evidence has to be given due credit.

27. It is also evident that absence of injury on private parts of the 'X', absence of spermatozoa in vaginal smear does not make the prosecution case doubtful. It is also evident that if the 'X' is accustomed to sexual intercourse, even then she cannot be raped. It is also evident that where there is no other witness of the commission of offence, then non-examination of other witnesses is immaterial and the sole testimony of the 'X' is sufficient, if it inspires confidence and is found to be reliable.

28. In this case, the 'X' P.W.-1 has consistently stated in her previous

statement recorded under Sections 161 and 164 Cr.P.C. and in her examination-in-chief and cross-examination in trial court, that the incident took place on 11.09.2016 at about 01:30 p.m., when she was inside her house alongwith his younger brother 'R' P.W.-06 and her fiancé 'S' then the accused alongwith his accomplices forced his entry into the house and he forced 'R' out of the house. The accused was armed with a country made weapon, who ordered the 'X' and her fiancé 'S' to get undressed and when they refused, they were forcibly undressed, thereafter the accused made a video clip of them and 'S' was allowed to dress and was forced out of the house, thereafter the accused raped the 'X'. The 'X' has specifically mentioned that she was semi-conscious after the incident. The accused had threatened the 'X' not to disclose about the incident to anyone, failing which she would suffer dire consequences. After the rape, the accused forcibly took the 'X' by a motorcycle and dropped her near village- Nainapur, where the 'X' became unconscious.

29. There is no material inconsistency or improvement in the previous statements and the substantive evidence given by the 'X' in the Court, so as to make the testimony of 'X' untrustworthy.

30. The 'X' was medically examined on 15.09.2016 at 11:30 a.m. by Dr. Seema Gupta P.W.-03. The following injuries were found on the body of 'X':-

a) Brown colour abrasion was present on both sides of neck.

b) 3 X 1.5 c.m. abrasion on right side of the neck, 8 c.m. below right ear.

c) 3 X 2.5 c.m. abrasion on left side of neck, 7.5 c.m. below left ear.

d) 6 X 3.5 c.m. brown colour abrasion was present at right buttock, 9 c.m. away from middle.

31. The 'X's hymen was found old torn and healed. No spermatozoa was found in the vaginal swab of the 'X'. The medico legal report mentions that signs of struggle was present on the body of the 'X'.

32. Dr. Seema Gupta P.W.-3 has stated in her examination-in-chief that there were signs of struggle on the 'X's body, which could have occurred at the time of rape. In the cross-examination P.W. 3 has mentioned that all the injuries sustained by the 'X' were simple in nature, no internal injuries were found on the body of 'X'. Hymen was old torn. This witness has mentioned that by way of D.N.A. test, it could have been confirmed whether rape has been committed or not, but she has not received the D.N.A. report. She has also mentioned that the injuries sustained by the 'X' could have been inflicted in self-defence.

33. The trial court has specifically mentioned that the medical report of the 'X' does not support the prosecution story, which is a perverse finding. It is evident, that the 'X' has sustained simple injuries on her neck and right buttock, which according to the doctor P.W.-3, are signs of struggle, which could have occurred when 'X' tried to defend herself. The hymen of the 'X' has been found to be old torn and healed. Besides this, absence of spermatozoa in the 'X's vaginal swab also does not make the prosecution story false.

34. It is also evident that D.N.A. sample of the 'X' was not taken by the Investigating Officer S.I. Ratan Singh P.W.-4. He has also accepted in his cross-examination that he has not collected forensic evidence from the spot. It is well settled that if any lapse is conducted by the I.O. during the investigation, then its benefits could not be given to the accused. In view of this, in my opinion, non-collection of the forensic material from the spot and D.N.A. sample from the 'X', does not make the prosecution story untrustworthy.

35. The 'X' P.W.-1 has been extensively cross-examined and she has been suggested in her cross examination that she had a very good friendship with the accused. The 'X' has stated that there was no enmity with the accused. The 'X' has been further suggested that she used to talk with the accused day and night through her Vodafone mobile phone SIM No. 7379629374 and on the date of the incident, she had invited the accused on the above Vodafone mobile phone. She has been further suggested in her cross-examination that when the accused reached her house then on seeing the accused, 'S' left the 'X' 's house immediately. She has been further suggested that when the accused reached her house, she was alone with 'S'. She has been further suggested that the accused came alone at her house and the accused was not armed with a country made weapon, but she has denied all these suggestions.

36. The trial court has also recorded the demeanor of the 'X' during the cross-examination. At one point of time, during her cross examination, the 'X' was weeping in the court room. The 'X' has been further

suggested in her cross-examination that the incident occurred due to her consent.

37. The 'X' 's younger brother 'R' P.W.-6 has also corroborated the evidence of the 'X' P.W.-1. P.W.-6 has mentioned in his examination-in-chief that on 11.09.2016 at 01:30 p.m. he, 'X' and 'S' were present in their house then accused alongwith his 3 - 4 accomplices came, the accused was armed with country made weapon, the accused got the 'X' and 'S' undressed and when P.W.-6 objected, he was assaulted and forced out of his home. Thereafter, the 'X' had told P.W.-6 that after getting her and 'S' undressed, the accused had made a video clip, 'S' was forced out of the room and thereafter, the accused had committed rape.

38. It is true that 'R' P.W.-6 has not witnessed the offence of rape, but P.W.-6 has specifically mentioned that the accused, who was armed with a country made weapon came to the 'X' 's house and in his presence, the accused had ordered the 'X' and 'S' to undress. P.W.-6, has specifically mentioned that when he objected then he was slapped and was forced out of the house.

39. It is true that 'R' P.W.-6 is not a witness of the rape, but his testimony corroborates the testimony of 'X' P.W.-1 on the point that the accused came to the house of the 'X' on the date of occurrence, the accused was armed with a country made weapon and the accused ordered the 'X' and 'S' to get undressed.

40. Learned counsel for the accused-respondent has vehemently argued that the accused has been falsely implicated in the present case, but from the above analysis, it is evident that the 'X' P.W.-1 has

consistently stated that she has been raped by the accused and even in the cross-examination, the 'X' has been suggested that she was a consenting party in this incident, to which the 'X' has denied. There is no material inconsistency or material contradiction in the testimony of the 'X', so as to make her testimony unreliable. The 'X' has sustained simple injuries in the incident, which has been proved by the doctor P.W.-3. The suggestions given to the 'X' P.W.-1 in her cross-examination also prove that the accused was present at the relevant time of occurrence. According to the accused, the incident occurred with the consent of the 'X', which she has denied. The trial court has not analysed, the evidence of the 'X' and has no-where held that 'X' is untrustworthy. The trial court has only disbelieved the prosecution case, on the ground that there is previous enmity between the accused and the informant, the F.I.R. has been registered with inordinate delay and the medical report of the 'X' does not support the offence/incident of rape, which are wholly perverse findings, as has been analysed by me in this judgement herein before.

41. It is evident that, in view of the above analysis, only one conclusion is possible that the accused has committed rape of the 'X', but the trial court has misread the evidence and has misdirected itself, which has caused a serious miscarriage of justice. It is a perfect case requiring interference by the appellate court, in exercise of its appellate jurisdiction.

42. Heard learned counsel for the accused- respondent on the quantum of

sentence to be imposed on the convicted accused.

43. I fully agree with the punishment imposed by my learned brother.

44. The accused is given two months' time to surrender before the trial court concerned to undergo the remaining sentence, if any. Any period undergone by the accused during trial in jail, be adjusted from the sentence imposed.

(2025) 4 ILRA 1020

**APPELLATE JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 06.03.2025

BEFORE

**THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE KSHITIJ SHAILENDRA, J.**

Commercial Appeal No. 5 of 2025

Omnarayansri Agrifarmer Pvt. Ltd.

...Appellant

Versus

P.N.B. & Ors.

...Respondents

Counsel for the Appellant:

Arun Mishra, Vijay Pratap Singh

Counsel for the Respondents:

Jainendra Kumar Mishra

A. Recovery Law – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Section 34 – Civil Procedure Code – Order VII R. 11 – Bar of Civil Court – Account was declared NPA – Commercial Court rejected the plaint on the ground of its being barred – Validity challenged – Held, the suit filed by the appellant was barred by S. 34 of Act, 2002 as declaration of account of the appellant as N.P.A. could not be seen in isolation qua the measures taken or to be taken or may be taken in pursuance of the power conferred under

the Act, 2002 – *Mardia Chemicals Ltd.'s case* relied upon. (Para 17 and 19)

Commercial Appeal dismissed. (E-1)

List of Cases cited:-

1. Bank of India & anr.Vs M/s Maruti Civil Works; 2024 (1) ICC 396
2. Mrs. Leelamma Mathew Vs M/s Indian Overseas Bank & ors.; 2023 All SCR 1
3. Mardia Chemicals Ltd. Vs U.O.I.& ors.; 2004 (4) SCC 311.
4. IFCI Venture Capital Funds Ltd. Vs SRGP Corp. Ltd.; 2024 SCC Online Del 1148
5. Gaurav Lubricants Pvt. Ltd. Vs Tamilnadu Mercantile Bank Ltd.; 2022 (6) ALT 529
6. Jagdish Singh Vs Heeralal & ors.; 2014 (1) SCC 479

(Delivered by Hon'ble Arun
Bhansali, Chief Justice & Hon'ble Kshitij
Shailendra, J.)

1. Heard Shri Arun Mishra, learned counsel for the appellant, Shri Jainendra Kumar Mishra, learned counsel for respondents No. 1 and 2 and perused the record.

THE CHALLENGE

2. The present appeal under Section 13 (1-A) of Commercial Courts Act, 2015 (in short 'the Act, 2015') has been filed challenging an order dated 04.03.2025 whereby the Commercial Court, Allahabad has rejected an application filed by the appellant under Order XXXIX Rules 1 and 2 read with Section 151, Code of Civil Procedure (in short C.P.C.) in the Commercial Suit No. 1 of

2025 as well as the plaint thereof under Order VII Rule 11(d) C.P.C.

BRIEF FACTS

3. The plaintiff obtained a cash credit limit and term loan facility from the respondent-Bank for running its business and executed certain documents in relation thereto. After exchange of certain communications between the appellant and the Bank, the bank account of the appellant was declared as Non-Performing Assets (N.P.A.) on 29/30.07.2024. The appellant filed the Commercial Suit No. 1 of 2025 in question with a prayer to declare notice dated 30.07.2024 classifying the appellant's account as N.P.A., as void for want of requirements prescribed by the Reserve Bank of India and without rescheduling the term loan account. Another prayer made in the plaint was to direct the defendants to pay damages to the tune of Rs.10,00,000/- (rupees ten lac) towards mental agony and loss of business to the plaintiff.

4. By an order dated 06.08.2024, the Commercial Court rejected the application filed by the appellant seeking exemption from complying with the mandatory provisions of Section 12-A of the Act, 2015. The appellant approached this Court by filing First Appeal From Order (Defective) No. 857 of 2024, which was dismissed by Co-ordinate Bench of this Court by order dated 21.10.2024 mainly on the ground that the appeal against the order rejecting application seeking exemption from pre-institution mediation and settlement is not maintainable under the Act. The matter, thereafter, proceeded before the Commercial Court, where the Bank filed an application under Order VII Rule 11 C.P.C. praying for rejection of plaint on the ground that the suit is barred by provisions of **Securitisation and Reconstruction of Financial Assets and**

Enforcement of Security Interest Act, 2002 (in short 'Act, 2002'). The appellant also filed an application under Order XXXIX Rules 1 and 2 read with Section 151 C.P.C. seeking temporary injunction pending suit and, based upon certain further proceedings undertaken by the Bank under Act, 2002, the appellant also sought amendment in the plaint.

5. By the order impugned dated 04.03.2025, the Commercial Court has found the suit as barred by Section 34 of Act, 2002 and, consequently, not only rejected the injunction application but also the plaint itself by allowing the application under Order VII Rule 11(d) C.P.C.

SUBMISSIONS ON BEHALF OF THE APPELLANT

6. Assailing the order impugned, learned counsel for the appellant has vehemently argued that bar under Section 34 of the Act, 2002 would not be attracted at all, inasmuch as the said bar attracts against entertainment of any suit or proceedings in respect of any matter which the Debt Recovery Tribunal or Appellate Tribunal is empowered by or under the Act to determine. Submission is that the Tribunal is competent to entertain proceedings only under Section 17 of Act, 2002, which may be instituted by any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of Section 13 of Act, undertaken by the secured creditor. It is urged that declaration of bank account as N.P.A. is not one of the measures taken under Section 13(4) of the Act, 2002 and, hence, once the Tribunal is not competent to entertain a challenge to an order/notice declaring bank account as N.P.A., the Commercial Court has erred in rejecting the plaint. It is also

urged that the suit was filed on 06.08.2024 and the bank, maliciously issued notice under Section 13 (2) of the Act, 2002 on the same day, i.e. 06.08.2024, and whatever proceedings were thereafter undertaken by the Bank, the same may be a measure under Section 13(4) of the Act, 2002, but the suit on the date of its institution, would be maintainable under the law. Learned counsel further submits that cause of action in relation to a suit has to be seen on the date when the suit is instituted and the plaint cannot be rejected based upon subsequent developments or proceedings, particularly when the same were brought before the Court by the bank way of its defence, whereas, while considering the application under Order VII Rule 11 C.P.C., it is only the statement contained in the plaint that has to be seen and, for this reason also, the Commercial Court has erred in rejecting the plaint.

7. In support of the submissions, reliance has been placed on the following judgments:-

(i) **Bank of India and another vs. M/s Maruti Civil Works**, 2024 (1) ICC 396

(ii) **Mrs. Leelamma Mathew vs. M/s Indian Overseas Bank and others**, 2023 All SCR 1.

SUBMISSIONS ON BEHALF OF THE RESPONDENT BANK

8. Per contra, learned counsel for the Bank, with reference to its counter affidavit, submits that by issuing various notices, the appellant was asked to clear the dues, however, when the notices remained uncomplied with, the Bank was well within its right to declare the bank account of the appellant as N.P.A. As regards proceedings

under the Act, 2002, submission is that the Bank exercised its statutory power under Section 13 of the Act, 2002 by first issuing a notice under sub-section (2) thereof on 06.08.2024 calling upon the appellant to repay the loan amount within 60 days. The appellant filed objections under Section 13(3-A) of the Act, which were disposed of on 26.09.2024 justifying the action undertaken against the appellant. Thereafter, a possession notice was issued on 21.10.2024, which was followed by a sale notice dated 06.01.2025 fixing 11.02.2025 as the date for e-auction. The appellant, after receiving the sale notice, filed an application under Order XXXIX Rule 1 read with Section 151 C.P.C. on 16.01.2025 seeking restraint order against the proposed sale. When the Bank objected to the injunction application, the appellant filed an application under Order VI Rule 17 read with Section 151 C.P.C. praying for amendment of pleadings originally contained in the plaint and raised a challenge to the demand notice under Section 13(2) and possession notice under Section 13(4) of the Act, 2002. The Bank proceeded to issue a subsequent sale notice dated 28.02.2025 fixing 19.03.2025 as the date for e-auction and, in the aforesaid background facts, the Commercial Court was justified in rejecting the plaint as well as injunction application, as the suit was barred under Section 34 of the Act, 2002.

9. It is also urged that examining the validity of declaration of bank account as N.P.A. also comes within the jurisdiction of Debt Recovery Tribunal and, hence, the suit, as initially framed, itself was not maintainable and, even otherwise, it did not remain maintainable when the proceedings under Section 13(4) etc. were put in motion. In support of his submissions, learned counsel for

respondent-Bank has placed reliance upon the following judgments:-

(i) **Mardia Chemicals Ltd. vs. Union of India and others**, 2004 (4) SCC 311.

(ii) **IFCI Venture Capital Funds Limited vs. SRGP Corporation Limited**, 2024 SCC Online Del 1148.

(iii) **Gaurav Lubricants Pvt. Ltd. vs. Tamilnadu Mercantile Bank Ltd.** 2022 (6) ALT 529.

(iv) **Jagdish Singh vs. Heeralal and others**, 2014 (1) SCC 479.

ANALYSIS

10. Having heard the learned counsel for the parties, the Court, first of all, deems it appropriate to refer Section 13 of the Act, 2002 and its relevant sub-sections. The provision reads as under:-

“13. Enforcement of security interest.— (1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, **and his account in respect of such debt is classified by the secured creditor as non-performing asset.** then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured

creditor shall be entitled to exercise all or any of the rights under sub-section (4).

.....
(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

.....
 (c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.”

(emphasis by us)

11. A bare perusal of Section 13 would reflect that whenever any security interest is created in favour of any secured creditor, the same may be enforced, without intervention of the court or tribunal, by such creditor in accordance with the provisions of the Act. Declaration of an account as N.P.A., is recognized by sub-section (2) in the event when the borrower makes a default in repayment of secured debt or any instalment thereof. The same sub-section

further proceeds with issuance of notice by the secured creditor requiring the borrower to discharge in full his liabilities within 60 days failing which the secured creditor shall be entitled to exercise all or any of the measures under sub-section (4) to recover the secured debt.

12. The afore-quoted provision reflects that action under Section 13 (4) of the Act, 2002 is dependent upon and is in furtherance of the event(s) mentioned in sub-section (2) and cannot be read in isolation. Therefore, one or the other measure under sub-section (4) follows declaration of the bank account as N.P.A. and failure on the part of borrower to discharge liability despite notice.

13. There is no dispute about the fact that after the appellant's account was declared as N.P.A. on 29/30.07.2024, the Bank issued statutory notice under Section 13(2) of the Act, 2002 on 06.08.2024, which was followed by further proceedings upto the stage of e-auction of the secured assets. Therefore, various measures were undertaken by the Bank under Section 13(4) of the Act, 2002. It is for this reason that the appellant proceeded not only to seek amendment in the plaint by raising a challenge to the measures under Section 13(4), but also seeking a restraint order against taking of possession etc. by filing an application for injunction under Order XXXIX Rule 1 read with Section 151 C.P.C. The Commercial Court, under the said facts and circumstances, relied upon the judgement of Hon'ble Supreme Court in the case of **Mardia Chemicals Ltd. (supra)** and found the suit as barred by Section 34 of the Act, 2002 holding that the civil court or any authority has no power or

jurisdiction to entertain any suit or injunction application.

14. In the case of **Mrs. Leelamma Mathew (supra)**, Hon'ble Supreme Court was seized of a matter where the Bank had secured an immovable property admeasuring 54 cents in exercise of powers under the Act, 2002 and secured its possession and, thereafter, the said property was put to auction. The plaintiff therein, after inspection of the property, submitted quotation for sale of 54 cents and offered requisite sum. Tenders were invited on 'as is where is' and 'as is what is' basis. Ultimately, it was found through a report submitted by the Tehsildar that the actual measurement of the land was 39.60 cents and that the debtor had already transferred 14.40 cents out of the land admeasuring 54 cents prior to creation of mortgage with the Bank. The dispute of the aforesaid nature, ultimately, gave rise to institution of a suit for recovery of damages/compensation with respect to 14.40 cents. The matter reached to the High Court, who found the suit as barred by Section 34 of the Act, 2002. The Hon'ble Supreme Court observed that the suit was filed only for damages/compensation with respect of balance land, which aspect could not be decided by the Debt Recovery Tribunal or Appellate Tribunal and, therefore, Section 34 would have no application. It was also observed that the plaintiff had not challenged the sale/sale certificate and, therefore, the High Court had erred in holding the suit as barred by Section 34.

15. Facts of the present case are entirely different where, on account of default in discharge of financial liability, the Bank declared the account of the appellant as N.P.A. and commercial suit was filed seeking a declaration of holding

such order of the Bank as null and void. Although, damages for mental agony etc. were also claimed in the suit, when the matter went up to the stage of auction sale, the appellant itself sought to assail all proceedings under the Act, 2002, the challenge whereto could be laid before the Debt Recovery Tribunal and not by way of the suit. Therefore, the cited judgment in the case of **Mrs. Leelamma Mathew (supra)** has no application to the facts of the present case.

16. Reliance placed by the appellant on the judgment of Bombay High Court in the case of **M/s Maruti Civil Works (supra)** is thoroughly misplaced, inasmuch as, the issue before the Bombay High Court was as to, when an application under Order VII Rules 10 and 11 (d) of C.P.C., filed by the Bank is rejected, whether an appeal under Section 13(1-A) of the Act, 2015 would lie. The Bombay High Court held the appeal as not maintainable. Here, the situation is reverse that is to say that the application filed by the Bank under Order VII Rule 11(d) C.P.C. has been allowed by the Commercial Court and, consequently, the plaint has been rejected. We have not raised any doubt regarding maintainability of this appeal and, therefore, the judgement has no application.

17. In the case of **Mardia Chemicals Ltd. (supra)**, bar of jurisdiction of the civil court under Section 34 of the Act, 2002 was specifically dealt with in the light of the language used in the provision. When it was argued before the Hon'ble Supreme Court that before any action or measure is taken under sub-section (4) of Section 13, there would be no bar to approach the civil court, the Apex Court turned down the said submission in paragraph 50 of the report and held as under:-

“50. It has also been submitted that an appeal is entertainable before the Debt Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debt Recovery Tribunal or the appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr. Salve one of the counsel for respondents that there would be no bar to approach the civil court. Therefore, it cannot be said no remedy is available to the borrowers. **We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debt Recovery Tribunal or appellate Tribunal is empowered to determine in respect of any action taken "or to be taken in pursuance of any power conferred under this Act". That is to say the prohibition covers even matters which can be taken cognizance of by the Debt Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debt Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.**”

(emphasis by us)

18. The judgements in the case of **Gaurav Lubricants Pvt. Ltd.** (supra) and **Jagdish Singh** (supra) follow the ratio in the case of **Mardia Chemicals Ltd.** (supra).

19. In view of the above law laid down by Hon'ble Supreme Court, the suit filed by the appellant was barred by Section 34 of Act, 2002 as declaration of account of the appellant as N.P.A. could not be seen in isolation qua the measures taken or to be taken or may be taken in pursuance of the power conferred under the Act, 2002.

20. As far as the last submission made by learned counsel for the appellant that while deciding an application under Order VII Rule 11 (d) C.P.C., only statement contained in the plaint and not defence raised by the defendants has to be seen, there is no quarrel with the said proposition which is apparent from the language of the provision. However, the appellant is not correct in raising this argument in the facts of the present case where, even if we ignore the defence of the Bank with respect to measures taken under Section 13(2) or 13(4) read with applicable Rules, the fact remains that the appellant itself described these proceedings in its application under Order XXXIX Rule 1 C.P.C. and also in the application under Order VI Rule 17 C.P.C. Such assertions will certainly be read in connection with the plaint and would be deemed to be statement contained in the plaint, which was not only sought to be amended, but allied prayers were also made through injunction application. Therefore, the Commercial Court did not err in considering the admissions made by the plaintiff itself and, hence, the submission advanced that the Commercial Court has rejected the plaint by taking into

consideration the defence raised by the Bank, has no substance.

21. In view of above discussion, the order passed by the Commercial Court rejecting the injunction application as well as plaint under Order VII Rule 11 C.P.C. does not suffer from any error of fact and/or law. Consequently, the appeal fails and is **dismissed**.

(2025) 4 ILRA 1027
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.04.2025

BEFORE

THE HON'BLE ASHWANI KUMAR MISHRA, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Special Appeal No. 846 of 2024

State of U.P. & Ors. ...Applicants
Versus
Mahaveer Singh & Ors. ...Respondents

Counsel for the Applicants:
Ratan Deep Mishra, C.S.C., S.C.

Counsel for the Respondents:
Vinod Kumar Singh

Civil Law - U.P. Regularization of Persons Working on Daily Wages or on Work Charge or on Contract in Government Departments on Group 'C' and Group 'D' Posts (Outside the Purview of U.P. Public Service Commission) Rules, 2016 - Rule 6(1)(i) - Constitution of India, 1950 - Article 16 - Regularisation - Continuous working - Petitioners have not rendered continuous service over years - Whether this interruption in service was due to their own voluntary absence or was caused by artificial break i.e. a deliberate act on part of employer preventing them from working, a question that requires examination by competent authority - As

per Rules authority competent to assess is
Selection Committee - Duty of Selection
Committee to examine work records,
determine nature, cause of absence period
- No consideration has been made, nor
have petitioners been given opportunity to
explain reasons for their absence - Claim
of regularization must be reconsidered
afresh - Petitioners must be afforded
proper opportunity of hearing, including
chance to explain period of their absence -
Selection Committee shall reconsider
entire matter, pass reasoned order -
Impugned order, set aside. (Para 9)

Appeal allowed. (E-13)

List of Cases cited:

1. Janardan Yadav Vs St. of U. P. & ors., 2008
(1) UPLBEC 498, (Para 18 to 25)
2. Jagannath Yadav Vs St. of U.P. & ors., 2019
SCC OnLine All 8274
3. Janardan Yadav Vs St. of U.P. & ors., 2008
(2) ESC 1359, (Para 10)
4. St. of U.P. Vs Ram Roop Yadav, Special
Appeal No. 47 of 2016
5. St. of U.P. Vs Raj Kumar Srivastava (2017) 4
UPLBEC 3359, (Para 171 to 175)
6. Secretary, St. of Karn. & ors. Vs Umadevi (3)
& ors.; (2006) 4 SCC 1

(Delivered by Hon'ble Ashwani Kumar
Mishra, J. & Hon'ble Praveen Kumar Giri,
J.)

1. This intra-court appeal is filed by the State challenging the judgment of learned Single Judge rendered in Writ-A No. 19200 of 2019, whereby, the writ petition has been allowed and a direction has been issued to the State-respondent to regularize the services of the respondents-petitioners.

2. It transpires that respondents/petitioners had earlier approached this Court by filing Writ-A No. 6580 of 2019 which came to disposed of vide order dated 18.07.2019. The order reads as under:

"Despite grant of opportunity on 26.4.2019 and again on 23.5.2019, learned Standing Counsel has not been able to obtain instructions. It is submitted that the authorities have been communicated but no instructions have been received so far.

Petitioners, who are six in number, alleged that they were engaged in the Government Gardens at Agra as Mali on different dates between 1998 to 2001 and except for certain artificial breaks have continuously being working till date. It is stated that their claim for regularization is covered under the Uttar Pradesh Regularisation of Persons Working On Daily Wages or On Work Charge or On Contract In Government Departments On Group "C" and Group "D" Posts (Outside The Purview Of The Uttar Pradesh Public Service Commission) Rules, 2016 notified on 12th September, 2016, but their claim of regularisation has not been examined by the authority concerned. Repeated representations made since have not been bestowed any consideration, as such, petitioners are before this Court.

Learned Standing Counsel states that an appropriate decision would be taken in respect of claim of the petitioners, by the competent authority, in accordance with law.

In the facts and circumstances, noticed above, this writ petition stands disposed of with a direction upon the respondent no. 3 to accord consideration to the petitioners' claim for being regularized, in accordance with law, by means of a reasoned order to be passed, within a

period of three months from the date of presentation of a certified copy of this order.

Any artificial break in the working of the petitioners would be ignored and shall not be read against the petitioners. It would, however, be open for the authorities to verify as to whether petitioners had been working on the relevant date i.e. 31st December, 2001 and the second cut off i.e. 12th September, 2016 and have remained in employment throughout except for artificial breaks."

3. Pursuant to above direction, the Deputy Director, Horticulture, Agra Region, Agra vide order dated 14.10.2019 has rejected the claim of the respondents/petitioners on the ground that they had not worked continuously. The officer concerned has placed reliance upon a chart prepared by the officer in respect of the working of the respondents-writ petitioners which is extracted herein:

क्र. ० सं. ०	दैनिक श्रमिक का नाम व पिता/प ति का नाम	जन्म तिथि	जाति	शैक्षि क आह ता	लगातार कार्य प्रारंभ करने की तिथि	अभियुक्ति
1	श्री नईम पुत्र मज्जो	01.07.19 80	पि०जा ति		सितम्बर 2000	वर्ष 2000- 01 के माह सितम्बर 2000 से वर्तमान तक कार्यरत है।
2	श्री गगन देव पुत्र श्री चरनदी प प्रसाद	01.07.19 76	पि०जा ति		दिसम्बर 2004	वर्ष 1998- 99 में 26 दिन 1999- 2000 में 119 दिन तथा

						वर्ष 2001-02 में 23 दिन कार्य किया तथा वर्ष 2000-01 एंव 2002-03, वर्ष 2003-04 एंव वर्ष 2004-05 के माह नवम्बर 2004 तक स्वैच्छा से कार्य पर अनुपस्थित रहे। वर्ष 2004-05 के माह दिसम्बर 2004 से वर्तमान तक कार्य कर रहे हैं।							2004-05 के माह मार्च 2005 से वर्तमान तक कार्य कर रहे हैं।
							4	श्री चरन सिंह पुत्र श्री रामदया ल		पिंजा ति		17.8.2005	वर्ष 1998-1999 में 05 दिन कार्य करने के उपरान्त वर्ष 2005-06 के माह जुलाई 2005 तक स्वैच्छा से कार्य पर अनुपस्थित रहे। वर्ष 2005-06 के माह अगस्त 2005 से वर्तमान तक कार्य कर रहे हैं।
3	श्री सन्तोष कुमार उर्फ शान्ती प्रसाद पुत्र श्री रामगोप ल		सामान्य		20.03.2005	कार्यालय अभिलेखों के अनुसार सन्तोष कुमार उर्फ शान्ती प्रसाद पुत्र श्री रामगोपल नाम के किसी व्यक्ति द्वारा कभी भी दैनिक श्रमिक के रूप में कार्य नहीं किया गया है बल्कि श्री सन्तोष कुमार पुत्र श्री रामगोपाल द्वारा वर्ष							वर्ष 1988-99 में 60 दिन, वर्ष 1999-2000 में 10 दिन कार्य करने उपरान्त माह अप्रैल 2005 तक स्वैच्छा से कार्य पर अनुपस्थित रहे। पुनः वर्ष 2005-06 के माह मई 2005 में 26 दिन कार्य
							5	श्री महाबीर सिंह पुत्र श्री लाल सिंह		पिंजा ति		03.5.2006	

						करने के उपरान्त माह अप्रैल 2006 तक स्वैच्छा से कार्य पर अनुपस्थि त रहे। वर्ष 2006- 07 के मई 2006 से वर्तमान तक कार्य कर रहे हैं।
6	श्री महावीर पुत्र श्री बैजनाथ				03.5.200 5	वर्ष 1988- 99 में 57 दिन कार्य करने के उपरान्त वर्ष 2006- 07 के माह अप्रैल 2006 तक स्वैच्छा से कार्य पर अनुपस्थि त रहे। वर्ष 2006- 7 के माह मई 2006 से वर्तमान तक कार्य कर रहे हैं।

4. Learned Single Judge has taken note of the U.P. Regularization of Persons Working on Daily Wages or on Work Charge or on Contract in Government Departments on Group 'C' and Group 'D' Posts (Outside the Purview of U.P. Public Service Commission) Rules, 2016 and has observed that rule 6(1)(i) provides that a person who is considered to be regularized must be directly engaged or employed on or before 31st December, 2001 and must be

still engaged or employed or deployed or working as such on the date of commencement of the rules.

5. Learned Single Judge has relied upon the judgment of this Court in **Janardan Yadav Vs. State of U. P. and others, 2008 (1) UPLBEC 498**, wherein, the learned Single Judge of this Court while interpreting the pari materia provisions of previous Regularization Rules of 2001 observed that requirement of continuous working is not contemplated in the Rules and if such a condition is read into the provisions, it would amount to adding words in the Rules which would be impermissible. Learned Single Judge has accordingly observed as under:

“18. Here in this case the rule contemplates two conditions to be fulfilled: (a). A person must be appointed prior to cut off date; and (b). A person must be working/ employed/ deployed on the date of enforcement of the rules.

19. Looking to the chart that has been given in the order impugned I find Petitioners Mahaveer Singh, Mahaveer, Gagan Dev, Charan Singh and Naime to be appointed prior to the cut off date and that they have been working continuously on the enforcement of the Regularization Rules, 2016. Insofar as Santosh Kumar @ Shanti Prasad, petitioner No.- 6 is concerned, he is also stated to be working since 2004-05 continuously whereas the records are not available regarding his initial engagement.

20. Thus, it is clear that except Santosh Kumar @ Shanti Prasad all other petitioners were appointed prior to the cut off date, on daily wage basis by the respondent No.- 4 as a class IV employee (Group – D category) prior to the cut off date 31st December, 2001 and have been admittedly working on the date of

enforcement of the Regularization Rules, 2016 on 12th September, 2016.

21. *In view of the above, the second question need not be gone into as I am able to conclude from above discussion that an employee/ daily wager who is required to be considered under the Regularization Rules, 2016, is required to be engaged prior to the cut off date and should be employed/ deployed/ working on the date of enforcement of the Regularization Rules, 2016.*

22. *Upon simple interpretation from the language of the rules it is clear that an employee to be considered for regularisation is not required to have continuity of service from the date his initial appointment for regularisation under Rules, 2016.*

23. *In view of the above, the writ petition succeeds and is allowed.*

24. *The respondents are directed to pass formal orders giving benefit of regularisation to the petitioner Nos. 1 to 5 in the light of the observations made hereinabove.*

25. *Insofar as the petitioner No.- 6 is concerned he is directed to place his document of initial engagement first, if available to him and in the event any such document is filed, the respondent will consider the same and upon verification of the document if found genuine, the concerned respondent will be given the same benefit of regularisation to the petitioner No.- 6 also as he has been admitted to be working with the respondent No.- 4 on the date of enforcement of Regularization Rules, 2016 as a daily wager."*

6. Learned State Counsel has placed reliance upon a subsequent judgment of learned Single Judge in **Jagannath Yadav Versus State of U.P. and others, 2019**

SCC OnLine All 8274, wherein the previous judgment of this Court in **Janardan Yadav versus State of U.P. (supra)** has been considered. The judgement of learned Single Judge in the case of **Janardan Yadav Vs. State of U.P. and others, 2008 (2) ESC 1359** also fell for consideration before a coordinate Bench of this Court in Special **Appeal No. 47 of 2016, State of U.P. v. Ram Roop Yadav**. After noticing the judgments relied upon by learned Single Judge in the case of **Janardan Yadav (supra)**, the Division Bench has observed as under:

"We find that the judgment in the case of Sri Ram Yadav (supra) follows the judgment in the case of Janardan Yadav (supra) which, in our opinion, proceeds on complete non-consideration of Hindi version of Rules of 2001. Under the Hindi version of the Rules of 2001 a person is entitled for being considered for regular appointment under the Rules of 2001 only if he has been continuously working since prior to the cut-off date as mentioned in Rules of 2001 i.e. 29.06.1991 and the date of enforcement of Rules of 2001 i.e. 21.12.2001. The Hindi version of the relevant rules reads as follows:-

"इस नियमावली के प्रारम्भ के दिनांक को इस रूप में निरन्तर सेवारत हो."

A seven Judges Bench of this Court in Special Appeal No.622 of 1965 vide judgment dated 13.9.1974 has examined the issue with regards to doubt or ambiguity in any provision in the authoritative english text viz a viz the hindi text and while answering the question it has been held as under:-

"We are, therefore, of opinion that where there is some doubt or ambiguity in any provision in the authoritative English text, it is permissible to look into the Hindi text to remove the doubt or ambiguity. We

accordingly answer the question referred to this Bench in the affirmative."

Since in the facts of the case, we find that there had been a break of more than one and a half year in the working of the petitioner during the relevant period as has been admitted on record, it cannot be said that the petitioner had been working continuously as required under the Rules of 2001 so as to be considered for regularization. We may however clarify that there may be cases where there may be artificial break which can be ignored, but the continuous period of one and a half year of non-engagement in our opinion cannot be termed as artificial break.

For the reasons recorded above, as also in the case of Division Bench judgment of this Court in State of U.P. and others Vs. Chhiddi and another (supra), we find that the judgment and order of the learned Single Judge cannot be legally sustained and it is hereby set aside.

The special appeal is allowed."

7. The Division Bench of this Court in the **State of U.P. Versus Raj Kumar Srivastava (2017) 4 UPLBEC 3359** also considered the judgment of learned Single Judge in first **Janardan Yadav case** (supra) and observed as under:

"171. Reference has been made to the meaning of word of "continuous" and "continuing" given in the Black's Law Dictionary, Oxford dictionary of English, Law Lexicon and Hindi to English dictionary namely Vidhi Shabdawali of Government of India.

172. He has further relied upon the judgement of the learned Single Judge of this Court in Janardan Yadav (supra) and urged that the meaning of "continuing in service" as interpreted by the learned Single Judge may be accepted

to hold that the daily wage Registration Clerks would be treated to be "continuing in service" between 29.06.1991 and 09.07.1998, and thus, they would be covered under the Regularization rules 1998 and their regularization, therefore, has to be held to be made in accordance with law.

173. We are afraid to accept the interpretation given by Sri J.N. Tiwari in as much as only artificial breaks or short breaks in service could be ignored for computing "continuous service" or holding that the incumbent was in "continuous service" of the department, for the purpose of regularization.

174. Further the benefit could be given only to those who remained in employment "continuously" or "continuing in service" giving the impression that their services were required continuously though they had been engaged on daily wages basis. The persons who had been appointed for few days in one year and did not work continuously for the whole one year or more than that between two relevant dates from 29.06.1991 till 09.07.1998, cannot be said to be in "continuous employment", working on the requirement of the Registration department. They cannot be said to be covered by the meaning of words "continuing in service" under the Regularization Rules' 1998. None of the daily wagers before us could demonstrate otherwise.

175. For the reasons indicated in the preceding part of this judgement and those indicated above, we reaffirm our view that the daily wage registration clerks working in the Registration Department were not entitled to be regularized under the Regularization Rules' 1998. The exercise of regularization

undertaken by the State Government in the year 2011 was an illegal exercise."

8. In the second case of **Janardan Yadav case** (supra) the learned Single Judge has observed as under:

"10. The very object of granting regularization is to make regular the appointments which have been made without following the procedure laid down in law. The intent is to end uncertainty for employees who are working for inordinately long period. This period is specified as 10 years in the Constitution Bench Judgment in Secretary, State of Karnataka and others Vs. Umadevi (3) and others; (2006) 4 SCC 1. It is this long length of service which gives justification for framing rules to regularise the services or else the engagement being contrary to recruitment rules itself would be hit by Article 16 of the Constitution of India. Continuous working for long periods, therefore, would be a sine qua non for the grant of relief of regularization in accordance with the rules. Contention that merely working on two dates without necessity of continuance in between (excluding artificial breaks), therefore, cannot be accepted. The petitioner's working in the present case is not found to be continuous (there is a gap of almost eight years). Petitioner's absence also cannot be ignored by treating it to be artificial break nor such absence can be ignored on the ground that it was involuntary and caused by the employers. His claim for regularization under the rules is, therefore, not shown to be covered. The decision of the Divisional Director (Forest) suffers from no illegality. The writ petition fails and is, accordingly, dismissed."

9. Having examined the arguments advanced on behalf of the appellant, we are of

the opinion that the very object of granting regularization is to regularize the appointments which are made without following the procedure laid down in law. Article 16 of the Constitution of India otherwise contemplates equality of opportunity in matters of public employment. Any appointment made contrary to the rules of recruitment would thus be impermissible. It is only on account of continuous working for substantial long that the concept of regularization steps, which is manifestation of the concept of equity applied in the case of daily wagers who are continuing for long. Unless such working for continuously long length of time exists the decision to regularize such employee itself would be contrary to law. The working for inordinate long period has been specified as 10 years by the Supreme Court in Constitution Bench Judgment in **Secretary, State of Karnataka and others Vs. Umadevi (3) and others; (2006) 4 SCC 1**. It is this long length of service which therefore gives justification for any rules to be framed to regularize the services or else the engagement otherwise being contrary to recruitment rules would be hit by Article 16 of the Constitution of India. Unless the requirement of continuous working is read into the rules, the Regularization rule itself would be open for challenge on the ground of it being violative of Article 16 of the Constitution of India. The only exception which can be contended is the artificial break or period in which the employee is prevented from work by the employer. In the present case, we find that some of the persons have not worked continuously for several years. Whether these persons were prevented from working or was it a case of artificial break is an aspect which would require consideration by the competent authority. In the facts of the present case, the competent authority in terms of Rule 2016 is the selection committee which has to take note of the period of working. There is however no

consideration as to whether the period of absence is attributed to voluntary act on part of the writ petitioners or they were prevented from working by any act of the State authorities. Since on these material aspects we find that adequate opportunity to explain the circumstances has not been given to respondents-petitioners, as such we are of the view that the claim of the respondents-petitioners for regularization is required to be considered afresh, by the selection committee, after affording opportunity of hearing to the writ petitioners and to explain the period of absence from working. The chart annexed in the order impugned (extracted above) specifies the period of working of the writ petitioners. It would be open for all the petitioners to explain the period of absence and the selection committee would then take a decision as to whether such period of absence is attributed to any voluntary act on the part of the writ petitioners or they were prevented from working. It will also have to be seen whether it is a case of artificial break so as to prevent the action of the employer in not permitting the petitioners to work? Appropriate explanation would be offered within the period of four weeks. The selection committee shall accord fresh consideration to the claim of writ petitioner for regularization keeping in view the observations made above. Such consideration would be within a period of three months by passing a reasoned order.

10. Since the judgment of learned Single Judge omits to factor necessary aspects involved and also to facilitate a fresh consideration of appellant the judgment of learned Single Judge is set aside.

11. Consequently, special appeal succeeds and is allowed. The judgment and order impugned to this appeal is set aside. The matter stands remitted to the concerned authority for fresh consideration of cause in terms of observation made above.
